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ON

CRIMINAL LAW

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UNILITY OF THE MAXIM IGNORANTIA JURIS NON-EXEOUSAT IN THE PRESENT DAY CONTEXT

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The terms Law and liability are well known to us. We further know the difference between absolute or strict liability and qualified liability. Absolute liability, strictly speaking has no place at all in Criminal Law.

There was a time when a person was punished for the act he did. Mental element was not at all taken into consideration. But in course of time the influence of xianinity was felt in the realm of Criminal Law. A man is punished if he has a guilt mind and that is expressed in the well known maximum "Actus reus ...." General defence chapter of the I.P.C. is an exception to the doctrine of mens rea. One of the defences is Ignorance of fact and not of law. Ignorantia juris non excusat. Austin and other jurists have given reasons as to why it is to be so. As Holmes expressed it..."Public Policy sacrifices the Individual to the general good. To admit the excuse at all would be to encourage ignorance where the law maker has determined to make men and obey" (The Common Law of 48).

The Roman explanation that the law is definite and knowable signified that every person of discretion may know it, hence ignorance is culpable. The rigour of the Roman doctrine, unlike Blackstone was

relieved by the exception of various large classes of persons (Minors etc) from its operation. This theory seems so far fetched in modern times as to be quirxotic. Its rationale must be formed in policy that can be justified otherwise than by reference to culpable failure to acquire legal knowledge that is actually unattainable. The first modern theory, constructed with due appreciation of this was presented by Austin who argued that it rested and was required by the impossibility of determining the relevant issues. "Whether the party was really ignorant of the law and was so ignorant of the Law that he had no surmise of its provisions, could scarcely be determined by any evidence accessible to others".

Only when a law is published in a gazette it gets life and every body is presumed to know of it and in such a case he cannot plead ignorance of law as an excuse. But there are some cases where in we see that the law never reaches him or he is so uneducated that he cannot know it all and he is following his caste custom which he has to follow if he is to be a member of the tribe. Maul J Obscrued "There is no presumption in this country that every one knows the law, it would be contrary to common sense and reason if it were so" (Martin dela v. Falkner). The view that every one is presumed to know the law is now generally rejected, it is not a true proposition of law and even if it were, it would be only a legal fiction, not a moral justification. The idea that the vast network of Governmental controls can be known by everyone is to-day more ludicrous than ever. Recent years have seen, the production of a notable body of literature arguing for recognition of the defence of non culpable ignorance of law. A more specific way of resolving the problem is that a distinction should be drawn between crimes resting up on immenorial ideas of right and wrong, where it is the business of the citizen to know what he may legally do and modern regulatory offences of which the citizen would not normally know unless there is something to put him on enquiry. Most regulations apply to the conduct of particular trades and professions and a person who enters upon a calling may be expected to acquint himself with such rules relating to the calling as are reasonably accessible to him and also keep himself informed of charges in the law by reading trade, or professional periodicals. This requirement would still leave it open

to the individual to show, by way of defence, that a particular regulation had not been advertised or otherwise noted in the periodical or had not been reasonably been made available to him in the course of his professional training. To recognize this defence would have considerable advantage of compelling the departments of Government to make a continuous effort to bring regulations to the notice of those affected. It would propably have a beneficial effect on the clarity with which rules are drafted, the frequency with which they are revised in the light of judicial interpretation and the general effectiveness of legal regulations. But there is, unfortunately no reason to think that it represents the present law. So long as ignorantia juris rule exists, it is all the more incumbent on the Government to issue that the criminal Law is generally know for others, as the criminal law commission pointed out the pains of disobedience are inflited on those who having no notice the law, were now disobedient otherwise than in legal fiction". In modern times the executive in coming more and more to take the responsibility for bringing regulations to the notice of those who are affected by them, as by communications to trade journals and even advertisements in the press.

Although a statute takes effect promulgation, there is authority for saying that before a continuous act or proceeding, not originally unlawful, can be treated as unlawful by reason of the passing of an Act of Parliament by which it is in terms made so, a reasonable time must be allowed for its discontinuance, and though ignorance of law may itself be of no excuse for one who may act in contravention of it, ignorance may nevertheless be taken, into account when it becomes necessary to determine whether a reasonable time elapsed..

Delegated legislation does not come into force until it is published so that ignorance due no non publication is a defence according to Bailhach J.

The Statute of Instruments Act 1946, provides that in the proceedings for an offence under a statutory instrument, it is a defence to prove that the instrument had not been issued by.

Her Majesty's Statutory office, unless reasonable standards had been taken to bring its purport to the notice of those affected. This provision applies only to statutory instruments and only to prosecution for a criminal offence.

The new Korean Criminal Code also allows reasonable mistake of criminal law as a defence. In U.S., the distinction between mala in se and mala prohibita is recognised to the extent that ignorance of law is a defence to a charge of conspiracy to produce malum prohibitum. Systems like the German and Swiss that have accepted a limited defence of ignorance of law have found that sexual offences represent an area of difficulty, yet here again a common sense approach seems to remove most problems. An adult and matured man would not be believed if he said he did not know it was an offence to interfere sexually with young girls and knowing that some prohibition exists he would be put an enquiry as to the precise age of consent fixed by law. In the case of a young person it is more of consent that he might realise the ambit of the criminal law. Lambert v. California 355 U/s 225 (1957) Raid in his book on criminology in connection with the above case writes as follows:-

"Although it can be argued that there cannot have been intent if the accused did not know the law ignorance of law is usually not a defence. But if the law has not been published or otherwise made reasonably available or is the accused was acting in good faith on the inaccurate interpretation of the law by a recognised official, this defence may be used. The law must not be vague and it must provide adequate notice to prospective violators. Consider the Los Angles Municipal Code that included in its defence of "Convicted person" convicted of an offence outside California which if committed in California, would be felony. The statute then required that under specified stitutations such persons should register if in loss Angles. One person was found guilty of failing to register,fined and placed on probation for three years. When the conviction was appealed, the Supreme Court of the U.S. held that where a person did not know of the duty to register and where there was no proof of the propability of such knowledge, he may not be convicted consistently with due process. Were it otherwise, the evil would be as great as it is when the law is written in print too fine to read in a language

foreign to the community. The Court distinguished the Los Angeles Statute from others that regulate the omission of an act. We deal here with conduct that is wholly passive-mere failure to register. It is unlike the omission of acts or the failure to act under circumstances that should alter the doer to all the consequences of his deed. The Court recognize that on the other hand places some limits on its exercise. Ingrained in our concept of due process is the requirement of notice. I do not like to quote other cases relevant on the point.

JAPANESE PENAL CODE OF 1961

Art. 20 runs thus:-

(i) Ignorance of law shall not mean the absence of intent: Provided that punishment may be reduced in light of circumstances.

(ii) A person who acts without knowing that his acts are not permitted by law shall not be punished, if there is adequate reason for his ignorance.

Art: 59 German Penal Code runs thus: If a person in committing an offence did not know of the existence of factual circumstances which are part of the statutory definition of the offence or which increases the punishment, then these circumstances may not be charged against him. So, in classical crimes like murder, etc., ignorance of law may not be a defence but in regulatory offences it must be allowed. Ignorance of law must be held to be a defence in the following cases:-

(1) There is not sufficient time to bring it to the notice of the public.

(2) A person is so idiotic that he does not know whether there is law at all.

(3) A law is so technical and complicated that it is difficult even for educated persons to know it.

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