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# Criminal Law - Sufficiency of Statutory Definitions

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and statutes requiring no guilty knowledge. It is further suggested that the contrasting of passive omission with active commission or overt action is not a step back into the old area of nonfeasance and malfeasance, but an explanatory necessity. This definition is not employed by the majority as a dividing line between constitutionality and unconstitutionality. It *is* important in that passive and innocent omissions are more subject to arbitrary administration of the ordinance. Punishment for an innocent and passive omission serves to magnify the unreasonableness of the ordinance. In summary, it would appear that the decision in the instant case results in no modification of prior jurisprudence. It may, however, be valuable in determining the due process limitations the Court will impose on local exercise of the police power in an area of exception to the deeply ingrained rule that "ignorance of the law will not excuse."[24]

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CRIMINAL LAW — SUFFICIENCY OF STATUTORY DEFINITIONS

Two 1957 Louisiana Supreme Court decisions dealt with the sufficiency of statutory definitions of crimes. In the first case defendants, inmates of Angola, broke out of the dormitory in which they were confined and were recaptured while still on the prison grounds. They were convicted under the Louisiana simple escape statute[1] which broadly defines simple escape as the "intentional departure of a person from lawful custody . . . or from any place where lawfully detained." Defendants charged that the statute was unconstitutional in that its meaning was vague because the words "lawful custody" and "place where lawfully detained" were not sufficiently defined. On appeal, *held*, conviction affirmed. The general terms which adequately define a crime are a sufficient definition. The simple escape statute is not unconstitutional for vagueness because the meaning of the questioned terms can be taken according to their fair import, in the common meaning, and in connection with the context. *State v. Marsh*, 233 La. 238, 96 So.2d 643 (1957).

In the second case defendant, a legislator and employee of a paint store which had procured state contracts, was indicted under R.S. 48:422 which purported to make it a crime for a

24. Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57, 68 (1910).
1. LA. R.S. 14:110 (1950), as amended, La. Acts 1954, No. 122, § 1.

member of the legislature to be "in any way interested" in contracts for highways and public works. Defendant filed a motion to quash the indictment on the ground that the statute was unconstitutional for reasons of vagueness. The trial court sustained the motion. On appeal, *held*, affirmed. A statute must inform an offender of the nature of his acts. *State v. Murtes*, 232 La. 486, 94 So.2d 446 (1957).

The sufficiency and validity of statutory definitions of crimes seem to be a common problem.[2] In Louisiana all crimes are statutory, and the legislature must define them in sufficient terms.[3] The courts have frequently been called upon to determine whether or not criminal statutes have been sufficient in definition to meet the constitutional requirement that "the accused shall be informed of the nature and cause of the accusation against him."[4] This requirement is interpreted by the Supreme Court to mean that the statute must define the conduct denounced with sufficient precision and clarity that a person of ordinary intelligence may readily discern whether his conduct is criminal or not.[5]

The Louisiana Criminal Code of 1942[6] opened a new series of litigations as to the validity of the crimes therein defined. The new Code combined numerous forms of related criminal activity, previously specifically defined, into general articles which denounced the major activity.[7] For example, Article 67 combined more than fifty separate stealing crimes[8] into a single crime of "theft."[9] *State v. Pete*[10] upheld the validity of an indictment under the new theft article, and in effect gave judicial sanction to the Criminal Code policy of defining crimes in general terms rather than by specification of each of the separate

2. CLARK AND MARSHALL, CRIMES § 29 (5th ed. 1952); PERKINS, CRIMINAL LAW 541 (1957).

3. LA. R.S. 14:7 (1950); La. Acts 1804, c. 50, p. 416; State v. Robinson, 143 La. 543, 78 So. 933 (1918).

4. LA. CONST. art. I, § 10.

5. State v. Vallery, 212 La. 1095, 34 So.2d 329 (1948); State v. Kraft, 214 La. 351, 37 So.2d 815 (1948).

6. La. Acts 1942, No. 43, incorporated as Title 14 of the Louisiana Revised Statutes of 1950.

7. Bennett, *Louisiana Criminal Code*, 5 LOUISIANA LAW REVIEW 6 (1942).

8. LA. R.S. ANN. 14:67, Reporter's Comment (West 1950).

9. LA. R.S. 14:67 (1950) defines "theft" as follows: "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential."

10. 206 La. 1078, 20 So.2d 368 (1944).

forms. Similarly the "gambling" article[11] was upheld in the case of *State v. Varnado*,[12] in which the Supreme Court held that the word "gambling" was a sufficiently defined and understandable term to serve as the basis for a criminal law, and that it was neither necessary nor feasible to enumerate each of the many forms which this vice might take. Other general terms which have been held sufficient in this area are "prospect,"[13] "mechanical device,"[14] "sexually indecent print,"[15] and "lewd dancing."[16] In brief, it would appear that a statute using general terms will be valid if the terms employed have a generally understood meaning and are used in that sense. On the other hand statutory definitions based on such phrases as "indecent assaults,"[17] "indecent print,"[18] "immoral act,"[19] "immoral purpose,"[20] and "satisfactory explanation,"[21] have been held unconstitutional because of vagueness. The line drawn is a nebulous one, but the basic test is whether the statutory language conveys a sufficiently definite warning as to proscribed conduct when measured by common understanding and practices.[22]

The decisions in the instant cases were consistent with the pattern established by the prior Louisiana jurisprudence. The simple escape statute in the *Marsh* case deals with a type of offense where all persons have a general knowledge of the nature of the criminal activity denounced. The key phrases "lawful custody" and "lawfully detained" seem to be words with commonly understood meanings rather than words of art. In this case the court upheld the sufficiency of general terms which clearly define and denounce the act punished. The *Murtes* case involved a criminal definition which was fraught with uncertainty. It attempted to make criminal certain corrupt practices by public officials. This is not a field where common knowledge of criminality abounds. In such an area of law the line must be drawn

11. LA. R.S. 14:90 (1950) defines "gambling" as follows: "Gambling is the intentional conducting, or directly assisting in the conducting, as a business, of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in order to realize a profit."
12. 208 La. 319, 23 So.2d 106 (1944).
13. State v. Evans, 214 La. 472, 38 So.2d 140 (1948).
14. *Ibid.*
15. State v. Roth, 226 La. 1, 74 So.2d 392 (1954); State v. Esposito, 226 La. 114, 75 So.2d 27 (1954).
16. State v. Rose, 147 La. 243, 84 So. 643 (1920).
17. State v. Comeaux, 131 La. 930, 60 So. 620 (1913).
18. State v. Kraft, 214 La. 351, 37 So.2d 815 (1948).
19. State v. Vallery, 212 La. 1095, 34 So.2d 329 (1948).
20. State v. Truby, 211 La. 178, 29 So.2d 758 (1947).
21. Shreveport v. Brewer, 225 La. 93, 72 So.2d 308 (1954).
22. Connaly v. General Construction Co., 269 U.S. 385 (1926).

with clarity. Yet the terms "in any way interested" did not specify what type interests were prohibited or how direct an interest would have to be. Thus it seems the court was correct in overturning the statute.

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## CRIMINAL PROCEDURE — CONSTITUTIONALITY OF SHORT FORM INDICTMENT

For years, Louisiana, as many other states, had been plagued by the once useful but now technical and anachronistic long form indictment.[1] In 1928, when the Louisiana Legislature adopted a Code of Criminal Procedure, a short form indictment was provided for in Article 235.[2] The purpose was to eliminate the complex and technical form of the common law charge for the more widely known and re-occurring crimes and to provide an accurate but concise form of indictment.[3] If the accused desired further information concerning the offense charged, he could, prior to arraignment, call for a bill of particulars, which the judge could not arbitrarily refuse to grant.[4]

Immediately after its adoption, the constitutionality of the short form indictment as established in Article 235 was challenged on the ground that it did not inform the accused of the nature and cause of the accusation against him.[5] In all of these cases, the validity of the short form was sustained.[6]

1. Comment, 6 LOUISIANA LAW REVIEW 461 (1945). The long form indictment developed at a time when many relatively minor crimes carried the penalty of capital punishment. The technical requirements of the long form were used to mitigate this harshness. However, as punishment became less severe, these requirements no longer served this purpose, but to the contrary, provided technical loopholes for the accused. See Note, 17 LOUISIANA LAW REVIEW 232, 233 (1956).

2. LA. R.S. 15:235 (1950). This article provides that "the following forms of indictment may be used in the cases in which they are applicable." For example, in the case of an indictment for attempted murder, the form is: "Attempt ..... A.B. attempted to murder C.D."

3. See Bennett, *Louisiana Legislation of 1944*, 6 LOUISIANA LAW REVIEW 16 (1944).

4. LA. R.S. 15:235 (1950). The Louisiana Supreme Court has often said that, when a short form indictment is used, the defendant is entitled of right to a bill of particulars, and the constitutional right to be informed of the nature and cause of the accusation is fully protected thereby. State v. Leming, 217 La. 257, 46 So.2d 262 (1950); State v. Masino, 214 La. 744, 38 So.2d 622 (1949); State v. Bessar, 213 La. 299, 34 So.2d 785 (1948).

There are certain practical limitations on the right of the accused to a bill of particulars. See Comment, 12 LOUISIANA LAW REVIEW 457 (1952). See also Note, 17 LOUISIANA LAW REVIEW 232 (1956).

5. LA. CONST. art. I, § 10, provides that an accused "be informed of the nature and cause of the accusation."

6. See State v. Holmes, 223 La. 397, 65 So.2d 890 (1953) (simple burglary);