

## States of Mind

In order to be guilty of most crimes, or liable for most torts, a person must have a *mens rea*, which in English can be translated to a *guilty mind* or *culpable state of mind*. What exactly constitutes a guilty mind? There are four different states of mind that can lead to liability, having different levels of severity, and as a result, different levels of liability. In the order of most severe to least severe, they are *intent*, *knowledge*, *recklessness*, and *negligence*. I'll discuss each of them below and give some examples. Try to stay focused when I give the examples. My examples are ridiculous at times, and loaded with crimes. All you should be focusing on is the state of mind.

### Intent

For attorneys, intent has the same meaning that it has for non-attorneys: it's a state of mind where a person acts purposely to bring about a particular result. In legalese, a person acts with intent when it is the person's *conscious object* to engage in the particular conduct in question.

In criminal law, intent is divided into two categories, *general* and *specific*. General intent exists where a person desired to commit the act in question, and specific intent exists where the person intended to do something further. For example, battery is defined, basically, as hitting someone against their will. It's a general intent crime or tort because the act itself, hitting, is what the person intended to do. Burglary, on the other hand, is breaking and entering the home of another person with the intent of committing a felony inside. It's a specific intent crime because the act of breaking and entering isn't all the person intended. The person intended to commit another act (for example, a murder). Whether or not the person committed the murder, the person is still guilty of burglary because there was a breaking and entering and murder was intended.

The distinction is important in two cases: intoxication and mistake. Being drunk gets you out of a general intent crime but not a specific intent crime. For example, if you break into a home but are too drunk to actually intend to hurt anyone or steal anything inside, you will not be found guilty of burglary even if someone gets hurt. Of course, the state of mind, level of intoxication, etc. would all have to be determined in court. This is a theoretical example, and I hope you keep it that way!

### Knowledge

A person is said to act knowingly (or "with knowledge") if the person is *practically certain* that an act will have a given result. The focus, then, is on the consequences of a person's actions. For example, let's say my honest intent is to destroy something you're carrying in your suitcase. Let's say that the total value of everything being destroyed, including the suitcase itself, is about \$199. If I succeed in Virginia, then I'm guilty of simple larceny under § 18.2-96 (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-96>).

But what if I committed this crime using a bomb while your suitcase was on an airplane across the country? Besides the fact that smuggling explosives onto a plane is a crime itself, I'm going to be guilty of killing the passengers when the plane crashes. Although I don't intend, or maybe

even want, anyone else to be hurt, I know for a fact that I'm about to kill a lot of people (and destroy a lot of property, including the plane). In most cases, and especially the one I just gave you, you should expect knowledge to be punished the same as intent.

### Recklessness

A person acts with recklessness if the person consciously ignores a *substantial and unjustifiable risk*. In doing so, the person must have acted in a way that represents a *gross deviation* from the acts of a law-abiding person. In my suitcase example above, if the level of explosive I used was small (as strong as a firecracker), but I knew there was a possibility that your suitcase could be stored near the fuel tank, the cockpit, or some other area that's sensitive enough that a small explosion could still take down the plane, then I'm guilty of recklessness if that occurs. I may not be facing the death penalty, but I'm still in a world of hurt for committing this crime.

### Negligence

A person is negligent when they act without knowing of the risk involved, but the law says they should have known about that risk. For example, what if I open a nightclub and I didn't know there was a requirement for a certain number of fire exits. On opening night, there's a fire, and people are badly burned because they couldn't get out in time. I can honestly say that I didn't know that I needed four exits, but I should have; it's a state requirement.

### Strict Liability

Remember my first sentence when I said that a state of mind was required for *most* crimes and torts? Well, I've saved the best for last. Sometimes, there are crimes or torts that don't require a state of mind at all. In those cases, a person is said to be strictly liable. Even if you weren't aware that there was a risk of harm, let alone intended to commit a harm, you can still be found guilty or liable.

Strict liability offenses are not as common as offenses requiring a state of mind, especially when it comes to crimes, and the law varies greatly from state to state. For example, in *Laughon & Johnson, Inc. v. Burch*, 222 Va. 200 (Va. 1981) (<http://www.bodinelaw.com/LaughonVBurch.pdf>), the Virginia Supreme Court applied strict liability in a civil case where vibrations from a blasting operation (i.e., one using explosives) caused damage to buildings nearby. The Court pointed out that some jurisdictions didn't use that standard for these cases, but these so-called *abnormally dangerous activities* are a common example of where strict liability applies.