

Criminal Law – Practice Question and Answer

Session: The Elements of a Criminal or Regulatory Offence

Topic: Objective Mens Rea and True Crimes

Recommended time: 1 hour

Score: 100 Marks

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Facts

Moldaver was granted bail for drug related offences. One of the conditions of his bail included a curfew with the requirement that he must remain in his residence at all times, unless prior consent to go out has been sought and granted by his bail supervisor. He must also present himself to the supervisors on demand. The surety further entered a recognisance in the sum of \$15,000 to guarantee that Moldaver would observe all the conditions of the bail.

A week later, two bail supervisors conducted a bail compliance check on Moldaver at his residence. The bail supervisors met the surety who stated that he did not know if Moldaver was at home as he had not seen him that morning. The surety checked his room but he was not there. The supervisors stayed for about 20 minutes but Moldaver did not show up. They asked the surety to call Moldaver's phone which rang out several times. The officers informed the surety that Moldaver may be charged with non-compliance with his bail conditions if he did not present himself before their departure. He did not.

Moldaver was subsequently charged with two counts of breaching his curfew and bail conditions under s. 145(5) of the Criminal Code. Moldaver's defence was that he was in the basement for about 5 hours, trying to record a song, and had to lock up both the door and window to prevent sound interference. And that this explained why he didn't hear his name or phone rings. He contended that he left his phone in his room and later discovered the missed calls when he returned to the room, at which point he tried calling back the officers.

The trial judge convicted Moldaver of the two counts, on the grounds that objective mens rea is sufficient for a conviction of the offence under s. 145(5). He ruled that Moldaver's behaviour was a marked departure from what a reasonable person would do to ensure they complied with their bail conditions, holding that Moldaver could have alerted his surety beforehand of his mission at the basement, because a reasonable person ought to have foreseen that the bail supervisors could come at anytime. The judge concluded that though the fault element was not specifically stated in the section, he was of the view that s. 145(5) created a duty-based offence on the ground that the accused persons had a specific legal duty to comply with bail conditions, and that this shows that Parliament intended to create an offence with an objective mens rea.

Moldaver had filed an appeal and the matter has been assigned to you as the summary conviction appeal judge. Prepare a draft of your ruling, with particular attention on whether objective or subjective mens rea is required for the offence as charged under s. 145(5).