

MENS REA

COMMON LAW

A. General

1. Most crimes require a mental attitude -- “strict liability” or “liability without fault” offenses do not
2. Mental attitude required for a crime is found:
 - a. Definition of the offense
 - b. Application of common law Mens Rea structure

B. Elements of Mens Rea

1. Specific Intent
Focus is what defendant was thinking or planning at the time of the offense: Attitude must match definition of the offense.
 - a. Contemplated Conduct
 - b. Contemplated Impact
 - c. Knowledge that One or More Elements of the Actus Reus Exists
2. General Intent
A residual term - any crime that does not require specific intent or does not impose strict liability.
 - a. Mens Rea Words:

reckless	negligent	maliciously	feloniously
wantonly	willfully	scienter	wrongfully
corruptly	fraudulently		
 - b. Much used Mens Rea Words
 - (1) “Recklessness”
 - (a) Conduct created an unacceptable risk that an element of a crime would occur
 - (b) Defendant was aware of the risk

(c) Defendant was seriously at fault for engaging in the conduct given the awareness of the risk

(2) "Negligence"

(a) Conduct created an unacceptable risk that an element of a crime would occur

(b) The defendant should have been aware of the risk

(c) The defendant was seriously at fault for engaging in the conduct given that a reasonable person would have been aware of the risk

C. Best Common Law Approach to Mens Rea

Use the organizational scheme of the Code

Organize Mens Rea around four ideas:

1. Purpose -- Conscious desire or objective
2. Knowledge -- Awareness or belief
3. Recklessness -- Aware of risk
4. Negligent -- Should have been aware of risk

MODEL PENAL CODE

A. General

1. Common law language is not used
2. Scheme: MPC §2.02 (1)
 - a. Must act purposely, knowingly, recklessly or negligently
 - b. With respect to each material element of the offense

B. Elements of the Mens Rea

1. "Purposely"
 - a. Defined: MPC §202(2)(a); §1.13(11); §1.13(12)
 - b. Equivalents: "with purpose"; "designed"; "with design"; "intentionally"; "with intent"
2. "Knowingly"
 - a. Defined: MPC §2.02(2)(b); §1.13(13)

- b. Equivalents: “knowing”; “with knowledge”; aware
- 3. “Recklessly” Conscious of Risk Creation
 - a. Defined: MPC §2.02(2)(c); §1.13(14)
 - b. Equivalents: “recklessness”; “with recklessness”
- 4. “Negligence” Does not Involve a State of awareness
 - a. Defined: MPC §2.02(2)(d); §1.13(15); §1.13(16)
 - b. Equivalents: “negligence”; “with negligence”; “reasonably believes”; “reasonable belief”

C. Analytical Structure

- 1. Start with MPC §2.02(1)
- 2. Element of the Offense MPC §1.13(9)
- 3. Material Element MPC §1.13(10)
 - Connected -- Conduct, result, or circumstance elements used in
 - a. Defining the offense
 - b. Establishing its grade or severity
 - c. Providing a defense
- 4. “Violations” v. “Elements” MPC §2.05(1)
 - a. MPC §2.05 offenses do not require mens rea
 - b. Classified as “violations”
 - c. Note MPC §1.04(5)
 - A “violation” does not constitute a crime
 - No imprisonment
- 5. Culpability structure does apply to all crimes
 - In effect strict liability offenses are eliminated from the Code

Conclusion: Some level of culpability is required as to each material element of every crime -- that is each conduct, each result, and each circumstances element contained in the definition of every offense and in its grading and in any defense.