

# ACTUS REUS (The Physical Element of An Offence)

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## What is Actus Reus

Actus reus may consist of an act, omission, a passive state of affairs or an initial act and/or some other factor. The actus reus of an offence is the external manifestation of human conduct that results in a forbidden act. It is simply the whole definition of a crime excluding the mental element.

## Categories of Actus Reus

The following are various categories under which acts are done to constitute the actus reus of an offence:

**1. Action:** The intention of a man, no matter how wicked cannot make him blameworthy until it is put into action. This is due to the fact that it is only God that can ascertain the true intention of a man's heart.

However, it becomes a crime when he puts it into action, no matter how minute the action is. For example, a small movement can constitute the actus reus of assault, a slight movement of property can constitute the actus reus of theft and if A hit B on the face, the actus reus is the act of hitting B.

**2. Omission:** An omission concerns itself with a failure to do a particular act when you are bound by law to do that act. The law does not enjoin you to be charitable and good but it prevents you from doing harm to others. An omission to do an act would not be a crime unless the doing of such act is a duty imposed by law.

Thus, if A refuses to give food to B and thus voluntarily causes B's death, A would only be liable for murder if B is an infant dependent on him. If B is a beggar that has no claim on A except on the basis of humanity, A would escape liability.

In the case of *Akanni & Ors vs State (1959) WRNLR* the presiding justice stated:

the members of the crowd who stood by and watched the house in which they knew an old woman was locked in and being burnt and did nothing behaved disgracefully but that does not bring them within the provision of the law dealing with principal offenders as to be regarded as participants in the act of murder

There are four categories of omission under the law that would amount to a crime:

- Where there is a statutory duty to act:** For example, **s.136 of the Penal Code** makes it a crime to refuse to appear to a summons or notice requiring a person to appear at a particular place during a particular time.
- Where there is a contractual duty to act** and you refuse to act leading to the death or injury of others. For example, **s.305A(1) of the Criminal Code** provides that if a person whose contractual duty involves supplying electricity or water to a particular community maliciously breaks such contact, and thus deprives the community of water or electricity, he has committed an offence.
- Where there is a special relationship:** According to **s.300 Criminal Code** if a person neglects to provide for another person who is dependent on him due to reason of age, sickness, unsoundness of mind, detention or any other reason, he would be responsible for any harm that results to the person's life or health.
- A person who voluntarily undertakes to act and refuses to act** leading to danger to the health or life of a person; **s.305 Criminal Code** if a person undertakes to do an act, the omission of which could be harmful to the life or health of others, the omission to do that act would result into an offence.

**3. Passive State of Affairs:** Actus reus may in some situations result from a state of affairs. Thus, an offence can be so without one seeing the physical act. By the provisions of **S.405 & 406 of the Penal Code**, it is an offence punishable with 6 months imprisonment for a person to be idle.

In the case of *R vs Parsonneur*, a French woman who illegally entered the UK was ordered to leave. Instead of complying, she went to Ireland where she was arrested and subsequently brought to London to be convicted of vagrancy, the equivalent of being an idle person.

**4. Initial Act and/or Other Factors:** Sometimes, initial acts are not sufficient to prove actus reus of an offence, there have to be other acts to complement it. A good example is in the offence of receiving stolen property, for the prosecution to establish this it has to first prove that the goods were stolen in the first place.

Another example is in the case of rape where in addition to proving penetration, there should be proof of absence of consent; **S.282 Penal Code**.

## SOURCES

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- Okonkwo and Naish: Criminal Law in Nigeria
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- 5. Clarkson and Keating: Criminal Law