

Chapter 3

The General Principles of Criminal Liability: *Actus Reus*

LEARNING OBJECTIVES

After studying this chapter, you will:

1. be able to identify the elements of, and to explain why, the voluntary act is the first principle of criminal liability.
2. be able to define, distinguish between, and understand the importance of the elements of, criminal conduct and criminal liability and therefore punishment.
3. understand and appreciate the importance of the requirement of a voluntary act.
4. identify the circumstances when, and to be able to explain why, status is treated, sometimes, as an affirmative act.
5. be able to understand the how the general principle of *actus reus* includes a voluntary act and how it is viewed by the Constitution.
6. identify the circumstances when, and to be able to explain why, failures to act are treated as affirmative acts.
7. understand and identify the circumstances when, and to be able to explain why, omissions and possession are treated as acts.

CHAPTER OUTLINE

I. Introduction

- A. Is there a criminal act of some kind?
- B. Is the act justified?
- C. Is the unjustified act nonetheless excused?

II. The Elements of Criminal Liability

- A. The Elements of a Crime
 1. Criminal Act (*actus reus*)
 2. Criminal Intent (*mens rea*)
 3. Concurrence
 4. Attendant Circumstances
 5. Bad Result (causing a criminal harm)
- B. Conduct Crimes
- C. Bad Result Crimes

III. The Criminal Act (*Actus Reus*): First Principle of Criminal Liability

- A. Manifest Criminality

IV. The Voluntary Act Requirement

- A. Criminal law punishes people
- B. We can only punish people we can blame
- C. We can only blame people who are responsible for their acts
- D. People are only responsible for their voluntary acts
- E. One-Voluntary Act is Enough

V. Status as a Criminal Act

VI. *Actus Reus* and the U.S. Constitution

- A. *Robinson v. California* (1962)
- B. *Powell v. Texas* (1968)

VII. Omissions as Criminal Acts

- A. Only when it's outrageous to fail to do something to help someone in danger can criminal omissions satisfy the voluntary act requirement
- B. Two Kinds of Criminal Omission
 - 1. Failure to act
 - 2. Failure to intervene
- C. Legal Duty
- D. Good Samaritan Doctrine
- E. American Bystander Rule

VIII. Possession as a Criminal Act

- A. Legal Fiction Required for *actus reus* to include possession
- B. Actual Possession
- C. Constructive Possession
- D. Knowing Possession
- E. Mere Possession

IX. Summary

X. Key Terms

CHAPTER SUMMARY

There are five elements available to writers of criminal codes: the criminal act (*actus reus*), the criminal intent (*mens rea*), concurrence, the attendant circumstances, and the bad result (causing a criminal harm). Crimes requiring a criminal act triggered by criminal intent are called conduct crimes. Criminal acts are voluntary body movements; criminal conduct is the criminal act triggered by a *mens rea*. Bad result (result) crimes include all five elements of crime.

The first principle of criminal liability is the criminal act. The requirement that attitudes have to turn into deeds is called manifest criminality. The *actus reus* serves several purposes: it helps to

prove intent, it reserves the harsh sanction of the criminal law for cases of actual danger, and it protects the privacy of individuals. Criminal punishment depends on conduct, not status.

Only *voluntary* acts qualify as criminal *actus reus*. Only voluntary acts qualify as criminal acts because: criminal law punishes people, we can only punish people we can blame, we can only blame people who are responsible for their acts, and people are only responsible for their voluntary acts.

Action refers to what we do; status (or condition) denotes who we are. Most statuses or conditions don't qualify as *actus reus*. Status can arise from prior voluntary acts or from no act at all (sex, age, race).

According to the Court (*Robinson v. California*, 1962), legislatures can't make status or personal condition by itself a crime. Additionally, the Court (*Powell v. Texas*, 1968) clearly stated that the Constitution bans only pure status as a basis for criminal liability.

Failures to act satisfy the *actus reus* requirement only when it's outrageous to fail to do something to help someone in danger. There are two kinds of criminal omission: the simple failure to act, usually the failure to report something required by law and the failure to intervene to prevent injuries and death to persons or the damage and destruction of property. Both omissions are criminal omissions only if defendants had a legal duty to act. Legal duties are created in three ways: by statutes, contracts, and special relationships. There are two approaches to defining a legal duty to rescue strangers or call for help. One is the "Good Samaritan" doctrine, which imposes a legal duty to help or call for help for imperiled strangers. Only a few jurisdictions follow the Good Samaritan approach. Nearly all follow the approach of the American bystander rule (*State v. Kuntz* 2000, 951) which has no legal duty to rescue or summon help for someone who's in danger, even if the bystander risks nothing by helping.

It's only by means of a legal fiction (pretending something is a fact when it's not, if there's a "good" reason for pretending) that the principle of *actus reus* includes possession. There are two kinds of possession: actual and constructive. Actual possession means physical control of banned stuff. Constructive possession means I control banned stuff, but it's not on me (it's in my car, my apartment, or other places I control). Knowing possession means possessors are aware of what they possess. Mere possession means you don't know what you possess.