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Mistake of Fact as a Defense to Common Law Crimes

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NOTES

MISTAKE OF FACT AS A DEFENSE TO COMMON LAW CRIMES

The general rule of the Common Law is that a mistake of fact[1] is a defense to a crime if the mistake was:

(1) as to a material fact; and

(2) reasonable; and

(3) such that the defendant's conduct would have been:

[1]For a discussion of the distinction between a mistake of fact and a mistake of law see Keedy, Ignorance and Mistake in the Criminal Law, 22 Harvard Law Review 75; also Kohler, Ignorance and Mistake of Law as a Defense in Criminal Cases, 40 Dickinson Law Review 113.

(a) legal; and

(b) moral

if the facts had been as he mistakenly believed them to be.

MATERIALITY OF MISTAKE

To be a defense the mistaken fact must have been a material fact[2]. If the act done would have been criminal, the same crime, if the facts had been as he supposed them to be, the mistake is immaterial[3]. Thus, if A kills B because he mistakenly believes B is wearing a red necktie, he is guilty of murder. His conduct would have been criminal, i. e., murder, had the facts been as he supposed them to be. His mistake was as to an immaterial fact.

REASONABLENESS OF MISTAKE[4]

At law an act is reasonable when it is such that a man of ordinary prudence, skill, and care would do it under similar circumstances. This application of an external standard to an individual has been criticized by writers on this subject[5]. Keedy argues, "If the defendant, being mistaken as to material facts, is to be punished because his mistake is one which an average man would not make, punishment will sometimes be inflicted when the criminal mind does not exist. Such a result is contrary to fundamental principles, and is plainly unjust, for a man should not be held criminal because of lack of intelligence. If the mistake, whether reasonable or unreasonable, as judged by an external standard, does negative the criminal mind, there should be no conviction." The Courts have refused to apply this theory, clinging to the external standard. In *Williams v. State*[6] Merritt, J. says, "If the circumstances attending the killing were such as to justify a reasonable man in the belief that he was in danger of great bodily harm or death, and that he could not have retreated without adding to his peril, and he honestly believed such to be the case, then he had the right to fire the fatal shot in his own defense, although as a matter of fact he was not in actual danger, and retreat

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[2]Keedy, supra.

[3]Reg. v. Lynch, 1 Cox C. C. 361; Com. v. McGehee, 62 Miss. 772.

[4]"A bona fide and reasonable mistake of fact stands on the same footing as absence of the reasoning faculty, as in infancy, and perversion of that faculty, as insanity." Regina v. Tolson, 23 Q. B. Div. 168.

[5]Keedy, Ignorance and Mistake in the Criminal Law, 22 Harvard Law Review 75. In Dotson v. State, 62 Ala. 141, the court said the mistake must be without fault or carelessness. In Fain v. Commonwealth, 78 Ky. 183, the court said if the mistake is due to sonambulism it need not be reasonable. Bishop, New Criminal Law, Sec. 5.

[6]93 So. 57.

would not have endangered his personal safety." In a leading English case[7] in which the defendant was indicted for felonious homicide, it was shown that he reasonably believed that there was a burglar in his house, and thrusting his sword in the dark, where he thought the burglar was concealed, killed a woman who had come into the house to assist one of his servants in her work. It was decided that the defendant was no felon and was in the same position as if he had in fact killed a burglar, the act being attributable to an error which could not have been prevented by an inquiry practicable in the circumstances.

Undoubtedly, the individual test as suggested by Professor Keedy is theoretically sound, but it would be abused in so many instances that it would be of little value. How would the courts determine the intelligence of a defendant? If they did succeed in proving that the defendant was lacking in mental nimbleness to a greater extent than an ordinary person, he might be possessed of average intelligence as to the particular fact as to which he was mistaken. The courts have adopted the only sound measure of reasonableness.

EXCEPTIONS TO THE GENERAL RULE

There are exceptions to the requirement that the mistake must be reasonable[8].

1. Some acts done under a mistake are criminal even though the mistake is reasonable. In these situations the defendant acts at the risk of being mistaken. His guilt is determined by the actual facts. The rule, as to the right to defend a third person from a felony of violence such as murder, rape, robbery, etc., is: A defendant can kill in defense of a third person only when the third person would be justified in killing in self-defense. Thus the defendant is guilty if when he appears upon the scene of a combat, the original aggressor may be about to be killed by the other party in self-defense, and the defendant kills the apparent aggressor. The defendant cannot avail himself of the defense of mistake of fact because the actual aggressor would not have been justified in killing in his own defense. All courts are not in accord with this rule; some allow the defense when the person protected, the original aggressor, is a brother or relative. In *Guffee v. State*[9] the trial court charged: "When one person interferes on behalf of another he becomes responsible for the acts of the person in whose behalf he interferes; and if the acts and circumstances would not justify the killing by the person in whose behalf he interferes, neither will the law justify him in taking the life of such a person." The appellate court said: "The inherent vice of the extract from the charge of the court below is that it bound the appellant to his brother with

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[7]Levett's Case, Cro. Car. 538, 1 Hale, P. C. 474; Beale's Cas., 68.

[8]The greater number of exceptions are as to statutory crimes.

[9]8 Tex. App. 187.

hooks of steel, and made him answerable for the acts of his brother, as well as for his own, without regard to the motive or intent which may have been totally dissimilar in the breast of each. Throughout the transaction John Guffee may have been actuated by a malicious motive,—while the intent of appellant may have been of a wholly different nature and character. Can it be said that in the event the same degree of culpability must attach to him as if his purpose had been the same as his brother? If so, one of the fundamental principles of criminal jurisprudence must be ignored and set at naught. If my brother seeks out his enemy on the public highway with a view to slay him, and I, ignorant of his design as well as the cause of the difficulty and how it originated, but seeing him hotly engaged and the fortune of the fight turning against him, and realizing that he is in imminent danger of life or limb, rush to his rescue, and strike down his antagonist in order to save his life, must I, under such circumstances, be adjudged guilty of murder with express malice, merely because my brother would be so adjudged in case he had inflicted the mortal blow? If the law is so written in the books we have failed to discover it." This rule has been followed by several courts[10] but the weight of authority favors the strict adherence to the rule that one interfering in behalf of another steps into that person's position and his defense must be that of the person he so defends. As stated in *Stanley v. Commonwealth*[11], "It (the rule) did not allow them to act in good faith upon appearances, however reasonable. Under it they could only act if, as a matter of fact, in the judgment of the jury the defended was in actual danger and entitled to so defend himself[12]." The minority rule, it is said, sacrifices the innocent to protect the guilty.

2. Some acts are not criminal even though the mistake is unreasonable, if the belief is bona fide. Thus in England and the great majority of the States of the United States, the crime of perjury is not committed, if the accused believes the statements which he makes under oath, however unreasonable his belief may be. Pennsylvania and a small minority assert a contrary doctrine[13]. In the crime of larceny the taking must be with the intent to deprive the owner of the goods permanently, and as long as the taker believes the goods are his own, no matter how unreasonable this belief may be, he is not guilty of larceny[14].

A man's mistake is not reasonable if he makes it because he is negligent. Therefore the courts frequently discuss the mistake as being negligent rather than

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[10]People v. Curtis, 52 Mich. 616, 18 N. W. 385; Monson v. State, (Tex. Cr. App), 63 S. W. 647.

[11]6 S. W. 155.

[12]Wood v State, 128 Ala. 27, 29 So. 557; Weaver v. State, 1 Ala. App. 48, 55 So. 956; State v. Hennessy, 29 Nev. 320, 90 P. 221; Wood v. Commonwealth, 219 Ky. 456, 293 S. W. 951.

[13]6 Binn. 249 (Pa.).

[14]Reg. v. Addis, 1 Cox C. C. 78; Rex v. Crump, 1 Car. & P. 658.

unreasonable and as said in *Stern v. State*[15], "It is impossible to lay down any general rule as to the care which must be exercised to ascertain the facts. Each case must depend on its own nature and circumstances." In *Springfield v. State*[16] the court said, "A man who by voluntarily putting himself under the influence of liquor incapacitated himself from taking such a view of the situation as a reasonably prudent man would have taken under the circumstances is not excused." In a very famous case[17], a man before going to church fired off his gun, and left it unloaded. While the master was attending church a servant loaded the gun. After returning from church the master picked up the gun and touched the trigger, the gun went off killing his wife. It was held that his mistake in believing the gun to be unloaded was non-negligent and reasonable. The case might have been decided differently if days instead of hours had elapsed between the firing and the subsequent handling without examination to see whether in the meantime it had been loaded again. In *State v. Hardie*[18], the defendant snapped a loaded gun at another, knowing it to be loaded, and killed him. His defense was that he thought the cartridge too old to explode. The court said the mistake was due to negligence and convicted him of murder.

LEGALITY OF DEFENDANT'S CONDUCT UNDER MISTAKEN BELIEF

A person may be criminally responsible for results brought about under a mistake of fact. If the defendant while engaged in the commission of one criminal act commits another by mistake or ignorance of fact, the doctrine of constructive intent is used to supply the intent for the act mistakenly or ignorantly done. Thus if A with intent to steal a turkey, shot and killed a man mistaking him for a turkey, he is guilty of murder. His conduct would have been criminal had the facts been as he supposed them to be. Thus in an old English case[19], "If A meaning to steale a Deere in the park of B shooteth at the deere, and by the glance of the arrow killeth a boy that is hidden in the bush, this is murder for the act was unlawful, although A had no intention to hurt the boy, nor knew of him." It is murder if: One intending to commit felonious assault causes death[20], or one feloniously sets fire to a dwelling house and accidentally burns an inmate when he thinks the dwelling is unoccupied[21], or one prepares poison for one person and another dies from it[22], or one intending to shoot unlawfully a certain person kills a bystander[23].

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15 53 Ga. 229.
16 96 Ala. 81.
17 Foster 265 (K. S. C. 27).
18 47 Iowa 647.
19 3 Co. Inst. 56.
20 Wellar v. People, 30 Mich. 16.
21 People v. Ferlin, (Col. Sup.) 257 P. 857.
22 2 Plowd 473.
23 Geore's Case, 9 Coke 81a.

IMMORAL ACTS DONE UNDER A MISTAKE OF FACT

If a man is engaged in the commission of an immoral act, even though it may not be indictable, and unintentionally commits a crime, it is generally no defense for him to show that he was ignorant of the existence of the circumstances rendering his act criminal. Thus a man who has unlawful sexual intercourse with a woman cannot defend against a charge of adultery on the ground that he did not know that the woman was married.[24] A man who has intercourse with a girl below the age of consent, with her consent, cannot defend against a charge of rape, on the ground that he reasonably believed her to be above the age of consent[25].

—Paul A. Koontz.

CONTINGENT REMAINDERS IN PENNSYLVANIA

The Pennsylvania Legislature in 1935 passed an act to limit the operation of the rule in Shelley's Case[1]. This act so far as it will operate[2] to limit the rule in Shelley's Case creates contingent remainders and thus may make applicable another rule in Pennsylvania which operates to defeat the intention of the testator. The rule which may now become more noticeable is that contingent remainders are destructible. The new act which purports to prevent the life tenant from taking the remainder as he would under the rule in Shelley's Case makes these remainders into contingent remainders.[3] That is, where land is devised to A for life, remainder to A's heirs, the heirs of A now have contingent remainders and the heirs of the testator a vested reversion. This gives rise to the question whether A by his act can destroy these contingent remainders.

In answering this question the first factor to be determined is: Are contingent remainders destructible in Pennsylvania? From the earliest case in Pennsylvania to the last the answer seems to be in the affirmative. From *Dunwoodie v. Reed*[4] in 1817 to *Gunning's Estate*[5] in 1912 the rules of the common law have been followed in all of their details to destroy the contingent remainders. It seems

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[24]State v. Anderson, 140 Iowa 445, 118 N. W. 772; Commonwealth v. Elwell, 2 Metc. (Mass.) 190; State v. Cody, 111 N. C. 725, 16 S. E. 408; Fox v. State, 3 Tex App. 329.

[25]Commonwealth v. Murphy, 165 Mass. 66, 42 N. E. 504.

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[1]Act of June 19, 1935, P. L. 1013.

[2]See: Irwin, Legislative Limiting of the Rule in Shelly's Case in Pennsylvania, Dickinson Law Review, October 1935, p. 27.

[3]See footnote 2.

[4]3 S. & R. 435 (1817).

[5]234 Pa. 144 (1912).