
INTRODUCTION TO SUBSTANTIVE CRIMINAL LAW

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1. Definition of Crime

The term 'Crime' denotes an *unlawful act* and this unlawful act is *punishable by a state*.

A common principle about Criminal Law is that, unless an activity is *prohibited by law*, it does not qualify as a crime.

Incidents of crime *hurt not only the individual, but also the state*. Therefore, such acts are forbidden and punishable by law.

The body of laws which deals with imposing punishments on crimes is known as *Criminal Law*.

2. Elements of Crime

- Guilty Act – Actus Reus
- Guilty Mind – Mens Rea
- Injury

To be classified as a crime, the act of *doing something bad (actus reus)* must be accompanied by *the intention to do something bad (mens rea)*.

A crime is said to exist usually when both these elements are present.

Unless this mental element is present, no act is usually criminal in nature. So, all crimes have a physical element and a mental element, usually called actus reus and mens rea respectively.

“actus non acit reum nisi mens sit rea”

The principle of actus reus and mens rea are embedded in this Latin maxim.

The Latin maxim means that an act does not make one guilty unless the mind is also legally blame worthy.

In other words, for a physical act to be termed a crime, it must be accompanied by the necessary mental element.

What is actus reus?

The word actus connotes a 'deed' which is a physical result of human conduct.

The word reus means 'forbidden by law'.

It is made up of three constituent parts, namely:

1. An action or a conduct.
2. The result of that action or conduct
3. Such act/conduct being prohibited by law.

e.g.: An executioner's job is to hang and an army man kills as a part of his duty. Hence, no actus reus here.

What is mens rea?

Mens rea generally mean 'ill intention'.

The constituents of mens rea are:

1. There must be a **mind at fault/intention**.
2. The act becomes criminal when the actor **does it with a guilty mind**.

Motive vs Intention

Motive	Intention
Motive is the <u>ulterior objective</u> behind an act.	Intention is the <u>thing you plan to do and achieve</u> .
<u>Every act</u> has some kind of <u>motive</u> (good or bad).	<u>Some actions</u> might have <u>no intention</u> .
Considered to be <u>irrelevant</u> in Criminal Law.	<u>Key element</u> in determining a criminal liability.

3. Stages in Commission of a Crime

- Stage 1 Intention
- Stage 2 Preparation
- Stage 3 Attempt
- Stage 4 Commission/Accomplishment

Intention (Stage 1)

It is also called mental stage, a state of mind where a person wants to do an act which when completed or attempted to be done, is punishable and prohibited by law.

This stage is *not punishable* because it is *difficult to prove guilty mind* of a person.

Kinds of intentions in IPC:

1. Purposely/Intent

Intends to bring about a result.

With intent, there is no denying that someone deliberately set out to harm someone, or to engage in some kind of illegal activity.

e.g.: Rob and Andrew are out in a field near the airport in their small town, drinking beer and watching planes land. They decide that the blue lights out there would be cool to own, so they take turns sneaking out into the field, unscrewing a light bulb, then stashing them in their car.

- They knew they were trespassing, and had to know that taking lights could put others in danger. Yet they stole the lights with intent to deprive the rightful owner of them, and convert them to their own use.

e.g.: X and Y know there is an old airport outside their small town, which they believe to be abandoned. While exploring, they discover blue lights they would like to have. Being sure the airport is no longer in use, the boys take the light bulbs, stashing them in their car.

- They truly believed the airport was no longer being used. While they must have known they were trespassing on private property, they thought they were taking abandoned property, lights that were no longer in use. They did not intend to deprive the rightful owner.

2. Knowingly

Practically certain the result will occur.

In knowledge the criminal is aware of consequences that can result from his actions, but simply does not care.

e.g.: Anna is upset that Charlie is cheating on her, so she plants a bomb in his car. She knows that Charlie will probably be taking Elsa, his mistress, out to dinner that night, and the bomb could kill both on setting off. Anna does not care that Elsa could die too, and she is fully aware that this is most likely to happen.

- The bomb in the car on exploding, kills everyone in the car. While Anna will be charged with the intent of killing Charlie. She will more than likely also be charged with the knowledge that her actions would also kill Elsa.

3. Recklessly

Consciously disregards a substantial or unjustified risk.

Recklessness is someone's decision to do something dangerous, despite knowing the risks involved.

e.g.: If someone waves a loaded gun around in a crowded room – with no intention of shooting anyone, but the gun goes off and hurts someone.

- The shooter did not intend to hurt anyone, but he knew what could happen if he waved a loaded gun, and he did it anyway.

4. Negligently

Should be aware of a substantial or unjustifiable risk, but is not.

Negligence applies when someone failed to live up to his responsibilities, and someone else was injured as a result.

e.g.:

- a. A child gets hurt on the babysitter's watch.
- b. Pet owner allows his pet to become malnourished and dehydrated.

Preparation (Stage 2)

When a person who intends to do an act prohibited by law, starts preparing for the same, then he is said to be on the stage 2, preparation.

It is again not punishable, but exceptions are:

- (i) Preparation to wage war against government. (Section 122, of IPC)
- (ii) Preparation to commit depredation on territories of a power at peace with government of India. (Section 126, of IPC)
- (iii) Preparation to commit dacoit. (Section 399, of IPC)
- (iv) Preparation for counterfeiting of coins or government stamps. (Section 233, 235, 255, 257, of IPC)

Attempt (Stage 3)

Attempt would be defined as “*Direct movement towards commission*”.

It is punishable, as it cause injury.

e.g.:

- a. Attempt to Commit Murder (Section 307, of IPC)
- b. Attempt to Commit Suicide (Section 309, of IPC)
- c. Attempt to Commit Robbery (Section 393, of IPC)

Distinction between Attempt and Preparation

For distinction courts have laid down five tests:

- i. **The Proximity Test:** Focuses of whether the defendant was '*dangerously close*' to completing the crime or '*so near to the, result the danger of success is very great*'.

Case: State of Maharashtra v. Mohd. Yakub & Others

The respondents were charged with the offence of attempting to smuggle out of India 43 silver ingots in violation of the Foreign Exchange Regulation Act, 1947, Imports and Exports (Control) Act, 1947 and the Customs Act, 1962. The prosecution alleged that on the night of the occurrence the respondents carried in a truck and a jeep silver ingots some of which were concealed in a shawl, and some others hidden in saw-dust bags from Bombay to a lonely creek nearby and that when the ingots were unloaded near the creek the sound of the engine of a mechanised sea-craft from the side of the creek was heard by the Customs officials and that therefore they were guilty of attempting to smuggle silver out of India. The respondents pleaded that they were not aware of the presence of silver ingots in the vehicles, that they were only employed for driving the jeep and the truck to another destination and that the police stopped them en route and had driven them to the creek. The Trial Court convicted and sentenced them to various terms of imprisonment and fine. On appeal, the Sessions Judge acquitted all the respondents taking the view that the facts proved showed no more than that the accused had only made "preparations" for bringing the silver to the creek and "had not committed any act amounting to a direct movement towards the commission of the offence" and that until the silver was put in the boat with intent to export, it would merely be in the stage of preparation falling short of an "attempt" to export in contravention of the law. The High Court dismissed the State's appeal.

- ii. **The Locus Poenitentiae Test:** It means the opportunity to withdraw from a bargain before it has fully constituted and become binding.

Case: Malkiat Singh v. State of Punjab

In exercise of the powers conferred by s. 3 of the Essential Commodities Act, 1955, the Central Government promulgated the Punjab Paddy (Export Control) Order,

1959. Paragraph 3 of the Order prohibited the export of or attempt to export paddy from any place within the State of Punjab to any place outside the State except under a valid permit. Paddy, booked by a firm in Punjab to a consignee to Delhi, was carried in a lorry driven by the first appellant. The lorry was stopped by the police at a place which was 32 miles from Delhi, that is, inside the State of Punjab (the Punjab-Delhi boundary was 18 miles from Delhi), and the appellants, along with others, were prosecuted and convicted for an offence under s. 7 of the Essential Commodities Act. In appeal to this Court, HELD: No offence has been committed by the appellants nor was there an attempt to commit an offence. As the paddy was seized well inside the Punjab boundary, there was no export of paddy outside the State of Punjab. It was also possible that the appellants might have changed their minds at any place between the place of seizure and the State boundary. The acts of the appellant then would only constitute preparation and not an attempt to commit the offence of export, because, the test for determining whether acts constitute. Merely preparation and not an attempt is whether the overt acts already done are such that if the offender changes his mind and does not proceed further, the acts already done would be completely harmless.

- iii. **Impossibility Test:** The act itself is impossible of performance and yet it constitutes an offence of attempt to commit crime. **E.g.:** aborting a baby even when the woman is not pregnant, since act of abortion is illegal.

Case: Queen Express v. Mangesh Jivaji, the Bombay High Court held that within the meaning of Section 511 of IPC, an attempt is possible, even when the offence attempted cannot be committed.

- iv. **Social Danger Test:** Difference between attempt and preparation is following factors:
- a. The seriousness of crime attempted.
 - b. The apprehension of the Social Danger, involved.
- v. **The Equivocality Test:** If what is done indicates unequivocally and beyond reasonable doubt the intention to commit the offence, it is an attempt, or else it is a mere preparation.

Accomplishment (Stage 4)

If commission of an act, unlawful and prohibited by law is accomplished or one succeeds in attempt accused will be guilty of the complete offence.

4. Extend and Operation of Indian Penal Code

The Indian Penal Code was passed in the year 1860. However, it came into effect from January 1, 1862.

The Indian Penal Code applies to the whole of India except for the state of Jammu & Kashmir. It contains 23 Chapters and 511 Sections. Before the Indian Penal Code came into effect, the Mohammedan Criminal Law was applied to both Mohammedans and Hindus in India.

Section 1, gives the extent of this act, which is whole of India, except the state of Jammu and Kashmir. New amendment for section 1 remains to be published.

Section 2, of this act says that anyone within India, who does a crime is punishable under Indian Penal Code.

Section 3, says if an act of crime would have been committed by an Indian, outside India, the person would be punished according to Indian Penal Code, only if the crime done on the foreign soil could have been enacted the same way in India.

Section 4, of the act tells us that Indian Penal Code is also applicable, on a person committing a crime at following places as well:

- a. Indian citizen, outside India.
- b. Aircraft, or ship, registered to India.
- c. Any person causing cyber threat to India.

Section 5, tells that Indian Penal Code will not intervene in provision of any act for punishing mutiny and desertion of officers, sailors or airmen in the service of Government of India, or the provision of any special or local law.