

UNIVERSITY OF SAN DIEGO
SCHOOL OF LAW

CRIMINAL LAW

Mid-Term

Time: 75 minutes

This is an OPEN BOOK examination.

Mel lives in Texarkana, Arkansas. He is poor, illiterate, and a heroin addict. He doesn't read books, newspapers, or magazines, nor does he watch anything on TV but entertainment shows. He occasionally hears news items on his radio, which is always tuned to an FM rock station, but that is the only source of news he has except for what he hears from his friends, mainly other addicts.

Texarkana is on the Texas-Arkansas border, and half the town is in fact in Texas. In response to the spread of AIDS in the state, the Texas legislature has enacted the following criminal statute:

- (1) It is a felony for one infected with the AIDS virus to give any hypodermic needle that has penetrated his or her skin to any other person for that other person's use as a hypodermic needle.
- (2) It is an aggravated felony if violation (1) causes the person to whom the needle is given to contract AIDS within five years.
- (3) It is second degree murder if the victim in (2) dies from AIDS within five years of the violation of (1).
- (4) It shall be conclusively presumed that, where (1) is violated and the victim contracts AIDS within five years, the violation of (1) caused the victim's contracting AIDS.

Mel is unaware of these Texas statutes. Indeed, Mel is completely ignorant when it comes to AIDS. He does not know its nature, how it is spread, or its symptoms.

Mel has not been feeling well lately, and his symptoms are those typical of AIDS, which in fact he has contracted. He believes he just has a "bug," however, and he does not seek medical attention because he dislikes going to doctors, he wants to save what little money he has for more heroin, and he is afraid a doctor will spot his addiction and hassle him about it.

Mel obtains some heroin and injects it. The heroin is quite strong and induces an altered state of consciousness, dreamlike in nature. In this state of consciousness, Mel wanders across the state line into the Texas portion of Texarkana, though he cannot remember doing so.

Once in Texas (though unaware that he has left Arkansas), Mel comes upon other addicts. They ask him to share his needle with them, the one he had just used earlier. He does so.

One of the Texas addicts is Del, a prostitute. She offers to have sex with him in exchange for some heroin he still has. He gives her the heroin and his needle, and she injects it. They then have sexual intercourse. Heterosexual sexual intercourse is also a way that AIDS can be spread, though sharing needles is slightly more dangerous. Del is aware of the facts about how AIDS is spread, but she is willing to take the risks because of her craving for heroin.

About a year later, Del comes down with AIDS. In response to questioning by Texas public authorities, she relates the story of her encounter with Mel. Mel also has now been diagnosed with AIDS in Arkansas, and a check with the Arkansas Department of Public Health reveals to Texas authorities that Mel probably gave an AIDS contaminated needle to Del. Mel cannot remember any of the events in question because of the strong high he was on at the time.

Mel is charged in Texas with violations of (1) and (2). While the charges are pending, Del dies in a Texas hospital of a highly contagious viral disease that several patients brought into the hospital environment, and which the hospital authorities failed to diagnose in time because of a shortage of medical personnel due to budget cuts. The disease is not usually fatal, but Del was quite weak due to AIDS. After Del dies, the Texas prosecutor adds a charge of violating (3) to the other charges.

Texas (let us assume) follows the MPC in every respect. And it is, of course, subject to the limitations of the U.S. Constitution.

You are assisting the Public Defender assigned to Mel's case. The Public Defender asks you to write her a memo listing all of the issues (including mistake of law issues) (that are from the first ten class sessions of your course) that the defense might use to defeat the prosecution, how exactly the facts give rise to these

issues, what "the law" on these issues is, how the law applies to the facts, and the basic policy considerations that lie in the background of these issues. She has given you 75 minutes to read Mel's file and write the memo. She also wants you to tell her how your answers would differ if Texas did not have MPC § 2.02(3) but followed the MPC in all other respects. Good luck!

ONE PAGE SCHEMATIC OF CRIMINAL LAW
(up to defenses)

THEORIES OF PUNISHMENT -- (1) Backward looking (moral desert): how measure? (2) Forward looking: deterrence, incapacitation, rehabilitation, cutting costs of detection, trials (3) Mixed theories (4) Problem of proportional punishment

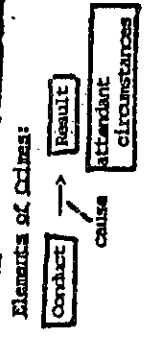
Burden of Proof:
(1) Elements must be proved beyond reasonable doubt by plaintiff
(2) Can choose to eliminate elements and convert them to defenses, with BVP on defendant, limited by voluntary act and proportional punishment requirements

Presumptions:
(1) permissive (may infer element from proved fact) -- need rational connection
(2) mandatory/rebuttable (must infer unless rebuttal evidence) -- needs to be true beyond reasonable doubt
(3) conclusive (non-rebuttable) -- needs to always be true beyond reasonable doubt
But if treat conclusive as redefinition of crime, may be OK; but if so, why not also true of mandatory and permissive presumptions?

Legality/Fair Notice
(1) no common law crimes
(2) no retroactive laws
(3) no "unreasonable" vagueness

Mistake as to Penal Law:
(1) strict liability (no defense)
(2) exceptions
(a) reliance on official interpretation
(b) Lambert

Conduct: Must be voluntary "act" or "omission"
(1) what is "act"?
(2) can it be mental?
(3) what connection between will and body?
(4) reflexes, altered states of consciousness
(5) no status crimes
(6) time framing problem where conduct is strict liability element
(7) BVP always on plaintiff, but not burden of production
(8) possession = act or omission
(9) omissions -- how define?
(10) omissions -- punishable only if defendant creates risk or legal duty to act imposed by statute, status, or contract



MENTAL STATES FOR ELEMENTS OF CRIMES (need concurrence of mental state and conduct)
Note: Mistakes of fact and mistakes of non-penal laws are treated according to the mental state required. BVP is on plaintiff to prove mental state, not on defendant to prove mistake, though defendant may have burden of production.

- (1) **RICKSIA**
(a) can be intermediate
(b) can be conditional
(c) can be associated with any risk > increase
(d) ~~is it a mistake of fact?~~ ~~is it a mistake of law?~~
(e) transferred intent

- (2) **Knowledge**
(a) near certainty
(b) no requirement that know "unjustifiable"
(c) willful blindness = "knowledge"
(3) **Recklessness** -- awareness of negligence (unjustifiable/substantial) *WISK*

- (4) **Negligence**
(a) what's substantial risk?
(b) is negligence culpable?
(c) is it distinguishable from strict liability?
(d) why punish?
(5) **Strict liability**
(a) no mental state required (but voluntariness is)
(b) why punish?

independent of justifications??