

LAW COURSEWORK: Number Three

Name: Joseph Tilbury

Examination Number:

Centre name: Spalding Grammar School

Centre Number: 26233

Component Code: 1177/3

Examination Session: Summer 2003

List of Sources:

- GCSE Law (Second Edition) by Jacqueline Wilson
- GCSE Law Casebook (Third Edition) by Eric Boucher & David Corns
- GCSE Law Textbook (Third Edition) by P.A. Read
- www.lawteacher.com

I. Using actual situations, describe the elements of actus reus and mens rea in criminal law.

It is necessary for the prosecution, in the bulk of crimes, to prove two elements in order for a person to be found guilty of a crime. These are the actus reus (which means the guilty act) and the mens rea (which means the guilty mind/intention), and it is only in strict liability crimes where the act alone (the mens rea) is enough to prove a person guilty. Examples of strict liability crimes are possession offences (the defendant possesses, for example, knives, guns or drugs) and not wearing a seatbelt. The actus reus can be an act (e.g. stabbing someone) or an omission (e.g. not halting at a red light), whilst the mens rea can be caused by intention (this level must be proved for the most serious crimes including theft, burglary, robbery, murder) or recklessness (taking an unjustifiable risk, this level must be proved in crimes including assault and battery).

It is easiest for me to describe the elements of a crime by utilising real cases and offences. I must first however explain the chain of causation, which is where there is an intervening act between the defendant's guilty act and the consequence, which contributes to the consequence. Problems occur here (where the act has to cause a consequence for the accused to be guilty) as it is necessary to illustrate the link between the actus reus and the consequence, which is hard if the victim has taken avoiding action or if a third person has intervened. It is therefore crucial to use something called the 'but for' test, which basically proves if the defendant had the actus reus of the crime by asking: 'but for the defendant's actions, the victim would not have suffered a loss'. If the actions of the defendant caused a loss to the victim then he has the actus reus of a crime.

In the case *R. v. Chan-Fook* (1994), the defendant dragged the foreign victim up some stairs and locked him in a second floor room after Mr. Chan-Fook and other members of his family believed, after questioning, that the victim had stolen Mr. Chan-Fook's fiancée's ring. The victim tried to escape through the window but the makeshift rope he had made broke under his weight and he was injured when he fell into the garden below. The defendant was charged with assault occasioning actual bodily harm as the victim had been reduced to a mental state which, in itself, amounted to actual bodily harm (the extent of his injuries were disputed). The actus reus in assault occasioning actual bodily harm has two elements: assault (causing the other person to fear immediate unlawful force) plus the consequence of actual bodily harm (any injury, including psychiatric, even a scratch or a bruise). The mens rea for this offence does not include any intention to cause actual bodily harm or recklessness as to whether such harm is caused and so the defendant is guilty even if he did not intend to cause an injury. It can be seen then that Mr. Chan-Fook had both the actus reus and mens rea of assault occasioning actual bodily harm and he was convicted, however the case was quashed on appeal, as there was no evidence of psychiatric injury.

In *Oxford v. Moss* (1979) a student removed an examination paper, photocopied it and then replaced the original paper and was subsequently charged with theft. The actus reus of theft is the 'appropriation of property belonging to another'. The mens rea has two

elements, the thief must both be dishonest and intend to 'permanently deprive' the other person of their property. In this case, it was decided that this was not theft, since knowledge was not property. This means the student did not have the actus reus of theft. He could also not have the mens rea of theft, as he did not intend to permanently deprive the other person of their property and, as already stated, knowledge is not considered property anyway.

My final example of a case showing elements of actus reus and mens rea is in *R. v. Wood* where the defendant had been charged with malicious wounding. The actus reus of malicious wounding is that the defendant must 'wound or inflict grievous bodily harm'. The mens rea of malicious wounding is intending to do the injury or foreseeing the risk that the act might cause injury and deciding to take that risk, but it is unnecessary (in all section 20 cases, not just malicious wounding) for the defendant to have foreseen that the unlawful act might cause 'physical harm of the gravity described in the section'. However, in this case it was held that breaking a collarbone was not wounding, so the defendant was not guilty, as he did not have the actus reus of malicious wounding.

II. Comment on the importance of these two elements to murder and manslaughter.

The actus reus of murder is the unlawful killing of a person. The mens rea of a murder is 'malice aforethought, either expressed or implied'. Expressed intention (the same as expressed malice aforethought) is where the defendant's actions were intended to lead to the death of the victim whilst implied intention is where the defendant went with the intention of committing grievous bodily harm, but went to far in his actions and killed the victim.

The actus reus of manslaughter is also the unlawful killing of a person. However, there are two separate forms of manslaughter. Voluntary manslaughter is where the defendant has committed the actus reus and mens rea of murder (the unlawful killing of a person and the specific intention to kill or cause grievous bodily harm) but is allowed, by law, to use one of three defences to lesson the charge to manslaughter. These defences are diminished responsibility, provocation and suicide pact. Involuntary manslaughter is an unlawful killing where the accused did not have the specific intention for murder. A person may be guilty of involuntary manslaughter in three ways: by an act which is unlawful and dangerous, by recklessness and by gross negligence.

When I compare the actus reus' of murder and manslaughter, it can be seen that in both murder and manslaughter the unlawful killing of a person is the actus reus. This leads me to the conclusion that the actus reus isn't that important when comparing the importance of the two elements in murder and manslaughter. This is because they lead to the same outcome, the unlawful killing of a human life.

As I have now established that there is no difference between the actus reus of murder and the actus reus of manslaughter, I must try to find what the difference is between the two crimes. I must therefore turn my attentions to the mens rea of each crime. The mens rea for murder is 'malice aforethought, either expressed or implied', basically the intention to kill or seriously harm another person. The mens rea for voluntary manslaughter is also the specific intention to kill or cause grievous bodily harm, but this is due to one of the following: diminished responsibility, provocation or a suicide pact. The mens rea for involuntary manslaughter is where the accused did not have the specific intention for murder. We can therefore see that the critical difference to distinguish murder from manslaughter is the mens rea element; whether the defendant intended to kill or cause grievous bodily harm or not, or if they intended to kill or cause grievous bodily harm, but only because of an abnormality of mind, due to provocation or if they had the settled intention to die when they caused the other person's death. The distinction between murder and manslaughter is therefore hinged on the killer's state of mind. For example, in *R. v. Thornton* (1995) the defendant was a 'battered wife' who killed her husband by stabbing him when he was asleep. The Court of Appeal ordered a re-trial, as the jury in the original case had not been allowed to consider the effect of the 'battered wife syndrome' on her reaction to the final incident. She had the actus reus of murder, the unlawful killing of a person, but was found guilty of voluntary manslaughter due to provocation. This is important as the judge can inflict a lesser sentence than life (which is

the automatic sentence for murder), if he thinks suitable, if the defendant is found guilty of manslaughter.

In conclusion, I feel that due to the fact that the actus reus is the same in murder and manslaughter, the mens rea is the essential element of the crime as it is this which distinguishes the killer's state of mind and ultimately if the defendant committed murder or manslaughter.