

## The Difference of Objective Side of Crime Compound and Actus Reus: Compare Analyses

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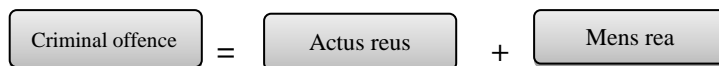
### Abstract

This article discusses various socially – dangerous and illegal acts and their signs, in particular, the objective side of the crime and its importance in exposing the crime, as well as similar and different aspects of the objective side of the crime and the actus reus used in foreign jurisdictions, how these crimes affect the life of the society and what penalties are applied by law enforcement agencies for these crimes.

**Keywords:** actus reus, objective side of crime, punishment, commission, omission, possession, voluntary – involuntary acts and conduct.

### Differences in definition

Analyzing the actus reus and the objective side of the crime in this article, it is appropriate to first discuss their definitions and their differences. In most foreign countries: USA, Great Britain, Canada, Australia and France, the criminal offense consists of two elements: actus reus and mens rea.



In this article, we will focus on the legal definition of actus reus. An actus reus can consist of more than just an act, it comprises all the elements of the offence other than the state of mind of the defendant [1]. Similar to other national jurisdictions, a crime comprises a material element (actus reus) and a mental element (mens rea). A criminal offence is an act committed or omitted in violation of public law that either forbids or commands it. An actus reus of a criminal offences covers both acts and omissions [2]. The actus reus of a criminal offense covers both act and omission. In addition, I can say that the actus reus includes possession and these actions, omissions, and possessions all require voluntary action.

Traditionally defined as the "evil act" requirement, actus reus is based on twin concepts: that thoughts without action should not be punished; and that the act should be voluntary [3]. The Model Penal Code does not use the term actus reus [4]. Instead, it has a "Voluntary Act Requirement" and defines a voluntary act as one being under the control of the actor, discarding free will entirely [5].

If we compare our national jurisdiction with the criminal offense in these countries, it consists of objective side, subjective side, object and subjects.



Subjective side

Criminal offence

Object

The objective side, which is equivalent to *actus reus*, used in our criminal law, consists of signs representing the external state of socially dangerous action and inaction against the object protected by the Criminal Law.

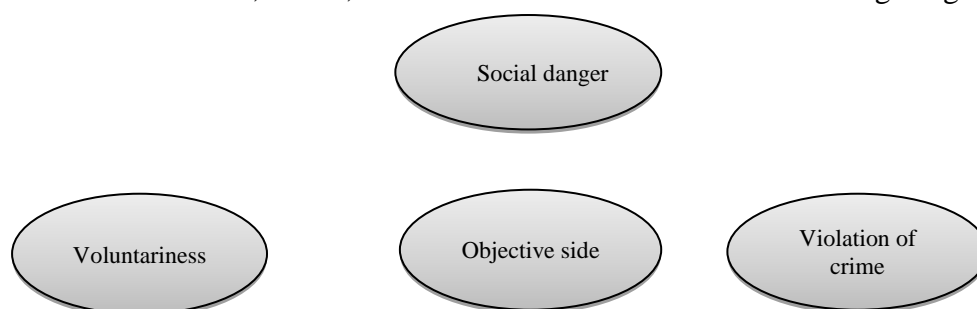
The objective side of the crime structure is a set of objective, social and legal signs that represent the level of social danger of aggression, characterize the external situation of socially dangerous aggression directed against an object protected by the criminal law. The objective side of the crime must have the characteristics of social danger, otherwise it cannot be called an objective side. Only an act that shows the signs of the objective side of the crime and consists of the following four parts has criminal legal significance:


- ✓ violation of law;
- ✓ social danger;
- ✓ consciousness;
- ✓ voluntariness.

Social danger and the violation of rights arising from it are the main characteristics of crime. However, the criminal-legal concept of the act does not come from them, but they are limited to defining the list of actions or omissions that have criminal-legal significance (or prohibition).

Consciousness is an objective characteristic of an act, which means that a person has conscious control over the act, that is, the possibility of exercising such control physiologically and physically. Committing the act unconsciously, for example, in sleep or through reflex body movements, excludes the criminal-legal significance of the act, criminality. At the same time, committing an act unconsciously - in a state of intoxication - is considered to be a conscious act, because he fell into a state of intoxication by his own will and consciousness. In accordance with Article 56 of the Criminal Code, this situation is considered an aggravating situation, and the person is brought to criminal responsibility on general grounds.

Voluntariness - (characterizing the action objectively) is the existence of a real possibility that a person can choose another behavior without committing the action when the action is performed under the control of consciousness. Voluntariness is an objective sign, which is expressed in the fact that a person's choice of this or that behavior is not hindered by invincible forces arising under external influences. Volition in this case differs from subjective signs, since they represent a guilty form of consciousness aimed at committing a socially dangerous act. Involuntariness is also a negative sign of the commission of a crime, that is, it denies the act itself and its criminal-legal significance.




 An oval-shaped graphic with a light gray gradient background and a thin black border. The word "Consciousness" is centered within the oval in a black, sans-serif font.
 

Consciousness

*Differences in doctrines***1**

In this part of article, we will discuss doctrines about actus reus and objective side of crime, as well as differences of them. There are four doctrines of Paul H. Robinson on actus reus and they consist of act requirement, substitutes for an act (omission to perform a legal duty and possession of contraband), voluntariness requirement and objective elements of offense definitions (conduct, circumstance, and result).

These doctrines contain all the elements necessary to apply liability to actus reus, and Paul H. Robinson has tried to explain the importance of each of them. As for the first of these doctrines, it included the importance of the act requirement that is necessary for the actus reus.

In this article it is said that the act requirement and the voluntariness requirement, frequently treated as a single actus reus requirement, are related but distinct doctrines. Several writers assure that the two are treated as one by defining an “act” as a “willed movement” [6].

The act requirement also is distinct from the objective elements of an offence. The act requirement may be satisfied by proof of the conduct element of an offence, but it also may be satisfied by proof of a different act. Complicity, causing crime by an innocent, vicarious liability, and inchoate liability are the most obvious examples. In each instance, a defendant may be held criminally liable although he does not satisfy the conduct element of any substantive offence. The act requirement demands none the less that the defendant's liability be based upon some act. The point is that the act requirement sets a minimum condition for liability that is independent of the substantive-offence definitions. The Model Penal Code, for example, in addition to its offence definitions, requires that liability be 'based on conduct which includes [an] act'. Where a code does not explicitly require an act, courts none the less tend to enforce such a requirement. The act requirement does not have universal application. Liability may be imposed in the absence of an act, if the defendant fails to perform a legal duty or has possession of contraband [6].

The importance of the act requirement in this doctrine is that it makes it clear that the liability of the person who committed the crime based on some criminal act. This requirement also establishes a sub-crime requirement independent of the criminal offense charge and may include action, omission, and possession based on conduct.

By requiring an act, the law excludes from liability those persons who only fantasize about committing an offence and those persons who may indeed form an intention to commit an offence but whose intention is not sufficiently firm that it will mature into action [6]. I think that such people are dangerous, at least more dangerous than those who have no such thoughts or intentions, and perhaps the criminal law should bring this situation under jurisdiction. But many people can imagine or form vague intentions that they have never committed, so criminal liability is inappropriate in these cases. Criminal punishment is usually effective only after the intention mature into the act.

Beyond its value in barring punishment for unexternalized thoughts, the act requirement provides some minimal objective confirmation that the defendant's intention does exist. Upon observing an action consistent with the intention, we feel more sure of the defendant's intention and her willingness to act upon it. But the act requirement by itself performs this role poorly. Admittedly, some conduct may

unambiguously manifest a mind bent on crime. But it also is the case that conduct, especially that short of a substantive offence, frequently does little by itself to indicate a culpable state of mind [6].

As noted above, stabbing another person to death may not seem ambiguous. But a driver speeding a critically ill patient to the hospital may not have intended to hit another person on the road. In addition, it should be said that according to this part of the doctrine: the act requirement is useful in providing a time and place of occurrence of an offence. While one's intention may range over a long period of time and many places, the conduct constituting the offence can be identified with a particular time and place. An identifiable time and place also make it easier to apply various procedural rules, such as those governing jurisdiction, venue, and periods of time of limitation. Even here, however, the act requirement cannot be relied upon for too much. One may conclude from the California experience that the act requirement is of little value in solving the difficult problem of multiple offenses. At best, it serves as a starting-point for a more complex analysis. Criminal liability must be based on conduct that includes an act. A second aspect of the act requirement concerns the definition of offences. Nothing in the act requirement as expressed in Model Penal Code, § 2.01 (1) requires that an offence definition contain any act as an element of the offence. Rather, the prosecution need only show that in that case hand the defendant's 'liability is based on conduct which includes [an] act'. That modern offences typically require an act as an element of the offence shows that legislatures are sensitive to the virtues of requiring an act [6].

According to the Robinson's doctrine, the act requirement serves to bar punishment for unexternalized thoughts, attempts to give some minimal objective confirmation that a defendant's intention does exist, provides the time and place of the offense, serves as a starting point for resolving thorny issue of liability and punishment for multiple related offences, as well as limits authority of government to define offences. Additionally, these rationales for the act requirement are similar in some respects to the rationales for the omission and possession rules in that these doctrines attempt to justify an exception to the act requirement.

## 2

As regards second Robinson's doctrine, substitutes for an act that include in omission to perform a legal duty and possession of contraband. This doctrine says about these two substitutes: liability frequently is imposed for an omission to perform an act that one has a legal duty to perform and for possession of contraband). The requirements are complementary; liability always requires proof of one or the other [6].

Specifically, requiring an omission to perform a legal duty helps to exclude from liability cases of fantasizing and of intentions too irresolute to be externalized. Of course, requiring only an omission does nothing to screen out mere fantasies. It is the failure to perform a legal duty that suggests a willingness to go beyond mere fantasizing, to have the harm or evil of the offence occur. Even then, however, the screening effect seems weak; 'letting something happen' may not carry the same implication of resolute intention that is shown in causing something to happen by affirmative action.

A defendant's failure to perform a duty also provides some evidential support for the existence of an intention to have the harm or evil occur [6]. In addition, it is worth saying that the government must impose a legal duty on the person who committed the inaction to bring him to criminal responsibility. Moreover, an omission or its special liability requirement does not help in determining the time and place of occurrence, unlike an act requirement. Where the offence can be committed in law by omission, it can only be committed by a person who has a legal duty to act (in other words, a duty not to commit such omission). The reason for this, English law does not impose a general duty on people to help each other or to save each other from harm. Thus, if a man sees a boy drowning in a lake, it is

arguable that under English criminal law the man is under no duty to save him, and can walk past without incurring criminal liability for the child's subsequent death. A duty to act will only be imposed where there is some kind of relationship between the two people, and the closer the relationship, the more likely it is that a duty to act will exist [1].

Another almost universally recognized exception to the act requirement is possession of contraband. Technically, possession under certain circumstances is said to be an 'act'. Under the Model Penal Code, for example, Possession is an act ... if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession [6].

The final breed of Actus Reus is possession, a special case inasmuch as it has been criminalized, but under common law does not constitute an act [7]. In the United States, this has been redefined as a voluntary act, allowing possession to satisfy Actus Reus [4]. Possession is also a type of actus reus when an individual is in the possession of or has the possession of an item that is known by the individual to be illegal under the law. As an example, if a person is wearing a jacket that contains a bag of marijuana in the pocket and the person knows that the substance is illegal, then even if the marijuana is not the wearer's marijuana, the action of possession is fulfilled due to the marijuana being an illegal substance [8].

With the addition of the special requirement of 'knowing receipt or control', the intent-based rationales of the act requirement are sought to be satisfied. That is, where the defendant has knowledge of receipt or control but fails to terminate possession, he appears to have made a conscious choice to keep possession. The conceptual similarity between the possession and omission doctrines is confirmed by the fact that one may view possession of contraband as a form of criminal omission. That is, the defendant's liability flows from his failure to dispossess himself of contraband, as he has a legal duty to do [6].

### 3

Voluntariness act was described in the third party of these doctrines and according to this party, unlike the act requirement, the voluntariness requirement is universal in application. Criminal liability must be based on either a voluntary act, a voluntary omission, or voluntary possession. To be voluntary, an act must be 'a product of the effort or determination of the actor'. A defendant who injures another through convulsion or reflex muscle action, for example, is excused under this provision. Involuntary acts include, for example, 'a reflex or convulsion; a bodily movement during unconsciousness or sleep; conduct during hypnosis or resulting from hypnotic suggestion.

To be voluntary, an omission must be an omission 'to perform an act of which [the defendant] is physically capable. To assure that possession is voluntary, modern codes typically require that the defendant know he has control 'for a sufficient period to have been able to terminate his possession. The voluntariness requirement and the act-or-omission requirement obviously are related in one sense. An involuntary act or omission does not satisfy the primary rationales of the act requirement [6].

The commitment to voluntariness is widespread among both scholars and jurists, too widespread to document in anything like a complete way. Even those who deny that criminal liability requires an 'act' (insisting that liability is and may be imposed as well for omissions, statuses, possession, and states of affairs) accept that the actus reus of offences must be committed or brought about voluntarily, or be such that their realization is within the control of the person held responsible for them. As Husak says, "A fundamental principle of criminal liability is that all offenses require an actus reus" (Husak and Callender 1994, reprinted in Husak 2010, p. 229). This commitment seems, moreover, to transcend debates about the metaphysical nature of acts, action, control, choice and the



many other points of contention among theorists who think about for what people should be held responsible. The Canadian Supreme Court has articulated a number of formulations of the voluntariness requirement that would seem familiar in many jurisdictions as well as philosophical treatises. It has said that “a fundamental principle of the criminal law is that no act can be a criminal offence unless it is performed or omitted voluntarily” (Binnie J. in *R. v. Stone* [1999], p. 301); that an act “must be the voluntary act of the accused for the actus reus to exist” (McLachlin J. (as she then was) in *R. v. Theroux* [1993], p. 17); that “there can be no actus reus unless it is the result of a willing mind at liberty to make a definite choice or decision” (Taschereau J. in *R. v. King* [1962], p. 749); and it is “a principle of fundamental justice that only voluntary conduct—behaviour that is the product of a free will and controlled body, unhindered by external constraints—should attract the penalty and stigma of criminal liability” (LeBel J. in *R. v. Ruzic* [2001] at para. 47) [9].

Fundamental principle of criminal liability said by Husak is that all crimes require an actus reus, so in our criminal law, all crimes constitute the objective side of the crime, and it must consist of voluntary action and inaction on the objective side. If any criminal act or omission is committed by coercion, it does not constitute an objective side of the crime or actus reus. Usually these forced actions are manifested in two forms: physical and mental coercion. These actions negate the criminality of the act and the perpetrator does not voluntarily commit the crime. Such forced action is carried out by another person under the influence of illegal force, the forced person in such a situation appears as a “living weapon” of the crime, and the coercer is considered the subject of the crime and is responsible. Because the person who committed the forced action satisfies the objective side of the crime (actus reus). These compulsions usually take two forms, physical and mental. These actions negate the criminality of the act and the actor does not voluntarily commit the crime. That forced action is carried out by another person in the influence of illegal force, the forced person in such a situation appears as a “living weapon” of the crime, and the coercer is considered the subject of the crime and is responsible. Because the person who committed the forced action satisfies the objective side of the crime (actus reus).

Related to the many explanations of why involuntary conduct should not be criminalized, there are a number of competing interpretations of what is missing when the actus reus is absent due to lack of voluntariness, though the bodily motions, in-fact causation and results that would normally constitute a given crime are present: an act, control, volition, consciousness, choice, agency, attitudinal disrespect for the relevant protected interests, practical rationality, and more have been proposed as the feature that is absent in cases that we ought not to punish [9].

In Robinson’s doctrine it is that rather than protecting fantasizing and irresolute intentions from liability, or providing an anchor for application of procedural rules, or limiting governmental criminalization authority, the voluntariness requirement is designed to protect from liability defendants who admittedly have brought about a prohibited harm or evil but who cannot properly be held blameworthy for the violation, because they are unable to control their conduct. The assault that results from convulsion, hypnotic suggestion, or somnambulism is harmful and remains prohibited in the future, but the defendant at hand is not to be punished for it, because he is not morally responsible for the conduct [6].

Moreover, in this doctrine Paul. H Robinson emphasized that both the voluntariness requirement and the excuse defences, such as insanity, involuntary intoxication, and duress, hold a defendant blameless despite criminal conduct, because that conduct is judged to be too much the product of forces other than the defendant’s exercise of will [6].

On some understandings, voluntariness is a requirement of action, and so a requirement of the actus reus of every crime. But even broader understandings of that for which we may hold people

responsible seem to depend upon conduct being voluntary and so imputable. Consider again, for example, the attitudinal view defended by Alexander and Westen. They say we should hold people responsible for conduct that demonstrates or exemplifies insufficient concern for the interests of others. This view is more capacious than one focused on acts or actions, since one can show insufficient concern for others and the values protected by criminal law through many other kinds of conduct. But even this view depends upon the conduct being imputable to the agents whose attitudes are supposedly revealed by it. Surely only voluntary conduct can reveal attitudes, good or bad; persons' attitudes or character are not revealed by what they do while unconscious or while lacking voluntary control over their bodily movements [9].

As Finkelstein puts it, nothing done involuntarily can satisfy the *actus reus* elements of a crime of conduct. Involuntariness is also a sign of damage to the commission of a crime, that is, it denies the act itself and its criminal-legal significance. That is, the above information shows that if a person does not voluntarily commit a certain criminal act, it does not constitute an element of the crime, and as a result, it should not be called a crime. In turn, it loses its criminal-legal significance, because even if damage is caused by a criminal act, the person who committed the crime will not be punished.

#### 4

Final part of these doctrines includes in conduct, circumstance and result. Usually these objective elements of crime include requirements of *actus reus* and liability require proof of all these elements. In modern codes, these requirements are stated independently of the act-or-omission requirement and the voluntariness requirement. The objective elements are contained in the offence definitions in the code's Special Part; the act, omission, and voluntariness requirements are contained in provisions in the code's General Part [6].

The doctrine of conduct plays an important role in regard to establishing and describing general preconditions for criminal liability. It constitutes a crucial yardstick in the quest of the courts to identify a criminally relevant conduct on which the imposition of criminal liability can be based. The conduct requirement is traditionally closely linked to the principle of individual autonomy as well as to the principle of legality. This is because on the one hand the conduct requirement is traditionally aimed to ensure that the law treats citizens as responsible beings capable of rational choice, and on the other gives them fair warning regarding the possible incident of criminal liability[10].

The social theory of action makes it clear that physical conduct, which will often consist in deliberate movements like shooting, stabbing, stealing, robbing, is a sufficient, but not a necessary requirement for the imposition of criminal liability[11]. Based on this, we can say that criminal conduct consists of theft, robbery, assault, and similar physical conditions.

Conduct crimes, like perjury, on the other hand do not require a specific result, but are consummated once the prohibited conduct has taken place. In regard to conduct crimes the wrongdoing is constituted by the conduct itself, whereas result crimes prohibit a wide range of conduct if they lead to the prescribed harm.

One of the most basic distinctions is the one between conduct and result crimes. Result crimes are offences for which the law requires a specific result to occur; the most prominent examples being murder, manslaughter, wounding, etc. Hence, the offence definition here requires conduct, causation and fault to be proven. [10, p - 40].

Finally, criminal liability can also arise from the violation of a duty of care in which case the notions of conduct, fault and causation can become fused together in a duty of care. Yet, leaving these different modes of liability aside and returning to the local point of this discussion, an *actus reus* can

also encompass certain further circumstances. These can for instance require certain qualities in the person who commits the crime or a further list of conditions which need to be fulfilled in order for criminal liability to arise. [12]. Circumstances are thus facts which further specify the actus reus [10].

Doktrines of objective side of crime

## 1

In the objective side of our criminal law there are three main concepts. They include in the concepts of scientific abstraction of the structure of crime, real structure of crime and the normative or legislative model - the concept of structure of crime.

According to the first doctrine, the objective party is necessary for the correct qualification of the act as a crime and for bringing the guilty person to criminal responsibility. Subjective signs (mental attitude, direction of intention, guilt) are formed depending on the object of crime and external signs of criminal aggression directed at it.

This concept becomes important when studying the elements common to all crimes. The common elements for all crimes are understood as who is the subject of the crime, in what forms the guilt is manifested, what are the objective side of the crime, etc. In such cases, the elements of the crime are considered only theoretically. It is not expressed as the sole basis of criminal responsibility. When the composition of the crime is expressed as the only basis of criminal liability, it is understood only by its composition by type, and the crime includes such elements as the subject, object, subjective side and objective side that exist in a certain reality. Also, the criminal law norms specify the exact nature of the crime. The elements of the crime are expressed not only in the Special part of the criminal law, but also in the norms of its General part (age of criminal responsibility, sanity, guilt and its forms, etc.). In today's theory of criminal law, the understanding of the existing criminal structure as a scientific abstraction is inextricably linked with the concept of "general criminal structure" [13]. Based on this concept, it should be said that this concept contains a general understanding of the structural elements of the crime and constitutes non-existence in real life.

## 2

In the second concept of them, real structure of crime was described. In this concept, it is said that the sub-system core (basis, essence) of the crime, which represents the signs reflected in the criminal-legal norms provided for in the disposition of the General and Special part of the Criminal Code, is understood.

The composition of the crime exists in real objective reality as an integral part of the crime. The crime and the structure of the crime interact as a whole and as part of it. Any crime in real objective existence has certain characteristics of the crime. These symbols describe its elements, and the elements describe a particular crime as a part of the whole. That is, any crime has its own structural structure and system, which, in turn, constitutes its core. Crime is a crime structure and its signs are interrelated and complement each other as an integral part of the whole [13, p – 79].

N.F. Kuznesova stated that the composition of the crime is a system of necessary objective and subjective elements that constitute and represent a socially dangerous act, a system of signs provided for in the disposition of the norms of the General and Special part of the Criminal Code. [14, p - 484].

According to this concept, the composition of the crime is the "core" and "skeleton" of the crime and represents four elements. Proponents of this concept call these elements of the criminal structure "system". The system means the system of signs representing the criminal act expressed in the criminal law. They include the object of the crime, the objective side, the subject of the crime, and the



subjective side. These subsystems also include facultative symbols. They are the time, place, situation, method, weapon and means of committing the crime, purpose, motive, object of the crime, signs of a special subject, object of the crime. These signs may become necessary if they are provided for in the criminal law or by analyzing and interpreting some of the elements of the crime provided for in the norm.

In fact, a set of signs representing the social nature of the committed criminal act exists objectively in reality. The legislator envisages a set of signs of this act in a specific norm of the criminal law, and this socially dangerous act is reinforced in the criminal law with its sign of illegality. The main features of this criminal act are selected and strengthened in a specific norm of the criminal law. As a result, the committed criminal act will be correctly qualified by a ready-made model prepared by the lawmaker, that is, a specific norm of the Criminal Code 13, p – 80 – 81].

### 3

When analyzing these concepts, it is appropriate to focus on the normative or legislative model, which includes the third concept. This concept is the most common, and according to scientific views, the structure of the crime in itself represents the legal structure (construction), normative model, description of the crime in the law. As each concept has different aspects, the main difference between this and the first concept is that the first expresses the structure of the crime as a very doctrinal concept, while this concept expresses it as a legal category. Such an approach to this concept contrasts the concepts of crime and crime composition. Crime is a real social phenomenon, while the composition of a crime is a formal and legal concept. According to this concept, the elements of the crime are expressed in the law by the legislation means [13, p – 81].

A.I. Rarog stated that a crime is the occurrence in real life of a certain socially dangerous act prohibited under the criminal law with the threat of punishment, and the composition of the crime is an instrument developed by the science of criminal law and strengthened in the law, which is a legal instrument of a socially dangerous act. It makes it possible to determine the structure (construction) and to conclude that the act is represented as a crime under this or that norm of the Special Part of the Criminal Code. The composition of a crime is a set of objective and subjective signs provided by the criminal law that characterizes a socially dangerous act as a crime. [15, p – 52, 82].

Supporters of this concept A.N. Ignatov, I.Y. Gontar and others are considered. In this case, the composition of the crime acquires a nominal (considered) character. Also, the composition of the crime is manifested in the interaction with the crime and its concept. As a result, it is brought to the level of a principle that means general rules. The legislator of the criminal law discloses the crime and its signs in the General part, and in the Special part, referring to the signs that show the objective side of the structure of each crime, the list of signs of the structure of the crime is strengthened in the criminal law based on the specificity of each crime. [16, p – 26, 10].

The definition given to the concept of crime or its nature can never be the basis of criminal liability. Also, the norm of disposition of the criminal law cannot be such a basis. The basis of any type of liability can be a crime, a certain person's social behavior. The definition, nature or legal norm of a specific offense cannot be the basis of liability. According to this concept, considering the composition of the crime as a "legislative structure", "normative model", in turn, in some sense contradicts the fact that the presence of all the symptoms of the composition of the crime is the only basis of criminal responsibility.

According to the first and second concepts presented above: the composition of a crime is understood as a set of signs that are part of a crime under the criminal law; according to the criminal law, it serves as a set of signs that describe a socially dangerous act as a crime and is also the basis for imposing

responsibility. It is appropriate to use the concept called "normative" or "legislative model" to describe the structure of the crime. Based on this approach, it can be said that the set of objective and subjective signs that recognize a socially dangerous act as a crime under the criminal law constitutes the composition of the crime.

#### Similarity of objective side of crime and actus reus

As regards similarities between objective side of crime used in our jurisdiction and actus reus, both of them include in action (commission) and omission, that is, they consist of signs representing the external state of a socially dangerous act or inaction against an object protected by the criminal law. According to the definition of the elements of the crime used in these two different jurisdictions, commission, is defined as a "bodily movement, whether voluntary or involuntary which results in a criminal act." There are also situations where the accused has a duty to act, in such a situation, the accused does not perform the action that he should have done, and through his omission, causes a criminal action. As a result, liability will be imposed for the accused. Commission and omission in the objective side of the crime in our national law and the actus reus applied in a foreign country constitute a criminal act. Criminal act is a general term that defines the appearance of socially dangerous behavior of a person. It includes two forms of socially dangerous behavior, which differ according to the external expression, that is, commission and omission.

In the second part of Article 14 of the Criminal Code of the Republic of Uzbekistan, it is explained that a criminal act has the form of action (active behavior) or inaction (passive behavior expressed in not performing an action that is necessary and necessary for a person to commit). If we focus on the actus reus used in foreign countries, the American criminal law says that Similar to other national jurisdictions, a crime comprises a material element (actus reus) and a mental element (mens rea). A criminal offence is an act committed or omitted in violation of public law that either forbids or commands it. An actus reus of a criminal offences covers both acts and omissions. According to the aforementioned concepts, the objective aspect of the crime and the actus reus is the commission of socially dangerous acts which are defined in the criminal law or is to allow the commission of these crimes by omission.

The objective side of the crime - actus reus serves as the basis for imposing a liability to the accused, that is, both national and foreign laws require a specific action (commission) or omission to give a punishment. It is not enough that a person intends to commit a crime for criminal liability to arise; criminal liability arises not for thoughts and desires, but for actions. In this regard, the objective side of the crime and actus reus are important. The entire thrust of Robinson's interpretation of the Cruel and Unusual Punishment Clause in four doctrines written by himself is that criminal penalties may be inflicted only if the accused has committed some act, had engaged in some behavior, which society has an interest in preventing. As well as, the government need only create a legal duty in order to criminalize an omission [6]. If a person is charged with obligations by law or other regulatory documents, and has real opportunities to fulfill these obligations, and the person fails to fulfill his obligations under the criminal law in case of damage to protected objects, a criminal penalty is imposed for omission. The actus reus - objective side of the crime must be to harm social relations protected by the criminal law or have a real excuse for harm and through these two concepts demonstrate their illegality.

The objective side of the crime, that is, the actus reus, in addition to being active or inactive according to the nature of the external party, it must also be consciously committed. . Based on these two characteristics of a criminal act, it is necessary not to evaluate the actions or omissions as a crime in some cases. They are consisted of the lack of possibility to perform this or that action (for example, under the influence of physical force or insurmountable force), as well as not consciously performing

the committed act (for example, reflexive actions, actions of a person who is mentally deficient or under the age of criminal liability). The commission of an act prohibited by criminal law or an actus reus is not sufficient ground for imposing criminal liability, as it must be accompanied by a necessary mental element or mens rea. The very essence of mens rea is the attribution of criminal responsibility to persons who are sufficiently aware of what they are doing, and of the consequences it may have, that they can fairly be said to have chosen the behaviour and its consequences. A person is not criminally liable unless the requisite state of mind coincides with the prohibited actus reus. The physical act shall be contemporaneous with the guilty state of mind [17].

If a person's criminal act is not controlled by his mind, the consequences are not the result of his will. In practice, there are cases when a person is aware of his action and the consequences arising from it, but due to physical or mental force that cannot be overcome beyond his control, his will is unable to act. Such acts also do not have criminal legal significance. The American Model Penal Code provides that "person is not guilty of an offence unless his liability is based on conduct that includes a voluntary act". There is an intimate interrelation between the voluntariness and consciousness of conduct: a voluntary conduct must occur as a result of the accused's conscious choice. The Model Penal Code lists specific conditions that determine the involuntariness of conduct, inter alia, reflexes and convulsions, bodily movements during unconsciousness or sleep, conduct during hypnosis or resulting from hypnotic suggestion, and other movements that are not a product of the effort or determination of the accused. According to circumstances which is mentioned above, it is not appropriate to impose a punishment for committing a crime and we can see this in the second part of Article 18 of the Criminal Code of the Republic of Uzbekistan. In the Code it is written that at the time of committing the criminal act he was in a state of unconscious mind, that is, his mental state was chronic or a person who could not understand the importance of his actions (inaction) or control them due to temporary impairment, mental weakness or mental state is not held liable. Therefore, we cannot call it a crime if the objective side or actus reus of the committed crime does not include conscious and voluntary action or omission.

Generally, in order to be culpable for one's behavior the initial action must be voluntary. An actus reus and objective side of crime can consist of more than just an act, it comprises all the elements of the offence other than the state of mind of the defendant. Unlike the act requirement, the voluntariness requirement is universal in application. Criminal liability must be based on either a voluntary act, a voluntary omission, or voluntary possession. To be voluntary, an act must be 'a product of the effort or determination of the actor. A defendant who injures another through convulsion or reflex muscle action, for example, is excused under this provision. Involuntary acts include, for example, a reflex or convulsion; a bodily movement during unconsciousness or sleep; conduct during hypnosis or resulting from hypnotic suggestion [6]. The American Criminal Code does not assign responsibility for crimes committed as a result of compulsory actions cited above, that is, this code conclusively presumes 'conduct during hypnosis or resulting from hypnotic suggestion' to be involuntary. This situation can also be seen in our criminal code, that is, in article 35, there are circumstances that exclude the crime and it says that the commission of the crime (actus reus – objective side) is not considered a crime if it is committed under compulsion.

### *Differences of them*

Despite the fact that these two concepts have some similarities, they are structurally different from each other. The elements of the offense including the actus reus requirements are consisted of (i) conduct, (ii) attendant circumstances, and (iii) a result of conduct [6]. As for the objective aspect used in our criminal law, it contains socially dangerous act (action or inaction), consequence, causal connection between the act and consequence, as well as the place, time, circumstances, weapon, tools

and method of committing a socially dangerous act. If we compare the signs mentioned above, actus reus and objective aspects may include commission – omission, circumstances, result and causal connection, but actus reus does not include place, time and weapon of the crime. In order for a criminal consequence to occur in actus reus – objective side damage must be done to social relations protected by the criminal law.

There is also a causal connection that is part of the actus reus and the objective side. An objectively existing criminal element is a causal connection between a socially dangerous act and the consequences resulting from it. Causal connection is used to solve the issue of liability for damage caused by a socially dangerous act. Accordingly, determining the causal connection between the subject's socially dangerous action or inaction and the harmful consequence that occurred is one of the decisive factors in determining criminal responsibility. Result crimes raise the issue of causation: the result must be proven to have been caused by the defendant's act. If the result is caused by an intervening act or event, which was completely unconnected with the defendant's act and which could not have been foreseen, the defendant will not be liable. Where the result is caused by a combination of the the defendant's act and the intervening act, and the defendant's act remains a substantial cause, then he or she will still be liable [1].

As regards circumstances of committing a crime, the circumstances of committing a crime are the situation that exists at the time of committing a socially dangerous act, and such a situation can be objectively present, created by the victim or the criminal. For example, it can be said that the accused commits intentional homicide in a state of intense mental excitement in a state of intense mental excitement that suddenly occurred due to the Unlawful force or serious insult committed by the victim, as well as his other Unlawful actions. For such cases, it is inappropriate to impose a punishment by the relevant authorities, because the accused does not realize the social danger of his actions in such circumstances, or is forced to commit a crime. Section 2.01(2) (c) of the United States Penal Code does not provide for the sentencing of a crime committed under hypnosis, where the defendant is not aware of his actions. It is written that Article 35 of the Criminal Code of the Republic of Uzbekistan If the act of a person in self-defense is the cause of the crime or he commits a crime as a result of physical and mental coercion or intimidation, it is considered to be an exception to the crime. It follows that if a person commits a forced crime (actus reus) in circumstances that he does not want, the probability of punishment is low.

Another difference between the objective side of the crime and the actus reus is that the objective side of the crime consists of necessary and facultative signs. The necessary signs include the consequences of the crime, the socially dangerous act - action and inaction, and the causal connection, while the optional signs include the method of committing the crime, time, including location and circumstances. But actus reus has no such content. Necessary signs of the objective side are important in the detection of crime and imposing a punishment and facultative signs are of special importance in determining some crimes, despite the fact that they are not so necessary.

While the objective side of the crime includes commission and omission, the actus reus includes possession too. But in our law possession constitutes an element of action. We can see this in the example of black drug storage. In actus reus, this state constitutes possession, while on the objective side it is action.

On the objective side of the crime, the place, time, method, tools, and circumstances of the crime are facultative features of the criminal structure, but some of the objective side of the crime have an important criminal-legal significance in criminal law. Actus reus does not have such facultative features. Facultative signs are not considered a necessary sign of the objective side of all crimes, but are necessary only for some crimes, and the criminal act without the sign cannot be qualified by that

norm. if we take the weapon of crime as an example, according to part 2 of article 164 of the Criminal Code of the Republic of Uzbekistan, paragraph "a", the accused is punished for committing the crime of invasion using a weapon or other objects that can be used as a weapon. Such structural elements do not exist in the actus reus of the criminal law of foreign countries.

As mentioned above, actus reus does not have a facultative character. But the facultative sign of the objective side in our criminal law is not of great importance. Usually, in forensic practice, the time of committing any crime is clearly indicated. But this specified time does not have criminal legal significance, but is shown as an element of proof of the committed crime. It should also be said that in the doctrine of actus reus written by Robinson, the place and time of the criminal act is considered as follows: The act requirement is useful in providing a time and place of occurrence of an offence. While one's intention may range over a long period of time and many places, the conduct constituting the offence can be identified with a particular time and place. This assists enforcement of the concurrence requirement, i.e. that the required mens rea exist at the time of the conduct constituting the offence. An identifiable time and place also make it easier to apply various procedural rules, such as those governing jurisdiction, venue, and periods of time of limitation [6].

In a number of articles of the Special Part of the Criminal Code used in our criminal law, time is included in the scope of the objective side of that crime. For example, when committing a homicide in the course of mass disorder (Article 97, Part 2, Clause "e"), time is important for imposing a liability. If we talk about the importance of the crime scene, in Article 114 of the Civil Code, if an artificial abortion is carried out in places other than medical facilities or medically impossible, the crime scene is important and is a necessary sign of the objective side. If facultative signs are written in the provisions of the Special Part of the Criminal Code as a necessary sign of the objective aspect of that crime, the court shall impose a punishment for such a crime on general grounds within the scope of the sanction of that norm. If these signs are not indicated in the disposition of that norm, but if such a sign is present in the act, the court will consider it as a mitigating or aggravating circumstance at the time of giving a punishment.

#### Imposing a punishment for actus reus and mens rea

Actus reus, or the act requirement, is the first component of culpability in criminal law. In short, the actus reus requirement assures us that we cannot be punished for our thoughts alone. We must act, and act voluntarily, before criminal punishment may be imposed [18]. For instance, Criminal liability is rarely imposed for true omissions at common law, though there are situations where a non-lawyer would consider that there has been an omission but in law it will be treated as an act and liability will be imposed. There are also situations where the accused has a duty to act, and in these cases there may be liability for a true omission. Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

- ✓ the omission is expressly made sufficient by the law defining the offense; or
- ✓ a duty to perform the omitted act is otherwise imposed by law [19].

#### Importance of punishment

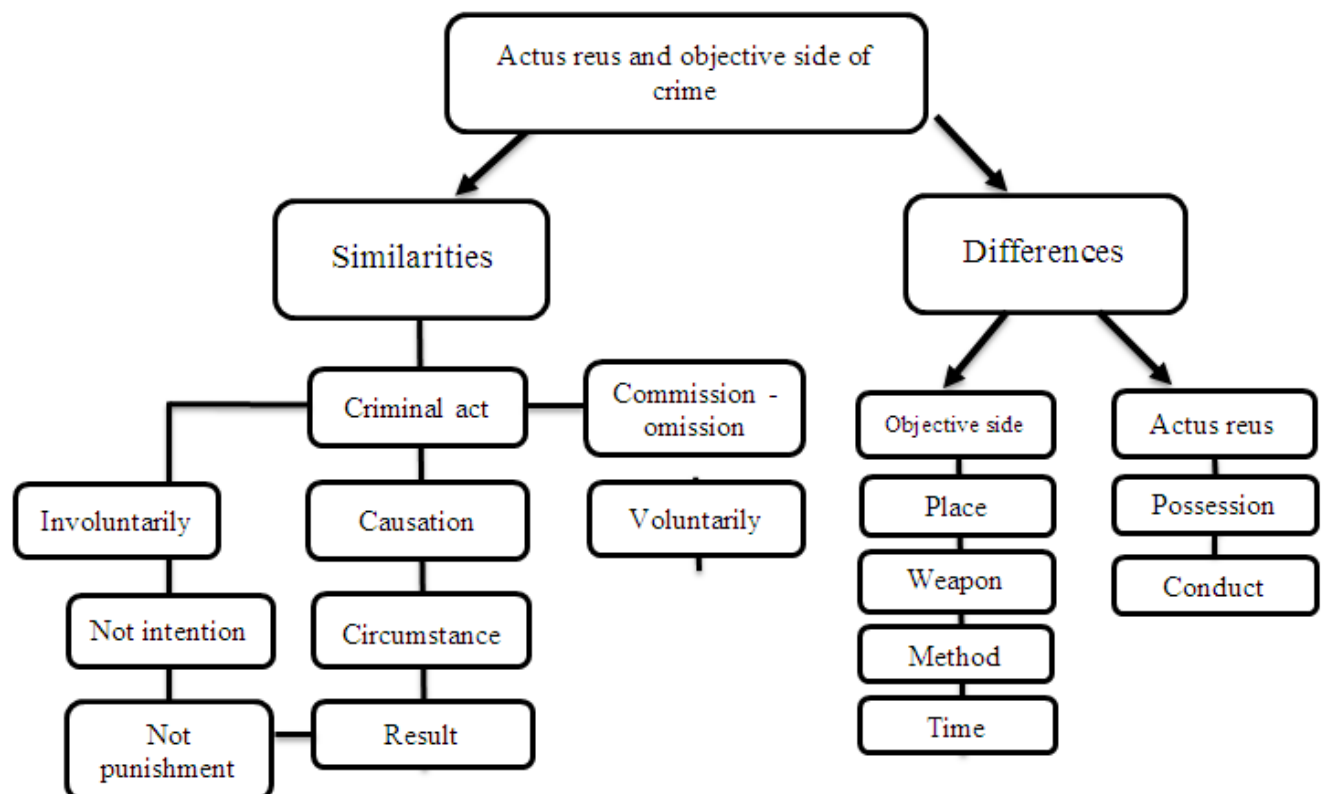
For each crime committed, the court imposes an appropriate punishment, which helps to reduce the number of crimes committed in society. Punishment is the imposition of a penalty in response to an offense, and it takes many forms. "An eye for an eye" is one of the strongest human instincts—and one that can be difficult for both individuals and societies to overcome—but decades of evidence show that reciprocating harm is not always the best course of action, either for the offender or the offended. Punishment, when meted out fairly, can work to condition people not to repeat misdeeds,



and threats of negative repercussions can act as powerful disincentives. Punishment has its place—but the ability to rise above baser instincts and judge each situation objectively, and with an eye toward fairness, is one of the highest achievements of humanity and of civilization [18].

Any person charged with a crime cannot be regarded as guilty until his or her guilt has been established in a lawful manner. No one shall be subjected to torture, to cruel, inhuman or degrading treatment or punishment. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed [20]. No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment. Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned [21].

If justification be required for continued discussion of the punishment of the criminals it may be found in the consideration that the solution of the problem is an ever – present challenge to society whose loftier purposes are so readily thwarted by human frailties. At a time when the existence vel non of a general crime wave is being pressed for popular adjudication, a further consideration of so closely allied a topic as the proper punishment for crime should not be destitute of popular appeal [22].



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