

Sample student outline for Prof. Alexander's Criminal Law class.

CHAPTER 8 PRESUMPTIONS

8.01 The Nature of a Presumption

8.02 Mandatory Presumptions

[A] Rebuttable Presumptions

- **Unconstitutional if presumed fact is an element of the crime**
- Sandstrom v. Montana
- Shift to D the burden of proof regarding an element

[B] Irrebuttable ("Conclusive") Presumptions

- **Unconstitutional if presumed fact is an element of the crime**

*** **Though mandatory presumptions are unconstitutional, legislature can achieve same effect by re-wording as an affirmative defense**

8.03 Permissive Presumptions ("Inferences")

- **Constitutional if presumed fact more likely than not flows from the basic fact**
- County Court of Ulster County v. Allen
- Do not shift the burden of proof; D has only a burden of production
- Rationale: It is highly unlikely that D has an excuse/justification and cannot produce more than a scintilla of evidence in support (permissive presumption does not lower the probability of guilt)

8.04 **Model Penal Code § 1.23**

- Does not allow mandatory presumptions b/c allows for affirm. defenses
- If the legislature wants to criminalize the basic act, they should do so
- Allows permissive inferences with appropriate jury instructions

CHAPTER 9 ACTUS REUS

9.01 *Actus Reus*: General Principles

[A] Definition: **(1) a voluntary act (2) that causes (3) social harm**

- Some jurisdictions use the term to refer only to (1), others to (2)

[B] Punishing Thoughts: Why Not?

9.02 Voluntary Act: General Principles

[A] General Rule: with few exceptions, **a person is not guilty of a crime unless her conduct includes a voluntary act, i.e. no status crimes**

[B] The "Act" = bodily movement, muscular contraction

- Some scholars say muscular contraction itself must be voluntarily performed
- Most lawyers and the **MPC [§ 1.13(2)]** say an act is a muscular contraction which might be voluntary or involuntary

[C] "Voluntary"

[1] Broad Meaning: In the Context of Defenses

- D had sufficient free will to be blamed for her conduct
- Acting under duress or with a mental disorder is "involuntary"

[2] Narrow Meaning: In the Context of the *Actus Reus*

- An act produced by function of the human mind
- Involuntary acts: reflexive actions, spasms, epileptic seizures, **hypnosis, somnambulism, automatism, St. Vitus Dance**
- **Voluntary acts: brainwashing, habits**

[3] Voluntariness: At the Edges

[a] Hypnotism (Dressler)

[b] Multiple Personality (or Dissociative Identity) Disorder

- Confronted by few courts, but approach is to treat all personalities as one agent

[D] Voluntary Act Requirement: Rationale

- Criminal punishment should only be inflicted upon those who act as the result of free choice.

[E] Burden of Proof

- **P required to prove BRD that D's conduct included a voluntary act**
 - **May be permissive presumptions that act was not, e.g., under hypnosis**
- [F] The Issue of "Time-Framing"
- P does not need to show that every act or last act was voluntary, conduct has to *include* a voluntary act; **problem is that there is always a voluntary act if time frame is broad enough**
 - **Problem of voluntary acts with no culpable choice (usually the point at which you start telling the story)**
 - Baker: speeding due to stuck cruise control
 - Newton: possession of a loaded firearm when plane unexpectedly landed at JFK
 - Time frame problem could be avoided by applying this rule: *A person is not guilty of an offense unless her conduct, which must include a voluntary act, and which must be accompanied by a culpable state of mind (mens rea) is the actual and proximate cause of the social harm, as proscribed by the offense.*
 - **Problem of deviant causal chains, e.g. St. Vitus Dance problem: basically comes down to whether "involuntary" act was part of plan**
- 9.03 Voluntary Act: Supposed (But Not Real) Exceptions to the Requirement
- [A] Poorly drafted statutes can appear to eliminate voluntary act req.
- [B] Status offenses will probably be overturned.
- **BUT** it is constitutional to criminalize a certain voluntary act by a person of a particular status (e.g. felons cannot have guns) or to enhance punishment for persons of a particular status (e.g. Ronald Reagan problem)
- [C] Crimes of Possession
- Interpreted to require a voluntary act, i.e. knowing procurement or receipt of contraband, or failure to dispossess self of contraband after becoming aware of its presence
- 9.04 Voluntary Act: Constitutional Law
- [A] Robinson v. California
- Unconstitutional to criminalize addiction
- [B] Powell v. Texas: no status crimes
- Constitutional to criminalize behaviors consistent with addiction
- [C] Current Law: Powell in the Light of Robinson
- State may not dispense with requirement of an *actus reus*
- 9.05 Voluntary Act: **Model Penal Code § 2.01**
- [A] General Principles
- § 2.01(1) **"A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable."**
- [B] Exceptions to the Rule: violations
- 9.06 Omissions: General Principles
- [A] General Rule
- **With few exceptions, a person has no criminal law duty to act to prevent harm to another, even if the person imperiled may lose her life in the absence of assistance**
 - Criminal law system distinguishes b/tw an act that causes harm and the failure of a bystander to take measures to prevent harm
- [B] Criticisms of the General Rule
- [C] Defense of the General Rule
- 9.07 Omissions: Exceptions to the No-Liability Rule
- [A] Common Law Duty to Act: "Commission by Omission"
- [1] Overview
- **D's omission of a common law duty to act, assuming he is physically capable of performing the act, serves as a substitute for a voluntary act**
- [2] When There Is a Duty to Act

[a] Status Relationship: parents to minor children, spouses to one another (sometimes common law spouses), masters to servants,