Why Am I Reading This Case?

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The Court of Appeals of Michigan is not the highest court in Michigan. Michigan has a Supreme Court, which is styled the Supreme Court of Michigan. Sometimes the highest court will be called the New York Court of Appeals. That's the Supreme Court in the state of New York, so you need to be careful about the court designation. But you're going to come to read these things so automatically. But clearly you want to know what court because that's going to tell you something about the precedential value of the case, right? Is it the highest court in the state? If not, you're going to want to be thoughtful, potential even dubious, about the precedential value of the case. And then you're going to want to look at the date. Now, this case is it '68? Is that right? Do I have that right? Yes, sorry. My eyes are bad. So it's 1968. And you're going to look at the date, too, because the date will also tell you something about precedential value. Obviously, a fresh precedent that's right on point for you is really great. But sometimes the grandmother case is really old. You just want to notice when was this case decided. And so those are things that are important. You don't need to worry about all of that so much when you're just breaking into your first year reading. But these are things that you're going to remark and you're going to notice. And you're going to wonder about, 1968? Why are they giving me a case from 1968? I don't think you were born then. This is ancient history. Presumably the casebook editors think it's good ancient history. You'll want to notice that. OK, so then, when I'm approaching a case in criminal law and I'm thinking that this is going to be a very similar question in other courses as well, is you immediately want to know, I'm going to call it the cause of action. And then you want to know the procedural posture of the case.

You want to know, why is this case at court? What was the legal issue that brought people into court? What are they litigating over exactly? Is it a tort that fell apart or a contract that fell apart or a civil procedure rule that blew up on somebody? Just joking, I don't how you'd describe that. But what is the matter that they're litigating? And then you also want to know, where are you in the court process? Where are you procedurally in the case? And what's great about this case is the court tells you in the very first sentence what you need to know. So the court tells you the name of the crime, that he's been convicted. So we know

that these characters were convicted for attempted larceny in a building. So that tells you conviction. There's been a jury trial. They've been convicted. And the reason that they were litigating was someone accused them of attempted larceny in a building. And now they're on appeal. And that's just something that's important to know. You want to know where are we in the litigation. The fact that they've been convicted turns out to be really important when you're approaching the standard of appellate review and so on and so forth. You just want to know, has there been a trial? Has the jury answered the basic guilt innocence question? If not, if it's a motion to dismiss an indictment, if it's some other kind of interlocutory appeal, that's important for you to know, where are we in the litigation and how that's going to affect the way in which you read the case. So the next thing that happens in this case, the next, I think, seven paragraphs or so and here's where it's a ton of fun and one of the reasons why cases are so much fun is the court gives you what we call the facts of the case. And of course, you can instantly see that these facts are a narrative. It's a story. So you're getting a little slice of reality. And what the court is describing for you here is here's the stuff that happened that caused these people to be in court litigating over the attempted larceny in a building.

So the court just instantly jumps into a recitation of the facts. And what's fun here is they give that to you right at the beginning of the case. Now, typically, I think what you'll do is you'll end up having to reread the facts. You want to read them once pretty closely and then go on and read the legal analysis that follows. But the point is that you can't be sure at the outset which of these facts are important until you know what the legal issues are. Now, clearly the court is selecting, as I said, a portion of the facts. They're not telling you everything that went down that day. They're not telling you what clothing the defendants are wearing. They're not telling you if there were flies buzzing around the house or if there was a cat in the corner. They're just giving you a very concise description of the facts that the court thinks are essential. So again, notice it's a very pared down narrative. But even with that, you just can't be sure which of these facts matter or which of these facts are the most crucial in terms of sorting out the result later. So I always and particularly if you're writing a brief or doing a close analysis of a case of the sort that we do when we are teaching you you'll end up having to reread the facts. So you'll go through them once, give it a good job. Then you'll go off. And you'll read though the legal analysis that follows and probably have to go back and go, ah, now I get why they were talking about those facts. And I know this sounds like a ton of work. Yep, it's some work. It's slow. But again, the thing that I find so engaging about law and litigation is that you just get these really crazy stories. It's just people, the things that people get up to. And obviously, criminal law is often very sad as well as crazy. The other thing I think that's fun for you to remark is just sort of the rhetoric that the court is here in creating the facts because, of course, you're going to want to start thinking about your own writing style.

So one thing that I recommend that you do as young readers is to start to try to absorb some of the rhetoric that the court is using. And obviously, the court is speaking in an institutional voice. It has the power and the authority to decide this is the way it is and this is what the result should be. When you're a lawyer, you'll be using different kinds of voices. You'll be more argumentative, perhaps. And different lawyers have different styles of

writing. But you're going to want to be thinking about that or at least open yourself up to absorbing it because you guys are going to be law clerks. Four years from now, you're going to be writing these things. And we're going to be writing about the things that you're writing for your judges. But notice what's fun, a neighbor believing the defendants to have designs upon her property. They apparently engaged with her in conversation. And then the house is in a state of disarray. In Bowen's helper this is on page 261 generally helped himself to things that belonged to her and so forth. So you just know that the court is sort of playing a little bit with the language. You could say, the house was a mess, believing the defendants were there to steal her property, generally stole things from her, and so forth the court is just sort of there's a little bit of playfulness in the rhetoric and of a deft touch, a kind of dressing up of what was going on, which creates a little distance between the court and these facts, I think. So you'll want to remark what the rhetoric looks like. And did you get what the basic story is here? So you haven't read the case yet. And so I'm going to have to tell you. So what will happen when you get to class I'm not sure what will happen when you get to class. I think that, if I were teaching the case this year, I would ask the students to recite the facts because the facts end up being pretty important.

And so you're just going to want to know what happened. These two guys show up at this old woman's home pretty late at night. They have two female companions with them. The two men had, or at least one of them, had done some work for the old lady. From time to time, he'd gone and done some handy work for her, so he'd been there before. He's not a complete stranger to the household. So a neighbor sees that he's arrived, sees the car there, and calls the police because she's worried that the guy is there to steal from the woman. And the police come and burst in. And I'm not sure they burst in. I made that up. The police come and go in. And they discover that the house is in a state of disarray and that the woman is sitting on the couch, apparently engaged in conversation with the female companions. And then they discover the two men sort of hiding in the stairs going down to the basement. L They call the two men up, bring them in. And they sit down on the couch. And then sometime subsequently they discover jewelry, the old woman's jewelry, is hidden under the TV and is hidden behind the couch cushions and so forth. So they arrest the guys for larceny in a building and of the jewelry. And then there's his testimony about the fact that the men had come there before and so forth. So I think that your professor will ask you, tell me the facts of the case. And you're just going to want to have, again, a concise description of what happened. These two men come to the house. They are then discovered in this way. So there is the story. And that's great. And now what? Stories are fun. But the court's not telling the story just for the sake of telling the story. They're telling the story to set the stage for the legal arguments that they are about to evaluate. So once you get a sense of here's what the litigation was about. We were litigating attempted larceny in a building. And here was the facts. Here's a quick look at what the facts are that supported these actions. OK, now what? Courts don't jump into cases unless they're asked by appellants to do so or litigants to do so, here appellants.

So you need to figure out what are the legal arguments that the appellants are making. Why do the appellants believe their convictions should be set aside? You need to identify precisely what is the basis for the appeal. And what's interesting about Bowen and Rouse is

that the court doesn't tell you this directly. The court doesn't give you a nice little list. The defendants there, the appellants. The appellants are arguing ABC. The court just instantly jumps into the arguments. And every year I find that my first year students miss the fact, or many of them miss the fact, that there are two claims that are evaluated on appeal because understandably students get engaged with the second of the two arguments, which is the question of what is the actus reus for attempt. And so they tend to jump over the first argument altogether. And try as I might, at the end of the year during exams, I'm always getting the impression that some students never were able to reread the case and understand there were two arguments. And it's very important to understand the two arguments. And as I said, here's where the close reading is important. The court doesn't tell you what the arguments are. You need to figure them out. And it's not that difficult to do once you have practice and once you know that the court isn't going to necessarily tell you. You need to figure it out. So it turns out here that they're making two separate arguments on appeal. They have two claims for why they say their convictions should be set aside. The first claim is known as an insufficiency of the evidence argument. On that claim, they lose very swiftly. The second claim is the jury instructions contained an error with respect to that crucial element, the actus reus of attempt. On that claim, they win. So they lose on number one. They win on number two. And what's important about reading number one, the I'm sorry.

And again, here you can see it's divided into nice little pieces. Number one is the first argument. Number two is the second argument. But notice how the court starts the beginning of the paragraph that is contained under Roman numeral 1. The court says there was sufficient evidence to support the defendant's conviction of attempt to commit larceny. And so why is the court saying that? You look at that sentence, you go, OK. OK, why are you saying that? Courts don't just offer observations. They answer questions that are brought to them. So you can immediately infer correctly that the defendant I'm sorry, that the court is offering this sentence to reject the defendant's argument. The defendants were saying the evidence was insufficient. And the court is saying, no, it's not. There was sufficient evidence. So that's claim number one. And the court rejects the claim, says there is sufficient evidence. And then the court goes ahead and gives you a very quick, very quick, description of why the evidence is sufficient. And I really had fun reading this this time because I found myself wondering I've read this case for years. It's a great case. And it shows you all the shortcuts that legal minds make. I'm thinking, what possible argument could they have had to claim that the evidence was insufficient? And so that's the other thing that a careful reader wants to do. When the court says to you, the evidence is insufficient, you think, oh, that's easy. The evidence is insufficient. The court tells you. The jury could infer that both elements of the crime are satisfied. And you just immediately accept it without questioning. And what I would urge you to do, certainly in law school, is to really push hard and to say, well, what would the defendant have been arguing? You want to open your mind to the possibility that there is a non-frivolous argument there because, in fact, appellate opinions don't get written unless there are non-frivolous arguments.

So you really want to push yourself to think, well, what could the claim possibly have been? The court slam dunk, you lose, and this is a general point. Sometimes students will come

and say, oh, shouldn't I'd be reading lots of other cases so that I can practice making arguments? And my answer, when you're in your first year, absolutely not unless you are a much quicker reader than I was. The most important thing to do is to read the cases you're given and to use those cases as the vehicle for practicing. What if you are the lawyer for these appellants and you were required to stand on your feet and to say, here's why the evidence was insufficient? It looks silly to my eyes, after reading this case. But at the time, I take it there was a live issue there. And I'm assuming that their point was to then, hey, no one saw us take the rings. No one saw us take the necklace. True, the necklace and the rings happened to turn up in this apartment. But there was no direct evidence that we ransacked the place. And who's to know how those things got there? And the court explains to you, eh, no. And again, it's a common sense reading based on the testimony we got about the way in which she generally kept house and what was going on that evening. It was proper for the jury to infer that you did this, even though no one saw you do it. But so that's another thing. Really push yourself, what would I argue? And the careful reader, then you're able to figure out what the arguments were. And it gives you a wealth of material to work with. So the first argument so again, you have to figure out what are these defendants arguing. And you can only figure that out by reading the arguments that the court's rejecting. The court doesn't state of what the defendants are claiming. It just quickly tells you, no, that's stupid. And you have to then figure out, oh, here's what they were arguing. The other thing that's quite important in this first paragraph, though, is the court tells you, at the bottom of 261 to the top of 262, what the elements are of attempted larceny.

And of course, you know because you answered that question that I told you to ask yourself. The question I told you to ask yourself was, why am I reading this case? You know that you're reading this case to learn about at least one of the elements of attempt, whether it be larceny or anything else. So in here the court is beginning that discussion. It tells you. And so that's something that's quite important. The court is telling you here are the elements of the crime we call attempt. The elements are a felonious intent to commit larceny and an overt act going beyond mere preparation. So those are the two elements. You have to prove the felonious intent and the overt act that goes beyond preparation. And the court says, at least in so far as the insufficiency of the evidence claim goes, the conviction is solid. There was sufficient evidence from which a jury could infer both the felonious intent that's intent to steal the rings and the jewelry both the intent and a sufficient act. So they've lost on that ground. So then now the plot thickens. And now you're right. And now you're moving to the point where the court starts to discuss in detail the issue that you care about, the case as a vehicle to teach you what's the actus reus of attempt. And the argument that appears under Roman numeral two or I'm sorry, the discussion that appears under Roman numeral two goes to that. And it's here that things get really interesting. So again, notice the court doesn't tell you the appellants are making a jury instruction argument, that the appellants are arguing that the trial judge's instructions to the jury were erroneous. The court doesn't tell you that's what they're arguing. But you can infer it because the court says, we do find error in the jury charge. And the error is that the court, the judge, failed properly to charge the jury on the necessity of finding the overt act. So with respect to this crucial element, the

one that you're trying to figure out what does it mean, how do the courts define it, what is the doctrine when it comes to actus reus of attempt, here you are.

The court is now about to launch that discussion. So one thing that I want to stop here and say is, make no mistake about the significance of jury instructions in criminal cases. Last year or the year before, a couple of my colleagues and I were marveling over a student who said, why do I need to care about the jury instructions? And we were like, oh. They're the law. The jury instructions contain a concise and, one hopes, clear description of the criminal law that applies to the case you are describing for the jury. In order to convict this person of this crime, here's the law you have to follow. So the jury instructions crystallize the law. And they are a great place to look to figure out what the law really is. And they are also a great place to look to practice your close reading. Can you understand what the trial judge is telling your jury? Frequently, you won't be able to. It's just blah, blah, blah. And it's so it's deeply painful if we are giving instructions to juries that we as lawyers experience as a cloud of abstract words that makes no sense. This is kind of worrisome. So one great device to use in criminal law is always ask yourself, what do the jury instructions say? Are they accurate? Can I embody the legal doctrine more clearly as a writer and potential consumer of these texts? So jury instructions describe the law. And if the judge gets the jury instructions wrong, if the judge gives an erroneous legal instruction, you're going to get a new trial. So it's a place where you really need to read carefully. So the court does exactly what courts do in these cases. It then gives you a little excerpt of the jury instructions. And again, you can begin here, again, as new readers and close readers. You can start to understand the complex kinds of texts that interact in creating a legal outcome.

So at one point in time, a jury hears all this evidence. And then the judge reads them instructions. And we assume they heard those instructions and acted on them appropriately. And if there is an error in the instruction, we got to go back and fix it and give them a new text to read. So you're going to have to read the jury instructions carefully. And again, here the court gives you the excerpt for the jury instruction. And frequently, sometimes you have to read a lot more than they're giving you here. And you have to figure out, what's wrong with it? Now, the court's going to tell you what's wrong with it. But sometimes you can't tell on the first go through. So again, as I mentioned with the facts, you may have to read it twice or even three times. You read it once, you go, makes no sense to me. And don't worry. It doesn't. You can only make sense of it when you subsequently read the court's analysis. But what's great about this case is that the appellate court, the Court of Appeals, italicizes for you the portions of the jury instructions that are in error. So bless them. And when you all become judges, you do that, too. It's just incredibly helpful for readers to be told, here's the stuff that you should be reading. This is the material that's going to be criticized and evaluated coming forward. So again, the question in the case is, what is an overt act for purposes of attempt liability? And what the court tells you is that there are two problems with the trial judge's instructions on overt act. And remember, an erroneous instruction on overt act is just absolutely going to be reversible error. How do you know? Because you already know from your first couple days or weeks of crem that actus reus is a fundamental element of the crime. If actus reus fails, no conviction. So you've got

to get the law right on that. You have to give the jury good instructions. And the court tells you there are two problems with the instructions that the trial judge gave.

First, the trial judge didn't give any instruction at all on the separate element of overt act. He never separately highlighted, you must find overt act and you must find intent. So he never gave that separate instruction on overt act. And then the few things that he said along the way about the overt act were wrong. So again, you've got to infer, well, he never gave a general instruction about overt act. The instructions that he does give were embedded, you can infer, in his instructions on intent. So he does give instructions on intent. The court tells you that. And those instructions were acceptable. And presumably, the jury followed them. We always assume the jury followed them. He didn't give a separate instruction on overt act. What did he say about overt act? And do you know what overt act is by now? It's conduct. You know that. And conduct is well, I'm not going to start slapping people, certainly not when I'm on tape. Oh my gosh, I can't believe I said it. So can we cut that out? OK. I wouldn't even touch anybody. But my point is what am I talking about? An overt act is that. It's the mind moving the body, some kind of volitional mind moving the body thing. So you've got to have some conduct. You have to have something more than thoughts. Words can count. But we don't punish people for just thinking. We require conduct. In addition to them wanting to steal, intending to steal, having their objective to steal, we need to see sufficient conduct that will support that conviction, certainly for completed larceny but also for intent. So you're looking for some kind of conduct, conduct that falls short of the completed crime but conduct that is sufficiently substantial to be the basis for criminal liability. Obviously, now I'm getting into normative questions. And I'm trying not to do that. I'm trying to just stay at the level of the disruptive the doctrine. So we're looking for conduct. What did the trial judge say would be sufficient conduct? This is what you want to identify here.

What did the trial judge say would suffice? And what the trial judge says is, coming to the house. Entering the house. Going into the house. Coming into the house. That's the conduct that the judge isolates. Now, notice, the judge says entering the house with intent to steal, coming to the house with intent to steal, entering or coming into the house with intent to steal. But with intent to steal, that's the mens rea. So the conduct part is coming to the house, going to the house. And what the judge tells you is I'm sorry, what the Court of Appeals tells you is that's wrong. Coming to the house, entering the house, going into the house, is insufficient conduct. It's just not enough conduct. OK, good. That's great. But now, of course, you need to figure out, well, why? You need to know what's the rule that makes that so. What is the definition of actus reus under which coming to a house, going to a house, with intent to steal is insufficient? And so, of course, that's the burden of the rest of the case. The court then explains to you here is the doctrine. Here is how our state Supreme Court, Michigan's Supreme Court, defines actus reus. And now we can figure out why coming to the house, going into the house, doesn't satisfy that definition. So what the court does is it starts as a lower court of appeals would naturally do. This is at the top of page 263. It immediately cites People versus Coleman, which is a fairly recent not too recent, but at that time. Obviously, for you, it's really ancient history by then. It starts with a prominent state Supreme Court case binding precedent. And it tells you, look, Coleman. Coleman is the

case that lays down the law on actus reus of attempt. Coleman is the case that we will apply. And so then your task is going to read what the Court of Appeals tells you about Coleman. And again, you have this wonderful little excerpt. And it describes for you here's how the state of Michigan defines actus reus for attempt purposes.

And so you want to figure out what is that test. The close reader has to read that little excerpt and say, oh my gosh, OK. Coming into the house isn't enough to satisfy the test. But now I have to state the test in some kind of general terms, right? What is the general description of the test? And it's here that things get so much fun. This is the best case. But so too are many, many cases. You're in for a huge treat if you like reading cases that is. If you don't, well, sorry. Then you're not going to have as much fun as I did. But so what the court does is describe for you the Coleman case and describes for you the tests laid down in the Coleman case. And your job, your professor is going to ask you, what is the test that the Court of Appeals derives from Coleman and applies in this case? And what we call it is the res ipsa loquitur test. We call it the acts must speak for themselves test. And you got to read that paragraph and wrestle with it. And you may not get fully educated on this issue until you read some of the notes subsequently. But again, if you read the excerpt from Coleman, you can see the court said the court in interesting because what the court does in Coleman, of course, is to cite Turner, which is this law review article. The acts must be unequivocally referable to the commission of the crime. They must speak for themselves. That's res ipsa. So you're looking for conduct that speaks for itself. And then what's really wonderful here, and, again, to the extent you guys find this particular exercise useful, when you become judges, do this. The more help you can give to your trial attorneys and your trial judges, instruct them on how to apply the test. The court goes on and instructs you in that excerpt how to apply the test. So I mean, again, if I were you, I'd be reading res ipsa loquitur, like what does that mean? Conduct speaks for itself. What does that mean? How do I decide if conduct speaks for itself? And the first thing that I want to tell you, again, if you're being a careful reader, you'll know conduct doesn't speak for itself.

Lawyers speak for it, right? We speak for it. That's why you get paid. So conduct does not speak for itself. You've got to figure out what speech, what the story is. But nonetheless, this is the locution. The conduct is unequivocally referral to the commission of the crime. And then the court tells you what you're supposed to do, how you're supposed to decide. It says if they call it a cinematographic, but I think of it as a silent movie. It's as if you're watching a silent movie. And notice the move here. This is very important. All you have seen in the silent movie is evidence of conduct. All you've seen are acts committed by the defendant. You haven't learned anything about intent or mental state. And you're supposed to look at the acts and ask yourself do they unequivocally refer to the crime? If I'm looking at this conduct by itself, does it speak for itself? Does it speak for attempted larceny? So that's what you're supposed to do according to this court. You're supposed to imagine all I again, remember when evaluating actus reus, you're supposed to imagine all I can see, all I can think about right now is the conduct. Does it speak for itself, OK? Now before we go on and then apply that, the court tells you in the very next sentence it has been suggested that the basic function of the overt act is to corroborate intent. Who suggests that? AUDIENCE: The trial court? ANNE COUGHLIN: Who? AUDIENCE: The trial court? ANNE COUGHLIN: Good

for you, the trial court. They may have the trial court in mind there because it certainly seems like that if they came with intent, right? So it seems like that could be what the trial court so they're getting it from somewhere. So again, as I said, they don't just say random thing I mean, they do say random things. But typically, in the casebook, we edit out the random things. And this is an example of a non-random thing.

They're clearly responding to an argument that's been made somewhere. And I'm assuming the prosecution made the argument because the good for you. Because the trial judge's instructions, I think, support the inference that, wait a minute, you don't have to look for conduct that speaks for itself, unequivocally speaks for itself. Instead, what you're looking for is conduct that corroborates the felonious intent or the criminal intent. And the court says it's been this has been suggested, but we reject that claim. We don't think that's correct. And then the court goes on and explains a couple of things. It explains first of all why the act of coming to the house, entering the house, is insufficient, why it doesn't speak for itself as a matter of factual analysis. But then the court also goes on and tells you why it thinks this is a good rule. And that's another reason why I like this case. You don't always get that in cases. Judges will just apply the rule and give you the result. And they don't give you the value judgments that are animating their decisions. I think when you get to read this case, you'll be really you may be quite conflicted about the value judgment here. And in fact, if my experience is any guide, I think many of you will think the court might well be wrong. But this represents a robust body of law. And so it's important for you to take account of it. So first of all, why did the act of coming to the house not speak for itself? AUDIENCE: When you come to the house, you can have the intent to do a bunch of different things. ANNE COUGHLIN: Right, so there you could have the intent to do a whole bunch of things. It's late at night. It's this group of people. She's old. That still doesn't do it for you, right? So one thing is they came to a house. They entered a house. It could mean anything. I mean, they're just going in for a cup of lemonade or something or they're whatever. So right, the conduct itself. But what else does the court say? One of the things that the court also so you're right.

Just on the face of it, the court also says you guys haven't read the opinion yet. They've been there before. And in the past, they were there for lawful reasons. In the past, she willingly admitted them, right? There was no suggestion that they had busted in before. So their mere act of coming to the house, as you said, the act of coming to the house is hard to see it ever speaking for itself. I guess going into a house could speak for felonious intent in what kind of case? AUDIENCE: In a burglary case? ANNE COUGHLIN: Yeah, yeah, yeah, yeah, right, right, right. Baseball bat to the windows, like, OK, that's telling me what I need to know. I can arrest you right now because that's the other thing you all want to be thinking about. I'm teaching the case now, sorry. Teaching, teaching, not reading, but oh, no, no, no, when you're reading, you want to be thinking about who's this case for, right? It's obviously for trial judges and prosecutors and defenders to know. But it's also for police officers, right? Police officers are watching a course of conduct. And they're thinking, oh my gosh, I think that guy's about to rob a bank. In fact, the guy told me I'm about to rob that bank. Can I arrest him right now? You need to know. But you're right, baseball bat. Does he have to hit the window? Anyway, those are questions. So in any event, the court says, it's insufficient

evidence. Going to a house, coming into a house, entering a house, it just doesn't speak for larceny particularly here when they've been there before. They're not strangers. And then the court tells you, we believe it's important to bifurcate, if you will. We think it's important that we have a rule that requires you to consider the acts by themselves, do the acts speak for themselves, as opposed to the rule either embodied in the trial judge's instructions or suggested by the prosecutor where actus reus is supposed to corroborate intent. And as you're going to discover when you get into the notes later, there's a strong school of thought that agrees with the prosecutor's argument.

The function of actus reus should be to corroborate perhaps strongly felonious intent. And the court then tells you why in its view the value judgment should require you to have very strict separation between act evidence and intent evidence. And again, if you haven't read the opinion, you don't know this language. But your professor will surely ask about it. And the court says something like, we have faith in the ability of people to change their minds. The devil may lose the contest albeit late in the hour. So the idea is we want to give people a lot of room to conduct, conduct, conduct. The criminal law shouldn't intervene until we're sure that the devil is going to lose the contest and you're going to go ahead and do it. And that's the function of actus reus. And that's why they're enacting an actus reus test that's so strict, OK? So so far, so good. You have a description of the State Supreme Court's case. You've got to read that description carefully to figure out here's the general rule. In our state, actus reus endorses actus reus for attempt endorses the res ipsa test. I have to be able to persuade the jury the conduct speaks for itself, right? Here and then the court explains to you, this conduct doesn't speak for itself. Here's why. And then the court also gives you what you might call as policy judgment. The reason why, the value judgment, the reason why we want to have the test this way as opposed to the other way is because we're trying to protect people from the long arm of the state. We're trying to give people some room to breathe and live and even act and do potentially silly things before we put them in jail. Then the court goes on and describes three more cases. And again, this is why the casebook when I suggest that you don't go off and read lots of additional cases, you'll frequently find embedded in your cases additional cases that you can play with.

And the question now becomes, what rule can you deduce from those cases? What rule can you pull out of those cases? So what the court does is it gives you Coleman. And it could have stopped the discussion right there easily, right? But instead, it says this is on page 264. Oh, the devil language is at the top of 264. Underline it. Your professor is definitely going to ask you about that. OK, so the third full paragraph on 264, the court says, attempt patterns vary widely. No rule can be laid down applicable to all cases. Most cases will, in the end, turn on their own facts. And then the court discusses the Peaslee case, Pippin, and Young as additional examples of how the actus reus test works. And what you're going to want to do is to try to read the little, very short descriptions of those cases and figure out what rule is the court applying in those cases? And then the other thing that you want to notice is this very peculiar sentence. I mean, didn't this strike you well, it will strike you really weird. Attempt patterns vary widely. No rule can be laid down applicable to all cases. Most cases will turn on their own facts. I mean, that's very scary. I mean, we think we have a rule of law that tells us on these facts, you convict him. And on these facts, you don't. And suddenly,

we're being told, oh, there's not really a rule. And it's just very odd because you're faulting a trial judge for not embodying the correct rule in his jury instructions. And you're saying, well, it's all fact-based. So it's a very odd sentence and one that makes you should make you really a little worried. But then the next set of questions for you is the cases that follow, Peaslee, Pippin, and Young, are they res ipsa cases? And you haven't read the notes, I'm assuming, if you haven't had a chance to read the case. But notice when you get to the little excerpt from Peaslee, and this is Justice Holmes when he was on the Massachusetts Supreme Court. It is a question of degree.

The degree of proximity held sufficient may vary with the circumstances, including the amount of apprehension that the case creates. And there he uses the word proximity. And by the time you get to the end of the unit, and you've read the notes, you'll realize that res ipsa tests and proximity tests are separate and different. They have a different focus. They have a different application. And so the use again, for the careful reader, you go, wait a minute. We've moved from a res ipsa-based test to a proximity-based test. The courts telling me they're the same. Are they really the same? And oh my gosh, what is the holding of this case? Now again, I believe the holding is we apply res ipsa approach in Michigan. And under the res ipsa approach, there is insufficient evidence, OK? I'm sorry. No, no, no, no, under the res ipsa approach, the trial judge's instructions were wrong. I need to go back and clarify that. But the court muddies the water by bringing in a proximity test. And you suddenly have to push yourself to say, well, are they the same? And it gives you the chance as the careful reader once you've gotten through the notes to really think that question through if you're applying a proximity approach as opposed to a res ipsa approach. See, and it's here where the classroom discussion will get into hypotheticals. What if Michigan used a proximity approach? What would the result be on the facts of Bowen and Rouse, OK? So that's what you're being invited to do there. And again, that word proximity, it's a term of art. It's something you don't know yet. But you're about to learn it. And that should clue you into, gee, there's something funny going on here. And then the other thing that you want to do as careful readers is, and I really invite you to do this, is to focus on the facts of these cases and think about what judgments you would make as a lawyer, you are now in the legal profession, about these cases. So look at the facts. Each of these is held to not constitute an attempt.

And ask yourself whether you think that that's a just outcome, whether you think that that's an outcome that is supported by value judgments about the criminal justice system, by value judgments that you've already learned, I hope, about some of the purposes of it. So look at what happened in Peaslee. The defendant arranged combustibles in a building. He left the building. Later he set out for the building with the intention of lighting it, changed his mind and turned back. Not an attempt. You just want to stop and ask yourself, is that a good result? Under what test is that the appropriate result? Is it a good result? And again, why? And then the next one, Pippin. Defendant has been convicted of gross indecency. He invites a 13-year-old boy to enter his vehicle, his car. And the Supreme Court, again, is looking at whether he commits an overt act. And so just to walk you through how you're going to want to read this. You want to stop and really think about that question. What's the conduct this man has been charged with? Inviting a 13-year-old boy to get in his car. The

court assumes that there's sufficient evidence that he intends to abuse the child, OK? So the assumption is yep, there is sufficient evidence of intent to abuse the child. But the act of inviting him into the car doesn't speak for itself. I guess you can invite people into cars for lots of reasons. But you should immediately start thinking about, hmm, what is the function of actus reus? Should it be to corroborate intent? Like suddenly, that test starts looking attractive, at least to me. If I was worried about protecting my youngsters, which I am, I would think, well, if I could prove that this man did possess mens rea, his purpose was to molest the child, that might do it for me, inviting him into the automobile. And if it's not enough, how much more do you need? How much more do you look for when you're constructing your stories? And then the next one, likewise, once again, People v.

Young, this might be my favorite. The defendant arms himself with a revolver, buys cartridges, obtains an armed accomplice, carries slippers to perpetrate a silent entry of his victim's house, buys chloroform to knock the victim out, and has set out for the selected scene of the crime. He's going to murder somebody. He's on his way to the crime. Not enough of conduct. It's just interesting, right? So you don't read this stuff mechanically. Put yourself there. And if you'd like to, read like a police officer. What would you do if you were a police officer and, like, someone has told you, Young is going to go kill somebody? And you corroborate he's got cartridges. Oh my god, his wife is with him. And she's carrying a gun too. They've got slippers and chloroform. And they're on their way to the house. Good police work. You pulled the guy before he got there and right? So really put yourself into these cases. Bring them to life. These are real, real people. Do the math. I mean, Young is dead by now. But some of these people are still alive. They're on the planet. They're walking and talking and doing things. And so bring it to life. And then ask yourself, is that a good result? Because we think the devil's going to lose the contest? That's what the court told you. We think the devil will lose the contest. Albeit it late in the hour, we're going to give you more time. And that may be a perfectly wise and a sound value judgment. On the other hand, it's certainly one that you'd want to question. The other thing that I'm going to say here about this case that's very tricky, and it requires extremely close reading, and I know we're going over, but I cannot leave you until I tell you this, is that one of the difficulties with this case is the interaction between the first argument, the evidence is insufficient, and the second argument, the jury instructions are erroneous. And what students frequently do, not just students, lots of readers frequently do, they get very bewildered about the second holding.

How could you say that there was an insufficient overt act here? Because they came to the house. They went in there. There's plenty of evidence that suggests that they ransacked the house and actually removed her jewelry from her wherever it was stored, her jewelry box. And they put it in their pockets. And they were getting ready to go. And then they dump it and hide it, right? How could that not speak for itself under the silent movie? Again, this time and you don't just see them coming to the door going, right? That doesn't speak for itself, right? That doesn't speak for but certainly, once they go in, and their two accomplices distract Ms. Gatzmeyer. And then the two of them run to the I mean, that's the silent movie that the jury actually saw, right? Do you see what I'm saying? OK, the point is that the jury instructions artificially cut short or had the potential of artificially cutting short the jury's

deliberation on all of that additional evidence and whether that additional evidence would satisfy overt act. Again, this is why you have to come back to the jury instruction and read it again carefully. The trial judge says, if you find they came to the house with the intention to steal, you've satisfied overt act. The prosecution has satisfied over act. And you can convict. And the concern is that the jury might have listened to that instruction and followed it faithfully and didn't consider the subsequent evidence. So that's why we need to send it back and have a new trial where the jury is told, when you're deciding if the conduct speaks for itself, you must consider the entire course of conduct up till the point where they discover them in the house having ransacked it and so forth, right? But because of the way the jury instruction was given, it's as if the trial judge artificially cut short or had the effect, the potential, to artificially cut short, right? Because remember, there's sufficient evidence to convict these guys.

It's just that the jury wasn't instructed you have to consider the entire course of conduct, including the things that happened after they entered. There's a whole lot more to be said about this case, things that I would be noticing if I were you. But I deliberately didn't mention them because they are things that are not answered by this case. So you're going to be, when you're reading, you're going to be having lots of great questions. Let me tell you this. And I won't tell you what they are because then we'll go off on those tangents. But when I'm reading, I'm going, oh, why does he get to do that? Oh, what's that about? And when I'm actually trying to read the case as a reader and not as a teacher and but I'm not going to mention any of those things because they're really outside the four corners of the case. Those questions that you have may become live litigated questions in other cases, but not here. So what you want to do is just to be patient and set or ask your professor after class. But try to stay within the four corners of this case. Why am I reading this case? What is it a vehicle to teach me, right? What's the rule that this case is going to teach me either so I can understand what criminal law is about, or so that I can make a good argument for my client and explain to the court, right? And then you really want to put the flesh on that litigation by thinking about the facts and sort of picturing them. That's why I like this case so much. It tells you, do the movie thing. Run it visualize it. What does it look like? What does it feel like? Armed accomplice, I mean, it's just so don't read them as flat. They were real. And when you're in them as lawyers, you're going to experience it that way. So really spend some time on the facts. You'll have to go back to the facts and figure out later which ones mattered and which one don't. And then really say to yourself, what precisely is the appellant arguing here? What is the precise legal argument? And as concisely as you can, describe that.

And then see what the court says. And here what's great is they not just give you the holding, they describe the abstract rule and then the reasons for it and then these other cases, which really give you the opportunity to question the rationale. So I am happy to stop and take questions. I am sure that you want to leave, and that's fine with me too. AUDIENCE: As far as when exam time comes, what information should I be retaining? Because I think I'm kind of getting weeded in the facts instead of .. ANNE COUGHLIN: So the problem right now is that you gotta learn to read in this kind of holistic way and because it's very hard to know what you have to retain for the exam until you go through this osmosis

process. And this is not me trying to create extra work for you. It's just that's why I say being a careful reader, it's hard work in the beginning. I underlined everything in my cases like like everything seemed important. So I think what you need to do in the first month, four or five weeks, is just be patient with that feeling of being overwhelmed and drowning in detail and drowning in questions that may or may not be answered by the case. You're definitely going to want to take away the doctrinal holding of the case. So what does this case teach you about the meaning of actus reus? Criminal law requires conduct. It requires mental state. That's true for any crime, including attempt crimes. An attempt happens to be the area where there is a lot of action on this front. With completed crimes, it's usually not a problem, usually don't litigate that actus reus question as heavily if it all turns on mens rea. Attempt, I don't want to say it's all actus reus, but there's a lot. How much is enough? So this case is presenting to you one body of law on the meaning of actus reus. And you absolutely want to have that for the exam, right? Under one line of cases, actus reus is not satisfied, unless the conduct speaks for itself, unless the conduct unequivocally refers to the commission of the crime.

And then you'll absolutely want to know something about the facts of the cases that fall short where the defendants are winning on appeal, right? Because that way, you're going to be able to compare that you might be given on an exam or a case that you might encounter in real life, right? Some of us will practice in some of these areas you're learning. And you'll want to stop and think, well, is this case like Bowen? Is this case like Peaslee? Because of course, as you can imagine, the narratives in these cases tend to get stylized, right? And it's true that there are always new facts but. So you definitely want to have that core holding. You definitely want to know the fact patterns that you're given that don't satisfy that holding. And then I also believe that you'll want to have a brief little statement of the normative ground. Why does the court think this is a good rule? Because as you're going to discover when you get into the notes, a bunch of smart people think it's a silly rule, right? And a bunch of smart people think that the NPC approach is the better rule. And under the NPC, the function of actus reus is to corroborate mens rea or intent. So it's important to keep in mind, OK, here's the rule. Here are facts that were held to satisfy or not the rule. And then why does the court think it's a good rule? And that's the devil may lose the contest idea, the idea that the state's power should be limited to intervene in our lives until we've really done something bad. And entering a house just doesn't cut it.

References

Bailliu, J., Dib, A. & Schembri, L., 2005. Multilateral Adjustment and the Canadian Dollar.
Ball, L., 2000. Policy Rules and External Shocks. NBER Working Paper.

Balaji, C., Kusuma, G. D. V., & Kumar, B. R. (2018). Impact of General Elections on Stock Markets in India. Open Journal of Economics and Commerce, 1(2), 1–7.

Ball, L. M., 1999. Policy Rules for Open Economies. National Bureau of Economics Research, pp. 127-156.

Brunie, C. H., Hamburger, M. J., & Kochin, L. A. (1972), "Money and stock prices: the channels of influence", The journal of Finance, Vol. 27, No. 2, pp. 231-249.

Chen, N. F., Roll, R., & Ross, S. A. (1986), Economic forces and the stock market, Journal of business, Vol. 59, No. 3, pp. 383-403.

Démurger S, Xu H. Left-behind children and return decisions of rural migrants in China. 2011.

Esin, C. and Gupta, R., 2017. Does the US. macroeconomic news make the south african stock market riskier?. The Journal of Developing Areas, 51(4), pp.15-27.

Goodfriend, M., 1991. Interest rates and the conduct of monetary policy. Carnegie-Rochester Conference Series on Public Policy, pp. 7-30.

Griffin, J., 2002. Are the Fama and French Factors Global or Country Specific?. Review of Financial Studies, 15(3), pp.783-803.

Hondroyiannis, G. and Papapetrou, E. 2001. Macroeconomic influences on the stock market.

Johansen, S (1995). Likelihood-Based Inference in Cointegrated Vector Autoregressive Models (NewYork: Oxford University Press).

McKinnon, R. I. (1973), "Money and capital in economic development". Brookings Institution Press.

Osterwald-Lenum, M. (1992). A Note with Quantiles of the Asymptotic Distribution of the Maximum Likelihood Cointegration Rank Test Statistics. Oxford Bulletin of Economics & Statistics, pp. 461–472. .

Parreñas, R. S. Mothering from a distance: Emotions, gender, and intergenerational relations in Filipino transnational families. Feminist Studies, 2001.

Potter, D. Psychosocial Well-Being and the Relationship Between Divorce and Children's Academic Achievement. Journal of Marriage and Family, 72(4), 2010.

Raychaudhuri, Ajitava. "The Macroeconomic Impact of Covid-19 on the Indian Economy." The COVID-19 Pandemic, India and the World, 2021, 129-45. doi:10.4324/9781003220145-10.

Rydberg, H. T., (2000). Realistic Statistical Modelling of Financial Data. International Statistical Review / Revue Internationale de Statistique, 68(3), 233. .

Saikkonen, P., & Lütkepohl, H. (2000) Testing for the Cointegrating Rank of a VAR Process with Structural Shifts. Journal of Business & Economic Statistics;18(4):451. doi:10.2307/1392226.

Saikkonen, P., & Luukkonen, R. (1997). Testing Cointegration in Infinite Order Vector Autoregressive Processes. Journal of Econometrics, 81(1), 93–126.

Sharma, Tanya, and Tapan Kumar Shandilya. Impact of COVID-19 on Indian Economy. New Delhi: Shandiliya Publications, 2021.

Svensson, L. E., 2000. Open-economy inflation targeting. Journal of International Economics, pp. 155-183.

Tsouma, F. 2009. Stock returns and economic activity in mature and emerging markets. Quarterly Review of Economics and Finance, pp. 668-685.

Tully, E., & Lucey, B. M. (2007), “A power GARCH examination of the gold market”, Research in International Business and Finance, Vol. 21, No. 2, pp. 316-325.

Vuchelen, J. (2003). Electoral systems and the effects of political events on the stock market: The Belgian case. Economics and Politics, 15(1), 85–102. doi: 10.1111/1468-0343.00116.

Yeoh B S A, Lam T. The costs of mobility: Children left behind and children who migrate with a parent. Perspectives on gender and migration, 2007.