

**Culpable Mental States**  
 12-Hour TMCEC Regional Judges Program  
 AY 2009

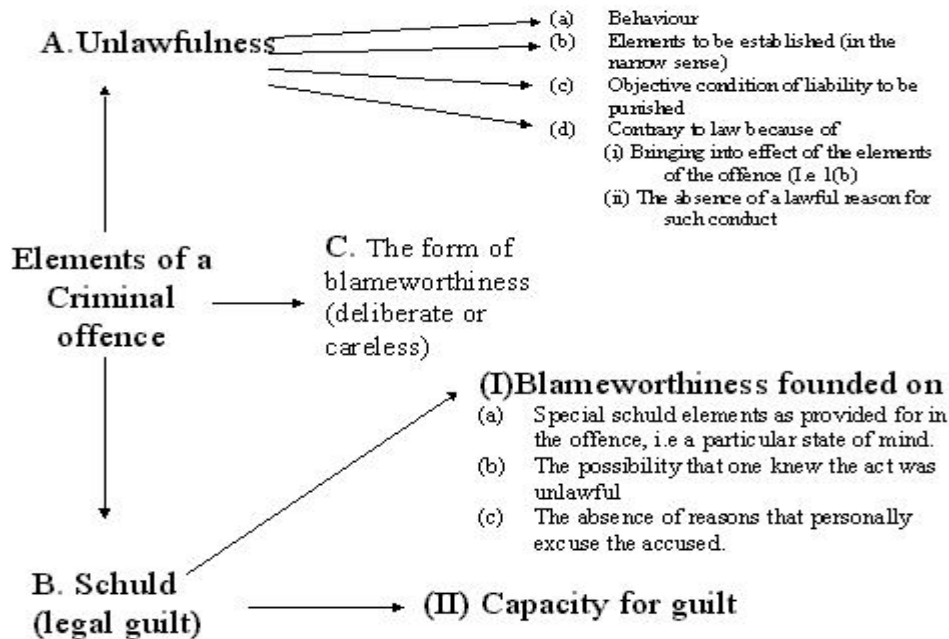
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**Criminal Responsibility: What is a Crime?**

“Criminal responsibility usually attaches only when mens rea combines with volitional conduct - or the withholding of some required act - to produce a public harm. These component parts of criminal responsibility are widely accepted and utilized to define what is a "crime." Taken together, they express the simple but powerful idea that one is accountable to society for the consequences of what one does, but only if mental fault prompted the act. A voluntary act that produces even the most horrible harm is usually not criminal without an accompanying mental fault; it is an "accident." Similarly, culpability alone is not punished, in large part because its occurrence in human beings is too common to bear sanction unless it results in action.

The origins of these precepts may be ancient, but they continue to be the foundations on which substantive criminal law is built. Even a cursory examination of the contents of contemporary criminal law casebooks confirms that mens rea coinciding with actus reus to cause a result, equals criminal responsibility.”<sup>1</sup>

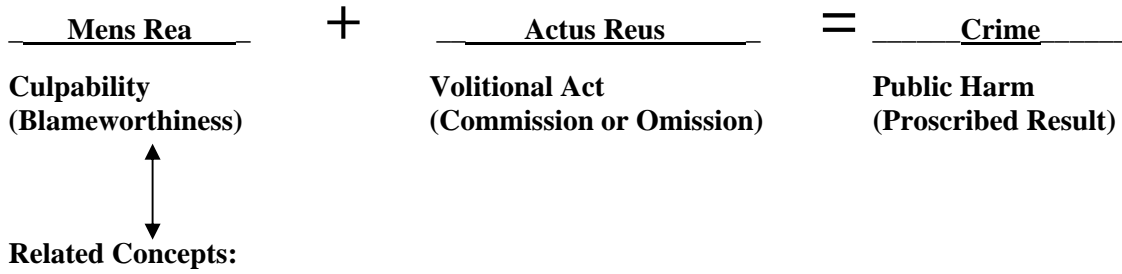
**Illustration**<sup>2</sup>



<sup>1</sup> Citations omitted. Gerald S. Reamey, *The Growing Role of Fortuity in Texas Criminal Law* 47 S. Tex. L. Rev. 59 (Fall, 2005).

<sup>2</sup> Brian Foley, *Same Problem, Same Solution: The Treatment of the Voluntarily Intoxicated Offender in England and Germany*, 4 Trinity College Law Review 119 (2001).

**Formulation of a Crime:**



“Capacity” – Example:       Age Affecting Criminal Responsibility       (Sec. 8.07, Penal Code)

“Sanity” – Example:       The Insanity Defense       (Sec. 8.01, Penal Code)

“Competency” – Example:       A defendant charged with a felony or with a misdemeanor punishable by confinement       (Art. 46B.002, CCP)

Additional Notes:

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**Texas Penal Code (2007):**

**Title 2. General Principles of Criminal Responsibility**

**Chapter 6. Culpability Generally**

**§ 6.01. Requirement of Voluntary Act or Omission**

**(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.**

NOTES: An “offense” only occurs if either:

(S)he did it (but       wasn't allowed to      )(i.e.       Commission      )

–

(S)he was suppose to do it (but       didn't      )(i.e.       Possession      )

–

(S)he had it (but       wasn't authorized to      )(i.e.       Possession      )

“Voluntary conduct is simply the absence of an accidental act, omission, or possession. It embraces no element of will or thought.”<sup>3</sup>

**§ 6.01 (b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.**

NOTES: Possession is akin to what game? hot potato

**§ 6.01 (c) A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 provides that the omission is an offense or otherwise provides that he has a duty to perform the act.**

NOTES:

“Law” =

- Constitution or Statute
- Written Opinion of a Court of Record
- Municipal Ordinance
- Order of Commissioners Court
- Rule Authorized and Lawfully Adopted under Statute

“Omission” = Failure to Act

## **§ 6.02. Requirement of Culpability**

**(a) Except as provided in Subsection (b), a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.**

General Rule = No Proof of Culpable Mental State, No Crime Committed

Proof of AR (Actus Reus) alone is insufficient. Defendant would be entitled to either a directed verdict or acquittal because the State has failed to prove its prima facie case beyond a reasonable doubt

General Rule = Definition of the Crime Requires one of Four Culpable Mental States

"The punishment of one for an offense when he is able to show that the act was done without guilty knowledge or intent is contrary to the general principles of criminal law ...." *Vaughn v. State*, 86 Tex. Crim. 255, 219 S.W. 206, 208 (Tex.Crim.App. 1919);

Complaint for Ordinance Violation Alleging “Negligent Collision” Deemed Fundamentally Defective (*Honeycutt v. State*, 627 SW2d 417 (Tex.Crim.App 1981))

“In *Honeycutt v. State*, 627 S.W.2d at 423-24, we held that the power to define offenses in abrogation of Titles 1, 2, and 3 of the Penal Code, which include the culpable mental state

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<sup>3</sup> Citations omitted. Mike Charlton, *6 Texas Practice at 39* (2001).

requirements, is reserved to the legislature. Therefore a municipality must comply with Section 6.02 when it prescribes, or dispenses with, a culpable mental state in an offense.” *Aguirre v. State*, 22 S.W.3d 463, 470 (Tex. Crim. App. 1999).

**§ 6.02(b). If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.**

Just Because the Definition of the Offense does not contain a Culpable Mental State does not mean that one is not “required.”

“Required”?

Required to be alleged?

Required to be proved?

Required to be alleged and proved?

Exception: “...unless the definition plainly dispenses with any mental element.” (i.e., it is a “strict liability offense”)

**Are Most Criminal Offenses Strict Liability? NO!!!**

“We must presume that a culpable mental state is required unless a contrary intent ‘is manifested by other features of the statute.’” *See Aguirre v. State*, 22 S.W.3d 463, 471-472(Tex. Crim. App. 1999)

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The offense of speeding is a strict liability offense, and requires no showing by the State that a person charged with such offense acted intentionally or knowingly. *Zulauf v. State*, 591 S.W.2d 869, 872-73 (Tex. Crim. App. 1979); *Goodwin v. State*, 63 Tex. Crim. 140, 138 S.W. 399 (Tex. Crim. App. 1911.)

“If an offense does not contain a culpable mental state element, the offense is one of strict liability. Strict criminal liability is based upon the principle that ‘a person who commits an act in violation of the law may be held criminally liable even though he might be innocent of any criminal intent.’ *Vaughan & Sons, Inc. v. State*, 737 S.W.2d 805, 818 (Tex. Crim. App. 1987) (Teague, J., dissenting).

“In charging the accused with a strict liability offense, culpability is irrelevant and, thus, need not be alleged in the charging instrument. If the individual commits the act, she is, ipso facto, held strictly criminally liable.” *Thompson v. State*, 44 S.W.3d 171, 177 (Tex. App. Houston 14th Dist. 2001)

## **Aguirre Factors**

### **“The Conclusive Feature”**

“The conclusive feature would be an affirmative statement in the statute that the conduct is a crime though done without fault. A legislature could make such a statement, but it rarely if ever does so. The typical strict liability statute is "empty" -- it simply says nothing about a mental state.” *Aguirre* at 472.

### **Other Aguirre Factors:**

- (1) The Legislative History of the statute or its title or context may throw some light on the matter.
- (2) The Severity of the Punishment provided for the crime is of importance. Other things being equal, the greater the possible punishment, the more likely some fault is required; and, conversely, the lighter the possible punishment, the more likely the legislature meant to impose liability without fault.
- (3) The Serious of Harm to the public which may be expected to follow from the forbidden conduct is another factor. Other things being equal, the more serious the consequences to the public, the more likely the legislature meant to impose liability without regard to fault, and vice versa.
- (4) The Defendant’s Opportunity to ascertain the true facts is yet another factor which may be important in determining whether the legislature really meant to impose liability on one who was without fault because he lacked knowledge of these facts.
- (5) Proof of Mental State - The difficulty prosecuting officials would have in proving a mental state for this type of crime. The greater the difficulty, the more likely it is that the legislature intended to relieve the prosecution of that burden so that the law could be effectively enforced.
- (6) The Number of Prosecutions to be expected is another factor of some importance. The fewer the expected prosecutions, the more likely the legislature meant to require the prosecuting officials to go into the issue of fault; the greater the number of prosecutions, the more likely the legislature meant to impose liability without regard to fault. *Aguirre* at 476.

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**§ 6.02(c). If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b), intent, knowledge, or recklessness suffices to establish criminal responsibility.**

Notes:

- If the definition DOES NOT plainly dispense with a mental element, ONLY three of the four will suffice.
- Criminal Negligence WILL not suffice.

**§ 6.02 (d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:**

- (1) intentional;**
- (2) knowing;**
- (3) reckless;**
- (4) criminal negligence.**

Notes: **Penal Code § 6.03. Definitions of Culpable Mental States**

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will

occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

**§6.02(e). Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.**

Notes:

Accordingly:

- Proof of “intentional” ALSO constitutes proof of “knowing,” “reckless” or “criminal negligence.”
- Proof of “knowing” ALSO constitutes proof of “reckless” or “criminal negligence.”
- Proof of “reckless” ALSO constitutes proof of “criminal negligence.”

Inversely:

- Proof of “criminal negligence” DOES NOT constitute proof of “reckless,” “knowing” or “intentional.”
- Proof of “reckless” DOES NOT constitute proof of “knowing” or “intentional.”
- Proof of “knowing” DOES NOT constitute proof of “intentional.”

**§ 6.02(f). An offense defined by municipal ordinance or by order of a county commissioners court may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23. (i.e., An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.)**

Notes:

**Question One**

Q: What kind of offense carry fines that can potentially exceed \$500?

A: Article 4.14(a)(2), C.C.P. and Section 29.003(2)(A), Government Code authorize cities to adopt ordinances punishable by a fine not to exceed \$2,000 for offenses involving:

- Fire Safety,
- Zoning,

- Public Health, and
- Sanitation (including dumping of refuse)

**Question Two**

Q: Does this mean that all other ordinance violations that carry a fine of less than \$500 are strict liability offenses?

A: No. See *Aguirre*. In fact, without an express waiver it is presumed that a mental state is required subject to the analysis of factors set out in *Aguirre*.

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**Question Three**

Q. Does Sec. 6.02(f) mean that local government must revise certain penal ordinances?

A. Not necessarily. It means that prosecutors have to be mindful that culpable mental state may need to be alleged and proven even if the ordinance is silent.

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**Question Four**

Q. What if the ordinance relates to fire safety, health or zoning but by the letter of the ordinance the maximum fine is \$500, would the prosecution still have to prove a culpable mental state?

A. It depends. Probably, yes, but not because of Section 6.02(f). Rather, see Section 6.02(b) and the analysis described in *Aguirre*.

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City of Austin was also enjoined from imposing a fine in excess of \$500 for violations of its smoking ordinance. While it is likely that a smoking ordinance violation can carry a higher fine pursuant to Section 54.001 of the Local Government Code, in this case the ordinance stated “A person who violates the provisions of this chapter commits a Class C misdemeanor, punishable . . . by a fine not to exceed \$2,000. A culpable mental state is not required for a violation of this chapter, and need not be proved.” The court of appeals held it to be pre-empted by Section 6.02(f) of the Penal Code. See, *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 538 (5th Cir. Tex. 2008).

**Question Five**

Q. Isn't it inconvenient to have to use the *Aguirre* factors for determining whether an ordinance violations and Class C misdemeanors are strict liability?



A. Yes, it is! It is, of course, it's easier to for cities to expressly waive a culpable mental state for all eligible ordinance violations than would be for the Texas Legislature to review the more than 900 fine-only offenses in state law.

## What about Waiver?

### Texas Code of Criminal Procedure (2007)

#### Art. 45.019(f)

**If the defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.**

Notes:

Only the trial court judge can determine when a "trial on the merits commences" pursuant to Article 45.019(f). *State v. Sanchez*, 135 S.W.3d 698 (Tex. App. Dallas 2003), affirmed by 138 S.W.3d 324 (Tex. Crim. App. 2004).

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#### Art. 44.181

**(a) A court conducting a trial de novo based on an appeal from a justice or municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court.**

**(b) The attorney representing the state may move to amend a defective complaint before the trial de novo begins.**

Notes:

Based on Article 44.181, county court did not err in refusing to quash complaint charging defendant with theft that did not specify how property was appropriated. Defendant had not objected to such complaint before the trial began in justice court. *Schmitz v. State*, 952 S.W.2d 922, 925-26 (Tex. App.-Fort Worth 1997, pet. ref'd).

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