

Chapter 3 Summary: Mens rea

Chapter 3 explores the fault or mental part of a criminal offence, the mens rea. In particular we focus on the definitions of 'intention' and 'recklessness'.

Separating actus reus from mens rea (Chapter 3.1)

It is important to be able to separate an offence into mens rea elements (the focus of this chapter) and actus reus element (the focus of Chapter 2).

Mens rea in context (Chapter 3.2)

Many offences are constructed with a certain actus reus, and then mens rea applying to each element of that actus reus. However, there are exceptions:

- Strict liability: actus reus elements that do not require mens rea;
- Ulterior mens rea: mens rea elements that do not correspond to an actus reus requirement.

Voluntary act requirement (Chapter 3.3)

Every offence must involve voluntary conduct.

Mens rea terms (Chapter 3.4)

It is vital to understand the definition of mens rea terms in order to discuss and apply the law. We focus here on the definition of 'intention' and 'recklessness'.

- Intention: D's purpose or aim; a necessary means to achieving D's purpose or aim; and where D foresees the result as a virtually certain consequence of her conduct and the jury choose to find intention (key case: *Woollin*);
- Recklessness: D foresees a risk of her conduct causing the result, and continues unreasonably to run that risk (key case: *G*).

Objective and subjective mens rea (Chapter 3.5)

The language of objective and subjective mens rea is common, but most mens rea terms incorporate elements of both.

- Subjective: the prosecution must prove this state in the mind of D;
- Objective: the prosecution must prove this state in the mind of D, or that it would be in the mind of a reasonable person.

Other mens rea terms and prior-fault (Chapter 3.6-3.7)

Certain mens rea terms are non-conventional in that they combine mens rea and actus reus elements. We focus on negligence and dishonesty. Mens rea may also be located, in exceptional circumstances, from previous blameworthy conduct.

Reform (Chapter 3.8)

The central debates in relation to mens rea centre on changes in definition; the relative value of subjective or objective definitions; and codification.

Eye on assessment (Chapter 3.9)

This section provides a scheme for the application and discussion of mens rea in the context of a problem question.