

OVERVIEW

Interpreting Criminal Statutes: look at the plain language first – common sense dictionary definitions.

Principle of Legality: condemns judicial crime creation; provides notice of rules.

Strict Construction (lenity): when statute uncertain, bias in favor of the accused.

Void-for-vagueness: if statute is indefinite or over-broad, the law may not be enforced; prior interpretations or legislative intent may save the statute.

PUNISHMENT

Theories/Justifications for Punishment:

▪ **Utilitarian:** justification lies in the useful purpose the punishment serves; measures cost vs. benefit, where cost = pain and benefits include: general deterrence, individual deterrence, incapacitation, and reform.

▪ **Retributive:** justified because culpable person deserves it. *Choice* leads to *blame*, which leads to *punishment*. Different types of retributive methods include negative, positive, assaultive, and protective.

Jury Nullification: juries can acquit a guilty Δ because they don't agree with the law. Some say this is a safety valve, others say lawlessness.

Proportionality of Punishment: the 8th Amendment to the U.S. Constitution prohibits cruel and unusual punishments, requiring proportionality of punishment.

ACTUS REUS – GUILTY ACT

Components of Actus Reus:

▪ **Voluntary Act:** implied into act requirement of statutes; responsibility is key, so being forced to do something, or automatic responses, are not voluntary.

▪ **Attendant Circumstances:** condition must be present in conjunction with act and result to constitute a crime; eg. state of being [drunk] etc.

▪ **Result:** the result must result in some kind of social harm to society. eg. lost sense of security
Conduct vs. Results Crimes: in a conduct crime no harmful result is specified (eg. drunk driving), but a result crime does have a harmful result punished (eg. Murder); statute must spell out the result.

Omissions (No Act): imposes no criminal liability because motives for omissions are ambiguous, indefinite line as to who is responsible, intervention can make things worse, and U.S. values freedom and liberty. **Exceptions** include: special relationships, statutes, contracts, creation of risk, or voluntary assumption & seclusion. Eg: taking patient off feeding tubes; mistress pills / moral duty only.

MENS REA – GUILTY MIND

Generally: mens rea words end in “ly.” State of mind needs to be specified only once in the statute, and is then applied across the board. People intend the natural and probably consequences of their actions.

Malum in se: evil in itself; eg. rape, murder

Malum prohibitum: prohibited evil; pillow tag
Intent Under Common Law: included *purpose* and *knowledge*. Some states said only purpose = intent, and knowledge is not enough.

Intent Under M.P.C.: Purpose, Knowledge, Recklessness, and Negligence. If a statute does not specify the level of mens rea, negligence is the only grade that will not suffice.

Specific Intent: requires a special mens rea not having to do with the actus reus; answer the “why” or the motive.

General Intent: no special mens rea required; tied to actus reus only.

Transferred Intent: if one intends to harm one person, and instead harms another, the intent requirement is met for *both*.

Willful Blindness: when one attempts to avoid knowing the attendant circumstances; some courts equate this with knowledge of the attendant circumstances, and will give an ostrich instruction. Deliberate ignorance and positive knowledge can be equally culpable (MPC).

Strict Liability: does not require any mens rea for a criminal conviction. Usual these crimes are public welfare offences (except for Statutory rape) that involve a fine but not imprisonment.

There is no acquittal for mistake of any kind. The courts disfavor statutes with no mens rea, and they may also be unconstitutional on excessive punishment grounds. A statute is presumed to have a mens rea req. unless offense is particularly dangerous, imposes a fine only, or uncommon ownership.

Mistake of Fact: if mistake is based on reasonable (general intent) or honest (specific intent) grounds, then may be an excuse. Exception is the moral wrong doctrine.

Mistake of Law: or ignorance of the law is almost always never an excuse. Exception is where statute requires a knowing violation, which has to do with mens rea.

ATTEMPT

Definition: an inchoate offense which is planned but not yet occurred. Allows for punishment of actor even though crime not consummated. Policy reasons is not deterrence, but rather to allow a chance for intervention.

Rule: attempt occurs when a person *intends* to commit an offense and performs any *substantial step* towards its commission.

Attempt's Mens Rea: requires *purpose*; knowledge is not enough. MPC does not apply the mens rea to attendant circumstances, and instead requires a belief or conscious objective as to the result. C.L. applies to all 3 actus reus.

Attempt's Actus Reus: issue when preparation ends and perpetration begins. The act must be criminal in nature and not commonplace. The act *must not be equivocal*. A slight act could be attempt. Line is fuzzy, but several tests help determine a substantial step:

- **Dangerous Proximity:** found when too close to crime or victim.
- **Res Ipsa Loquitur:** eg. silent movie ending
- **Indispensable Element:** eg. buying a weapon
- **Probable Desistance:** where an ordinary person would not stop or desist.
- **Substantial Step MPC:** possessing materials without a lawful purpose to be used in the crime at or near scene. “Strong corroboration.”

Defenses to Attempt:

- **Factual Impossibility:** not a defense
- **Legal Impossibility:** pure legal impossibility (no law against act) always a defense. Hybrid legal impossibility (illegal goal w/ factual mistake) was enough under common law. However, some jx (including the MPC) have thrown out this defense.
- **Abandonment:** must be a good reason for the abandonment. For eg. if one plans to come back later, this is not a good reason.

RAPE

C.L. Rule: Carnal knowledge of a woman forcibly and against her will.

Elements: force (actual or constructive), Nonconsent (victim says, does, thinks, feels), resistance requirement (only some jx, common law required utmost resistance).

“No” as Force: no, or absence of yes, may be found to be forcible compulsion; some jx go so far as to say failure to get express permission to penetrate can be held as sufficient force.

Withdrawn Consent: nullifies any earlier consent and subject the actor to forcible rape charges if he persists.

Rape by Fraud: while *fraud in factum* (eg. doctor switches “instruments”) voids consent, *fraud in the inducement* (eg. the toilet seat cure) does not.

Mens Rea / Mistake of Fact: if Δ entertains a reasonable belief that victim voluntarily consented, he does not possess the mens rea required for a rape conviction. This is not a defense when Δ's belief is unreasonable.

Statutory Rape: since statutory rape is a strict liability offense, it does not require culpability as to the attendant circumstances.

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