ELEMENTS OF AN OFFENCE (Actus Reus and Mens Rea)

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In considering criminal liability we are considered with the elements that must be proved in order to secure the conviction of a criminal offender. In the early days of criminal law, what entailed was a system of strict liability which is still applied in some jurisdictions. In those days, crimes were not only considered as an offence against the state but also as an offence against God.

Under this system, there were three features:

- Strict accountability for the active conduct of a man.
- Omission, not doing anything at all, could not constitute a crime.
- There was severity of punishment and the intention of the offender was not considered as material proof.

The rationale for this principle is that a man intends the result of his action and should therefore be held accountable for his actions. To intend in law means to have in mind a fixed purpose to reach a desired objective.

Till the 15th century, the provision of the law was that the intention of a man could not be probed. This was based on the dictum of Bryan CJ: â€œeven the devil himself knows not the heart of manâ€.

Subsequently, some petitions were made for the courts to temper justice with mercy. This made the common law courts to come up with the common law maxim: â€œ***actus non facit reum nisi men sit rea***â€ which means that â€œan act does not render a person legally guilty until his heart is also blameworthyâ€.

From the above maxim, two principles evolved:Â *actus reus*(outward conduct) andÂ *mens rea*(state of mind of the accused). These principles are fundamental requirements that have to be proved before they can be applied.

It is however noteworthy that none of these two principles were mentioned in the Criminal Code or Penal Code. This has further supported the views of some scholars who are of the opinion that the maxims are inconsequential.

In the case of***Â R vs Miller (1983) AC***, the presiding Justice stated:

> â€œâ€¦My Lords it would I think, be conducive to clarity of analysis of the ingredients of a crime that is created by statute, as are the greater majority of criminal offences today, if we are to avoid bad latin and instead to think and speak about the conduct of an accused and his state of mind at the time of the conduct, instead of speaking of actus reus and mens reaâ€¦â€

Despite the above reservations, the terms are still widely in use in Nigeria. This view is supported by numerous scholars.Â **Clarkson and Keating**Â specifically submitted:

> â€œâ€¦ We shall judge crimes in terms ofÂ *actus reus*Â andÂ *mens rea*, we do this for two major reasons; that as long as one appreciates that these terms are no more than tools. They are tools that can usefully aid the clear exposition of the rules of criminal law.
> Further, they have been so much part of the vocabulary of criminal law for hundreds of years and are still are. Many of the cases will be highly confusing if not totally meaningless without some understanding of the meaning of these termsâ€¦â€

Consequently, it is safer to say that the above view is more acceptable. The use of the terms do not pose any risk to our understanding of criminal law, rather they aid our understanding of criminal law.