**Elements of a Criminal Offence**

**Actus Reus and Mens Rea**

Before someone can be convicted of a crime, the **Crown** (the prosecuting lawyer who tries to prove a suspect's guilt) must prove that two elements existed at the time of the crime: **actus reus** and **mens rea**. The following scenario will help you understand these terms.



John is a university student. He doesn’t have much money and is envious of his friends who seem to have it all. Because he has no video game console, he likes to visit his friend Mike to play their favorite games. Mike has two of the latest-generation consoles and buys games almost weekly. John likes to tell Mike that they are "best friends."

One day, Mike learns that his "pal" John was busted for stealing a gaming console and more.

Apparently, for an hour or two, John had browsed the stores, casually shopping. He spotted a small gaming console in the electronics store, so he entered and tried to look inconspicuous. When John was finally satisfied that no one was looking, he stuffed the console into his jacket pocket and started to leave the store. The cashier, who had been watching John, stopped him as he left the premises. John panicked and struck the cashier in the face, breaking his nose. John ran with the gaming console.

This scenario is intended to introduce two important concepts: actus reus and mens rea. John certainly had the intent to commit a crime; he wanted to steal the item. This intent is called **mens rea**, Latin words meaning "the guilty mind." In fact, the stage was set as soon as he began browsing around, looking inconspicuous. John also committed the prohibited act, known as the **actus reus**, Latin words meaning "the guilty act." In John's case, the actus reus is the theft of the console.

These two elements—mens rea and actus reus—are all the prosecution has to prove in order to establish guilt in a criminal case. Both are necessary. Whereas actus reus is the act or omission of committing a crime, mens rea is the intent to commit the crime; the person who has committed the crime has knowledge of committing an illegal act and means to do something wrong. The act is intentional. In other words, we must examine the state of mind of the person committing the crime. You may find the words such as "with knowledge," "with intent" and "knowing" used in the Criminal Code to express mens rea.

If you check out the [***Criminal Code***](https://laws-lois.justice.gc.ca/eng/acts/c-46/), and search statutes 265, 433 and 434, what word indicates mens rea?

**Check Your Understanding: Elements of a Criminal Offence**

Consider the following situation and try to find the mens rea and actus reus:



Lynn purchases a smartphone for $20.00 from someone she met. Before buying it, she noticed that the serial number had been scratched off. The low price and the missing serial number are enough clues for her to determine that the phone was probably stolen. However, she figures it is such a great deal that she buys it anyway.

Did Lynn commit a crime? To find out, see what section 354 of the [***Criminal Code***](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html) states regarding stolen property. Can you identify the actus reus and mens rea? (the correct answer can be found in the box below; simply select the box and change font colour back to black…try to challenge yourself and think about what the answer might be)

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| *In this case, Lynn did not commit theft, as she was not the person who stole the DVD player. However, she is in possession of something that is illegal. This type of crime can be considered an act of****wilful blindness****(wilful blindness is ignoring the consequence of your actions), as Lynn knew very well that the DVD player had been stolen. If you do a search for "possession of property obtained by crime," in the Criminal Code, you will see that statute 354 deals with the issue of possession of stolen goods:*  ***354. (1)****Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from:*   1. *the commission in Canada of an offence punishable by indictment; or* 2. *an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.* |

**Self Assessment**

**Top of Form**

**Check Your Understanding: Identifying actus reus and mens rea**

Can you identify the two main elements of a criminal offence? In each question, read the case, then choose the one sentence that describes the**mens rea** and another that describes the **actus reus** from the answer options given.

Be sure to read the details of each case carefully in order to correctly identify the mens rea and actus reus.

You must have a strong understanding of these concepts before continuing.

I’ve provided a blank answer key for you to copy your choices into.

\_\_\_\_\_1.

\_\_\_\_\_2.

\_\_\_\_\_3.

\_\_\_\_\_4.

\_\_\_\_\_5.

\_\_\_\_\_6.

\_\_\_\_\_7.

\_\_\_\_\_8.

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| **Question #1:**  Jack was having the worst week of his life. He got fired, his girlfriend dumped him and his car broke down. Bill collectors were calling him daily and his own family was demanding he shape up or ship out.  So it's no surprise that Jack was at least a little fired up when he went bar-hopping, very late on a Saturday night. He entered a spot he often visits. He spotted Kurt in the corner hanging out with friends. Jack approached—drunk, and looking for a fight. He cursed, swore and insulted Kurt in every way. Among other comments to Kurt, Jack said "Step outside, and I'll beat the #%@& out of you." When Kurt turned away, Jack shouted more insults and obscenities, punched Kurt in the arm and then in the face.  Kurt had enough. He hit Jack back and knocked him off his feet. Kurt then walked away, but Jack jumped up and hit him again. Kurt turned around and hit Jack in the face so hard that he broke Jack's nose. Despite his broken nose, Jack was charged with assault.  What is the mens rea in this case?   1. Kurt hit Jack back and knocked him off his feet. 2. Jack entered a spot he often visits. 3. Jack said, “Step outside, and I’ll beat the #%@& out of you.” |
| **Question #2:**  What is the actus reus in the case above?   1. Jack approached – drunk, and looking for a fight. 2. He spotted Kurt in the corner hanging out with friends. 3. Jack punched Kurt in the arm and then in the face. |
| **Question #3:**  Keith and Andrew grew up together. As teenagers, they grew apart, argued, fought, and competed for friends and attention. As adults working in the same company, they competed for promotions and sabotaged each other. Neither one could stand the other.  Andrew grew obsessed with the thought of eliminating Keith, who he saw as the cause of all his problems. He plotted and planned and finally acted. One night at a local club, Andrew picked a fight with Keith. Unknown to Keith, Andrew had a knife with him. During the fight, Andrew repeatedly stabbed Keith. The bouncers broke up the fight and Keith was rushed to hospital.  Keith did not die right away. Prompt medical attention kept him alive for six months before he died as a result of the wounds. Andrew, originally charged with assault with a weapon causing bodily harm, was now charged with murder.  What is the mens rea in this case?   1. He plotted and planned… 2. Neither one could stand the other. 3. Unknown to Keith, Andrew had a knife with him. |
| **Question #4:**  What is the actus reus in the case of Keith and Andrew above?   1. Keith did not die right away. 2. Andrew grew obsessed with the thought of eliminating Keith. 3. Andrew repeatedly stabbed Keith. |
| **Question #5:**  The accused was charged with first-degree murder following the death of his 12-year-old daughter, T. She had cerebral palsy, was quadriplegic and her physical condition rendered her immobile. She was said to have the mental capacity of a four-month-old baby and could communicate only by means of facial expressions, laughter, and crying.  T. was completely dependent on others. She suffered five to six seizures daily and was thought to experience a great deal of pain. She was spoon-fed, and her lack of nutrients caused weight loss. T. could have been fed with a feeding tube into her stomach, and option that would have improved her nutrition and health, and that might also have allowed for more effective pain medication to be administered. The accused and his wife rejected this option.  When doctors recommended additional surgery, which he perceived as mutilation, the accused decided to take his daughter's life. He seated T. in the cab of his pick up truck and inserted a hose from the truck's exhaust pipe into the cab. T. died from carbon monoxide poisoning.  The accused at first maintained that T. had passed away in her sleep, but later confessed to having taken her life. The accused was found guilty of second-degree murder and sentenced to life imprisonment without parole eligibility for ten years. The Saskatchewan Court of Appeal upheld the conviction and sentence of the accused, but the Supreme Court of Canada ordered a new trial.  In the second trial the accused was again found guilty of second-degree murder, but the jury, despite the ten-year minimum in the law, recommended he be eligible for parole in one year. The trial judge granted a constitutional exemption from the mandatory minimum sentence and imposed a sentence of one year of imprisonment and one year on probation. The Court of Appeal upheld the conviction but reversed the sentences, imposing the mandatory minimum sentence of life imprisonment without parole eligibility for ten years. On appeal, the Supreme Court of Canada upheld the conviction and the ten-year sentence.  What is the mens rea in this case?   1. The accused and his wife rejected this option. 2. The accused decided to take his daughter’s life. 3. The accused at first maintained that T. had passed away in her sleep. |
| **Question #6:**  What is the actus reus in the case above?   1. The Saskatchewan Court of Appeal upheld the conviction. 2. T.’s father placed her in the cab of the truck and directed carbon monoxide into the truck. 3. The accused was found guilty of second degree murder. |
| **Question #7:**  Maurice was driving his girlfriend, Beth, to school in his new Mercedes. He decided to show her what the car could do. "Watch this!" he said at the next light, and when it turned green, he sped off down the road with his foot to the floor. Beth, far from being impressed, was scared stiff. "Slow down," she screamed, "you'll kill someone!" Maurice replied, "Too bad for them if they get in my way....I want to see how fast this baby will go!"  Just in front of the high school, Maurice struck and killed a student who was jaywalking across the street.  Based on his (now ex-) girlfriend's full and frank account of what was said in the car, the police charged Maurice with criminal negligence in the operation of a motor vehicle causing death.  What is the mens rea in this case?   1. Just in front of the high school, Maurice struck and killed a student. 2. “Too bad for them if they get in my way…I want to see how fast this baby will go!” 3. Maurice was driving his girlfriend, Beth, to school in his new Mercedes. |
| **Question #8:**  What is the actus reus in this case?   1. Maurice struck and killed a student. 2. The police charged Maurice with criminal negligence. 3. He decided to show her what the car could do. |