



FACULTY OF JURIDICAL SCIENCES

COURSE: B.B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

SUBJECT CODE: BBL 106

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LECTURE 7

TOPIC: GENERAL CONDITIONS OF LIABILITY IN TORTS INCLUDING MENTAL ELEMENT

Mens-rea:

Mens- rea is a Latin term that means, 'guilty mind' or a 'culpable condition of the mind'. It is the second condition usually required for liability of a tort. In development of tort the Latin maxim "***Actus non facit reu, nisi mens sit rea***" provide there is no guilt or wrong in the absence of guilty mind. So, if a person liable for tort he should have guilty mind.

Case Ref: In this point the leading cases are:

1. ***Ryland V. Fletcher, 1868 R. 3HL. 330.***
2. ***Read V. Lyons, 1947 a.c. 156, chap. 16.***

But this maxim does not mean that, the act must be done with a wicked or evil motive, it simply means that mind must concur in act. The act must be done either with a wrongful intention or with culpable negligence on the part of the defendant. In criminal law and jurisdictions with due process, there must be an actus reus accompanied by some level of mens rea to constitute the crime with which the defendant is charged (see the technical requirement of concurrence). As a general rule, criminal liability does not attach to a person who acted with the absence of mental fault. The exception is strict liability crimes.

In civil law, it is usually not necessary to prove a subjective mental element to establish liability for breach of contract or tort, for example. However, if a tort is intentionally committed or a contract is intentionally breached, such intent may increase the scope of liability as well as the measure of damages payable to the plaintiff. Therefore, mens rea refers to the mental element of the offence that accompanies the actus reus. In some

jurisdictions, the terms mens rea and actus reus have been replaced by alternative terminology. In Australia, for example, the elements of the federal offences are now designated as "fault elements" or "mental elements" (mens rea) and "physical elements" or "external elements" (actus reus). This terminology was adopted to replace the obscurity of the Latin terms with simple and accurate phrasing.

Exercise:

1. For the purpose of vicarious liability, a servant is person
 - a) On whom the master has command of what to do
 - b) On whom the master has a command of what to do.
 - c) Whom master can hire and fire
 - d) Only (a) and (c)
2. The doctrine of common employment means
 - a) If the wrongdoer servant and the person injured are fellow servants, the master is not liable.
 - b) If the wrongdoer servant and the person injured are fellow servants, master is liable
 - c) If the wrongdoer servant and the person injured are not fellow servants, master is not liable
 - d) None of the above.
3. The term novus actus interveniens means
 - a) Directness of damages
 - b) Remoteness of damages
 - c) Direct and remote damages
 - d) Foreseeable damages
4. Remoteness of damages is determined by
 - a) The test of directness
 - b) The test of reasonable foresight
 - c) Both (a) and (b)
 - d) None of the above.
5. For 'false imprisonment' there should be

- a) Total restraint on the liberty of a person
- b) A partial restraint on the liberty of a person
- c) Means of escape
- d) All the above.