

2.2 APPLICATION OF THE PRINCIPLE OF LEGALITY IN SA LAW (continued)...

Can the IUS CERTUM PRINCIPLE be fully complied with?

Distinguish between descriptive and normative components of the definition of the crime:

Descriptive Components

* contains a description of a relatively concrete concept such as "motor-vehicle"

Normative Components

* must still be analysed and interpreted by the legal subject or judge to ascertain whether they are applicable in a specific case
EG: requirements such as "the violation of dignity", "potential prejudice"

The more descriptive components contained the easier it is for an indiv or a court to ascertain exactly what conduct is prohibited. The more normative components the higher the degree of uncertainty about the criminal norm. It is impossible for the legislature to exclude normative components.

Negligence in culpable homicide is a good example of a normative component: the precise determination of negligence depends on the facts of each case.

THE IUS STRICTUM PRINCIPLE

("STRICT" = not wide interpretation)

Courts are not free to interpret crimes widely or extend the application thereof by analogous interpretation.

COMMON LAW CRIMES (CL)

Also applicable to CL crimes.

Court cannot extend the definition or field of application of a CL crime by means of a wide interpretation of the existing requirements of the crime. If there is uncertainty about the scope of an element in a CL crime the court must interpret it strictly.

SIBIYA case on unlawful use of another's property, does it amount to theft?

Court said NO!

When a court is unsure if conduct can be brought under a particular recognised CL crime, a consistent application of the principle of L is that the court must accept that the conduct does not fall under the definition of such a crime.

It is upto the legislature to declare if it does.

(NOTE: FURTUM USUS is now punishable under the General Law Amendment Act)

VON MOLENDORFF case on extortion:

That the advantage must be of a patrimonial nature - ie, the advantage should be limited to a patrimonial nature.

(NOTE: the General Amendment Act now allows any advantage of extortion, whether patrimonial or not to be sufficient)

Other instances where it was allowed:

Theft of Credit - VERWEY case

Defeating or obstructing the course of justice - BURGER case (false criminal charge = false statement)

Are we dealing with situations or phenomena peculiar to our modern society but which were unknown to earlier societies?

If yes, the court will interpret more widely.

Due to principle of L being incorporated in our Constit., the courts do not readily extend or widely interpret CL crimes.

STATUTORY CRIMES

Well known rule in interpretation of statutes: crime-creating provisions in Acts of P and in subordinate legislation must be interpreted strictly - interpretation IN FAVOREM LIBERTAS. The underlying idea is not that the Act should be interp. to weigh against the state & in favour of (A) BUT - WHERE DOUBT EXISTS ABOUT THE INTERPR. ABOUT A CRIMINAL PROV, THE (A) SHOULD BE GIVEN THE BENEFIT OF THE DOUBT.

In applying the IUS STRICTUM PRINCIPLE, 1 has to establish whether the legislature's intention appears clearly & unambiguously prima facie.

If YES - the court cannot interpr. a prov more strictly in order to change the effect of the prov.
If NO - there is room for strict interpr.

Prov is ambiguous if it is possible to interpr. in 2 different yet ACCEPTABLE ways, one of which favours (A) and one which does not.
Ambiguity must not be artificial or far-fetched.