"Frankenexam 3 - Question # 1A"

Answer-to-Question-_1_

To: Colm N. Collette-Ted

From: Fran Tieck

RE: Case 12-9-2009, Charging Recommendation

Jezebel

Statutory Rape

We may be able to charge J for rape, although under the common law one element of the charge will be a serious hurdle. Under the common law, rape is sexual penetration, but a man, of a woman, not his wife, accomplished by force, threat, or artifice, and in the absence of consent. In Marvinland the age of majority for all purposes under state law is under 18, so we culd charge J for statutory rape, which removes the need to show lack of consent or force. Unfortunately, the common law only allows rape charges if the act is committed by a man on a woman, and we of course have the opposite situation here. However, many jurisdictions have done away with the "man" and "woman" titles and simply state "persons" so we may prevail. The Model Penal Code (MPC) 213.1(1) also defines rape as an act by a male, and 213.3(1) describes corruption of minors and seduction as by a male as well.

If we can argue that the statutory rape law should apply whether the actor is male or female, then we must show that the sexual penetration was voluntary and was done with malice and that Chip was under the age of majority. The act was done voluntarily (see below: HIV). Chip was 15 at the time, so he is under the age of majority. J will attempt to argue that she was not aware of his age, but under the common law mistake of age is never a defense to statutory rape; it is the only common law strict liability crime (Regina v. Prince (defendant's mistake of fact that girl was 18 not a defense), Olsen (mistake of fact that girl was 16 not a defense (lesser crimes principle)), Garnett (mistake of fact that girl was 16 not a defense (lesser crimes principle)). However, she may be able to bring up the Hernandez case from CA in which the defendant mistakenly believed that the minor was actually 18 and was allowed to raise a mistake of age. Nonetheless, the prevailing common law rule is that mistake of age is never a defense.

18-601.1: Transmission of HIV

We can charge Jezabel (J) with a violation of 18-601.1: Transmission of HIV. The elments of the statute are that 1) any individual, 2) who knowingly engages in intercourse 3) while HIV+ 4) and thereby transmits OR attempts to transmit HIV 5) to another individual.

The first element is trivial: J is an individual and we can prove that fact.

The second element is an act element, so we must show both that J's engagement in intercourse with Chip was a voluntary act and that she had the necessary mens rea that applies to that act (knowingly). The record supports the proposition that J voluntarily engaged in sex with Chip. Chip asked verbally for her consent and she stated "Honey, not only do I want to, this one's on the house..." She then voluntarily engaged in intercourse with Chip. The record does not show that she was intoxicated at the time, but if she were we would need to conduct further research into whether or not her intoxication was involuntary. We also must show that she knowingly engaged in sexual intercourse. Her statement that she "want[ed]" to engage in intercourse shows that she was aware of her actions and proceeded with knowledge of the nature of her act.

Before proceeding to the remainder of the elements, a discussion of mens rea distribution is critical. The common law is split as to whether or not mens rea distributes to all terms. Sometimes the mens rea does distribute (Liparota (knowingly distributes to all elements) and sometimes it does not (International Minerals (knowingly does not distribute to all elements). If the term does distribute, then we must prove that J knew that she was HIV+ and that she knowingly transmitted HIV or that she knowingly attempted to transmit HIV and did so knowingly to another individual. (We can already say that regardles of mens rea distribution, she knew that Chip was another individual or if not, that attendant fact element was true, so the element is trivial.) To determine whether or not mens rea distributes or whether there should be a mens rea assigned to each element of the offense, the common law considers several factors: the common law history of the crime (mala en se or mala prohibita), the severity of punishment, the barriers of entry, the relative inherent immorality of the crime, and the legislative purpose. There is no common law history of the crime, and this crime is a mala prohibita crime, so distribution of mens rea is less likely. The severity of punishment is moderate but not excessive, $2,500 or 3 years in prison or both, so the court could go either way on whether or not that factor causes mens rea to distribute. The barriers of entry are actually quite low considering that people infected with HIV may be asymptomatic for years and thus not know their status and inadvertently infect others, so this factor makes mens rea more likely to distribute. The relative inherent immorality of the crime is arguable, because on the one hand one may have no idea of their status but on the other hand HIV is an incurable disease, so the court could go either way on this point. Finally, the statute comes from the Marvinland Code of General Health, so perhaps the legislature

does have a strong interest in controlling the spread of HIV via this statute whether or not the offender realizes he is HIV positive, so this element could go either way. Considering all of the mens rea distribution factors, it seems that mens rea probably should distribute to all elments of the crime because of the low barriers of entry and the relative immorality of the offense.

If the mens rea were NOT distributed to all elements under the common law, then J could be charged and found guilty of the crime despite not knowing her HIV status because this lack of knowledge is immaterial. Under the Model Penal Code (MPC) 2.02(4) the term knowingly would apply to all elements unless a contrary purpose plainly appears. The fact that one of the elements is "transmits or attempts to transmit HIV" suggests that the legislature's purpose is to NOT allow defendants to raise defense that they did not know of their status.

If on the other hand the term knowingly distributed to all elements then we would have to prove that J knew that she was HIV+ when she had sex with Chip and that she knew she was transmitting or attempting to transmit HIV. We may not be able to prosecute if she did not know her status, as she was "stunned" when she found out that she had HIV. However, we can show constructive knowledge under the MPC or willful ignorance under the common law. Under the MPC 2.02(7) knowledge is satisfied if the defendant was aware of a high probability of the existence of a fact element, unless he actually believes that it does not exist. The record shows that J knew that her profession came with a high risk of HIV infection, and she "fequently" (but not always) used condoms with her clients, thus she may meet the knowledge requirement under the MPC unless she perhaps regularly tested herself for HIV and therefore "actually believed" that she did not have HIV. We may also be able to show willful ignorance under the common law, which requires knowledge of the risk and a reasonable ability to make an inquiry. If we can show J's willful ignorance, then it will suffice for knowledge (Jewell (defendant was willfully ignorant of the weed stashed in a secret compartment in his car, and thus had necessary "knowledge" of its existence)). J admittedly knew of the high probability and given the prevalence of free clinics, she likely had a reasonable ability to make an inquiry into her status.

If knowingly distributes, then J must have knowingly transmitted or attempted to transmit HIV to Chip. Again, she may argue that she unknowingly transmitted HIV because she was ignorant of her status, but we may be able to fall back on willful ignorance or constructive knowledge. If we were to try to argue instead that she attempted to transmit HIV then J can raise a mistake of fact (her HIV status) and be exculpated for her attempt. We would also have to show for attempt that J specifically intended to transmit HIV to Chip, which would be difficult considering it seemed she simply wanted to have sex with him "to have a good time" and not to infect him.

J will not be allowed the affirmative defense within the statute because she must have *actually* (not constructively) known that she had HIV and that Chip knew as well, which he clearly did not.

We will likely have difficulty charging J for this offense because the legislative intent and the relative immorality of the offense seem to suggest that mens rea should distribute to all elements, thus we would have to show that J knew her status and that she either transmitted or attempted to transmit HIV to Chip. Also, if we did not prevail on attempt to transmit and had to argue that J transmitted HIV to Chip, then we would need to show but-for and proximate cause, which may be difficult depending on Chips sexual history (although it looks rather scant given the record).

"Frankenexam 3 - Question # 1B"

B. The Ds are likely basing there defense on teh due process clause of the 14th Amendment of the Constition. Due process entails that citizens have a right to fairness in assigning legality to laws (Sallee). This legality is based upon publication of the laws, that the laws are clear and understandable, internally consistent, steady and predictable, impose fair limites on conduct, legal prohibtions, are enforced consistently, and enforced prospectively. The Ds have beef that the offense of exchanging sex for money have not been enforced against non-management participants, like prostitutes. Additionally the law has not been enforced against anyone for over 10 years, even though the trade has generally occurred openly, albeit discretely all over the state. This absence of enforcement for an extended period, tends against the steady and predictable and consistent enforcement elements of the principle of legality. The offense is obviously not enforced consistently, as noted by the 10 year gap, and is certainly not enforced against non-management prostitutes. Ds and society cannot be expected to predict that the offense would be enforced after such circumstances. Furthermore, this jump from not enforcing to strictly enforcing an offense, that was generally not regarded by the state for the past 10 years as criminal, violates the prospective enforcement requirement of the principle of legality - Ds have a right to know that they will only be punished for conduct made illegal before the Ds engage in such conduct. As alluded to in the later short answer problem, in order to enforce a law, a state must take reasonable measures to both publicize the law and publicize its (expected) enforcement.

While this is a legitimate defense against the attempted enforcement of the sex for money law, the factors working in our favor are that there was a law against the conduct in place and the prostitutes likely knew it was wrong, both morally and legally. Lewd conduct has been enforced in the past, even when not explicitly stated in the form of a law, as seen in Mr. Mochon's lewd phonecalls in 1955. If courts will enforce such morally bad conduct even without an explicitly stated law, why should they not enforce an explicitly stated law? However, although the courts generally will not overturn common law rulings, there is a general trend for these rulings not to be made. Also, prostitution is generally thought of as a morally dubious offense, one which the average person woudl reasonably believe to be a criminal offense. One could argue that by participating in such reckless conduct as having sex for money, when there very well could be (and was) a legal prohibition against conduct, means that one assumes the risk. Mistakes of law are no defense to common law crimes.

All in all, the violations of legality make it likely that the D will prevail. The state is trying to penalize conduct after the fact, despite a policy of enforcement. In the absence of other criminal measures against the Ds, a reasonable judge and jury would both agree that trying to enforce this law now will both violate the principles of legality and would be just plain unfair to the Ds.

"Frankenexam 3 - Question # 1C"

C. Bertha

Our best bet to pin charges on Bertha is through a theory of conspiracy. We will allege that 2 or more people (Bertha and the prostitutes) reached an agreement (allowing prostitutes to use the rooms to ply their trade) to commit an unlawful act (prostitution). There is no requirement that the agreement be a formal agreement, rather it can be tacit (Interstate Circuit v. US). Under Pinkerton liability, Bertha can be charged with all reasonably foreseeable crimes committed in furtherance of the conspiracy. Therefore we can charge her with all of the acts of prostitution, as well as Jezebel's statutory rape of Chip and the HIV statute violation because it is reasonably foreseeable that in the course of a conspiracy to commit prostitution statutory rape and the transmission of HIV would occur.

We have no indication that Bertha intended to join the conspiracy, however intent can be inferred from knowledge of the criminal acts of another if certain factual predicates are in place (see People v. Lauria). In Lauria, the court listed 4 tests that can indicate whether knowledge of criminal activity shows intent to promote it. (1) Does Bertha have a real stake in the prostitution? In Lauria, the court said that if Lauria was charging prostitutes more than legitimate customers to use his answering service, then intention could be inferred. We have no indication that Bertha charged prostitutes a premium over normal patrons- this is a matter we may want to investigate further. (2) Is there a legitimate explanation for Bertha's operating a hotel? Bertha does have a quite legitimate explanation for operating a hotel- she uses it to prevent patrons of her bar from drunk driving. These policies have earned her recognition from both the BBB and MADD, as well as the local press. Bertha has taken affirmative steps that indicate that her desire to have potential drunk drivers rent the room is bona fide- she offers to arrange space for drunk patrons and calls the police if they refuse. (3) Is the volume of business at Bertha's bar disproportionately composed of illegitimate business? In Direct Sales (cited in Lauria) the court indicated that where the defendant sold the majority of its drugs illegitimately in disproportionate amounts, intent could be inferred. Here we may have a dog that hunts. Several hundred actions of sex for money have taken place at Bertha's hotel over the last 3 years. If we can show that this far exceeds her legitimate business, we can satisfy this test. However, without information as to the volume of her legitimate room rentals, it is difficult if not impossible to make a conclusory determination. (4) Is the crime that Bertha knew was taking place through her service serious? Lauria specifically indicated that prostitution did not satisfy this requirement- a reasonable person might allow prostitution to occur where they would report or forbid a more serious crime. If Bertha's rooms were being used for heroin sales or murders then this requirement would be satisfied, prostitution will not do the "trick." Accordingly, Bertha's motel seems more like the

answering service in Laura, where the court declined to charge the operator with conspiracy, and less like the plane sale in US v. Morse, where the operator was charged with conspiracy. Further evidence in Bertha's defense is that when asked about "her girls" she replied that she did not have any girls.

For the same reason, we will probably be unable to prosecute Bertha as an accessory before the fact or accomplice under the common law in the acts of prostitution, because this will require that we show that she had the intent that the prostitutes commit criminal conduct or engage in criminal harm. Likewise MPC 2.06 requires that BErtha have had the purpose of promoting or facilitating the prostitution, which it simply does not seem that we will be able to prove.

Under MPC 5.03, we will also probably not get very far charging Bertha with conspiracy. The MPC requires specific intent for every crime charged under the conspiracy- it will be hard to show that Bertha specifically intended that Jezebel statutory rape Chip or transmit HIV to him.

Accordingly, it looks like we will be unable to prosecute Bertha for the criminal acts of prostitution that have taken place on her premises. Legislative action will be required to change the law so Bertha fits within a definition of "pimp," "madam," or management level participant.

"Frankenexam 3 - Question # 1D"

D. S can be charged with murder in the death of B, as he unlawfully killed B with malice aforethought. Under the common law, malice aforethought is intent to kill or inflict grievous bodily harm, with teh intention helpfully expressed by language of purpose and knowledge from the MPC. The crime was clearly unlawful, and B was clearly killed. Also, while B was not the intended target of S's action of throwing the pewter thing, S's action caused this deleterious result.

FOr causation to be met, the act must be both an actual cause and proximate cause of the harm suffered. S's throwing is an actual cause, but for B throwing the jug, B would not have died. A proximate cause is both foreseeable and efficient. It is foreseeable that someone could die when a heavy metal object is thrown at one's head, especially when on considers the low foreseeability requirement of crim law (similar to the tort negligence standard). Additionally, the harm is certainly an efficient cause from the action, happening with only the intervening potential omission of Rick in between the act and death. The causation requirement for the killing is met.

Mens rea can also be established - S purposely intended to grievously harm the other two guys; through his poor aim, B was harmed. WHile S may have held nothing against B, the intent to harm the two guys transfers to the intent to harm B.

The potential excusecdefenses S has to the harm suffered are provocation and involuntary intoxication. S could argue that he was provoked to this state of anger in which he acted, such that the provocation was calculated to inflame the passion of a reasonable man and tend to cause him to act with passion over reason. However, the two guys were not trying to provoke, and it is stated that S's belief as to the provoking words of is irrationally founded, while subjectively believed, it would not be objectively reasonable to accept such a belief. Moreover, the provocation only consisted of words, and by way of Girourd, words only cannot constitute adequate provocation.

S's better defense would be the involuntary intoxicaiton defense, in that he did not realize that was becoming intoxicated from the iced teas. While he would first have to prove that he did not realize the intoxicative nature of the drink, base on the hidden alcohol taste of teh dirnk, a reasonable jury could certainly accept this proposition. However, S would also have to prove that the intoxication negated the mens rea of the crime, that he was drunk beoynd being able to formulate the necessary mens rea for murder. While the circumstances are certainly unfortunate, it appears that while S would not have acted in the manner he acted if sober, he still possessed enough mental capacity to want and intend to harm the two guys (Kingston). Unless there is evidence of lingering permanent intoxication effects, S likely possess the intent to inflict grievous harm on folk. THese defenses are likely to fail, and the jury is likely to convict S

"Frankenexam 3 - Question # 1E"

E. Rick

As discussed above, I do not think that Rick owed a duty of any kind to Bob, and therefore under Jones v. US and Pope v. State he had no obligation whatsoever to act. In the US, we have chosen not to impose duties on the public at large, a stark contrast to the law in many continental European nations, even in shocking cases like the Kitty Genovese case. We could do further research, however, to determine if Rick falls under any of the categories of duties:

- Is there a statute in Marvinland that requires licensed EMT's to save people in harm when they are not on duty? Also, is there a Good Samaritan statute (like the statute in Vermont) in Marvinland that gives the general public a duty to rescue or aid others?

- Is there a special relationship between Rick and Bob? For example, is Rick Bob's father? Or, if Marvinland allows gay marriage, are Rick and Bob married?

- Is there a contract whereby Rick has agreed to aid Bob if necessary?

"Frankenexam 3 - Question # 2"

Answer-to-Question-_2__

The current purposes of and underlying theoretical justification for the MPC's provisions are primarily utilitarian. The proposed changes retain utilitarian goals in section (2)(a)(ii), however, these goals are secondary to the proposal's primary goal stated in (2)(a)(i), which is retributive. The MPC's current provisions as well as the propsed revisions of(2)(a)(i) state that proportionality is a goal. However, the MPC seeks to safeguard offenders against excessive and arbitray offenses, while the propsed revision introduces a factor that may undermine the goal of proportionality. (2)(a)(i) states that the proportionality of sentences will depend on the gravity of offenses, harm done to crime victims, and the blameworthiness of offenders. Of these three factors, the first and the last do not differ from the MPC's conception of those factors that should be taken into account when deciding the proportionality of an offense. It is the second factor proposed by the revision, the harm done to crime victims, that should be cause for pause and reflection before you vote. It is also important for you to consider if it is wise for the revisions to change the primary theoretical justification for punishment in the MPC to a retributive theory, making all utilitarian goals secondary, and only pursued "when reasonably feasible." It is my opinion that utilitarian goals such as deterrence, rehabilitation, and incapacitation of dangerous offenders, and re-integration of offenders into society (when the deserve it) are far more important goals than general retribution and should certainly not be so secondary as to only be pursued "when reasonably feasible."

If the MPC takes into account the harm doen to crime victims it could present legality problems for a number of crimes. Like cases will not be treated alike because the sentences will be based on subjective feelings and impacts on crime victims. Defendants should be charged and punished with crimes based on their own voluntary actions and level of mental culpability. It is unfair and arbitrary to punish a defendant more serverely for killing a beloved member of the community, whose death would have lasting effects on many, than for killing a lonely person. We should not make value judgments such as these as to the worth of human life. All human life is worth the same value, and our system of punishment should reflect that.

Changing the MPC to favor retributive goals over utilitarian goals is unwise. This is not to say that retributive principles do not have a place in our criminal justice system. These principles are implicit in our intuitive feeling that an attempt, although it was only thwarted by luck, should be punished less severely than a completed act. But this does not mean that our entire system of punishment should be based on retributive principles. Utilitarian guidelines are just as important, if not more so, because they promote the welfare of society as a whole.

An objection you could raise would be that changing the MPC's purposes to favor retributive goals of utilitarian goals may make the code internally inconsistent. Throughout the MPC most of the differences that occur in contrast to the common law are explained in light of the MPC's utilitarian purposes. Two examples are in attempts, accomplice liability, and conspiracy. Moving the threshold of criminality forward in attempts allows law enforcement to prevent more crimes and step in earlier furthering the utilitarian goals of deterrence and prevention. In conspiracy as well as accomplice liability, the MPC imposes liability only for those crimes which the defendant intended to aid and abet, rather than imposing liability for all reasonably foreseeable crimes. This decision reflects the MPC's current proportionality goals which protect the defendant against excessive or arbitrary punishment. These differences with the common law would be inconsistent with the proposed revisions, because its factors for proportionality are based more on the results of the defendant's acts or involvement in criminal activity rather than their actual level of mental culpability.

It may not be a bad idea to revise the MPC to include a retributive goal that has equal force as each of the utilitarian goals of deterrence, rehabilitation, and incapacitation. You could suggest this as a compromise between the two sides.

"Frankenexam 3 - Question # SA1"

1. Self-defense and necessity are justification defenses, which is to say that they propose that the defendant's conduct was the correct thing to do under the circumstances. Self-defense proposes that under the circumstances of the offense, the defendant was a less-culpable party who was faced with a threat of force from the victim that the defendant used reasonable force to terminate. The defendant is thus proposing that it was better for the defendant to cause harm to the victim than the victim to cause harm to the defendant. Necessity proposes that the defendant was faced with a choice of actions from an immediate threat of harm and that by breaking the law to prevent the harm the defendant caused less harm on the balance than would have been caused by not breaking the law. Thus, as in self-defense, the defendant is proposing that his action was the correct thing to do. Accordingly cases of perfect self-defense and perfect necessity exculpate rather than mitigate.

Duress, intoxication, and insanity, on the other hand, are excuse defenses. The defendant is not proposing that his action was correct, but that some other factors make the action less worthy of culpability than it would normally be. In duress, the defendant proposes that he was faced with an immediate threat of harm that would have overcome the will of an ordinary person, and that to escape that harm he broke the law. The defendant is not proposing that his action was correct, but that an ordinary person given the same scenario would also have been unable to resist and would have broken the law, thereby making the defendant less culpable for his actions. Intoxication and insanity propose again not that defendant's action was the right thing to do, but that the defendant, due to an intoxicated or insane state, did not have the mental connection to his criminal action that is required for punishment, and is not as culpable as a sober or sane person who did the same crime would be. Accordingly duress and intoxication typically mitigate the crime in most cases, rather than letting the defendant off the hook completely. Insanity does make the defendant innocent, but he is typically committed to civil confinement which in many cases exceeds his prison sentence.

"Frankenexam 3 - Question # SA2"

2. My response would be that the facts of the Perrin case and those of Gore's situation are readily distinguishable. Perrin was a free man faced with a threat that another drug dealer was going to kill him, and in fact had come to his house for that very purpose. Perrin had many options and avenues of escape other than arming himself- he could have gone to the police and informed them of the threat or he could have simply left town or moved to a different area to avoid the threat. In any event, the threat faced by Perrin was not even a real threat- at the time of Perrin's arrest, the man who wanted to kill him was in jail, and probably incapable of carrying out the desire to kill Perrin.

Gore on the other hand was a prisoner confined in federal prison. He couldn't go to the authorities, because the authorities were the very guards who he claimed were using excessive force against him, creating the need for him to act in self-defense. Nor could he escape the threat by moving, the movements of prisoners are closely restricted and had he tried to leave the area he would have been subjected to force from the guards (see State v. Abbott- no obligation to escape if escaping would subject you to harm; MPC 3.04(2)(b)(ii)- only an obligation to escape if you can do so with complete safety). Further, as opposed to Perrin's threat that in fact did not exist because the maker of the threat was imprisoned, if Gore is to be believed his threat was very real and imminent, in fact the guard had already tackled him to the ground.

"Frankenexam 3 - Question #SA3"

Answer-to-Question-_SA3__

False. In the common law, manslaughter can be found for both intentional killings committed under mitigating circumstances, or for unintentional killings. While unlikely that accessory would be found for killings committed under provocation, it is still possible, as long as the accessory specifically intends that the principal engage in the course of criminal conduct, and encourages or assists him by act or omission. Manslaughter can also be committed with gross negligence, reckless disregard, or wanton recklessness. Therefore, a mens rea of recklessness generally must be shown. Can one specifically intend that another engage in a crime recklessly? According to State v. McVay, yes, you can be an accessory to a reckless or negligent crime. As long as the accessory SPECIFICALLY INTENDS that the other engage in reckless conduct, liability will lie. The accessory does not need mens rea as to the result, but to the criminal course of conduct.

"Frankenexam 3 - Question # SA4"

Answer-to-Question-_SA4__

The cognitive approach to the insanity defense is best demonstrated by the M'Naghten test. M'Naghten presumes sanity, and says that "at the time of the commission of the act the party accused was laboring under such a defect of reason that was the consequence of a disease of mind as to not know the nature and quality of the act he was doing OR if he did know it, that he did not know what he was doing was wrong." Cognitive approaches focus on whether the defendant is capable of knowing the nature/quality/criminality of his offense - purely from a mental disease standpoint.

By contrast, the volitional approach states that the defendant lacks capacity to conform his conduct to the requirements of the law. This is also demonstrated by the Irresistible Impulse test, where the defendant knew that his acts were wrong, formed the required mental connections, but by the virtue of the mental disease he could not stop himself. The main difference is that the volitional approach essentially opens the door for insanity defenses based on personality disorders - those people who don't feel the moral burdens of the law.

The Model Penal Code contains the cognitive approach, but it also contains the volitional prong. It states in § 4.01 that "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law." The volitional prong is evidenced by the last clause - conforming conduct to the requirement of the law. It also steps down from the traditional cognitive approach of M'Naghten by reducing the mental connection to substantial capacity. The MPC, because it contains the volitional prong, similarly has the effect of holding the defense out for those with personality disorders, rather than just psychopathic disorders.

"Frankenexam 3 - Question # SA5"

Answer-to-Question-_SA5__

False. Generally, ignorance or mistake of law is not an excuse. However, when ignorance of the law does not match up with the principle of legality, it may be an excuse. For example, in the Lambert case, where felons had to register upon entering the city, the law was not sufficiently promulagated and publicized. Therefore, when the felon failed to register, the fact that he did not know the law and the government had not sufficiently provided fair warning as to the existence of the law were sufficient in combination to acquit him. Therefore, when fair warning is not met, ignorance of the law can be an excuse. Mistake of law is an excuse where the legal status of a fact/act/result is an element of the crime. For example, in Cheek, where the defendant decided income taxes were not constitutional, the legal status of the money was a fact element. Therefore, this mistake provided an excuse. Similarly, in attempts, where the defendant attempts to perpetrate a crime, but if all the facts had been as the defendant believed and it still would not constitute a crime, mistake of law will provide an excuse.