



**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 8

# 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jurisdictions, the terms mens rea and actus reus have been replaced by alternative terminology.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. Defamation is divided into libel and slander under
  - a) English law only
  - b) Indian law only
  - c) Both under English law and Indian law
  - d) None of the above
2. A man's reputation is his property, and if possible, more valuable, than other property. It was so observed in
  - a) Monson v. Tusands Ltd.
  - b) Dixon v. Holden
  - c) Youssouf v. M.C.M Pictures Ltd.
  - d) Austic v. Dowling.
3. Nuisance can be
  - a) Public
  - b) Private
  - c) Both private & public
  - d) Either private or public
4. The unlawful with a person use or en publicjoyment of land or of some right over or in connection with it, is a tort of
  - a) Defamation
  - b) Negligence
  - c) Nuisance
  - d) Strict liability
5. To constitute the tort of nuisance, the essentials are
  - a) Unreasonable interference

- b) Interference is with the use or enjoyment of land
- c) Damage
- d) All of the above