

## 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
2. Entrapment
3. Duress
4. Mistake of Fact
5. Drunkenness
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