

## Quadrant II – Notes

**Paper Code:** LOC 0312/LOC 0112

**Module Name:** Elements of Crime

**Module No:** 02

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### Elements of Crime or Principles of Criminal liability:

**To constitute a Crime Two essential elements are required as per English law**

1. Physical element known as Actus reus
2. Mental element called as mens rea
3. Human being
4. Injury
5. Motive

1) Human Being:

*Sec 11* of the Indian Penal Code – Define the term person

- ☺ It includes artificial and juridical person
- ☺ Company or Corporation are liable or not – not liable
  - no physical body of its own-no imprisoned
  - Corporation has no mind of its own-no criminal intention
- ▶ Leonard Carrying Co. Ltd. v. Asiatic Petroleum co. Ltd. (1915)
  - Corporation not liable –absence of mens rea-fines can be imposed
  - Corporation cannot be liable for committing offences like –murder, theft, robbery, dacoity etc.,
- ▶ St of Maharashtra v. Syndicate Transport Co. Ltd.
  - Corporation can be prosecuted under *Sec.403, 406* and *420*
  - The term person includes Company as per *Sec.11*
  - Fault of the Company is fault of someone for whom the Co. is liable

Prevention of Food Adulteration Act, 1954-*Sec.17*

- An offence committed by a Co. every person who is in charge at that time is liable

## 2) Mens Rea or the Mental Element:

Guilty intention or Evil intention-

**(Maxim: *Actus non-facit reum nisi mens sit rea* is the basic principle of criminal liability)**

- Introduction
- ⇒ Early primitive societies- mens rea was absent.
- ⇒ Mens rea was absent before 13<sup>th</sup> Century
- ⇒ Fully established during 14<sup>th</sup> and 15<sup>th</sup> Century
- ⇒ End of 17<sup>th</sup> Century it was settled

### English Law

- ⇒ Mens rea's application to statutory offences was uncertain till 1947.
- ⇒ The Court in the following cases established it
  - ▶ R v. Prince (1875)-  
(Prince kidnapping a girl aged 16 yr.)
  - ▶ R v. Tolson (1889) 23 QBD 168  
(Mr. and Mrs. Tolson, Bigamy case)
  - ▶ R v. Wheat & Stock co. Ltd. (1921) 2KB 119 (Bigamy)

- ⇒ In some case where there is absence of mens rea even then the offender is liable. The House of Lords affirmed this concept in
  - ▶ DPP v. Smith (1960) 3All.ER 161
    - Everyone knows the natural and probable consequences of his act.  
Accused was sentenced to death.

### Indian Law

- Mens rea is wholly out of place under IPC
- The concept is not defined clearly
- Expressions like fraudulently, dishonesty, wrongfully, voluntarily, knowingly – indicate criminal intention
- Mens rea takes different colours in different surroundings
- It may differ from crime to crime
- IPC contains a separate chapter regarding absence of mens rea
  
- ▶ Hariprasad Rao v. State AIR 1951 SC 204
  - ⊗ Petrol bunk dealer
  - ⊗ Motor Rationing Order, 1941-endorsement by the master was absolute
  - ⊗ Master was held liable
- ⊗ Nathulal v. St. of M.P. AIR 1966 Sc 43
  - ⊗ Food grain dealer applied for license
  - ⊗ Application not rejected

- ⊗ *Sec.7* of MP Food Grain Dealer Licensing Order, 1958 – Keeping excess quantity of grains is an offence
- ⊗ Accused acquitted
- ▶ Inder Jain v. State of Punjab (1973) 2 SCC 372
  - ⊗ Parcel of fruits released from railway station
  - ⊗ Caught by the police – parcel contains Opium
  - ⊗ *Sec.9 & 10* of Opium Act, 1878-possessing of opium shall be punishable with 3 years imprisonment with fine or without fine
  - ⊗ *Sec.13* of the Act Conscious possession is not necessary
  - ⊗ Accused has to prove to the satisfaction of the court-no evidence – found guilty
- ▶ Dhanraj v. Emperor
  - ☛ Detection of unknown thief –removing toddy from toddy pots
  - ☛ Accused poured poison in pots
  - ☛ Resulted in grave injury
  - ☛ Accused held liable under *Sec.328*

### 3) Actus Reus or the Physical Element

- Actus - Deed
- Reus - Forbidden by Law
- Any Human Action forbidden by law

### **Jerome Hall- a thing in addition to mens rea is required to produce crime**

Actus Reus made up of 3 parts

#### A. Human action – termed as Conduct

- Act means an event subject to the control of will
- Act includes act of commission or omission
- Voluntary act -like walking, talking, speaking, shouting etc.,
  - Act consists of 3 parts
    - A shoots B to death with a gun
    - Its origin-bodily act or willed movement (primary stage) Intention to kill, aiming, series of muscular contraction
    - The circumstances-gun is loaded and it is in working condition
    - Consequences-fall of trigger, explosion of powder, discharge of the bullet, striking the body of B- results in death

#### B. Result of such Act- death or injury

#### C. Act must be prohibited by law-in the present example the

Act of A was prohibited and punishable under *Sec.302*

### 4) Injury: Sec 44

Indian Penal Code defines the term injury Person, body, Mind, reputation or property.

Injury may be to one person, any other person or to the society

5) Motive: Reason for any act.

(Jealousy, Vengeance, enmity, hate redness, dislike, love etc.)