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## CRIMINAL LAW AND PROCEDURE - INTERPRETATION OF STATUTE

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CRIMINAL LAW AND PROCEDURE — INTERPRETATION OF STATUTE — Convicted of the statutory crime of falsely uttering a bank check,<sup>1</sup> defendant appealed on the ground that the instrument in question was a promissory note. It was in appearance and form a check except for the substitution of "will pay" for "pay" and the addition of the words "payable at" before the name of the bank.<sup>2</sup> *Held*, affirmed, the court construing the instrument as a check. *State v. Doudna*, (Iowa, 1939) 284 N. W. 113.

The Iowa court proceeds from the assumption that the defendant had the intention of evading the statute prohibiting the passing of bad checks, and interpreted as a check an instrument which, strictly construed, was a promissory note. The decision represents a very liberal interpretation of the penal statute involved, and embodies a reasonable public policy. It has long been settled that penal statutes must be strictly construed, and that all doubts must be resolved in favor of the accused.<sup>3</sup> The main reason for this rule<sup>4</sup> (to protect the casual offender as far as possible from the cruel and excessive punishments of feudal days) has largely disappeared.<sup>5</sup> Further, the argument that the public must be given a "fair warning" in terms that "the common world will understand"<sup>6</sup> seems

<sup>1</sup> "Any person who with fraudulent intent shall make, utter, draw, deliver, or give any check, draft or written order upon any bank, person, or corporation and who secures money, credit or thing of value therefor, and who knowingly shall not have an arrangement, understanding, or funds with such bank, person, or corporation sufficient to meet or pay the same, shall be guilty of a felony. . . ." Iowa Code (1935), § 13047.

<sup>2</sup> The following is a reconstruction of the instrument from the description given in the opinion of the principal case:

No. 6131

OTTUMWA, IOWA, Nov. 28, 1936

DOUDNA LIVESTOCK CO.

WINFIELD, IOWA

WILL PAY TO THE ORDER OF *Mrs. Katherine Brandmeir*

\$204.42

*Two Hundred and four 42/100*

DOLLARS

PAYABLE AT

DOUDNA LIVESTOCK CO.

THE FIRST BANK & TRUST CO.

BY *Vern I. Doudna (Mgr.)*

OTTUMWA, IOWA

<sup>3</sup> *United States v. Wiltberger*, 5 Wheat. (18 U. S.) 76 (1820); 36 Cyc. 1183 (1910).

<sup>4</sup> *HALL, THEFT, LAW AND SOCIETY*, c. 3 (1935).

<sup>5</sup> *People v. Fowler*, 88 Cal. 136, 25 P. 1110 (1891).

<sup>6</sup> *McBoyle v. United States*, 283 U. S. 25, 51 S. Ct. 340 (1931).

weak when the defendant has done an unconscionable act. Here, a strained interpretation in favor of the accused appears overly solicitous.<sup>7</sup> However, the "fair warning" argument should not be surrendered completely, for in operation it provides immunity for those persons who have based their action upon a reasonable interpretation of a statute. The principal case would be improperly interpreted if it is construed to demand a "liberal interpretation" (and hence conviction) where the defendant has examined a statute and has, by reasonable construction, discovered a "loophole." Generally, however, the reasons for the rule of strict construction have sharply diminished, but there is a need in the present complex civilization with its new fields of crime for a more rational approach to the problem.<sup>8</sup> New offenses cannot always be defined with hairline accuracy. A liberal interpretation of penal statutes seems necessary to better effectuate the control of modern criminal practices.<sup>9</sup> Within comparatively recent years many state legislatures have considered it wise to alter the rule of strict construction in the interest of more modern social and legal policy.<sup>10</sup> Statutes in about one-third of the states provide either that penal statutes are to be construed liberally,<sup>11</sup> or that they shall be construed in the same manner as remedial statutes.<sup>12</sup> A few courts have accepted these statutes literally and have used reason and the intent of the legislature in construing them;<sup>13</sup> but the examples

<sup>7</sup> See note in 32 MICH. L. REV. 976 (1934) for a discussion of the policy of strict or liberal construction of penal statutes.

<sup>8</sup> Hall, "The Substantive Law of Crimes—1887-1936," 50 HARV. L. REV. 616 (1937).

<sup>9</sup> Glueck, "Principles of a Rational Penal Code," 41 HARV. L. REV. 453 at 479, note (1928).

<sup>10</sup> See Hall, "Strict or Liberal Construction of Penal Statutes," 48 HARV. L. REV. 748 at 771 (1935) for a "digest of statutes on strict or liberal construction of penal statutes, and decisions stating or applying the rules after adoption of the statute."

<sup>11</sup> Ariz. Rev. Code Ann. (Struckmeyer, 1928), § 4477; Ark. Stat. Dig. (Pope, 1937) § 13254; Cal. Pen. Code (Deering, 1937), § 4; Colo. Stat. Ann. (1935), c. 159, § 5; Ill. Rev. Stat. Ann. (Smith-Hurd, 1934), c. 131, § 1; Minn. Stat. (Mason, 1927), § 9908; Mont. Rev. Code Ann. (1935), § 10710; 39 N. Y. Consol. Laws (McKinney, 1937), "Penal Law," § 21; N. D. Comp. Laws Ann. (1913), § 9201; Ore. Code Ann. (1930), § 14-1043; S. D. Comp. Laws (1929), § 3577; Utah Rev. Stat. Ann. (1933), § 88-2-2.

<sup>12</sup> Ky. Stat. (Carroll, 1930), § 460; Neb. Comp. Stat. (1929), § 29-106; Nev. Comp. Laws (Hillyer, 1929), § 9979; Tex. Civ. Stat. (Vernon 1932), art. 10; Wash. Rev. Stat. Ann. (Remington, 1932), § 2298.

"Remedial statutes are those which do not create, enlarge, diminish, or destroy vested rights. . . . and they should be interpreted liberally." 59 C. J. 1106-1107 (1932).

<sup>13</sup> In *Burks v. State*, (Okla. Crim. 1938) 79 P. (2d) 619, the Oklahoma court held sufficient a complaint sworn to before a deputy county clerk rather than a magistrate as provided by statute. Compare with *State v. Sowards*, (Okla. Crim. 1938) 82 P. (2d) 324 at 334, in which the court said, "The rule of strict construction of a penal statute is not violated by giving its words a reasonable meaning according to the sense in which they were intended, disregarding captious objections." Other "liberal" opinions were given in *Bizzelle v. State*, 134 Tex. Cr. 467, 116 S. W. (2d) 385 (1938), and in *Clark v. International Harvester Co.*, (Tex. Civ. App. 1938) 115 S. W. (2d) 1022.

of liberal construction are conspicuous by their rarity. The majority of recent cases state categorically that penal statutes are to be strictly construed,<sup>14</sup> and it seems to make little difference whether or not the state has a statute calling for a liberal interpretation.<sup>15</sup> In general, the courts have either ignored these statutes or construed them in such a way that the common-law rule of strict construction is still in force.<sup>16</sup> Inasmuch as Iowa has no statute requiring penal laws to be construed liberally, the principal case is particularly outstanding as an example of "liberal" construction.

<sup>14</sup> State ex rel. Williams v. Coleman, 131 Fla. 892, 180 So. 357 (1938); State v. Harris, 213 N. C. 758, 197 S. E. 594 (1938); People v. Zimbrott, (Cal. App. 1939) 91 P. (2d) 252; United States v. One Zumstein Briefmarken Katalog, (D. C. Pa. 1938) 24 F. Supp. 516; State ex rel. Dinneen v. Larson, (Wis. 1939) 284 N. W. 21; McBoyle v. United States, 283 U. S. 25, 51 S. Ct. 340 (1931); Darlington Theaters, Inc. v. Coker, 190 S. C. 282, 2 S. E. (2d) 782 (1939); State ex rel. Cooper v. Coleman, (Fla. 1939) 189 So. 691; State v. Green, (Mo. 1939) 130 S. W. (2d) 475.

<sup>15</sup> Hall, "Strict or Liberal Construction of Penal Statutes," 48 HARV. L. REV. 748 (1935).

<sup>16</sup> Nebraska has a "liberal" statute, yet a case decided this year applied the rule that: "It is elementary that penal statutes are inelastic and must be strictly construed; they are never extended by implication." Dutiel v. State, 135 Neb. 811 at 815, 284 N. W. 321 (1939), quoting Preston v. State, 106 Neb. 848 at 852, 184 N. W. 925 (1921). See also Lane v. State, 120 Neb. 302, 232 N. W. 96 (1930), and Weber v. State, 122 Neb. 369, 240 N. W. 429 (1932), for other Nebraska cases showing strict construction of penal statutes.

Montana has had a "liberal" statute since 1921, but the Montana court said in a recent case, "It has always been the policy of the legislature, carefully observed by our court, to provide for the strict construction of penal statutes in the interest of the accused." State ex rel. Juhl v. District Court, 107 Mont. 309 at 315, 84 P. (2d) 979 (1938).