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Wrong or Merely Prohibited:

Special Treatment of Strict Liability in Intuitive Moral Judgment

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**Abstract**

Most crimes in America require that the defendant have “mens rea,” Latin for “guilty mind.” However, mens rea is not legally required for strict liability crimes, such as speeding, for which someone is guilty even if ignorant or deceived about her speed. In three experiments involving participants responding to descriptive vignettes, we investigated whether the division of strict liability crimes in the law reflects an aspect of laypeople’s intuitive moral cognition. Experiment 1 (N = 396; 236 male, 159 female, 1 other; mean age = 30) found evidence that it does: ignorance and deception were less mitigating for strict liability crimes than for “mens rea” crimes. Experiments 2 (N = 413; 257 male, 154 female, 2 other; mean age = 31) and 3 (N = 404; 183 male, 221 female, mean age 35) revealed that strict liability crimes are not treated as pure moral violations, but additionally as violations of *convention*. We found that for strict liability crimes, ratings of moral wrongness and punishment were influenced to a greater extent by the fact that a rule had been violated, even when harm was kept constant, mirroring the legal distinction of *malum prohibitum* (wrong as prohibited) versus *malum in se* (wrong in itself). Further, we found that rules prohibiting strict liability crimes were judged more arbitrary than corresponding rules for “mens rea” crimes, and that this judgment was related to the role of mental states. Jointly, the findings suggest a surprising correspondence between the law and laypeople’s intuitive judgments.

**keywords:** rule violation; knowledge; decision making; explanations; law; convention

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### Wrong or Merely Prohibited: Special Treatment of Strict Liability in Intuitive Moral Judgment

#### **Introduction**

"The first requirement of a sound body of law," wrote Justice Oliver Wendall Holmes, "is that it should correspond with the actual feelings and demands of the community, whether right or wrong" (Holmes, 1881). Whether one believes that the law should conform to the feelings of the community, or vice versa, the idea of a correspondence between the legal system and laypeople's intuitive judgments continues to have popular and academic support (e.g., Alicke, 2008). To the extent this correspondence holds, the psychology of moral judgment has important implications for the law, and the law provides a rich source of information about human moral psychology (Hart & Honore, 1962; Mikhail, 2009).

One important correspondence between the law and intuitive judgments can be seen in the legal system's requirements regarding intent. Characteristically, a person cannot be found guilty of a crime in America unless that person had some intent to commit the crime or acted in a way that was negligent or reckless. Legally, this concept is referred to as "mens rea," Latin for "guilty mind," and has been a part of criminal law for centuries (Blackstone 4 Comm., 1769). Psychological research confirms that, in most cases, a person's intent is seen as a crucial variable in assigning moral responsibility and punishment (e.g. Malle & Knobe, 1997; Knobe, 2005). For instance, putting white powder in someone's coffee is judged considerably more harshly when the powder was known to be poison than when it was mistakenly thought to be sugar (Young & Saxe, 2011). Thus, law and psychology agree about the important role of mental states or mens rea, even if legal and intuitive concepts are not perfectly aligned (Malle & Nelson, 2003).

Notably, the law makes an exception concerning the role of mens rea for a specific class of crimes known as "strict liability" crimes. In criminal law, strict liability crimes are crimes for which the prosecution does not have to prove that the defendant had the requisite mens rea with

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respect to at least one element of a crime, and, in many cases, the defendant is not allowed to present evidence that she made a reasonable mistake or lacked relevant knowledge or intent (Levenson, 1992). For instance, a person who is speeding can be found guilty without the prosecution proving that she intended to speed or knew that she was speeding.

A variety of justifications for the imposition of strict liability have been offered. For example, some have argued that imposing strict liability increases the incentive for the actor to use care or to consider whether the activity should be engaged in at all (Singer, 1989; Manchester, 1977), or that strict liability appropriately apportions risk on the only person who could have benefited from the action (Keating, 2006). These positions are often tied to different justifications for punishment, such as the idea that punishment should *deter* the behavior, rather than being imposed in *retribution* (Craswell & Calfee, 1986; Stahlkopf et al., 2010).

Another explanation for strict liability comes from the Supreme Court case of *U.S. v. Morissette*, in which Justice Jackson noted that, historically, many strict liability crimes were primarily *malum prohibitum* (wrong *because* they were prohibited) rather than *malum in se* (wrong or evil in themselves). A crime that is wrong merely by law, it was argued, does not require mens rea because the violation of the law, regardless of intent, is part of the harm to be protected against (*US v. Morissette*, 1952). We will revisit this idea in Experiments 2 and 3.

In the present work, we investigate whether the legal distinction between strict liability crimes and mens rea crimes reflects a psychological distinction as well. One possibility is that strict liability crimes represent a departure from a general correspondence between the law and intuitive judgments. Indeed, many scholars point out how *unintuitive* the imposition of strict liability can seem (e.g. 113<sup>th</sup> Congress, 2013; Stanton-Ife, J, 2007). But a second possibility is that the distinction between strict liability and mens rea crimes reflects a psychological

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distinction that has not been adequately recognized within the psychological literature. Based on our findings, this is what we will ultimately suggest.

In Experiment 1, our aim is to establish whether judgments concerning strict liability crimes are – on average – influenced less by the actor’s knowledge and intent than are mens rea crimes, thus mirroring the law. Importantly, at no point are participants told or given any indication of which crimes are strict liability, nor do they come to the experiments with this knowledge (see online supplement). Nonetheless, Experiment 1 reveals a surprising degree of correspondence between the law’s special treatment of strict liability crimes and laypeople’s intuitive moral judgments.

In Experiments 1-3, we additionally explore potential bases for differentiation between strict liability and mens rea crimes. Specifically, we investigate whether views about punishment differ for strict liability and mens rea crimes, including the roles of retribution (Experiment 1 and S1, contact authors for full report), deterrence (Experiments 1 and S1), and incapacitation (S2, contact authors for full report). We also investigate whether strict liability and mens rea crimes tend to license different inferences about the actor’s mental states (Experiments 1, 2, and S1), and whether relative to mens rea crimes, strict liability crimes are to a greater extent *malum prohibitum* (Experiments 2 and 3). We find support for only one of these proposals: that relative to mens rea crimes, strict liability crimes are treated as more *malum prohibitum*, and that this is because they tend to have more arbitrary elements.

### Experiment 1

Experiment 1 investigated whether laypeople judge strict liability and mens rea crimes differently. Research in moral psychology suggests that mens rea is critical to moral judgment

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(e.g., Cushman & Inbar, 2012; Rai and Fiske, 2011), but there is also evidence that a person's knowledge and intentions are not equally influential in evaluating all types of transgressions (Barrett et al., 2016; Graham et al., 2011; Young & Saxe, 2011). Specifically, knowledge and intentions may be more important for "harm" violations than for "purity" violations, and many – but not all – offenses that have been historically treated as strict liability arguably involve some element of purity (e.g., statutory rape, incest, bigamy, food adulteration). We therefore consider both *public welfare* strict liability offenses that involve potential harm (speeding, selling drugs to minors) as well as *moral-purity* strict liability offenses that violate purity (statutory rape, incest). We compare judgments concerning these crimes against those for closely matched mens rea crimes that we likewise classify as public welfare (reckless driving, drug distribution) or as moral-purity (seducing a minor, first cousin marriage).

In order to investigate the role of mens rea in judging perpetrators of these crimes, we presented participants with vignettes involving a transgression and varied whether the actor knew the fact that rendered an action illegal – e.g., that he was driving over the speed limit, or that a sexual partner was underage. When the actor was ignorant, we additionally varied whether the ignorance resulted from inadvertent bad information or from intentional deception; based on prior work, we expected that deception would be more mitigating (Murray & Lombrozo, 2015; Phillips & Shaw, 2015). Finally, we also included a condition in which mental states were unspecified.

One primary hypothesis (H1) was that judgments concerning moral censure and punishment would depend on the actor's mental state, with the harshest judgments when the actor transgressed knowingly. We also anticipated that being deceived would be more mitigating than mere ignorance (H1a), and that these effects would be found for all crimes (H1b).

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Our secondary hypotheses concerned possible reasons why mens rea and strict liability crimes could receive different treatment. We tested the following predictions: (H2) that the mental state manipulation would influence judgments concerning public welfare crimes more strongly than those concerning moral-purity crimes, (H3) that deterrence would be regarded as a more central reason for punishing strict liability crimes than for punishing mens rea crimes, and (H4) that when an agent's mental states were not specified, participants would more often infer that the transgressor knew the key fact for strict liability crimes than for mens rea crimes.

### Methods

**Participants.** Three-hundred-and-ninety-six adults (236 male, 159 female, 1 other/prefer not to specify, mean age = 30,  $SD = 10$ ) participated in the study through Amazon Mechanical Turk. An additional 140 participants were tested, but were excluded for failing catch questions (92) and due to a data collection error (52).

In all studies, participation was restricted to workers with IP addresses in the United States and with an approval rating of 95% or higher on previous Mechanical Turk tasks. Only U.S. citizens above the age of 18 were allowed to participate, to better mimic the composition of an actual jury. Participants were given thirty cents for their participation.

**Materials & Procedure.** Participants were randomly assigned to one of thirty-two distinct vignettes, about which they answered several questions (detailed below).

Eight different crimes were chosen, four of which are strict liability crimes in a majority of states (statutory rape, incest, speeding, and selling drugs to minors) and four of which are mens rea crimes (seducing a minor, first cousin marriage, reckless driving, and drug distribution). We chose mens rea crimes that were as similar as possible to the corresponding strict liability crimes to make it more likely that differences, if found, would not reflect

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idiosyncratic properties of the selected examples. Four of the crimes involved moral purity (statutory rape, seducing a minor, incest, first cousin marriage) and four involved public welfare (speeding, reckless driving, selling drugs to minors, drug distribution).

Each of the eight crimes was presented to a participant in one of four versions, which varied the principal actor's mental states. In the *knowing* condition, participants were told that the actor knew the relevant fact that made a crime illegal (e.g., the age of an underage sexual partner). In the *unspecified* condition, participants were not given any information about the actor's knowledge. In the *unknowing* condition, participants were told that the actor received false but well-intentioned information about the relevant fact (e.g., in the statutory rape vignette, another person honestly believed the underage victim to be an 18-year-old college student and said so). In the *deceived* condition, the actor was deliberately deceived by another person (e.g., the victim lied about her age).

Examples of the different mental state conditions for speeding are excerpted below (see online supplement for all materials):

*Knowing*: "... Alan knew the speed limit was 55 miles per hour and that he was driving over the speed limit, but Alan didn't slow down as the speedometer crept up to 70 miles per hour."

*Unspecified*: "Alan was driving along a two lane highway... A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic...the officer... noticed that Alan was going 70 miles per hour."

*Unknowing*: "... Alan knew the speed limit was 55 miles per hour and was careful to check the speedometer periodically to make sure the car wasn't going faster than

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the speed limit...Alan had never had any reason to suspect the speedometer was broken but later found out that it was.”

*Deceived:* “.... Alan knew the speed limit was 55 miles per hour and was careful to check the speedometer periodically to make sure the car wasn't going faster than the speed limit...Alan was surprised to hear [he had been speeding]...Alan had never had any reason to suspect the speedometer was broken but later found out that his mechanic had intentionally tampered with it after Alan disputed a bill.”

After reading the assigned vignette, it was removed and participants answered questions. First, participants rated our variables of interest, moral censure and punishment, in a randomized order:

*Moral censure:* “How morally wrong were [Actor’s] actions?” Participants indicated their answer on a scale from 1 (not at all morally wrong) to 7 (very morally wrong).

*Punishment:* “How much punishment does [Actor] deserve?” Participants indicated their answer on a scale from 1 (none at all) to 7 (very much).

We did not ask participants to evaluate guilt, as in each vignette it was stipulated.

Second, to insure that strict liability and mens rea vignettes were well matched along other dimensions that could impact judgments, participants rated the following questions on a separate screen, in randomized order, from 1 (not at all/none) to 7 (very/a great deal):

*Disgust:* “How disgusting did you find [Actor’s] actions?”

*Anger:* “How angry did [Actor’s] actions make you?”

*Harm:* “How much harm did [Actor’s] actions cause?”

Third, to test whether differences in the evaluation of strict liability and mens rea crimes stem from commitments about why punishment is appropriate for each crime type (H3), participants

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rated the statements below in a randomized order, from 1 (completely agree) to 7 (completely disagree):

*Deterrence*: “Punishing people who [commit this crime] is critically important to preventing acts of [this crime] in society in general.”

*Retribution*: “Even if it won't prevent future [instances of this crime], a person who [commits this crime] deserves to be punished for this action.”

Fourth, to insure that participants were attending to the task and reading materials carefully, participants answered two “catch questions,” easy true/false questions that assessed having read the vignette. Participants who answered either question incorrectly were excluded from further analyses. This screen included a third question about the actor’s knowledge (e.g., “whether “Alan knew he was driving over the speed limit”), which served as a mere comprehension question for participants in the *knowing*, *unknowing*, and *deceived* conditions, where knowledge or ignorance of the vital fact – speed of the car, etc. – was stipulated. It also allowed us to test for differences in baseline inferences across crime types for the *unspecified* condition (H4).

Finally, participants justified their reaction to the story, received another attention check based on Oppenheimer, Meyvis, and Davidenko (2009), and answered demographic questions. (Neither the justifications nor the demographic information were analyze for this paper.)

## Results

**Disgust, anger, and harm.** To ensure that our strict liability and mens rea vignettes did not differ systematically in judged harm or elicited anger and disgust, we performed a series of one-way ANOVAs with legal category (strict liability, mens rea) as a between-subjects variable and with each rating as a dependent variable. No significant differences were found for harm,  $F(1,394)= 0.20, p < .66, d = .04, 95\% \text{ CI } [-.296, .469]$ , anger,  $F(1,394)= 1.74, p < .19, d = .13,$

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95% CI [-.126, .635], or disgust,  $F(1,394) = 1.35$ ,  $p < .25$ ,  $d = .12$ , 95% CI [-.169, .658], suggesting that the effects of legal category we report below are unlikely to result from these potential confounds.

**Moral censure and punishment.** Do mental states play different roles in intuitive judgments concerning strict liability and mens rea crimes? And if so, does the relationship hold across moral-purity and public welfare crimes? To address these questions we performed a series of 2 (legal category: strict liability, mens rea) x 2 (moral classification: moral, public welfare) x 4 (mental state: *knowing*, *unspecified*, *unknowing*, *deceived*) ANOVAs for moral censure and punishment.

These analyses revealed a significant main effect of mental state for both moral censure,  $F(3,380) = 29.34$ ,  $p < .000$ ,  $\eta^2 = .188$ , and punishment,  $F(3,380) = 20.52$ ,  $p < .000$ ,  $\eta^2 = .139$  (see Figure 1). Independent sample t-tests revealed that ratings for each of these dependent variables were significantly higher in the *knowing* condition than in any of the other three conditions ( $ps < .003$ ,  $ds > .43$ ), consistent with most previous work on the effects of intent on moral judgments, and supporting hypothesis H1. We also found that ratings for the *unspecified* condition were significantly higher than for the *unknowing* and *deceived* conditions ( $ps < .09$ ,  $ds > .38$ ), but that ratings for the *unknowing* and *deceived* conditions were not significantly different from each other for either dependent variable ( $ps > .30$ ,  $ds < .15$ ), challenging hypothesis H1a. This suggests that misinformation had a mitigating effect, but that the source of the misinformation was not relevant.

We also found significant effects of legal category for both moral censure and punishment, with higher ratings for strict liability crimes (Mc = 3.87, SDc = 2.20; Mp = 3.38, SDp = 1.81) than for mens rea crimes (Mc = 3.44, SDc = 2.16; Mp = 2.89, SDp = 1.84) (see

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Table 2). We hesitate to draw strong conclusions from these differences, as they could simply reflect our choice of stimulus materials rather than the classes of crimes. Moreover, our primary predictions concern an *interaction* between mental state and legal category, and this main effect was indeed qualified by an interaction for punishment,  $F(3, 380) = 3.40, p < .018, \eta^2 = .026$ : ignorance of the vital fact was more mitigating for mens rea crimes than for strict liability crimes. To confirm this interpretation statistically, we repeated our analysis with only the *knowing* and *unknowing* conditions (see Figure 2), which revealed that for mens rea crimes, punishment ratings were significantly higher for the *knowing* condition than for the *unknowing* condition,  $t(80) = 6.24, p < .000, d = 1.40, 95\% \text{ CI } [1.48, 2.86]$  (corrected for violating Levene's), but that for strict liability crimes, there was no significant difference between the two conditions,  $t(98) = 1.89, p < .061, d = .38, 95\% \text{ CI } [-.033, 1.39]$ . The corresponding interaction for moral censure was not significant,  $F(3, 380) = 2.33, p < .074, \eta^2 = .018$ , but trended in the same direction. These findings challenge prediction H1b: contrary to our initial expectations, and contrary to common assumptions in legal scholarship, our data support an intuitive basis for the special treatment of strict liability crimes. Moreover, this pattern was robust across crime pairs: for each of our four pairs, and for both moral censure and punishment, the difference between the *knowing* and *unknowing* conditions was greater for the mens rea crime than for the strict liability crime, with a single exception: for moral censure, the difference between ratings in the *knowing* and *unknowing* conditions was the same for statutory rape as for seducing a minor.

Finally, for moral censure, there was a two-way interaction between mental state and moral classification,  $F(3, 380) = 3.12, p < .026, \eta^2 = .024$ : for moral-purity crimes, moral censure did not differ across the *knowing* and *unspecified* conditions,  $t(94) = .548, p < .585, d = .11, 95\% \text{ CI } [-.546, .963]$ , nor across the *unknowing* and *deceived* conditions,  $t(98) = .548, p <$

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.548,  $d = .11$ , 95% CI [-.853, .455], but was significantly higher for both of the former conditions than for either of the latter conditions. In contrast, for public welfare crimes, moral censure was significantly higher for the *knowing* condition than all others,  $p < .000$ ,  $d > .75$ , which did not differ from each other,  $p$ s ranged from .09 to .53,  $d$ s ranged from .13 to .35.

**Bases for punishment: deterrence and retribution.** To test whether punishment was justified differently across legal categories, deterrence and retribution ratings were each subjected to a 2 (legal category: strict liability, mens rea) x 4 (mental state: *knowing*, *unspecified*, *unknowing*, *deceived*) ANOVA. For deterrence, this analysis revealed a main effect of legal category,  $F(1, 388) = 9.50$ ,  $p = .002$ ,  $\eta^2 = .24$ , with higher ratings for mens rea crimes ( $M = 4.82$ ,  $SD = 1.88$ ) than for strict liability crimes ( $M = 4.22$ ,  $SD = 1.95$ ), contrary to hypothesis H3 and what one might expect on the basis of legal scholarship, which sometimes justifies the imposition of strict liability on utilitarian grounds related to deterrence. This surprising result is unlikely to be a simple artifact of our stimulus materials: recall that moral censure and punishment were both *lower* for mens rea crimes than for strict liability crimes, and we did not find main effects for anger, disgust, or harm across legal category. No significant results were found for retribution ( $p$ 's  $> .215$ ;  $\eta^2$ 's  $< .008$ ).

**Inferring knowledge and intent.** Responses to the true/false knowledge question were checked to confirm that participants correctly responded “true” for the *knowing* condition and “false” for the *unknowing* and *deceived* conditions. Accuracy was high, ranging from 93% for the *deceived* condition to 95% for the *knowing* condition and 99% for the *unknowing* condition.

For the *unspecified* condition, we were interested in whether assumptions about knowledge would differ for mens rea and strict liability crimes. We therefore conducted a chi-

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squared test comparing rates of inferred knowledge. This analysis revealed no difference, challenging prediction H4: in both cases, participants inferred knowledge 54% of the time.

### Discussion

In Experiment 1, we sought to establish whether moral and punitive judgments concerning strict liability crimes reflect their treatment by the legal system, according to which knowledge is irrelevant. While we found that mental states did have a significant impact on judgments (supporting H1), with ignorance having a mitigating effect (regardless of its source, challenging H1a), the effect of mental states was not uniform across legal category. Contrary to our prediction (H1b), participants did differentiate between strict liability and mens rea crimes: ignorance was significantly less mitigating for strict liability crimes than for closely matched “mens rea” crimes.

We also tested, but failed to find support for, three hypotheses about why mental states might have different effects across legal categories. First, we considered the possibility (H2) that mental states would be less important for intuitive judgments of moral-purity crimes relative to public welfare crimes, consistent with both psychological data (Barrett et al., 2016; Russell & Giner-Sorolla, 2011) and the historical association between strict liability and purity (*US v. Morissette*, 1952). While we did find that mental state interacted with moral classification – with the *unspecified* conditions patterning differently – we did not find the anticipated difference between the *knowing* and *unknowing* conditions, nor an interaction with legal category. It thus appears that violating purity is neither necessary nor sufficient to explain the attenuated role for mental states observed in strict liability cases.

Second, we tested the idea (H3) that for strict liability crimes, punishment may be warranted for reasons of deterrence, if not retribution. However, we found no global differences

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in retribution ratings, and *lower* deterrence ratings for strict liability crimes than for mens rea crimes. This is surprising given that punishment ratings were *higher* for strict liability crimes than for mens rea crimes, even though crime types did not differ in perceived harm. This is not to say that deterrence might not still furnish some justification for the imposition of strict liability, but our data do suggest that for the crimes tested, laypeople do not associate punishment with deterrence more strongly for strict liability crimes than for mens rea crimes.

Finally, we also failed to find support for the idea (H4) that inferences about mental states might differ across legal category, with mental states being more likely to be inferred (or perhaps more difficult to ascertain) for strict liability: in our *unspecified* condition, rates for inferred knowledge did not differ across strict liability and mens rea crimes.

In sum, the results of Experiment 1 suggest that laypeople's intuitive moral judgments mirror the law in reserving strict liability crimes for special treatment, but don't shed light on why this might be. Before moving on to Experiments 2 and 3, in which we find support for one possibility, it's worth addressing some open questions from Experiment 1, which we investigated in supplementary experiments.

First, one concern is that the results from Experiment 1 could be driven by the particular crimes that we happened to test. Moreover, by selecting crimes that were so closely matched *across* legal categories (e.g., speeding paired with reckless driving), we could have inadvertently selected crimes that are not representative of strict liability or mens rea crimes in general. To address this possibility, we ran an additional experiment which we refer to as Experiment S1 (contact authors for a full report). In Experiment S1, we selected strict liability and mens rea crimes based on how frequently they are charged, as represented by FBI crime statistics (FBI, 2012) and consultation with attorneys. The strict liability crimes selected were statutory rape,

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selling drugs within 1,500 feet of a school, speeding, and driving under the influence. The mens rea crimes selected were sexual battery, burglary, theft, and (non-sexual) battery. Other than crime selection, the methods and procedure mirrored those of Experiment 1. Our key findings from Experiment 1 were replicated with these new crimes: ignorance significantly mitigated moral censure and punishment ratings for mens rea crimes, but had no significant effect for strict liability crimes. Ratings for deterrence were again higher for mens rea crimes.

A second concern is that the judgments concerning punishment in Experiment 1 may have been insufficiently fine-grained. In supplementary Experiment S2 (contact authors for full report), participants separately specified the appropriate levels for *finer* and for *jail time*. We also included a third possible basis for punishment: incapacitation. S2 supported the interpretation of Experiment 1: we found the same pattern of responses concerning the role of mental states across legal categories, and we found that incapacitation was rated a significantly better basis for punishing mens rea crimes than strict liability crimes.

In conjunction with the findings from Experiment 1, these supplementary experiments provide support for the idea that people mirror the law in their treatment of mens rea versus strict liability crimes, but the findings do not (yet) reveal the basis for this special treatment.

## Experiment 2

Experiment 1 found support for the idea that laypeople's intuitive judgments mirror the law in the following way: for mens rea crimes, judgments are sensitive to differences in mental states (*knowing* versus *unknowing*), while for strict liability crimes, judgments are less sensitive (or even indifferent). The data also revealed high levels of punishment assigned to strict liability offenders, despite the fact that strict liability offenses were judged no worse than mens rea

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crimes (in terms of overall harm or elicited anger and disgust), and despite the fact that three common justifications for punishment – retribution, deterrence, and incapacitation (tested in S2) – were not endorsed more strongly for strict liability crimes than for mens rea crimes.

Experiment 2 considers an explanation for these results with roots in the Supreme Court case of *United States v. Morissette*. In *Morissette*, Justice Jackson noted that historically many strict liability crimes were regulatory in nature, with the aim of improving public safety and welfare. He further suggested that strict liability crimes were therefore primarily *malum prohibitum* rather than *malum in se*, meaning that transgressions were considered wrong *because they were prohibited* (i.e., violated a regulation), not wrong or evil *in themselves*. For instance, while it isn't intrinsically wrong to drive a car at 50 miles per hour, it is wrong to do so in a 25-mile-per-hour zone. To quote Justice Jackson's Supreme Court Opinion:

“While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted. In this respect, whatever the intent of the violator, the injury is the same.... Hence, legislation applicable to such offenses...does not specify intent as a necessary element” (*Morissette v. United States*, 1952).

The legal distinction between *malum prohibitum* and *malum in se* mirrors a cognitive distinction explored in developmental research. Studies have found that children as young as six are able to distinguish between actions that are “rule contingent,” or wrong because an authority figure or rule says they are wrong, and actions that are *intrinsically* wrong, and would therefore be wrong even if no rule or authority prohibited them (Nucci & Turiel 2009, Turiel 2008). For example, if there is a rule against wearing pajamas to school, then doing so might be wrong and

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merit detention, no matter that the action would be perfectly acceptable on pajama day.

Similarly, it could be that participants judged our strict liability crimes wrong and deserving of punishment in large part because they violated rules, even though they did not regard the actions themselves as more harmful, angering, or disgusting than the mens rea crimes, and even though retribution, deterrence, and incapacitation were rated more appropriate reasons for punishing commissions of mens rea crimes.

To test these ideas, participants evaluated vignettes written in the style of our *unspecified* condition from Experiment 1. Then, subsequent to reading and evaluating the original vignettes, participants were told that the relevant statute had been changed. For example, participants in the statutory rape vignette were told, after initial judgments, that the age of consent had been lowered to 15, meaning that the action described in the vignette was no longer a crime. Participants then provided a second set of ratings for moral censure and punishment, allowing us to assess how much the change in statute affected these judgments, and therefore how “rule contingent” (or *malum prohibitum*) they regarded the original wrong.

Finally, we also added a question about whether the offender had a responsibility to acquire the knowledge relevant to the crime (e.g., the speed at which he was driving). If people believe that strict liability crimes have higher demands in this regard, then ignorance may be treated as a form of negligence, deserving of punishment despite an absence of bad intent.

In sum, Experiment 2 was designed to test two hypotheses. The central hypothesis (H5) was that punishment and moral censure ratings would decrease after participants learned of the statute change (such that the action was no longer prohibited), and that this decrease would be greater for strict liability crimes than for mens rea crimes. A secondary hypothesis (H6) was that

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participants would believe offenders had a greater responsibility to avoid ignorance for strict liability crimes than for mens rea crimes.

### Methods

**Participants.** Four-hundred-thirteen adults (257 male, 154 female, 2 other/prefer not to specify, mean age = 31, SD = 10) participated in the study through Amazon Mechanical Turk. An additional 77 participants were tested, but were excluded for failing catch questions. Only US participants who indicated they were older than 18 were allowed to participate, to approximate a real jury pool. Participants were given fifty cents for their participation.

**Materials & Procedures.** In an effort to view strict liability and mens rea crimes broadly, we included all the crimes used in Experiments 1 and S1 and added three new strict liability and three new mens rea crimes. The new strict liability crimes were illegal dumping, possession of an unregistered firearm, and hunting a migratory bird. The new mens rea crimes were disturbing the peace, public drunkenness, and minor in possession of alcohol (see Table 3). As in Experiment S1, these new crimes were chosen as the next most frequently charged according to FBI statistics and consultation with attorneys. The resulting design had 20 conditions, one for each crime.

After reading a vignette describing a crime, participants were asked the moral censure, disgust, harm, and anger questions used in Experiment 1. Participants were also asked two punishment questions: fines and jail time:

*Jail Time:* “How much jail time should [Actor] receive?” Participants indicated their answers on a continuous slider that ranged from 0 to twice the maximum penalty that could actually be assigned for the most harshly punished crime, assuming a first offense. The maximum value for jail time was 36 years.

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*Fines:* “How much should [Actor] be fined?” Participants indicated their answers on a continuous slider that ranged from 0 to twice the maximum penalty that could actually be assigned for the most harshly punished crime, assuming a first offense. The maximum value for fines was \$100,000.

We did not ask the deterrence, retribution, or incapacitation questions in this experiment.

We added two new dependent variables about the actor’s knowledge and responsibility to acquire that knowledge. Examples from the speeding story are below:

*Inference:* “Did Alan know that he was driving over the speed limit?” Rated from 1 (no, definitely not) to 7 (yes, definitely).

*Responsibility:* “Did Alan have a responsibility to check whether he was going over the speed limit?” Rated from 1 (no, definitely not) to 7 (yes, definitely).

After participants answered these questions, we presented them with a statute change that stated that the law had been changed such that the actor’s action was no longer illegal. In each case, we were clear that the statutory change was due to a technicality, not due to any change in the harm caused by the action. The participants then provided moral censure and punishment ratings in light of the new statutory information. An example from the migratory bird story is below:

“After Alan’s arrest, the officer was informed that the statute had been changed. Due to a technicality (not to a change in the bird species’ status), the bird Alan shot was no longer on the list of protected birds. Alan’s actions were therefore no longer technically a crime. Please answer the following questions based on the change in statute.”

One concern with including this statute change as a within-subjects factor is that participants’ initial ratings (before the statute change) could anchor or otherwise influence their second ratings

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(after the statute change). We were not overly worried by this possibility because our key hypothesis (H6) concerned a *differential* drop in ratings across strict liability versus mens rea crimes, not the values of the ratings themselves. But if anything, this methodological choice works against our hypotheses.

## Results

**Moral censure and punishment: ratings under statutory change.** To test hypothesis H5, that the wrong associated with strict liability crimes is more contingent on the presence of a rule than that of mens rea crimes, we created difference scores for moral censure, fines, and jail time by subtracting each participant's rating after the statute change from that participant's corresponding initial rating. An independent samples t-test on moral censure difference scores revealed a significant difference in the predicted direction,  $t(411) = 3.16, p < .002, d = .31, 95\% \text{ CI } [.155, .665]$ : ratings dropped an average of .914 points ( $SD = 1.41$ ) on a 7-point scale for strict liability crimes, but only .504 points ( $SD = 1.23$ ) for mens rea crimes.

To analyze punishment ratings, we transformed fines and jail time differences into z-scores and computed a repeated measures ANOVA with punishment type as a within-subjects factor and legal category as a between subjects factor. While the main effect of legal category was not significant,  $F(1,398) = 2.26, p = .103, \eta^2 = .007$ , there was a nearly significant interaction between punishment type and legal category,  $F(1,398) = 3.70, p = .055, \eta^2 = .009$ . For fines only, the predicted effect was significant,  $t(303) = 2.36, p < .019, d = .28, 95\% \text{ CI } [449.9, 4969]$  (corrected for violating Levene's): for strict liability crimes, there was a fine drop of \$4,844 ( $SD = \$13,595$ ), versus only \$2,134 ( $SD = \$8,637$ ). Jail time also dropped a larger amount for strict liability crimes ( $M = 0.364, SD = 1.09$ ) than for mens rea crimes ( $M = 0.339, SD = 1.35$ ), but not significantly,  $t(411) = .198, p < .843, d = .03, 95\% \text{ CI } [-.217, .266]$ .

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**Inferred knowledge and responsibility.** Responses to the question about the actor's responsibility for obtaining reliable information differed significantly between strict liability ( $M = 5.23, SD = 2.04$ ) and mens rea crimes ( $M = 5.61, SD = 1.83$ ) crimes,  $t(378) = 1.98, p < .049, d = .20, 95\% CI [-.759, -.002]$  (corrected for violating Levene's), with higher responsibility in the mens rea case. If anything, this goes counter to our expectation (H6) that people might be held more responsible in strict liability cases, rendering ignorance akin to a form of negligence deserving punishment.

We also found that participants were significantly more likely to believe that the principal actor possessed the relevant knowledge for mens rea crimes ( $M = 3.74, SD = 2.04$ ) than for strict liability crimes ( $M = 2.61, SD = 1.62$ ),  $t(410) = 6.27, p < .000, d = .62, 95\% CI [-1.48, .774]$ . This differs from what we found in Experiment 1 in relation to hypothesis H4; in that experiment we found no differences in inferred knowledge across mens rea and strict liability crimes. It is possible that the difference revealed here is the result of a more sensitive, continuous measure, or to the inclusion of additional crimes. Whatever the cause, it raises the question of whether the greater drop in ratings for strict liability crimes than for mens rea crimes after the statutory change was a consequence of differences in inferred knowledge, or an independent effect. To test this, we computed partial correlations between legal category and each of our three difference scores (moral censure, fines, and jail time), controlling for inferred knowledge. The relationship between legal category and moral censure remained significant,  $r = -.165, p < .001$ , as did that for legal category and fines,  $r = -.126, p = .012$ .

**Analyses across crimes.** Not surprisingly, there was considerable variation across crimes for all of our measures (see Appendix A for additional data by crime). Figure 3 plots the moral censure difference scores for each crime. The figure makes it clear that while the means for mens

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rea and strict liability crimes differed, their distributions were overlapping. In the general discussion we return to some of the outlying cases.

### Discussion

Experiment 2 had several aims. Most importantly, we found support for one account of what differentiates strict liability crimes from mens rea crimes. For the crimes we tested, the mere act of violating a prohibition played a larger role in judgments of moral censure and punishment for strict liability crimes than for mens rea crimes. Specifically, a change in statute led to a significantly greater decrease in moral censure and fines for strict liability crimes than for mens rea crimes, supporting hypothesis H5. This is consistent with the idea that strict liability crimes are wrong to a greater extent *because* they are prohibited; they are more *malum prohibitum* than mens rea crimes, which are, to a greater extent, *malum in se*.

Experiment 2 also found a difference in the knowledge imputed to offenders of different crimes: the modal response for strict liability crimes was to infer an absence of knowledge; the modal response for mens rea crimes was the midpoint of our scale. This difference does not appear to have driven the greater “rule contingency” of strict liability crimes. However, it may nonetheless be related. To the extent that strict liability crimes hinge on the precise specification of a rule (e.g., whether a bird or substance is on an official list), ignorance may be plausible, yet still fail to mitigate: because the crimes are *malum prohibitum*, the guilty mind is less relevant.

### Experiment 3

Experiment 1 found that ignorance was less mitigating for strict liability crimes than for mens rea crimes, but failed to identify a potential basis for this differential effect. In Experiment 2, we found support for one relevant difference between strict liability and mens rea crimes: on

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average, the former were treated as more “rule contingent” in the sense that censure and punishment dropped to a greater extent after a rule change. This is consistent with the suggestion that strict liability crimes are somewhat akin to conventional violations, or *malum prohibitum*. A remaining question, however, is *why* strict liability are treated in this way. The historical examples cited by Justice Jackson in *United States v. Morissette* were largely public safety regulations, but many contemporary strict liability crimes address other domains of human behavior. What is it, then, about strict liability crimes that renders their evaluation more contingent on the presence of a rule, and less contingent on mens rea?

While not all contemporary strict liability crimes involve public safety or welfare regulations, many seem to involve a somewhat *arbitrary* element. Returning to an earlier example, it is not in itself wrong or illegal to drive a car 50 miles per hour, but it is illegal to do so in a 25-mile-per-hour zone. But why is the zone’s speed limit designated as 25 miles per hour, and not 24 or 26? Similarly, it is not in itself wrong or illegal to have sex, but in our country it is illegal for an adult to do so with a person who is below a certain age. But why is that age 18 in some states, and 16 in others? Of course, there are very good reasons why driving too quickly or having sex with a child could be considered wrong in themselves – the rules are not merely a matter of convention. But the specific line that is drawn between legal and illegal actions – the specific age, speed, distance, etc., specified in a prohibition – is somewhat arbitrary and may therefore render strict liability crimes a hybrid of *malum in se* and *malum prohibitum*, whereas most mens rea crimes are more cleanly *malum in se*.

To test this idea, Experiment 3 investigated whether participants consider strict liability crimes to be more arbitrary than mens rea crimes. Our first prediction (H7) was that, on average, the rules corresponding to strict liability crimes would be judged more arbitrary than those

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corresponding to mens rea crimes. We also obtained a measure reflecting the role of mental states for each crime by presenting *unknowing* and *knowing* conditions to each participant. We predicted that the effect of mental states would be smaller for strict liability crimes than for mens rea crimes. We also predicted an association between arbitrariness ratings and the magnitude of the effect of mental state (H8): the more arbitrary the rule, the smaller the influence of mens rea.

### Methods

**Participants.** Four-hundred-and-four adults (183 male, 221 female, mean age = 35, SD = 12) participated in the study through Amazon Mechanical Turk. An additional 80 participants were tested, but were excluded for failing catch questions. Only US participants who indicated they were older than 18 were allowed to participate, to approximate a real jury pool. Participants were given sixty-five cents for their participation.

**Materials & Procedures.** Participants were randomly assigned to one of twenty conditions, representing each of the 20 crimes from Experiment 2. Each participant initially read the *unknowing* vignette of the assigned crime. Most of the *unknowing* version had been used in previous experiments, but for the crimes added in Experiment 2, new *unknowing* versions were created (see online supplement for the six new vignettes). After reading their *unknowing* vignette, participants were asked the moral censure, fine, and jail time questions used in Experiment 2.

Next, participants were presented with a knowledge change. Participants were asked to imagine that the actor had in fact known the vital fact, and they then provided the moral censure, fine, and jail ratings again. This manipulation allowed us to obtain a within-subjects measure of the effect of mental states. An example from the migratory bird vignette is presented below:

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“Suppose that Alan had actually realized, when he shot the bird, that his actions broke the law – that is, that he was shooting a protected bird. And suppose that he decided to shoot the bird anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)”

Next, all participants, regardless of which crime they initially evaluated, rated the arbitrariness of all twenty crimes. The crimes were preceded by the following instructions:

“Below you will see a list of laws. We’d like you to give your intuitions about how arbitrary each law seems to you. That is, do you believe that there’s a good reason for the law to draw the line where it does in terms of which actions are legal versus illegal? Or does it seem like the law is somewhat arbitrary in the sense that it could reasonably have drawn the line differently?”

Please do not consult any outside resources, like other people or websites. We are interested in your own intuitions, whether or not they correspond to the current legal system. Even if you think all laws are somewhat arbitrary or not at all arbitrary, please take note of which seem more or less arbitrary and respond accordingly.”

The twenty crimes were then presented in a randomized order. Each crime was presented as true to its statutory language as possible, with minor adjustments in wording to facilitate comprehension. Providing the full statutory language insured that participants were not operating with different, common sense definitions each crime. Below is the text for migratory bird:

“Migratory Birds: it is illegal for anyone to pursue, hunt, take, capture, or kill any migratory bird, or any part, nest, or egg of any such bird.” Participants indicated their agreement on a scale of 1 (not at all arbitrary) to 7 (completely arbitrary).

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Finally, participants answered the demographic and catch questions used in previous experiments.

### Results

**Arbitrariness ratings.** A primary aim of Experiment 3 was to test whether strict liability crimes are considered more arbitrary than mens rea crimes (H7). To do so, we computed the average arbitrariness rating for strict liability crimes and for mens rea crimes for each participant. We then ran a paired-samples *t*-test on mean arbitrariness ratings as a function of legal category. Consistent with our prediction, participants rated strict liability crimes significantly more arbitrary ( $M = 1.38$ ,  $SD = .24$ ) than mens rea crimes ( $M = 1.25$ ,  $SD = .19$ ),  $t(403) = 1.87$ ,  $p < .031$ ,  $d = .04$ , 95% CI  $[-.122, .003]$  (one-tailed test). (Mean arbitrariness ratings for each crime can be found in Appendix B.)

**Moral censure and punishment: ratings under mental state change.** This experiment was the first in which we manipulated mental states within subjects. Thus, we were able to create difference scores for each participant for moral censure, fines, and jail time by subtracting each participant's initial, *unknowing* ratings from the rating given after participants were asked to assume that the perpetrator acted knowingly. An independent samples *t*-test comparing moral censure difference scores as a function of legal category failed to find a significant effect,  $t(402) = .126$ ,  $p < .899$ ,  $d = .01$ , 95% CI  $[-.356, .406]$ . This departure from our previous findings could be due to the within-subjects design or to the addition of six crimes that were not included in Experiment 1 or in the supplementary experiments, and which were much less familiar than those used in our initial studies. We ran the same independent samples *t*-test on difference scores for the original 14 crimes from Experiments 1 and S1 and found a significantly greater effect of

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mental state for mens rea than for strict liability crimes on moral censure,  $t(273) = 4.08, p < .000, d = .49, 95\% \text{ CI } [.475, 1.36]$  (corrected for violating Levene's), replicating the original effect.

For punishment, however, we did find the predicted effect when considering all 20 crimes. A repeated measures ANOVA with legal category as a between subjects factor, and z-scores of difference scores for fines and jail time as a within subjects fact, revealed a significant effect of legal category,  $F(1,398) = 3.88, p = .050, \eta^2 = .008$ .

**Correlation between mental state effects and arbitrariness of assigned story.** Finally, we tested whether the arbitrariness of a crime would relate to the magnitude of a mental state effect for that crime. If part of what differentiates strict liability crimes from mens rea crimes is their more conventional or arbitrary nature, and this difference is partially responsible for the relative unimportance of mens rea, then we would expect arbitrariness ratings to be negatively correlated with the magnitude of a mental state effect. We ran a bivariate correlation between each participant's *knowing-unknowing* difference score and her arbitrariness rating for the specific crime she read. Consistent with our prediction (H8), we found that moral censure scores were significantly negatively related to arbitrariness,  $r(404) = -.13, p < .010$ . We found no significant correlations with either punishment measure.

## Discussion

Experiment 3 confirmed our prediction (H7) that strict liability crimes are considered more arbitrary than mens rea crimes. This prediction was motivated in part by arguments developed in *Morisette* and the findings from Experiment 2: if an action is wrong merely because it is prohibited, then the prohibition must not be grounded in intrinsic harm or other moral considerations. To be clear, our contention is not that strict liability crimes are not wrong in themselves, but merely that many also have a conventional element, and that the role for such

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arbitrary or conventional elements is greater, on average, for strict liability crimes than for mens rea crimes.

We also found a significant, though small, correlation between participants' arbitrariness ratings and the extent to which their judgments varied across knowing and unknowing violations. Specifically, the perpetrator's mental states (mens rea) had a greater impact on ratings the less arbitrary the rule. We return to this relationship in the general discussion.

### General Discussion

In the work reported here, we set out to test whether the legal distinction between strict liability and mens rea crimes reflects (and potentially reveals) aspects of intuitive moral judgment. Here we summarize and discuss our key findings.

Experiment 1 revealed that judgments concerning mens rea crimes were in fact more sensitive to the actor's knowledge and intent than were those concerning strict liability crimes. When an actor transgressed *knowingly*, punishment and censure were greater for mens rea crimes than for strict liability crimes, but when the actor transgressed *without knowledge and intent* (whether merely ignorant or deceived), this pattern was reversed. As a result, judgments for mens rea crimes were strongly influenced by the actor's knowledge and intent, whereas those for strict liability crimes were about the same. Put differently, ignorance was treated as a mitigating factor for mens rea crimes, but not for strict liability crimes.

In Experiments 2 and 3, we found support for a possible explanation: that strict liability crimes have more features that are *malum prohibitum*, or wrong because prohibited, while *mens rea crimes* are largely *malum in se*, or wrong in themselves. Experiment 2 found that judgments for strict liability crime were more dependent on the presence of a rule: when a statute was

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revoked, ratings for moral censure and punishment decreased more for strict liability crime than for mens rea crimes. These findings have analogues in social and cognitive development, where research differentiates between moral and “conventional” wrongdoing (Nucci & Turiel, 2009; Turiel, 2008). Experiment 3 focused on another aspect of conventionality: the potentially arbitrary nature of the rule involved. We found that rules prohibiting strict liability crimes were on average judged more arbitrary than rules for mens rea crimes, and that the more arbitrary the rule, the more attenuated the role of mental states.

The relationship between strict liability and arbitrariness can help explain why strict liability crimes involve an attenuated role for mental states. First, the more arbitrary nature of strict liability crimes means that the intentions associated with a knowing violation are not necessarily *intrinsically* bad. For instance, intentionally driving at 55 miles per hour is not itself wrong; it only becomes so in the context of a law that specifies an area as a 50-mile per hour zone. When a law is *not* arbitrary, by contrast, the intention is reprehensible even absent a law: intentionally hitting another person is unacceptable whether or not a law is in place. Relatedly, crimes that involve arbitrary thresholds are likely to impose a looser coupling between the legal status of an action and the “wrongness” of the act. Dumping a chemical a few feet outside a recognized zone, for example, could be regarded as only *slightly* less harmful than dumping the chemical just inside the zone. Yet crossing the threshold to illegal status will make the act wrong not just by an incremental increase in harm, but by virtue of having violated a prohibition. For mens rea crimes, in contrast, harm may track legal status more closely: taking something that doesn’t belong to you is both wrong and illegal; not doing so is neither. For these reasons, the evaluation of strict liability crimes –relative to mens rea crimes – could be less sensitive to mental states, and also more dependent on the presence of a rule.

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In light of these considerations, we can revisit our specific crimes. Reckless driving, seducing a minor, and minor in possession – all mens rea crimes – also involve a potentially arbitrary threshold or contingency. And in fact, in Experiment 2, reckless driving had the greatest drop in moral censure after the statute change of any mens rea crime, while seducing a minor had the second greatest drop in moral censure and the highest for fines and jail time of any mens rea crime (see Figure 3 and Appendix A). Minor in possession had the third greatest reduction in moral censure and a complete erasure of fines. In Experiment 3, minor in possession was also judged the second most arbitrary crime. On the other hand, the strict liability crimes of incest and unregistered firearm showed the smallest drops in moral censure in response to a statute change, and both arguably lack an arbitrary threshold beyond which they become legal.

Considering these “exceptions to the rule” helps make a valuable point. We do not mean to suggest that strict liability crimes form a special psychological kind, or that they have clear-cut necessary and sufficient conditions. Rather, a variety of different factors that come in degrees may be more likely to be found in strict liability crimes, and these features can potentially help explain their legal origins as well as the way they’re evaluated by both experts and laypeople. The surprise, perhaps, is that the strict liability designation has *any* counterpart in intuitive moral judgments; that the match is imperfect is to be expected, especially given the recognized heterogeneity of strict liability crimes within the law (Levenson, 1992; Sayre, 1933).

One lingering concern is that our findings could reflect American citizens’ knowledge of their own legal system, and not their untutored moral intuitions. Arguing against this possibility, an additional study confirmed that participants sampled from the same population as that in our studies were no more likely to think that knowledge was required for the conviction of our mens rea crimes than of our strict liability crimes (see online supplement for details).

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### Implications for the Law

Finding that the legal category of strict liability mirrors a cognitive distinction is exciting, but also potentially surprising: some of strict liability's most vocal criticism is rooted in the belief that defendants' mental states *should* and *would* have an effect on their legal outcomes. That is, there is often an implicit assumption that jurors care about a defendant's knowledge or intent, and that presenting evidence for the absence of either would mitigate a defendant's penalty in strict liability cases. For instance, Justice Jackson in *Morissette* said:

“The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.” (*US v. Morissette*, 1952, p. 250).

In contrast, we found that our participants' judgments were surprisingly consistent with the law, finding mental states less relevant for strict liability crimes than for other crimes. We are not arguing that mental states play *no* role for strict liability crimes, but our results do suggest that the (putative) counterintuitiveness of this aspect of strict liability has been overstated, and might not be the most compelling basis for arguments by its opponents. Indeed, recent work in the realm of torts has found that laypeople may endorse strict liability more strongly than scholars (Sanders et al., 2014).

Our studies also bear on more general questions about the role of explanations in legal judgment. We found evidence that offering an *explanation* for an actor's mental states can be more mitigating than the mere absence of knowledge. Specifically, Experiments 1 and S1 found that *unspecified* participants gave significantly higher ratings on every dependent measure than

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either of the conditions that offered explanations for false beliefs: *unknowing* or *deceived*.

Experiment S1 also found that deception was more mitigating than bad information. Our studies thus go beyond prior work about the importance of knowledge and intent by showing that while mental states are undeniably important, *explanations* for those mental states are as well.

### **Limitations and Future Directions**

One major concern with the present research is its lack of ecological validity. Certainly, our participants were making judgments in a much less formal and demanding environment than actual jurors judging a real case. Moreover our participants did not engage in group deliberation, and had less information than would be available at trial. However, these limitations do not undercut the central aim of the present research, which was to investigate whether laypeople's intuitive moral judgments discriminate between strict liability and mens rea crimes in the absence of specific instructions to do so, and if so, why.

Our results support the idea that the relative arbitrariness of a crime, and therefore its status as *malum prohibitum*, is intuitively recognized and influences judgments. However, open questions remain concerning how participants were interpreting and evaluating arbitrariness. In addition, the relationship between arbitrariness and the role of mental states was significant, but small. This suggests that a variety of additional factors influence the relative importance of mental states in legal judgment, and identifying these factors is an important direction for future research.

Another concern is the number of participants who failed our attention check questions. Using an Internet sample necessitates stringent attention checks, as participants cannot be monitored as they would be in a lab. Despite our multiple checks, however, our exclusion rates were comparable to those for other studies run on Mechanical Turk (e.g., Downs, Holbrook, &

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Sheng, 2010). One advantage of using a Mechanical Turk sample is that it is more representative of a jury than a sample of university undergraduates. That said, extending this line of research to jury-eligible participants who engage in deliberation over more detailed and realistic cases has clear value.

### **Conclusion**

In sum, our studies are the first (to our knowledge) to relate the strict liability designation to laypeople's intuitive moral judgments. We find that strict liability and mens rea crimes differ in two potentially related ways: mens rea crimes are more sensitive to the presence or absence of relevant knowledge, but strict liability crimes are more contingent on the presence of a rule. Our studies suggest that people find strict liability crimes to be more arbitrary and *malum prohibitum*, while mens rea crimes appear to be, to a greater extent, *malum in se*. This is good news for those, like Justice Holmes, who believe that the law should reflect community standards, but it may still be troubling for those who believe the law should maintain the highest standard of justice, even when the community does not demand it.

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## WRONG OR MERELY PROHIBITED?

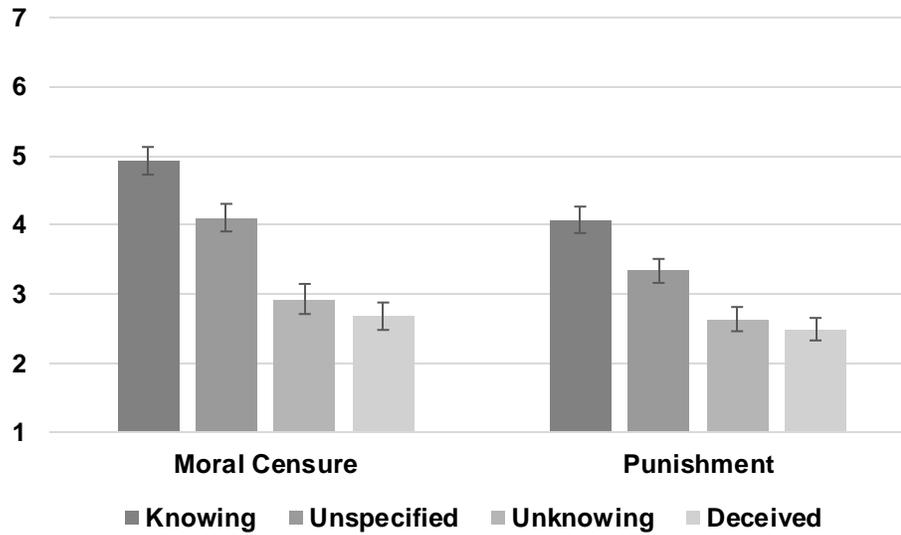
**Tables and Figures**

Table 1: Crimes used in Experiment 1. For each crime, participants were assigned to one of four mental state levels: *knowing*, *unspecified*, *unknowing*, or *deceived*. Each crime is followed in parentheses by the relevant knowledge that was varied across the mental state manipulation.

	<b>Strict Liability Crimes</b>	<b>Mens Rea Crimes</b>
Moral	Statutory Rape ( <i>Age of sexual partner</i> )	Seducing a Minor ( <i>Age of person receiving material</i> )
	Incest ( <i>Relatedness of sexual partner</i> )	First Cousin Marriage ( <i>Relatedness of spouse</i> )
Public Welfare	Speeding ( <i>Vehicle speed</i> )	Reckless Driving ( <i>Speed &amp; attendant circumstances</i> )
	Drugs to Minors ( <i>Age of customer</i> )	Drug Distribution ( <i>Nature of substance</i> )

## WRONG OR MERELY PROHIBITED?

Figure 1: Effect of mental state on moral censure and punishment. Higher values correspond to greater amounts of moral censure and punishment. Error bars correspond to one SEM in each direction.



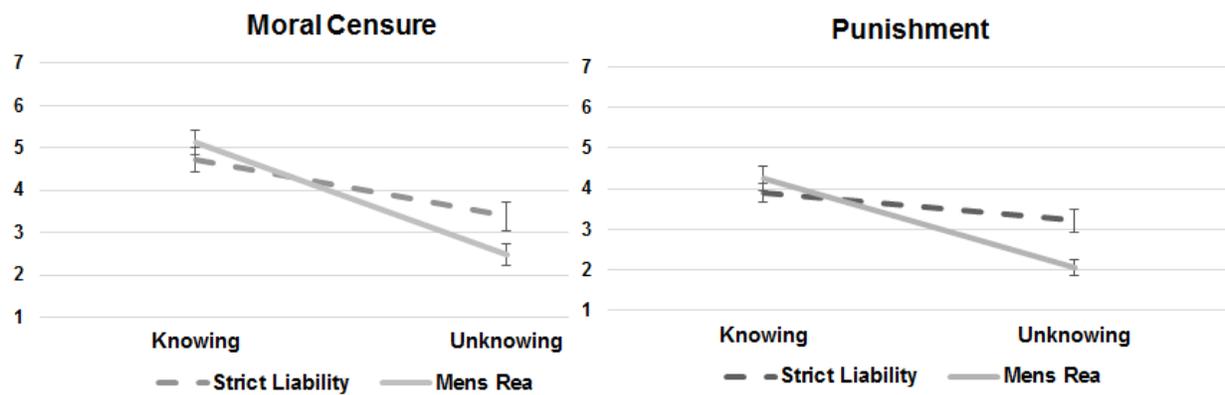
## WRONG OR MERELY PROHIBITED?

Table 2: Means as a function of legal category. Standard deviations in parenthesis.

<b>Experiment</b>	<b>Dependent Measure</b>	<b>Knowing</b>	<b>Unspecified</b>	<b>Deceived</b>	<b>Unknowing</b>
<b>Exp. 1</b>	Moral Censure				
	Strict Liability	4.78 (1.96)	4.50 (1.78)	2.82 (2.12)	3.44 (2.34)
	Mens Rea	5.14 (1.93)	3.71 (2.06)	2.51 (1.67)	2.43 (1.80)
	Punishment				
	Strict Liability	3.96 (1.64)	3.60 (1.55)	2.71 (1.87)	3.28 (1.94)
	Mens Rea	4.27 (2.07)	3.06 (1.82)	2.16 (1.18)	2.10 (1.30)
<b>Exp. S1</b>	Moral Censure				
	Strict Liability	4.04 (2.00)	4.04 (1.83)	3.50 (2.08)	3.71 (2.18)
	Mens Rea	6.02 (1.30)	4.50 (1.81)	3.04 (2.20)	3.54 (2.12)
	Punishment				
	Strict Liability	4.29 (1.66)	4.21 (1.76)	3.44 (1.90)	4.15 (1.74)
	Mens Rea	4.92 (1.57)	3.69 (1.53)	2.58 (1.67)	3.21 (1.88)

## WRONG OR MERELY PROHIBITED?

Figure 2: Interaction between mental state and legal category for moral censure (not significant) and punishment (significant). Error bars correspond to one SEM in each direction.



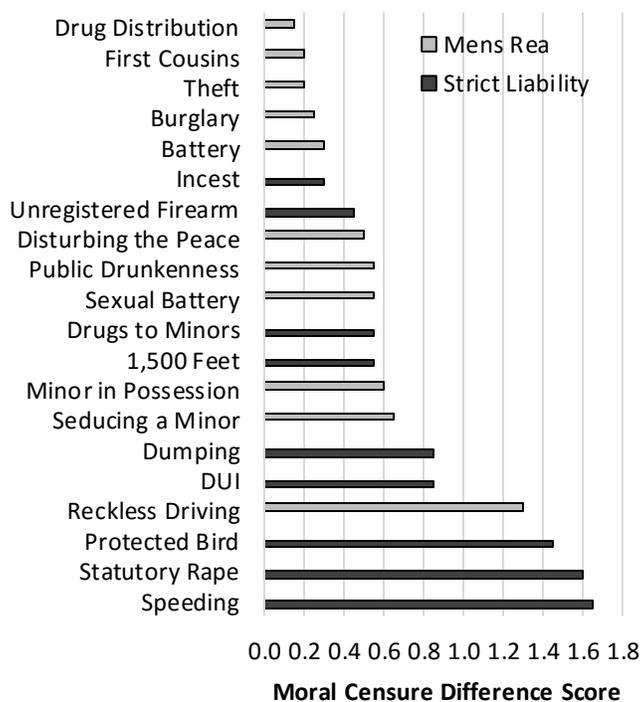
## WRONG OR MERELY PROHIBITED?

Table 3: Crimes used in Experiments 2 and 3. Each crime is followed in parentheses by the relevant knowledge that was varied across the mental state manipulation in Experiment 3.

<b>Strict Liability</b>	<b>Mens Rea</b>
Illegal Dumping	Disturbing the Peace
<i>(Distance from waterway)</i>	<i>(Unlawful to fight in public)</i>
Unregistered Firearm	Public Drunkenness
<i>(Registration status of firearm)</i>	<i>(Intoxication level prevented taking care)</i>
Hunting Migratory Bird	Minor in Possession
<i>(Bird's protected status)</i>	<i>(Beverage contained alcohol)</i>
Selling Drugs within 1,500 Feet	Sexual Battery
<i>(Distance from nearest school)</i>	<i>(Consent for the touching)</i>
DUI	Burglary
<i>(Level of intoxication)</i>	<i>(Owner's intent to keep the vase)</i>
	Theft
	<i>(whether saw had been discarded)</i>
	Battery
	<i>(Whether friend was genuinely in danger)</i>

## WRONG OR MERELY PROHIBITED?

Figure 3: Moral censure difference scores (rating before statute change minus rating after statute change) by crime in Experiment 2.



## WRONG OR MERELY PROHIBITED?

**Appendix A: Difference scores and mental state correlations by crime.**

<b>Crime</b>	<b>Moral Censure Difference Score</b>	<b>Fines Difference Score</b>	<b>Jail Difference Score</b>	<b>Mental State &amp; Moral Censure Correlation</b>	<b>Mental State &amp; Fines Correlation</b>	<b>Mental State &amp; Jail Correlation</b>
Speeding	1.65	273.06	0.000	0.403	0.051	-0.019
Statutory Rape	1.60	4645.07	0.945	0.031	0.298	N/A
Migratory Bird	1.45	4580.59	0.255	0.481*	0.415	0.092
Reckless Driving	1.30	-1600.95	0.130	0.067	0.104	0.091
DUI	0.85	3330.82	0.360	0.187	0.025	0.13
Dumping	0.85	10094.39	0.285	0.666**	0.192	0.532*
Seducing a Minor	0.65	13246.42	1.395	0.083	0.031	-0.195
Minor in Possession	0.60	116.40	0.000	0.112	-0.384	N/A
1,500 Feet	0.55	6143.78	0.596	-0.086	-0.047	-0.084
Drugs to Minors	0.55	6264.11	0.435	0.364	-0.148	0.296
Sexual Battery	0.55	3560.32	0.965	0.402	0.356	0.233
Public Drunkenness	0.55	54.49	0.005	0.301	0.100	0.515*
Disturbing the Peace	0.50	683.41	0.070	0.484*	0.141	0.449*
Unregistered Firearm	0.45	6421.05	0.410	0.137	0.420	0.304
Incest	0.30	307.06	0.090	0.111	0.168	0.128
Battery	0.30	1526.40	0.185	0.054	-0.164	0.099
Burglary	0.25	859.47	0.300	0.549*	-0.014	0.132
Theft	0.20	614.03	0.120	0.560*	0.207	0.39
First Cousins	0.20	2326.00	0.265	0.211	-0.064	-0.099
Drug Distribution	0.15	716.17	0.220	0.698**	.493*	.524*

\*Indicates significance at  $p < .05$ .

\*\*Indicates significance at  $p < .01$ .

## WRONG OR MERELY PROHIBITED?

**Appendix B: Arbitrariness Ratings by Crime**

Arbitrariness ratings from Experiment 3. Mean ratings are followed in parentheses by standard deviations. Strict liability crimes are italicized.

<b>Crime</b>	<b>Arbitrariness Rating</b>
Theft	2.37 (2.06)
Burglary	2.38 (2.15)
Sexual Battery	2.54 (2.20)
Battery	2.61 (2.12)
<i>Dumping</i>	2.63 (2.07)
Reckless Driving	2.74 (2.06)
<i>DUI</i>	2.82 (2.07)
Seducing a Minor	2.84 (2.15)
Drug Distribution	2.87 (2.07)
<i>Unregistered Firearm</i>	2.87 (2.14)
<i>Drugs to Minors</i>	3.03 (2.15)
<i>Speeding</i>	3.03 (1.90)
<i>Migratory Birds</i>	3.05 (1.83)
<i>Incest</i>	3.09 (2.21)
<i>Statutory Rape</i>	3.17 (2.14)
<i>1500 Feet</i>	3.19 (2.23)
Disturbing the Peace	3.20 (1.84)
Public Drunkenness	3.43 (1.87)
Minor in Possession	3.50 (2.08)
First Cousin Marriage	3.70 (2.08)

## WRONG OR MERELY PROHIBITED?

### **Online Supplement: Brief Report, Do Participants Know Which Crimes are Strict Liability**

#### **Introduction**

A potential concern is that rather than tapping into intuitive moral and legal judgment, what we actually tested was American citizens' knowledge of their own legal system. While we never told participants which crimes were strict liability or when they should take mental states into account, they may have been familiar enough with our crimes to know – for example – that burglary requires the knowledge that we varied while speeding does not.

#### **Methods**

To address this concern, we ran an additional experiment with the same population. Participants (N = 50) were asked to indicate whether they thought knowledge was required for conviction of each crime. For example, for speeding, participants indicated “true” or “false” for the following: “Speeding: Defendant must know how fast they were driving in order to be convicted of this crime. In other words, the defendant can't be convicted (or punishment will decrease) if it turns out that the defendant did not know the speed they were driving.” The question corresponding to each crime referred to the relevant knowledge, specified in Tables 1 and 3.

#### **Results**

We found no significant difference ( $p = .232$ ) in the rate at which participants responded true versus false across strict liability crimes versus mens rea crimes. This finding indicates that pre-existing knowledge of the legal categories of our crimes did not drive our results, and further suggests that our findings speak to an aspect of cognition that is not merely confined to those with exposure to our legal system.

## WRONG OR MERELY PROHIBITED?

**Online Supplement: Stimulus Materials**

Some of the *deceived* vignettes below have a paragraph denoted with \*\*. These paragraphs were updated in Experiment 2 to ensure that the information provided did not license further bad character evaluations of the main actor.

The statute changes in the *unspecified* stimuli were shown to participants only in Experiment 3.

**Strict Liability**

**Statutory Rape – Knowing.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura talked about how much fun she had with her friends the previous weekend celebrating her 15<sup>th</sup> birthday. Alan, a college sophomore, had thought Laura was in college. Regardless, the two had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer asked for identification and discovered that Laura is 15 and Alan is 20.

In Alan and Laura's state, it is illegal for any person to have sex with another person under the age of 16. Alan's action constitutes a crime: statutory rape. The officer arrested Alan.

The following questions refer to Alan's actions.

**Statutory Rape – Unspecified.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove her to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer asked for identification and discovered that Laura is 15 and Alan is 20.

In Alan and Laura's state, it is illegal for any person to have sex with another person under the age of 16. Alan's action constitutes a crime: statutory rape. The officer arrested Alan.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed. The age of consent had been lowered to 15. Alan's actions were therefore no longer technically a crime.

**WRONG OR MERELY PROHIBITED?**

Please answer the following questions based on the change in statute.

**Statutory Rape – Unknowing.** Laura and Alan met at a coffee shop. Alan asked the coffee shop owner about Laura, and the owner told Alan that Laura was a student at the same college Alan attended. After that first meeting, Alan and Laura ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove her to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer asked for identification and discovered that Laura is 15 and Alan is 20.

The coffee shop owner had heard Laura talking about going to an event on campus and honestly believed she was a student there. In fact, Laura had attended the event, but was never enrolled at the school.

In Alan and Laura's state, it is illegal for any person to have sex with another person under the age of 16. Alan's action constitutes a crime: statutory rape. The officer arrested Alan.

The following questions refer to Alan's actions.

**Statutory Rape – Deceived.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura talked about how much fun she had with her friends the previous weekend celebrating her 18th birthday. Alan, a college sophomore, was pleased to hear that they were about the same age. Laura and Alan found that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer asked for identification and discovered that Laura is 15 and Alan is 20. Laura had lied about her age earlier in the evening to impress Alan.

\*\* Laura had deliberately lied about her age earlier in the evening because she was angry at her parents and thought spending the evening with Alan would be a great way to get back at them. She thought if Alan knew how old she really was, he'd just take her back to her parents' house.

In Alan and Laura's state, it is illegal for any person to have sex with another person under the age of 16. Alan's action constitutes a crime: statutory rape. The officer arrested Alan.

The following questions refer to Alan's actions.

## WRONG OR MERELY PROHIBITED?

**Incest – Knowing.** Laura and Alan ran into each other at a coffee shop. Laura and Alan had the same father, but their father's divorce from Laura's mother had been difficult so Laura and Alan knew each other but had never been allowed to spend any time together. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found out that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove her to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer took Laura and Alan to the police station to book them for indecent exposure. During booking, the officer pulled up Laura's and Alan's files and discovered that Laura and Alan were half-siblings. Although they were related, Alan and Laura did not regret the encounter.

In Alan and Laura's state, it is illegal for half-siblings to have sexual intercourse. Alan and Laura's action constitutes a crime: incest. The officer arrested Alan and Laura.

The following questions refer to Laura's actions.

**Incest – Unspecified.** Laura and Alan ran into each other at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found out that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove her to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer took Laura and Alan to the police station to book them for indecent exposure. During booking, the officer pulled up Laura's and Alan's files and discovered that Laura and Alan were half-siblings. Although they were related, Alan and Laura did not regret the encounter.

In Alan and Laura's state, it is illegal for half-siblings to have sexual intercourse. Alan and Laura's action constitutes a crime: incest. The officer arrested Alan and Laura.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with incest unless they had sex with a full sibling. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Incest – Unknowing.** Laura and Alan ran into each other at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding

**WRONG OR MERELY PROHIBITED?**

to have dinner together at a restaurant nearby. During dinner, Laura and Alan talked about growing up as only children, and Laura talked about being raised by a single mother. Laura and Alan found out that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove her to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer took Laura and Alan to the police station to book them for indecent exposure. During booking, the officer pulled up Laura and Alan's files and discovered that Laura and Alan were half-siblings. Neither Laura nor Alan knew they had the same father.

Laura's mother had never told the father about Laura and had lost track of him after she got pregnant so did not realize he later had a son. Thus, both Alan and Laura had thought they were only children. Even after this discovery, Alan and Laura did not regret the encounter.

In Alan and Laura's state, it is illegal for half-siblings to have sexual intercourse. Alan and Laura's action constitutes a crime: incest. The officer arrested Alan and Laura.

The following questions refer to Laura's actions.

**Incest – Deceived.** Laura and Alan ran into each other at a coffee shop. Alan recognized Laura from photographs his father kept. Laura was Alan's father's daughter from his first marriage (i.e., a half-sibling), but the divorce had been difficult and their father had never been a part of Laura's life. Alan did not tell Laura what he knew. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura talked about being an only child raised by a single mother. Alan did not reveal that this was untrue, as he was Laura's half-sibling. Laura and Alan found out that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove her to a secluded section of the local park where the two eventually began to have consensual sex.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours before so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan and Laura having sex. The officer took Laura and Alan to the police station to book them for indecent exposure. During booking, the officer pulled up Laura's and Alan's files and discovered that Laura and Alan were half-siblings. Laura had never known she had a brother; her mother had told her she had no siblings. Even after this discovery, Alan and Laura did not regret the encounter.

In Alan and Laura's state, it is illegal for half-siblings to have sexual intercourse. Alan and Laura's action constitutes a crime: incest. The officer arrested Alan and Laura.

The following questions refer to Laura's actions.

## WRONG OR MERELY PROHIBITED?

**Speeding – Knowing.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window. Alan knew the speed limit was 55 miles per hour and that he was driving over the speed limit, but Alan didn't slow down as the speedometer crept up to 70 miles per hour.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan passed by, the officer looked at the gun and noticed that Alan was going 70 miles per hour. The officer pulled Alan over.

In Alan's state, it is illegal to drive a vehicle upon a two-lane, undivided highway at a speed greater than 55 miles per hour unless the highway has been posted for a higher speed. The highway Alan was driving on was not posted for a higher speed. Alan's action constitutes a crime: speeding. The officer gave Alan a ticket.

The following questions refer to Alan's actions.

**Speeding – Unspecified.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan passed by, the officer looked at the gun and noticed that Alan was going 70 miles per hour. The officer pulled Alan over.

In Alan's state, it is illegal to drive a vehicle upon a two-lane, undivided highway at a speed greater than 55 miles per hour unless the highway has been posted for a higher speed. The highway Alan was driving on was not posted for a higher speed. Alan's action constitutes a crime: speeding. The officer gave Alan a ticket.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed, due to a technicality. Speeding, even in a school zone, is no longer enough to show reckless driving. Alan's actions were therefore no longer technically reckless driving.

Please answer the following questions based on the change in statute.

**Speeding – Unknowing.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window. Alan knew the speed limit was 55 miles per hour and was careful to check the speedometer periodically to make sure the car wasn't going faster than the speed limit.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan passed by, the officer looked at the gun and noticed that Alan was going 70 miles per hour. The officer pulled Alan over. Alan was surprised to hear this and told the officer the speedometer had said 55 miles per hour the entire time. Alan had never had any reason to suspect the speedometer was broken but later found out that it was.

In Alan's state, it is illegal to drive a vehicle upon a two-lane, undivided highway at a speed greater than 55 miles per hour unless the highway has been posted for a higher speed. The

**WRONG OR MERELY PROHIBITED?**

highway Alan was driving on was not posted for a higher speed. Alan's action constitutes a crime: speeding. The officer gave Alan a ticket.

The following questions refer to Alan's actions.

**Speeding – Deceived.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window. Alan knew the speed limit was 55 miles per hour and was careful to check the speedometer periodically to make sure the car wasn't going faster than the speed limit.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan passed by, the officer looked at the gun and noticed that Alan was going 70 miles per hour. The officer pulled Alan over. Alan was surprised to hear this and told the officer the speedometer had said 55 miles per hour the entire time. Alan had never had any reason to suspect the speedometer was broken but later found out that his mechanic had intentionally tampered with it after Alan disputed a bill.

\*\* A police officer was parked alongside the road with a speed gun pointed towards oncoming traffic. As Alan passed by, the officer looked at the gun and noticed that Alan was going 50 miles per hour. The officer pulled Alan over. Alan was surprised to hear he was speeding and told the officer the speedometer had said 35 miles per hour the entire time. Alan had never had any reason to suspect the speedometer was broken but later found out that his mechanic had intentionally tampered with it because the mechanic was angry at his boss and wanted to make the garage look bad by doing shoddy work.

In Alan's state, it is illegal to drive a vehicle upon a two-lane, undivided highway at a speed greater than 55 miles per hour unless the highway has been posted for a higher speed. The highway Alan was driving on was not posted for a higher speed. Alan's action constitutes a crime: speeding. The officer gave Alan a ticket.

The following questions refer to Alan's actions.

**Drugs to Minors – Knowing.** Laura had been packaging and selling illegal drugs for several years, but, recently, business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot near the local high school. The area got a lot of foot traffic, and she knew that most of the high school kids passed by there at the end of the school day. Laura thought high school kids could be good customers. The second day in the new spot, Laura was approached by Alan who was wearing a high school shirt and carrying an algebra book. Alan asked for twenty ecstasy pills. Laura could tell Alan was in high school, but sold him the drugs anyway.

The transaction was seen by an off duty FBI agent who was at the school to pick up the agent's child. The agent promptly approached Laura and Alan, took the drugs, and asked for identification. The agent discovered that Laura was 23 and Alan was 16.

In Laura's state, it is illegal for any person eighteen years or older to distribute, dispense, or possess with intent to distribute or dispense a controlled substance to a person under twenty-one

**WRONG OR MERELY PROHIBITED?**

years of age. Laura's action constitutes a crime: distributing drugs to minors. The agent arrested Laura.

The following questions refer to Laura's actions.

**Drugs to Minors – Unspecified.** Laura had been packaging and selling illegal drugs for several years, but, recently, business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. She knew the area got a lot of foot traffic. The second day in the new spot, Laura was approached by Alan. Alan asked for twenty ecstasy pills. Laura sold Alan the drugs.

The transaction was seen by an off duty FBI agent who was in the area running errands. The agent promptly approached Laura and Alan, took the drugs, and asked for identification. The agent discovered that Laura was 23 and Alan was 16 [for Experiment 3, the age was raised to 18].

In Laura's state, it is illegal for any person eighteen years or older to distribute, dispense, or possess with intent to distribute or dispense a controlled substance to a person under twenty-one years of age. Laura's action constitutes a crime: distributing drugs to minors. The agent arrested Laura.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A minor was now defined as anyone younger than 18. Laura's actions were therefore no longer technically eligible for a sentence increase.

Please answer the following questions based on the change in statute.

**Drugs to Minors – Unknowing.** Laura had been packaging and selling illegal drugs for several years, but, recently, business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. She knew the area got a lot of foot traffic. The second day in the new spot, Laura was approached by Alan and one of Laura's regular customers. The regular customer told Laura he had recently met Alan at a bar. Alan asked for twenty ecstasy pills. Laura sold Alan the drugs.

The transaction was seen by an off duty FBI agent who was in the area running errands. The agent promptly approached Laura and Alan, took the drugs, and asked for identification. The agent discovered that Laura was 23 and Alan was 16.

Laura's regular customer had met Alan at the bar and honestly believed Alan was 21. In fact, Alan was at the bar for to see a band he liked and had a special wristband that indicated he was under 21. Laura's customer just hadn't noticed it.

In Laura's state, it is illegal for any person eighteen years or older to distribute, dispense, or possess with intent to distribute or dispense a controlled substance to a person under twenty-one years of age. Laura's action constitutes a crime: distributing drugs to minors. The agent arrested Laura.

**WRONG OR MERELY PROHIBITED?**

The following questions refer to Laura's actions.

**Drugs to Minors – Deceived.** Laura had been packaging and selling illegal drugs for several years, but, recently, business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. The area got a lot of foot traffic, and while she knew that most of the high school kids passed by there at the end of the school day, Laura had no plans to sell to the kids. The second day in the new spot, Laura was approached by Alan who was wearing a sports jacket and carrying a briefcase. Laura wanted to make absolutely sure Alan wasn't a high school student so she asked him how old he was. Alan said he was 22 and worked at a business nearby. Alan asked for twenty ecstasy pills. Laura sold Alan the drugs.

The transaction was seen by an off duty FBI agent who had been at the high school to pick up the agent's child. The agent promptly approached Laura and Alan, took the drugs, and asked for identification. The agent discovered that Laura was 23 and Alan was 16.

In Laura's state, it is illegal for any person eighteen years or older to distribute, dispense, or possess with intent to distribute or dispense a controlled substance to a person under twenty-one years of age. Laura's action constitutes a crime: distributing drugs to minors. The agent arrested Laura.

The following questions refer to Laura's actions.

**1,500 Feet – Knowing.** Laura had been packaging and selling ecstasy for several years, but recently business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. She wanted a spot that got a lot of foot traffic. One of Laura's regular customers suggested a location near a train stop. Laura knew there was a school around the corner, about 800 feet away, but decided to sell at that spot anyway because the foot traffic was good.

One day a police officer on routine patrol saw Laura on the street. The officer thought Laura might be selling drugs and waited out of sight until she sold some pills to a customer. The officer arrested Laura for selling drugs and informed her she would face additional time for selling so close to a school.

In Laura's state, it is illegal for any person to sell or possess with intent to sell to another person any controlled substance within fifteen hundred feet of any public or private school. Laura's action constitutes a crime: distributing drugs with fifteen hundred feet of a school.

The following questions refer to Laura's actions.

**1,500 Feet – Unspecified.** Laura had been packaging and selling ecstasy for several years, but recently business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. She wanted a spot that got a lot of foot traffic. One of Laura's regular customers suggested a location near a train stop.

One day a police officer on routine patrol saw Laura on the street. The officer thought Laura might be selling drugs and waited out of sight until she sold some pills to a customer. The

## WRONG OR MERELY PROHIBITED?

officer arrested Laura for selling drugs and informed her she would face additional time for selling so close to a school: a school was around the corner, about 800 feet away.

In Laura's state, it is illegal for any person to sell or possess with intent to sell to another person any controlled substance within fifteen hundred feet of any public or private school. Laura's action constitutes a crime: distributing drugs with fifteen hundred feet of a school.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person now needed to be selling drugs within 400 feet of a school to face additional time. Laura's actions were therefore no longer technically eligible for a sentence increase.

Please answer the following questions based on the change in statute.

**1,500 Feet – Unknowing.** Laura had been packaging and selling ecstasy for several years, but recently business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. She wanted a spot that got a lot of foot traffic. One of Laura's regular customers suggested a location near a train stop. Laura thought that spot was around the corner from a private high school, about 800 feet away, but her customer assured her the building she was talking about was actually a charity foundation, not a school.

One day a police officer on routine patrol saw Laura on the street. The officer thought Laura might be selling drugs and waited out of sight until she sold some pills to a customer. The officer arrested Laura for selling drugs and informed her she would face additional time for selling so close to a school.

Laura's regular customer – the one who had recommended the location – really believed that the school was a charity. The customer had heard a woman say that a lot of good work went on in the building, but the woman was referring to the number of low-income students the school accepted, not charity work.

In Laura's state, it is illegal for any person to sell or possess with intent to sell to another person any controlled substance within fifteen hundred feet of any public or private school. Laura's action constitutes a crime: distributing drugs with fifteen hundred feet of a school.

The following questions refer to Laura's actions.

**1,500 Feet – Deceived.** Laura had been packaging and selling ecstasy for several years, but recently business had been slipping. In an effort to get new customers, Laura decided to start selling in a new spot. She wanted a spot that got a lot of foot traffic. One of Laura's regular customers suggested a location near a train stop. Laura thought that spot was around the corner from a private high school, about 800 feet away, but her customer assured her the building she was talking about was actually a charity foundation, not a school.

One day a police officer on routine patrol saw Laura on the street. The officer thought Laura might be selling drugs, and knew that a small, charter school was just around the corner, about 800 feet away. The officer waited out of sight until Laura sold some pills to a customer. The

## WRONG OR MERELY PROHIBITED?

officer arrested Laura for selling drugs and informed her she would face additional time for selling so close to a school.

Laura's regular customer – the one who had recommended the location - had deliberately lied to Laura about the school being a charity because the spot was really close to the customer's apartment and it would be really convenient to have Laura nearby.

In Laura's state, it is illegal for any person to sell or possess with intent to sell to another person any controlled substance within fifteen hundred feet of any public or private school. Laura's action constitutes a crime: distributing drugs with fifteen hundred feet of a school.

The following questions refer to Laura's actions.

**DUI – Knowing.** Laura had just gotten a promotion at work, and she and her friends decided to go out to celebrate. They went to their favorite restaurant and stayed for several hours. Laura knew she had to drive home and that she should watch what she drank. She figured out how many drinks she could have – based on her weight and height - and still be able to drive home at the end of the evening, but she was having such a good time that she stopped worrying about it. At the end of the night Laura said goodbye to her friends, got in her car, and drove home, knowing that she'd had more to drink than she should have.

A police officer was out doing a routine patrol through town. The officer saw Laura's car swerve a little and pulled her over. When the officer got to Laura's car, the officer noticed the faint smell of alcohol on Laura's breath. The officer asked Laura to take a Breathalyzer test. Laura reluctantly agreed. The test indicated that Laura's blood alcohol was above the legal limit.

In Laura's state, it is illegal for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. Laura's test showed she had 0.09. Laura's action constitutes a crime: driving while intoxicated. The officer arrested Laura.

The following questions refer to Laura's actions.

**DUI – Unspecified.** Laura had just gotten a promotion at work, and she and her friends decided to go out to celebrate. They went to their favorite restaurant and stayed for several hours. Laura and her friends said goodbye, and Laura started her drive home.

A police officer was out doing a routine patrol through town. The officer saw Laura's car swerve a little and pulled her over. When the officer got to Laura's car, the officer noticed the faint smell of alcohol on Laura's breath. The officer asked Laura to take a Breathalyzer test. Laura agreed. The test indicated that Laura's blood alcohol was above the legal limit.

In Laura's state, it is illegal for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. Laura's test showed she had 0.09. Laura's action constitutes a crime: driving while intoxicated. The officer arrested Laura.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed due to a measurement technicality. A person could no longer be charged with DUI unless their

## WRONG OR MERELY PROHIBITED?

blood alcohol was measured at 0.10. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**DUI – Unknowing.** Laura had just gotten a promotion at work, and she and her friends decided to go out to celebrate. They went to their favorite restaurant and stayed for several hours. Laura knew she had to drive home so she was very careful about how much she drank. When she ordered her first cocktail, she specifically asked the waitress how much alcohol was in it. The waitress said it contained one shot. Based on this information and her weight and height, Laura figured out how many drinks she could have and still be able to drive home at the end of the evening. By the time Laura left, her calculations told her she was fine to drive. Laura and her friends said goodbye, and Laura started her drive home.

A police officer was out doing a routine patrol through town. The officer saw Laura's car swerve a little and pulled her over. When the officer got to Laura's car, the officer noticed the faint smell of alcohol on Laura's breath. The officer asked Laura to take a Breathalyzer test. Laura agreed. The test indicated that Laura's blood alcohol was above the legal limit.

The waitress had made a mistake about how much alcohol was in Laura's cocktail. Each drink actually had two and a half shots in it, not one.

In Laura's state, it is illegal for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. Laura's test showed she had 0.09. Laura's action constitutes a crime: driving while intoxicated. The officer arrested Laura.

The following questions refer to Laura's actions.

**DUI – Deceived.** Laura had just gotten a promotion at work, and she and her friends decided to go out to celebrate. They went to their favorite restaurant and stayed for several hours. Laura knew she had to drive home so she was very careful about how much she drank. When she ordered her first cocktail, she specifically asked the waitress how much alcohol was in it. The waitress said it had one shot in it. Based on this information and her weight and height, Laura figured out how many drinks she could have and still be able to drive home at the end of the evening. By the time Laura left, her calculations told her she was fine to drive. Laura and her friends said goodbye, and Laura started her drive home.

A police officer was out doing a routine patrol through town. The officer saw Laura's car swerve a little and pulled her over. When the officer got to Laura's car, the officer noticed the faint smell of alcohol on Laura's breath. The officer asked Laura to take a Breathalyzer test. Laura agreed. The test indicated that Laura's blood alcohol was above the legal limit.

The waitress had deliberately lied about how much alcohol was in Laura's cocktail because she thought that Laura might not buy as many if she knew how much alcohol was really in each one. Each drink actually had two and a half shots in it, not one.

## WRONG OR MERELY PROHIBITED?

In Laura's state, it is illegal for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. Laura's test showed she had 0.09. Laura's action constitutes a crime: driving while intoxicated. The officer arrested Laura.

The following questions refer to Laura's actions.

**Unregistered Firearm.** Laura had grown up in a family that kept guns in the house. Some of her family and friends even competed in target shooting competitions, so she was used to being around guns. Even though she'd been around guns her whole life, Laura had never participated in any of the competitions or paid too much attention to the guns one way or another. However, when Laura moved into her own place, she decided she wanted to keep a gun for protection and bought a gun from one of her friends.

A few days later, Laura threw a housewarming party and invited all her friends to come see her new place. Laura was giving everyone a tour when one of her friends, a police officer, noticed the gun on the bottom shelf of her nightstand. The officer was startled and asked Laura if the gun was registered. In fact, the gun was not registered.

In Laura's state, it is illegal for anyone to receive or possess a firearm which is not registered in the National Firearms Registration and Transfer Record. Laura's actions constitute a crime: possessing an unregistered firearm. The officer arrested Laura.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the firearm registration statute had been changed due to a technicality. Because of the state it happened to be manufactured in, the gun Laura had in her possession was old enough that it was not required to be registered under the new statute. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Illegal Dumping.** Alan had owned and operated a small fabrication business for many years. He made custom ordered cabinets, metal pieces, and some glass pieces. He usually sold his pieces to architects building custom houses. Alan didn't have room to keep all his scraps and trash in his shop between garbage pickups so he usually just put everything in the backyard until the garbage truck came.

One day, when the garbage people arrived to pick up Alan's trash, they saw Alan hauling it from the backyard. The garbage people knew that Alan used some chemicals in his work and that Alan's house was pretty close to a river. The garbage people reported Alan to the Fish and Game warden who confirmed that some of the substances Alan had been keeping in his backyard were on the list of prohibited substances and that these substances could have gotten into the nearby river. These substances had been placed on the list because they could potentially harm fish and wildlife.

In Alan's state, it is illegal for any person to deposit in, permit to pass into, or place where it can pass into state waters any of the prohibited substances. Alan's actions constitute a crime: illegal dumping. The warden arrested Alan.

## WRONG OR MERELY PROHIBITED?

The following questions refer to Alan's actions.

Statute Change: After Alan's arrest, the warden was informed that the illegal dumping statute had been changed. Due to a technicality, (not to a change in the anticipated risk of harming fish and wildlife), the substances in Alan's backyard were no longer on the list of prohibited substances. Alan's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Migratory Bird.** Alan had been an avid hunter his entire life. His family had gone on hunting trips regularly when he was younger, and he had continued hunting with family, friends, and solo as he became an adult. One day Alan was hunting in a spot that he had had good luck at before and quickly shot a large bird.

A fish and game warden doing a routine patrol of the area spotted Alan heading back to his car. The warden noticed that Alan was carrying a bird and stopped him to make sure that Alan had a hunting permit. Alan did have a hunting permit, but when the warden got closer, she realized that the bird Alan shot was from a protected species.

In Alan's state, it is illegal for anyone to pursue, hunt, take, capture, or kill any migratory bird, or any part, nest, or egg of any such bird. Alan's actions constitute a crime: killing a protected bird. The warden arrested Alan.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed. Due to a technicality (not to a change in the bird species' status), the bird Alan shot was no longer on the list of protected birds. Alan's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

## Mens Rea Crimes

**Seducing a Minor – Knowing.** Alan and Laura met in an online chat room. After that first meeting, they had three or four more conversations before the topics began to get more personal. During one conversation, Laura talked about how much fun she had with friends the previous weekend celebrating her 15<sup>th</sup> birthday. Alan, a college sophomore, had thought Laura was in college. Regardless, the two had a lot in common and had a long conversation that evening. Towards the end of that conversation, Alan sent Laura some pornographic photos hoping to make their conversation more sexual. Laura responded positively.

The next day, Laura's father was using her computer for work and found the photographs and chat log. He immediately notified the police, who traced the photographs back to Alan.

In Laura and Alan's state, it is illegal for any person to knowingly send harmful matter to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor. A minor is anyone under 16 years of age. Alan's actions constitute a crime: seducing a minor. A police officer arrested Alan.

## WRONG OR MERELY PROHIBITED?

The following questions refer to Alan's actions.

**Seducing a Minor – Unspecified.** Alan and Laura met in an online chat room. After that first meeting, they had three or four more conversations before the topics began to get more personal. The fourth or fifth time they talked, the two found that they had a lot in common and had a long conversation that evening. Towards the end of that conversation, Alan sent Laura some pornographic photos hoping to make their conversation more sexual. Laura responded positively.

The next day, Laura's father was using her computer for work and found the photographs and chat log. He immediately notified the police that someone was sending these photographs to his 15-year-old daughter. The police traced the photographs back to Alan.

In Laura and Alan's state, it is illegal for any person to knowingly send harmful matter to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor. A minor is anyone under 16 years of age. Alan's actions constitute a crime: seducing a minor. A police officer arrested Alan.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with seducing a minor unless the victim was under 15 years of age. Alan's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Seducing a Minor – Unknowing.** Alan and Laura met in an online chat room. Alan asked a friend of his who also used that chat room if he knew anything about Laura. Alan's friend said that Laura was a student at the same college Alan attended. After that first meeting, Alan and Laura had three or four more conversations before the topics began to get more personal. The fourth or fifth time they talked, the two found that they had a lot in common and had a long conversation that evening. Towards the end of that conversation, Alan sent Laura some pornographic photos hoping to make their conversation more sexual. Laura responded positively.

The next day, Laura's father was using her computer for work and found the photographs and chat log. He immediately notified the police that someone was sending these photographs to his 15-year-old daughter. The police traced the photographs back to Alan.

Alan's friend had talked to Laura about an event she attended at Alan's college. Alan's friend had honestly believed, based on that conversation, that Laura was a college student. In fact, Laura had attended the event, but was never enrolled at the school.

In Laura and Alan's state, it is illegal for any person to knowingly send harmful matter to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor. A minor

## WRONG OR MERELY PROHIBITED?

is anyone under 16 years of age. Alan's actions constitute a crime: seducing a minor. A police officer arrested Alan.

The following questions refer to Alan's actions.

**Seducing a Minor – Deceived.** Alan and Laura met in an online chat room. After that first meeting, they had three or four more conversations before the topics began to get more personal. During one conversation, Laura talked about how much fun she had with friends the previous weekend celebrating her 18th birthday. Alan, a college sophomore, was pleased to hear that they were about the same age. Laura and Alan had a lot in common and had a long conversation that evening. Towards the end of that conversation, Alan sent Laura some pornographic photographs hoping to make their conversation more sexual. Laura responded positively.

The next day, Laura's father was using her computer for work and found the photographs and chat log. He immediately notified the police that someone was sending these photographs to his 15-year-old daughter. Laura had lied to Alan about her age. The police traced the photographs back to Alan.

In Laura and Alan's state, it is illegal for any person to knowingly send harmful matter to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor. A minor is anyone under 16 years of age. Alan's actions constitute a crime: seducing a minor. A police officer arrested Alan.

The following questions refer to Alan's actions.

**First Cousins – Knowing.** Laura and Alan have known each other their whole lives, but have only been dating for the past few months. They haven't told anyone about their relationship because they are first cousins and know that their friends and family won't approve. Laura and Alan know that as first cousins, they cannot marry in their state but decide to do so anyway when Laura gets pregnant. They go to a justice of the peace and are married.

The county clerk who processes Laura and Alan's marriage license knows their family and knows that Laura and Alan are first cousins and that Laura is pregnant. The clerk reports the issue to the police. The police verify these facts.

In Laura and Alan's state, it is illegal for first cousins under the age of 65 to marry unless they have presented proof to a judge that one of them is unable to reproduce. Laura and Alan's marriage is annulled. Despite this turn of events, Laura and Alan continue their relationship.

The following questions refer to Laura's actions.

**First Cousins – Unspecified.** Laura and Alan have known each other their whole lives, but have only been dating for the past few months. They haven't told anyone about their relationship because they know that their friends and family won't approve. Laura and Alan decide to get married when Laura gets pregnant. They go to a justice of the peace and are married.

## WRONG OR MERELY PROHIBITED?

The county clerk who processes Laura and Alan's marriage license knows their family and knows that Laura and Alan are first cousins and that Laura is pregnant. The clerk reports the issue to the police. The police verify these facts.

In Laura and Alan's state, it is illegal for first cousins under the age of 65 to marry unless they have presented proof to a judge that one of them is unable to reproduce. Laura and Alan's marriage is annulled. Despite this turn of events, Laura and Alan continue their relationship.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. It is no longer a crime for first cousins to marry. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**First Cousins – Unknowing.** Laura and Alan have known each other their whole lives, but have only been dating for the past few months. They haven't told their families about their relationship because their families have never gotten along, and Laura and Alan know they won't approve of the relationship. Laura and Alan decide to get married when Laura gets pregnant. They go to a justice of the peace and are married.

The county clerk who processes Laura and Alan's marriage license has known Laura and Alan's families for years and knows that Laura and Alan's mothers are sisters. The clerk also knows that Laura is pregnant. The clerk reports the issue to the police. The police verify these facts.

Laura and Alan's mothers had the same father but different mothers. It was not a subject that the two women liked to discuss. They had never told Laura and Alan because it was embarrassing for them to talk about, and they had no idea Laura and Alan were seeing each other.

In Laura and Alan's state, it is illegal for first cousins under the age of 65 to marry unless they have presented proof to a judge that one of them is unable to reproduce. Laura and Alan's marriage is annulled.

The following questions refer to Laura's actions.

**First Cousins – Deceived.** Laura and Alan have known each other their whole lives, but have only been dating for the past few months. They haven't told their families about their relationship because their families have never gotten along, and Laura and Alan know they won't approve of the relationship. Alan has never told Laura that the reason their families don't get along is because their mothers are sisters and had a falling out years ago. Laura has no idea she and Alan are first cousins. Laura and Alan decide to get married when Laura gets pregnant. They go to a justice of the peace and are married.

The county clerk who processes Laura and Alan's marriage license has known Laura and Alan's families for years and knows that Laura and Alan's mothers are sisters. The clerk also knows that Laura is pregnant. The clerk reports the issue to the police. The police verify these facts.

## WRONG OR MERELY PROHIBITED?

In Laura and Alan's state, it is illegal for first cousins under the age of 65 to marry unless they have presented proof to a judge that one of them is unable to reproduce. Laura's mother had always said she was an only child, so Laura had no idea that she and Alan were first cousins. Laura and Alan's marriage is annulled. Despite this turn of events, Laura and Alan continue their relationship.

The following questions refer to Laura's actions.

**Reckless Driving – Knowing.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window. Alan knew the speed limit was 55 miles per hour, but Alan didn't care as the speedometer crept up to 70 miles per hour. Alan also saw the signs that said he was driving in a school zone. As the car started moving faster and faster, Alan enjoyed the speed more and more.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan flew by, the officer looked at the gun and noticed that Alan was going over the speed limit in a school zone. In fact, Alan was driving so fast that the officer was concerned about the safety of the children who were just getting out of school. The officer pulled Alan over.

In Alan's state, it is illegal to drive a vehicle upon a highway in willful or wanton disregard for the safety of persons or property. Due to Alan's proximity to the school zone, Alan's conduct constitutes a crime: reckless driving. The police officer gave Alan a ticket.

The following questions refer to Alan's actions.

**Reckless Driving – Unspecified.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan flew by, the officer looked at the gun and noticed that Alan was going 70 miles per hour in a school zone. In fact, Alan was driving so fast that the officer was concerned about the safety of the children who were just getting out of school nearby. The officer pulled Alan over.

In Alan's state, it is illegal to drive a vehicle upon a highway in willful or wanton disregard for the safety of persons or property. Due to Alan's proximity to the school zone, Alan's conduct constitutes a crime: reckless driving. The police officer gave Alan a ticket.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed, due to a technicality. Speeding, even in a school zone, is no longer enough to show reckless driving. Alan's actions were therefore no longer technically reckless driving.

Please answer the following questions based on the change in statute.

**Reckless Driving – Unknowing.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window.

## WRONG OR MERELY PROHIBITED?

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan flew by, the officer looked at the gun and noticed that Alan was going 70 miles per hour in a school zone. In fact, Alan was driving so fast that the officer was concerned about the safety of the children who were just getting out of school nearby. The officer pulled Alan over.

Alan did not know he was driving in a school zone because the signs had been blown down by a storm a few days before. He would not have driven that fast had he known.

In Alan's state, it is illegal to drive a vehicle upon a highway in willful or wanton disregard for the safety of persons or property. Due to Alan's proximity to the school zone, Alan's conduct constitutes a crime: reckless driving. The police officer gave Alan a ticket.

The following questions refer to Alan's actions.

**Reckless Driving – Deceived.** Alan was driving along a two lane highway. It was a nice day, and he was enjoying watching the scenery pass by outside the window. Alan knew the speed limit was 55 miles per hour and was careful to make sure that he wasn't driving in a way that might put people in danger.

A police officer was parked alongside the highway with a speed gun pointed towards oncoming traffic. As Alan drove by, the officer looked at the gun and noticed that Alan was going 70 miles per hour in a school zone. In fact, Alan was driving so fast that the officer was concerned about the safety of the children who were just getting out of school. The officer pulled Alan over. Alan had no idea he was in a school zone because an expelled student had stolen the signs a few days before. The student was angry about being expelled and hoped removing the sign would cause an accident. Alan would not have driven that fast had he known he was in a school zone.

In Alan's state, it is illegal to drive a vehicle upon a highway in willful or wanton disregard for the safety of persons or property. Due to Alan's proximity to the school zone, Alan's conduct constitutes a crime: reckless driving. The police officer gave Alan a ticket.

The following questions refer to Alan's actions.

**Drugs Distribution – Knowing.** Laura and Alan had been friends for several years. Laura had always been impressed that Alan managed to make a living working from home. Recently, though, Laura learned that Alan sold ecstasy which she knew was an illegal drug in her state. When Alan asked Laura if Laura would be willing to help with work, despite what Laura had recently learned about Alan's business, Laura readily agreed. Alan asked Laura to deliver twenty ecstasy pills to a customer. Alan gave Laura the name and address of the customer and instructed Laura not to leave the package with anyone other than the customer.

Laura went to the address Alan provided to deliver the package to the customer. The delivery was witnessed by FBI agents who had the customer's apartment under surveillance. The agents promptly approached Laura and the customer, took the drugs, and asked for identification.

It is illegal for any person to knowingly and intentionally distribute, dispense, or possess with the intent to distribute or dispense a controlled substance. The agents held Laura for questioning.

**WRONG OR MERELY PROHIBITED?**

The following questions refer to Laura's actions.

**Drugs Distribution – Unspecified.** Laura and Alan had been friends for several years. Laura had always been impressed that Alan managed to make a living working from home. One day, Alan asked Laura if Laura would be willing to help with work. Laura readily agreed. Alan asked Laura to deliver a package to a customer. Alan gave Laura the name and address of the customer and instructed Laura not to leave the package with anyone other than the customer.

Laura went to the address Alan provided to deliver the package to the customer. The delivery was witnessed by FBI agents who had the customer's apartment under surveillance. The agents promptly approached Laura and the customer, took the package which contained twenty ecstasy pills, and asked for identification.

It is illegal for any person to knowingly and intentionally distribute, dispense, or possess with the intent to distribute or dispense a controlled substance. The agents held Laura for questioning.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person cannot be charged with drug distribution unless the customer has accepted the drugs and exchanged money for them. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Drugs Distribution – Unknowing.** Laura and Alan had been friends for several years. Laura had always been impressed that Alan managed to make a living working from home, though she'd never been clear about what he did. One day, Alan's girlfriend, Diane, asked Laura if Laura would be willing to help with Alan's work while he was out of town. Laura readily agreed. Diane explained that Alan sold homeopathic medicine which needed to be delivered to a customer. She gave Laura the name and address of the customer and instructed Laura not to leave the package with anyone other than the customer.

Laura went to the address Alan provided to deliver the package to the customer. The delivery was witnessed by FBI agents who had the customer's apartment under surveillance. The agents promptly approached Laura and the customer, took the package which contained twenty ecstasy pills, and asked for identification.

Diane had no idea that Alan was selling ecstasy; she honestly believed that Alan was selling homeopathic medicine. She had met Alan at a homeopathic medicine seminar and when she saw the pills at his house, she had assumed that's what they were, though she'd never asked Alan directly. Alan had attended the seminar because he was interested in homeopathic medicine, but he had never realized that Diane thought that's what he sold. He had always assumed Diane was aware he sold ecstasy.

It is illegal for any person to knowingly and intentionally distribute, dispense, or possess with the intent to distribute or dispense a controlled substance. The agents held Laura for questioning.

The following questions refer to Laura's actions.

**WRONG OR MERELY PROHIBITED?**

**Drug Distribution – Deceived.** Laura and Alan had been friends for several years. Laura had always been impressed that Alan managed to make a living working from home. Recently, Alan had told Laura he sold homeopathic medicine. One day, Alan asked Laura if she would be willing to help him with his work. Laura readily agreed. Alan asked Laura to deliver an order to a customer. Alan gave Laura the name and address of the customer and instructed Laura not to leave the order with anyone other than the customer.

Laura went to the address Alan provided to deliver the package to the customer. The delivery was witnessed by FBI agents who had the customer's apartment under surveillance. The agents promptly approached Laura and the customer, took the package which contained twenty ecstasy pills, and asked for identification. It wasn't until that moment that Laura found out that she had been delivering ecstasy. Alan had intentionally lied to her so she would help him.

It is illegal for any person to knowingly and intentionally distribute, dispense, or possess with the intent to distribute or dispense a controlled substance. The agents held Laura for questioning.

The following questions refer to Laura's actions.

**Sexual Battery – Knowing.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove to a secluded section of the local park. Alan made a move and Laura said no. Alan ignored Laura and started fondling her over her clothes.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours earlier so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan running his hands over the front of Laura's shirt. Laura told the police officer that Alan groped her over her clothes.

In Alan and Laura's state, it is illegal for any person to touch an intimate part of another person over their clothes, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. Alan's action constitutes a crime: sexual battery. The officer arrested Alan.

The following questions refer to Alan's actions.

**Sexual Battery – Unspecified.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found that they had a lot in common, and dinner lasted for several hours. After dinner, Alan offered to take Laura for a ride and drove to a secluded section of the local park and parked the car for a while.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours earlier so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan running his hands over the front of Laura's shirt. Laura told the police officer that Alan groped her over her clothes.

## WRONG OR MERELY PROHIBITED?

In Alan and Laura's state, it is illegal for any person to touch an intimate part of another person over their clothes, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. Alan's action constitutes a crime: sexual battery. The officer arrested Alan.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with sexual battery unless he or she touched the skin of the victim. Alan's actions were therefore no longer technically a sexual battery.

Please answer the following questions based on the change in statute.

**Sexual Battery – Unknowing.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found that they had a lot in common, and dinner lasted for several hours. At dinner, a friend they knew from the coffee shop, Tim, came over to say hello. When Laura excused herself to go to the bathroom, Tim whispered to Alan that he overheard Laura saying she hoped Alan would make a move that night to initiate a romantic relationship. After dinner, Alan offered to take Laura for a ride and drove to a secluded section of the local park. Alan made a move on Laura, and she resisted. Remembering what Tim had told him earlier, Alan ignored Laura and started fondling her over her clothes.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours earlier so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan running his hands over the front of Laura's shirt. Laura told the police officer that Alan groped her over her clothes.

Tim, the friend from the coffee shop, had honestly believed he was giving Alan good advice. Tim had overheard Laura talking on the phone about a relationship, but she had been talking about characters in a television series, not Alan and herself.

In Alan and Laura's state, it is illegal for any person to touch an intimate part of another person over their clothes, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. Alan's action constitutes a crime: sexual battery. The officer arrested Alan.

The following questions refer to Alan's actions.

**Sexual Battery – Deceived.** Laura and Alan met at a coffee shop. After that first meeting, the two ran in to each other at the coffee shop three or four more times before deciding to have dinner together at a restaurant nearby. During dinner, Laura and Alan found that they had a lot in common, and dinner lasted for several hours. At dinner, a friend they knew from the coffee shop, Tim, came over to say hello. When Laura excused herself to go to the bathroom, Tim whispered to Alan that he overheard Laura saying she hoped Alan would make a move that night to initiate a romantic relationship. After dinner, Alan offered to take Laura for a ride and

## WRONG OR MERELY PROHIBITED?

drove to a secluded section of the local park. Alan made a move on Laura, and she resisted. Remembering what Tim had told him earlier, Alan ignored Laura and started fondling her over her clothes.

A local police officer was doing a routine patrol of the park and noticed Alan's car. The park had closed several hours earlier so the officer went to the car to tell the driver to leave. When the officer arrived at Alan's car, the officer found Alan running his hands over the front of Laura's shirt. Laura told the police officer that Alan groped her over her clothes.

Tim had lied to Alan because he had always liked Laura and was jealous that she went on a date with Alan instead of him; he thought that Laura would reject Alan if Alan pursued her too aggressively.

In Alan and Laura's state, it is illegal for any person to touch an intimate part of another person over their clothes, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. Alan's action constitutes a crime: sexual battery. The officer arrested Alan.

The following questions refer to Alan's actions.

**Burglary – Knowing.** Laura worked at a nursing home for retired veterans. Laura had always been impressed by the way the home was decorated. She especially admired a particular vase in one of the common rooms. The vase was a family heirloom of a resident who donated it to the home. One day, Laura noticed the vase was missing. She asked a co-worker what happened to it. The co-worker told her it had been moved while the room was being redecorated and would be put back when it was safe. The next day, Laura drove to work, went to the back storage room where the vase was being kept, and took it home.

When the home's director noticed the vase was missing, she reviewed the security tape and saw Laura take it from the storage room. She called the police.

In Laura's state, it is illegal for any person to enter a house or other building with intent to commit grand or petit larceny or any felony. Laura's actions constitute a crime: burglary. The police arrest Laura.

The following questions concern Laura's actions.

**Burglary – Unspecified.** Laura worked at a nursing home for retired veterans. Laura had always been impressed by the way the home was decorated. She especially admired a particular vase in one of the common rooms. The vase was a family heirloom of a resident who donated it to the home. One day, Laura noticed the vase had been moved to a back storage room where the home kept things, including everything they planned on getting rid of. The next day, Laura drove to work, went to the back storage room where the vase was being kept, and took it home.

When the home's director noticed the vase was missing, she reviewed the security tape and saw Laura take it from the storage room. She called the police.

## WRONG OR MERELY PROHIBITED?

In Laura's state, it is illegal for any person to enter a house or other building with intent to commit grand or petit larceny or any felony. Laura's actions constitute a crime: burglary. The police arrest Laura.

The following questions concern Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with burglary if they had not damaged the property and were able to return it in its original condition. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Burglary – Unknowing.** Laura worked at a nursing home for retired veterans. Laura had always been impressed by the way the home was decorated. She especially admired a particular vase in one of the common rooms. The vase was a family heirloom of a resident who donated it to the home. One day, Laura noticed the vase was missing. She asked a co-worker what happened to it. The co-worker told her they were redecorating and had decided to get rid of it. It was in a back storage room until the next garbage pickup. The next day, Laura drove to work, went to the back storage room where the vase was being kept, and took it home.

When the home's director noticed the vase was missing, she reviewed the security tape and saw Laura take it from the storage room. She called the police.

Laura's co-worker honestly thought the director meant to get rid of the vase. The co-worker had overheard the home's director saying the vase would not fit the style of the redecorated room. The director had indeed said this, but intended to move the vase to a different room. It was in the storage room temporarily for safekeeping.

In Laura's state, it is illegal for any person to enter a house or other building with intent to commit grand or petit larceny or any felony. Laura's actions constitute a crime: burglary. The police arrest Laura.

The following questions concern Laura's actions.

**Burglary – Deceived.** Laura worked at a nursing home for retired veterans. Laura had always been impressed by the way the home was decorated. She especially admired a particular vase in one of the common rooms. The vase was a family heirloom of a resident who donated it to the home. One day, Laura noticed the vase was missing. She asked a co-worker what happened to it. The co-worker told her they were redecorating and had decided to get rid of it. It was in a back storage room until the next garbage pickup. The next day, Laura drove to work, went to the back storage room where the vase was being kept, and took it home.

In fact, the vase had only been moved to keep it safe during the redecorating. When the home's director noticed the vase was missing, she reviewed the security tape and saw Laura take it from the storage room. She called the police.

## WRONG OR MERELY PROHIBITED?

Laura's co-worker deliberately lied to Laura because she was angry at the home's director. The co-worker knew Laura liked the vase and hoped she would take it and get the director in trouble for losing it.

In Laura's state, it is illegal for any person to enter a house or other building with intent to commit grand or petit larceny or any felony. Laura's actions constitute a crime: burglary. The police arrest Laura.

The following questions concern Laura's actions.

**Theft – Knowing.** Alan had always admired his neighbor Tim's electric saw. He was doing a renovation project and could really use a better saw than the one he had. Tim's was an older model, but from a good manufacturer. One day, Alan saw Tim working with the saw in his driveway. Alan waited until Tim went inside and picked it up off the sidewalk and took it to his own garage.

A few minutes later, Tim came back outside and noticed his saw was gone. He looked all over his garage for it, but couldn't find it anywhere and had to abandon the project he was working on. The next day, Tim saw it in Alan's garage and called the police.

In Alan's state it is illegal to feloniously steal, take, carry, lead, or drive away the personal property of another. Alan's actions constitute a crime: theft. The police arrested Alan.

**Theft – Unspecified.** Alan had always admired his neighbor Tim's electric saw. He was doing a renovation project and could really use a better saw than the one he had. Tim's was an older model, but from a good manufacturer. One day as Alan was rolling his trash out for collection, he noticed the saw laying on the sidewalk in front of Tim's house, a few feet away from Tim's trash cans. Alan picked it up and took it to his own garage.

A few minutes later, Tim came back outside and noticed his saw was gone. He looked all over his garage for it, but couldn't find it anywhere and had to abandon the project he was working on. The next day, Tim saw it in Alan's garage and called the police.

In Alan's state it is illegal to feloniously steal, take, carry, lead, or drive away the personal property of another. Alan's actions constitute a crime: theft. The police arrested Alan.

The following questions concern Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with theft if the property was lying on the sidewalk. Alan's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Theft – Unknowing.** Alan had always admired his neighbor Tim's electric saw. He was doing a renovation project and could really use a better saw than the one he had. Tim's was an older model, but from a good manufacturer. One day, Alan noticed the saw laying on the sidewalk in front of Tim's house. Tim's son was in the yard and Alan asked him why the saw

## WRONG OR MERELY PROHIBITED?

was lying there. Tim's son said his father was buying a new one and had put the saw out for the garbage men. Alan picked it up and took it to his own garage.

A few minutes later, Tim came back outside and noticed his saw was gone. He looked all over his garage for it, but couldn't find it anywhere and had to abandon the project he was working on. The next day, Tim saw it in Alan's garage and called the police. Tim had never had any intention of getting rid of his saw, he had just set it down while he went into his house to have lunch. Tim's son had heard his father complaining about the saw and talking about getting a new one, so he had assumed his father had left it out because he was actually getting rid of it.

In Alan's state it is illegal to feloniously steal, take, carry, lead, or drive away the personal property of another. Alan's actions constitute a crime: theft. The police arrested Alan.

The following questions concern Alan's actions.

**Theft – Deceived.** Alan had always admired his neighbor Tim's electric saw. He was doing a renovation project and could really use a better saw than the one he had. Tim's was an older model, but from a good manufacturer. One day, Alan noticed the saw laying on the sidewalk in front of Tim's house. Tim's son was in the yard and Alan asked him why the saw was lying there. Tim's son said his father was buying a new one and had put the saw out for the garbage men. Alan picked it up and took it to his own garage.

A few minutes later, Tim came back outside and noticed his saw was gone. He looked all over his garage for it, but couldn't find it anywhere and had to abandon the project he was working on. The next day, Tim saw it in Alan's garage and called the police. Tim had never had any intention of getting rid of his saw, he had just set it down while he went into his house to have lunch. Tim's son deliberately lied because he was angry at his father for grounding him the previous week.

In Alan's state it is illegal to feloniously steal, take, carry, lead, or drive away the personal property of another. Alan's actions constitute a crime: theft. The police arrested Alan.

The following questions concern Alan's actions.

**Battery – Knowing.** Laura's friend Tina was always talking about the yelling matches she had with her boyfriend. Laura encouraged Tina to just breakup with him, but Tina never did. One day, Laura went to Tina's apartment and could hear loud voices through the door. She burst in and could tell that it was just the same old yelling they always did. She knew Tina wasn't in any danger, but Laura had just had enough and lunged at Tina's boyfriend, hitting him in the face.

One of the neighbors heard the commotion and called the police.

In Laura's state it is illegal for any person to willfully use force or violence upon the person of another unless they believe it is necessary to defend themselves or others. Laura's actions constitute a crime: battery. The police arrested Laura.

## WRONG OR MERELY PROHIBITED?

The following questions concern Laura's actions.

**Battery – Unspecified.** Laura's friend Tina was always talking about the yelling matches she had with her boyfriend. Laura encouraged Tina to just breakup with him, but Tina never did. One day, Laura went to Tina's apartment and could hear loud voices through the door. She walked in and lunged at Tina's boyfriend, hitting him in the face.

One of the neighbors heard the commotion and called the police.

In Laura's state it is illegal for any person to willfully use force or violence upon the person of another unless they believe it is necessary to defend themselves or others. Laura's actions constitute a crime: battery. The police arrested Laura.

The following questions concern Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with battery unless they had caused serious injury. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Battery – Unknowing.** Laura's friend Tina was always talking about the yelling matches she had with her boyfriend. Laura encouraged Tina to just breakup with him, but Tina never did. One day, Laura went to Tina's apartment and could hear loud voices through the door. Laura walked in and saw a large red mark on Tina's face and thought that Tina's boyfriend had hit her. Laura believed Tina was in danger and lunged at the boyfriend, hitting him in the face.

One of the neighbors heard the commotion and called the police. It turned out that the boyfriend never hit Tina. She had been hit in a kickboxing class shortly before the argument.

In Laura's state it is illegal for any person to willfully use force or violence upon the person of another unless they believe it is necessary to defend themselves or others. Laura's actions constitute a crime: battery. The police arrested Laura.

The following questions concern Laura's actions.

**Battery – Deceived.** Laura's friend Tina was always talking about the yelling matches she had with her boyfriend. Laura encouraged Tina to just breakup with him, but Tina never did. One day, Laura went to Tina's apartment and could hear loud voices through the door. Laura walked in and saw a large red mark on Tina's face. Tina looked at Laura and said "he hit me." Laura believed Tina was in danger and lunged at Tina's boyfriend, hitting him in the face.

One of the neighbors heard the commotion and called the police. It turned out that the boyfriend never hit Tina. She had been hit in a kickboxing class shortly before the argument. Tina had deliberately lied because she was so angry at her boyfriend and hoped Laura would hit him.

In Laura's state it is illegal for any person to willfully use force or violence upon the person of another unless they believe it is necessary to defend themselves or others. Laura's actions constitute a crime: battery. The police arrested Laura.

## WRONG OR MERELY PROHIBITED?

The following questions concern Laura's actions.

**Disturbing the Peace.** Laura and her friends were at one of their favorite band's concerts. The concert was packed and it was difficult to see the stage. Laura was trying to get closer to the stage when she bumped into another girl and knocked her down. The other girl wasn't hurt, but got up in Laura's face yelling. Laura was angry that the other girl was yelling when the whole thing had been an accident. Laura was so angry that she asked the other girl if she wanted to fight. The other girl did not respond to the question but continued to yell at Laura for knocking her down. Laura continued to ask the girl if she wanted to fight.

A security guard noticed confrontation from across the room and came to break it up. When the security guard asked the girls to step away from each other, the other girl complied but Laura ignored the security guard. The guard asked again, and Laura continued yelling her question.

In Laura's state, it is illegal for any person to challenge another person in a public place to fight. Laura's actions constitute a crime: disturbing the peace. The security guard detained Laura and called the police. The officer arrested Laura.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with disturbing the peace for challenging someone to fight unless they also physically initiated a fight. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

**Public Drunkenness.** Alan and his friends were at a sports bar watching their local baseball team. It was an important game, and it wasn't going well. Alan kept ordering more drinks as the game got worse and worse. Eventually the bartender told Alan he wasn't going to serve him any more drinks because he was too drunk. Alan said he would climb over the bar and punch the bartender if he didn't serve him anymore drinks. The bartender thought Alan really might and called the police.

In Alan's state, it is illegal for any person to be found in any public place under the influence of intoxicating liquor, drugs, or controlled substances if that person is in a condition that he or she is unable to exercise care for his or her own safety or the safety of others. Alan's actions constitute a crime: public drunkenness. The police arrested Alan.

The following questions refer to Alan's actions.

Statute change: After Alan's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with public drunkenness unless they had made some physical movement to support their threat. Alan's actions were therefore no longer technically public drunkenness.

Please answer the following questions based on the change in statute.

**WRONG OR MERELY PROHIBITED?**

**Minor in Possession.** Laura was having a barbeque with her older sister and some of her sister's friends in the local park. It was a beautiful day and just before dinnertime so the park was packed with people, but Laura and her group had claimed one of the public grills. One of Laura's sister's friends opened a cooler and offered everyone something to drink. Laura reached in and took a can.

A local police officer was doing a routine patrol around the park when he noticed Laura and her group. He could see that several of them had beers in their hands and thought they all looked pretty young. Laura hadn't opened the beer can in her hand yet when the officer approached the group and asked for their IDs. Everyone except Laura was over 21. The officer arrested Laura.

In Laura's state, it is illegal for any person under the age of 21 years to have any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public. Laura's actions constitute a crime: minor in possession of alcohol.

The following questions refer to Laura's actions.

Statute change: After Laura's arrest, the officer was informed that the statute had been changed. A person could no longer be charged with minor in possession of alcohol unless the minor had taken a drink of the beverage. Laura's actions were therefore no longer technically a crime.

Please answer the following questions based on the change in statute.

## WRONG OR MERELY PROHIBITED?

**Online Supplement: Experiment 2 Knowledge Manipulation****Strict Liability**

**Dumping – Bad Info.** Alan had owned and operated a small fabrication business for many years. He made custom ordered cabinets, metal pieces, and some glass pieces. He usually sold his pieces to architects building custom houses. Alan didn't have room to keep all his scraps and trash in his shop between garbage pickups so he usually just put everything in the backyard until the garbage truck came.

One day, when the garbage people arrived to pick up Alan's trash, they saw Alan hauling it from the backyard. The garbage people knew that Alan used some chemicals in his work and that Alan's house was pretty close to a river. The garbage people reported Alan to the Fish and Game warden who confirmed that some of the substances Alan had been keeping in his backyard were on the list of prohibited substances and that these substances could have gotten into the nearby river. These substances had been placed on the list because they could potentially harm fish and wildlife.

Alan did not know that the chemicals he was keeping out back were on the list of prohibited substances. Alan knew that there was a list and had asked a friend who also ran a fabrication business where he could find it. The friend had given Alan a copy of the list. The friend did not realize that the list he gave Alan was an older, out-of-date list that did not include all the chemicals on the current list, including some that Alan used.

In Alan's state, it is illegal for any person to deposit in, permit to pass into, or place where it can pass into state waters any of the prohibited substances. Alan's actions constitute a crime: illegal dumping. The warden arrested Alan.

The following questions refer to Alan's actions.

**Unregistered Firearm – Bad Info.** Laura had grown up in a family that kept guns in the house. Some of her family and friends even competed in target shooting competitions, so she was used to being around guns. Even though she'd been around guns her whole life, Laura had never participated in any of the competitions or paid too much attention to the guns one way or another. However, when Laura moved into her own place, she decided she wanted to keep a gun for protection and bought a gun from one of her friends.

A few days later, Laura threw a housewarming party and invited all her friends to come see her new place. Laura was giving everyone a tour when one of her friends, a police officer, noticed the gun on the bottom shelf of her nightstand. The officer was startled and asked Laura if the gun was registered. In fact, the gun was not registered.

Laura did not realize that she needed to register her gun. When she purchased the gun, she asked her friend if it was necessary that she get it registered. The friend told her that due to the gun's size and model, it was not necessary for her to register it. The friend believed he was telling Laura the truth, but he was actually mistaken.

## WRONG OR MERELY PROHIBITED?

In Laura's state, it is illegal for anyone to receive or possess a firearm which is not registered in the National Firearms Registration and Transfer Record. Laura's actions constitute a crime: possessing an unregistered firearm. The officer arrested Laura.

The following questions refer to Laura's actions.

**Birds – Bad Info.** Alan had been an avid hunter his entire life. His family had gone on hunting trips regularly when he was younger, and he had continued hunting with family, friends, and solo as he became an adult. One day Alan was hunting in a spot that he had had good luck at before and quickly shot a large bird.

A fish and game warden doing a routine patrol of the area spotted Alan heading back to his car. The warden noticed that Alan was carrying a bird and stopped him to make sure that Alan had a hunting permit. Alan did have a hunting permit, but when the warden got closer, she realized that the bird Alan shot was from a protected species.

Alan had not realized that the bird was from a protected species. He knew that some birds in the area were and had consulted a list of them before his hunting trip. Alan did not realize that the list he consulted was out-of-date and did not contain all the species currently protected, including the one he shot.

In Alan's state, it is illegal for anyone to pursue, hunt, take, capture, or kill any migratory bird, or any part, nest, or egg of any such bird. Alan's actions constitute a crime: killing a protected bird. The warden arrested Alan.

The following questions refer to Alan's actions.

## Mens Rea

**Disturbing the Peace – Bad Info.** Laura and her friends were at one of their favorite band's concerts. The concert was packed and it was difficult to see the stage. Laura was trying to get closer to the stage when she bumped into another girl and knocked her down. The other girl wasn't hurt, but got up in Laura's face yelling. Laura was angry that the other girl was yelling when the whole thing had been an accident. Laura was so angry that she asked the other girl if she wanted to fight. The other girl did not respond to the question but continued to yell at Laura for knocking her down. Laura continued to ask the girl if she wanted to fight.

A security guard noticed the confrontation from across the room and came to break it up. When the security guard asked the girls to step away from each other, the other girl complied but Laura ignored the security guard. The guard asked again, and Laura continued yelling her question.

Laura did not realize that her actions would disturb the peace. She had a friend who had been arrested for it, and had asked her friend what actions were considered disturbing the peace. Her friend had told her that you can't be charged with disturbing the peace unless you are being loud

## WRONG OR MERELY PROHIBITED?

and disruptive, and Laura had been careful not to be too loud when asking the girl whether she wanted to fight. The friend had believed this was true, but she was mistaken.

In Laura's state, it is illegal for any person to challenge another person in a public place to a fight. Laura's actions constitute a crime: disturbing the peace. The security guard detained Laura and called the police. The officer arrested Laura.

The following questions refer to Laura's actions.

**Drunk in Public-Bad Info.** Alan and his friends were at a sports bar watching their local baseball team. It was an important game, and it wasn't going well. Alan kept ordering more drinks as the game got worse and worse. Eventually the bartender told Alan he wasn't going to serve him any more drinks because he was too drunk. Alan said he would climb over the bar and punch the bartender if he didn't serve him anymore drinks. The bartender thought Alan really might and called the police.

Alan didn't realize his actions would be considered public drunkenness. Alan had a friend who had been arrested for public drunkenness and had ask his friend what actions were considered public drunkenness. His friend had said that you could only be charged with public drunkenness in a public space like a street or a public park, not in a bar. The friend thought he was telling the truth, but he was actually mistaken.

In Alan's state, it is illegal for any person to be found in any public place under the influence of intoxicating liquor, drugs, or controlled substances if that person is in a condition that he or she is unable to exercise care for his or her own safety or the safety of others. Alan's actions constitute a crime: public drunkenness. The police arrested Alan.

The following questions refer to Alan's actions.

**Minor in Possession.** Laura was having a barbeque with her older sister and some of her sister's friends in the local park. It was a beautiful day and just before dinnertime so the park was packed with people, but Laura and her group had claimed one of the public grills. One of Laura's sister's friends opened a cooler and offered everyone something to drink. Laura reached in and took a can.

A local police officer was doing a routine patrol around the park when he noticed Laura and her group. He could see that several of them had beers in their hands and thought they all looked pretty young. Laura hadn't opened the beer can in her hand yet when the officer approached the group and asked for their IDs. Everyone except Laura was over 21. The officer arrested Laura.

Laura didn't realize her actions would violate the law. She had only taken the can to fit in and didn't really plan to drink it. Her older sister had told her that as long as she wasn't drinking it, she wasn't breaking the law. Laura's sister had been told that by a bartender who was kidding, but the sister didn't realize the bartender was joking and thought it was true.

## WRONG OR MERELY PROHIBITED?

In Laura's state, it is illegal for any person under the age of 21 years to have any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public. Laura's actions constitute a crime: minor in possession of alcohol.

The following questions refer to Laura's actions.

### **Strict Liability: Knowledge Manipulation**

**DUI.** Suppose that Laura had actually realized, when she got in the car, that her actions broke the law – that is, that her blood alcohol was over the legal limit. And suppose that she decided to drive anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Speeding.** Suppose that Alan had actually realized, while he was driving, that his actions broke the law – that is, that he was driving over the speed limit. And suppose that he decided to drive that speed anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Statutory Rape.** Suppose that Alan had actually realized, when he had sex with Laura, that his actions broke the law – that is, that Laura was 15. And suppose that he decided to have sex with her anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**1500 Feet.** Suppose that Laura had actually realized, when she began selling on that corner, that her actions broke the law – that is, that she was within 1500 of a school. And suppose that she decided to sell there anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Incest.** Suppose that Laura had actually realized, when she had sex with Alan, that her actions broke the law – that is, that she was having sex with her half-brother. And suppose that she decided to have sex with him anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Drugs to Minors.** Suppose that Laura had actually realized, when she sold Alan the drugs, that her actions broke the law – that is, that she was selling drugs to a minor. And suppose that she decided to sell him the drugs anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Dumping.** Suppose that Alan had actually realized, when put the chemicals in his backyard, that his actions broke the law – that is, that he was placing prohibited chemicals where they could enter the river. And suppose that he decided to put the chemicals there anyway. In this

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case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Unregistered Firearm.** Suppose that Laura had actually realized, before her friend pointed it out, that her actions broke the law – that is, that she should have registered the gun. And suppose that she decided to keep it unregistered anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Migratory Birds.** Suppose that Alan had actually realized, when he shot the bird, that his actions broke the law – that is, that he was shooting a protected bird. And suppose that he decided to shoot the bird anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

### **Mens Rea: Knowledge Manipulation**

**Theft.** Suppose that Alan had actually realized, when he took the saw, that his actions broke the law – that is, that he was taking the property of another. And suppose that he decided to take it anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Battery.** Suppose that Laura had actually realized, when she hit the boyfriend, that her actions broke the law – that is, that she was not defending herself or Tina. And suppose that she decided to hit him anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Burglary.** Suppose that Laura had actually realized, when she took the vase, that her actions broke the law – that is, that she was entering the home with the intent to take the vase. And suppose that she decided to take it anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Sexual Battery.** Suppose that Alan had actually realized, when he began touching Laura, that his actions broke the law – that is, that she did not consent to his touching. And suppose that he decided to touch her anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Seducing a Minor.** Suppose that Alan had actually realized, when he sent the photographs Laura, that his actions broke the law – that is, that Laura was 15. And suppose that he decided to send the photographs anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

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**First Cousins.** Suppose that Laura had actually realized, when she married Alan, that her actions broke the law – that is, that she was marrying her cousin. And suppose that she decided to marry him anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Reckless Driving.** Suppose that Alan had actually realized, when he was driving in the school zone, that his actions broke the law – that is, that he was disregarding the safety of others. And suppose that he decided to drive that way anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Drug Distribution.** Suppose that Laura had actually realized, when she delivered the package, that her actions broke the law – that is, that she was delivering ecstasy, a controlled substance. And suppose that she decided to deliver it anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Disturbing the Peace.** Suppose that Laura had actually realized, when she was challenging the girl to fight, that her actions broke the law – that is, that she her challenge was disturbing the peace. And suppose that she decided to keep asking anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Public Drunkenness.** Suppose that Alan had actually realized, when he threatened the bartender, that his actions broke the law – that is, that his threat constituted public drunkenness. And suppose that he decided to make his challenge anyway. In this case, where Alan knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

**Minor in Possession.** Suppose that Laura had actually realized, when she took the beer, that her actions broke the law – that is, that she was violating the law even though she didn't plan to drink the beer. And suppose that she decided to take it anyway. In this case, where Laura knowingly violated the law, how would you respond to the following questions? (Your responses may be the same as those you just provided, or they may differ.)

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