

# Chapter 4

## The General Principles of Criminal Liability: Mens Rea, Concurrence, Causation and Ignorance and Mistake

### **LEARNING OBJECTIVES**

After studying this chapter, you will:

1. understand and appreciate that most serious crimes require criminal intent and a criminal act.
2. understand the difference between general and specific intent.
3. understand and appreciate the differences in culpability among the Model Penal Code's (MPC) four mental states—purposely, knowingly, recklessly, and negligently.
4. understand that criminal liability is sometimes imposed without fault.
5. understand that the element of causation applies only to “bad result” crimes.
6. understand that ignorance of facts and law can create a reasonable doubt that the prosecution has proved the element of criminal intent.

### **CHAPTER OUTLINE**

#### **I. Introduction**

- A. Culpability
- B. Concurrence
- C. Cause in Fact
- D. Legal Cause

#### **II. Mens Rea (Criminal Mental Attitudes)**

- A. Proving State of Mind
- B. Criminal Intent
  1. Subjective Fault
  2. Objective Fault
  3. Liability without Fault (Strict Liability)

#### **III. General and Specific Intent**

- A. General Intent
- B. Specific Intent
- C. General Intent “Plus”

#### **IV. The Model Penal Code's (MPC's) Mental Attitudes**

- A. Purposely
- B. Knowingly

- C. Recklessly
- D. Negligently

## **V. Liability without Fault (Strict Liability)**

## **VI. Concurrence**

## **VII. Causation**

- A. Factual “but for” Cause
- B. Legal (“Proximate”) Cause
- C. Intervening Cause
- D. Proximate Cause of Death
- E. Superseding Cause

## **VIII. Ignorance and Mistake**

- A. Defense of Excuse
- B. Failure-of-Proof Defense

## **IX. Summary**

## **X. Key Terms**

### **CHAPTER SUMMARY**

Mens rea (“mental element,” also called “mental attitude,” “state of mind,” or “criminal intent”) is an ancient idea. Mens rea is complex and confusing. Several reasons account for this confusion. First, mens rea is difficult to discover and then prove in court. Second, courts and legislatures have used so many vague and incomplete definitions of the mental element. Third, mens rea consists of several mental attitudes that range across a broad spectrum, from purposely committing a crime you’re totally aware is criminal to merely creating risks of criminal conduct or causing criminal harms that you’re not the slightest bit aware you’re creating. Fourth, a different mental attitude might apply to each of the elements of a crime. Motive and intent are different. The relationship between motive and criminal liability is not as simple as the relationships between motive and intent. Motive is important in some defenses.

Confessions are the only direct evidence of mental attitude. Because confessions by defendants regarding their intentions are rare, proof of state of mind usually depends on circumstantial evidence.

Two kinds of fault satisfy the mental element in criminal liability: subjective fault or objective fault. A third kind of fault is strict liability.

General intent usually means the intent to commit the criminal act as defined in a statute. Specific intent is most commonly defined as the intent to commit the actus reus of the crime, and some “special mental element” in addition to the intent to commit the criminal act.

From most to least blameworthy, the Model Penal Code's four mental states are: purposely, knowingly, recklessly, and negligently. Purposely means what we mean by the everyday expression, "You did it on purpose." Knowingly means being aware. In recklessness, it's awareness of the risk of causing a criminal result, whereas in knowingly it's awareness of causing the result itself. Recklessness is about consciously creating risks; negligence is about unconsciously (unreasonably) creating risks.

In strict liability cases, the prosecution has to prove only that defendants committed a voluntary criminal act that caused harm. Strict liability arose during the industrial revolution when manufacturing, mining, and commerce exposed large numbers of the public to death, mutilation, and disease from poisonous fumes, unsafe railroads, workplaces, and adulterated foods, and other products. The penalty for strict liability offenses is almost always mild.

The principle of concurrence means that some mental fault has to trigger the criminal act in conduct crimes and the cause in bad-result crimes. All crimes, except strict liability offenses, are subject to the concurrence requirement.

Causation is about holding an actor accountable for the results of her conduct. Causation only applies to bad-result crimes. Factual cause is an empirical question of fact that asks whether an actor's conduct triggered a series of events that ended in causing death, or other bodily harm; damage to property; or destruction of property. "But for" cause means, if it weren't for an actor's conduct, the result wouldn't have occurred.

Legal (proximate) cause is a subjective question of fairness that appeals to the jury's sense of justice. It asks, "Is it fair to blame the defendant for the harm triggered by a chain of events her action(s) set in motion?" If the harm is accidental enough or far enough removed from the defendant's triggering act, there's a reasonable doubt about the justice of blaming the defendant, and there's no proximate cause. Intervening cause is a fact in addition to the proximate cause which contributed to a crime.

Mistake is a defense whenever the mistake prevents the formation of any fault-based mental attitude, namely purpose, knowledge, recklessness, or negligence. Mistakes sometimes are called a failure-of-proof defense because defendants usually present some evidence that the mistake raises a reasonable doubt about the formation of a mental element required for criminal liability. Mistakes don't work with strict liability crimes because there no mental element.