

Comparative Study of Minute Drug Problem

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In Japanese statutes there are certain prescriptions about prohibited drugs and narcotics but they don't refer to their quantity. Therefore, there is no telling whether we can punish a person with a possession of minute quantity of drugs. This article is a result of a research on the case law in major Common-law countries searching for a solution of minute drug problem.

My prior study, contributed to Japanese case law on the same issue(756 HANREITIMES 49(July 15, 1991)), arises a question whether or not we can consider minute drug possession as a crime.

In this following article, three countries other than Japan with the same controversy are treated. In Canada, courts used to decide minute drug possession according to "de minimis" doctrine in common-law. Its base is on social policy that courts should not punish a "trivial" act. Afterwards, however, Canadian courts changed their criterion to Mens Rea approach. By this approach, in which they must judge based on the fact whether or not defendant possesses

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drugs 1) knowingly and 2) on his control.

In England whose case law has been giving crucial influence on that of Canada and other countries, the Boyesen case in 1982, in which House of Lords adopted the test of “visibility” and “measurability” of drugs rejecting the test of “usability”, is a leading case of this matter.

In the United States, which is dealt in the chapter four, courts have two main views; One adopts the test of “usability” of drugs and the other not. Many states refuse this test, and in stead, propose, for example, the test of “visibility” or “measurability” of drugs.

In the final chapter, after analyzing various approaches to possession of minute quantity of drugs, a new standard on Mens Rea and Actus Reus in judging a case is proposed by the author. As for Mens Rea, whether a defendant “knowingly” possessed drugs or *not is the key factor. And the presence of “efficacy” and “usability”,* which is suggested by the social policy approach, is the key to Actus Reus. Inquiry with this new standard can be named “Synthetic test”. I believe that this is the high time, owing the development of scientific technique, the concept of “possession” must be changed from an old concept to the new which contains a substantial approach. By introducing this substantial approach, courts will be able to have more solid standard on judging defendant’s action which agent regards as a possession crime.