**SOC 3290 Deviance**

**Overheads Lecture 2: Deviance, Crime, and Criminal Law**

**(1) Deviance vs. Crime**

\* Commonsense view is that deviance = a wider concept than crime.

\* Problems: Not all breaches of law disapproved of nor punished

Not all harmful activities illegal

\* Practical definition of crime: a technical violation of the law

**(2) Criminal Law in Canada**

**\*** Criminal law = rules legislated & enforced by the state in the name of

society & enforced through the threat/application of punishment

\* Four characteristics:

(1) *Politicality*: variation in consensus over laws (mala in se vs. mala

prohibita). Potential “overcriminalization” /problems in enforcement

(2) *Specificity*: Crime control vs. due process; substantive vs. procedural

considerations: maintaining a balance

(3) *Uniformity*: applying the law equally to all: much debate about

practice

(4) *Penal Sanctions*: severity of sanction should reflect the crime

**(3) Elements of Criminal Law**

\* Seven principles:

(1) *Legality*: No crime exists without a law

(2) *Mens rea*: The mental element or “guilty mind.” Distinct from motive.

3 levels of culpability: General vs. specific intent, knowledge &

recklessness

(3) *Actus reus*: The prohibited act or omission

(4) *Concurrence*: Mens rea & actus rea must intersect

(5) *Harm*: injury to someone or the public (physical, psychological, etc.)

(6) *Causation*: Actus reus was the cause of harm

(7) *Punishment*: Sanctions must be stated in law

**(4) Case Illustrations of *Mens rea* and *Actus reus***

\* Only the appropriate coincidence of both elements can lead to a conviction.

**R. v. Cooper** (murder):

-Accused blacked out while strangling victim.

-Argued no *mens rea*.

-Majority ruled *mens rea* need not overlap entirely so long as coincides at some point.

-Minority disagreed, requiring conscious knowledge of likelihood

of death.

-Objective vs. subjective standards:

1. What reasonable person could be expected to intend

2. What accused actually did intend.

**R. v. Hundal** (Dangerous Driving):

-Illustrates nature of *mens rea* changes as one moves between

offences

-Look at section in criminal code for context of *mens rea*

required.

-Here no need of proving positive intention as standard is

recklessness

-*Mens rea* can be satisfied on objective standard of negligence

(“reasonable conduct”). No need to prove subjective mental state.

**Section 21**: (Parties to an Offence):

-Parties to an offence may be held as criminally responsible as perpetrators

-Requires: 1. Act or omission that aids the offender, or

2. A common intention to carry out an unlawful purpose

-May be simple or complex.

1. Driving getaway car for bank robber

2. Watching someone you dislike get beaten up by friend.

**(5) Criminal Defenses**

\* Many defenses based on violation of an accused rights under Charter.

\* Most others related to lack of *mens rea* for the crime. Examples:

1. Self defense 4. Mistake of Fact

2. Entrapment 5. Drunkenness

3. Duress 6. Insanity

**R. v. Tom**: (Drunkenness)

- Very intoxicated accused struck police officer with rock

- Had shown little understanding moments before when given

rights

- Argued so drunk did not have requisite *mens rea* for assault

charges

- Trial judge convicted on basis of recognition of officer/

conversation

-Appeal Court reversed ruling: lack of comprehension/

conversation made no sense

**R. v. Pappajohn**: (Mistake of fact)

-Accused and victim went to accused’s home and engaged in sexual activity after much drinking

-Accused later charged with sexual assault by victim.

-Argued honest, but mistaken belief in victim’s consent: no *mens rea*

-Presence of circumstantial evidence of consent

-Accused convicted: jury did not believe him. Defense still

theoretically available in other cases if jury believes accused.

**R. v. Sansregret**: (Mistake of fact)

-Victim broke up with accused after stormy relationship.

-Accused broke in several times, assaulted victim, and, out of

fear, victim engaged in sexual activity/ held out hope of

reconciliation.

-Accused charged with sexual assault. Argued honest, but

mistaken belief in victim’s consent: no *mens rea.*

-Accused convicted: “He saw what he wanted to see, heard what

he wanted to hear, believed what he wanted to believe.”

Ultimately:

- The defense of mistake of fact remains a legal possibility

- It cannot be simply a subjective test of the accused’s intention.

-Wholly unreasonable beliefs, however honestly held, are not

likely to negate *mens rea*

**Conclusion:**

We have reviewed: Deviance vs. crime

Characteristics & elements of criminal law

Criminal defenses

Keep these in mind when we review specific types of deviance.