

Criminal Law – Section A

Professor Alexander

Issues on Midterm Exam, Fall 2018

1. Did Mel’s commission of violations (1), (2), and (3) entail a “voluntary act” as required by MPC §2.01?
 - a. Generally
 - i. Was dreamlike state similar enough to sleepwalking and hypnosis to be treated as involuntary on the same grounds? Arguable.
 - ii. Does addiction make Mel’s acts involuntary? No. Law has rejected this claim.
 - b. Past voluntary act of heroin injection – does it mitigate effect of finding acts in dreamlike state to be “involuntary”? Time-framing issue here. Voluntary intoxication can serve as voluntary act when leads to later involuntary illegal behavior. Good policy reason to disallow claim of involuntariness where voluntarily induced. But may be mismatch of actual culpability and crime committed involuntarily.
2. Does Mel have defense of mistake of law?
 - a. Mel’s ignorance of Texas’ penal statutes does not negate any element of the Texas offenses (MPC §2.02(9)) unless not published or otherwise made reasonably available (§2.04(3)), or unless comes under *Lambert*. *Lambert* doesn’t look promising here.
 - b. What about Mel’s mistake as to jurisdiction (he thought he was in Arkansas)? This is treated like mistake of penal law – strict liability. (See Article I of MPC.) Do same policy reasons hold for making jurisdiction a strict liability element as for making existence of the penal law a strict liability element?
3. Did Mel have the appropriate mens rea for commission of the crime?
 - a. With §2.02(3):

Mel was not aware of a substantial and unjustifiable risk that he had AIDS. His ignoring his symptoms may have been reckless regarding transmission of a “bug” to others, but not regarding transmission of AIDS. Therefore, his mental state does not meet the requirements for recklessness regarding the “with AIDS” element of violation (1). And since violations (2) and (3) require violation (1),

Mel should be acquitted for lack of the required mens rea.

b. Without §2.02(3):

If we believe that some level of mens rea is required – the crime is too serious to be a strict liability crime – then Mel must be at least negligent regarding the elements of violation (1). (See MPC §2.01(1).) What would the reasonable person in Mel’s situation do regarding the sharing of needles? It depends on which aspects of Mel we hold constant and which we vary. This means that the determination of negligence may be arbitrary and impossible to distinguish from strict liability.

4. If Mel is guilty of violation (1), is he guilty of violation (2) when Del contracts AIDS?

a. Provision (4) makes violation (2) a matter of *conclusive presumption*. This arguably violates the 14th amendment’s due process clause. On the other hand, one could view provision (4) as just eliminating “cause” as an element of (2). If (2) would be constitutional without a causal connection required between the violation of (1) and the contracting of AIDS, then (4) is innocuous.

b. If (4) is unconstitutional, then is there sufficient evidence from which to infer that Mel caused Del’s AIDS by sharing the needle? The prosecution must prove each element, including causation, beyond a reasonable doubt. It can’t do that here.

5. If Mel is guilty of (1) and (2), is he guilty of (3)?

Here the problem is one of proximate causation. Was the hospital “negligent”? Does such negligence defeat proximate causation, or is it sufficiently “foreseeable”? Does death from AIDS include deaths that are AIDS-related, i.e., deaths caused by diseases that are more severe in AIDS patients? Why does causation, and hence proximate causation, matter?