

# Blockburger v. United States

Landmark Double Jeopardy Case Decided 1/4/1932



## Background

In 1931, Harry Blockburger was indicted and charged under the Harrison Narcotics Act for selling Morphine. He was indicted with five counts, of which he was convicted of three: Two counts for selling Morphine, and one count for selling it without a written order from the buyer. All of the acts were for selling to the same person. He was sentenced to 5 years in prison and a \$2,000 fine for each act.

However, Blockburger challenged the ruling. He argued that the second and third acts (two sales of the same drug, on different days) should be considered one continuous act, and therefore he was being charged twice for the same crime. He argued the same for the third and fifth act, which referred to two offenses on the same day.

## Issue

Does committing the same crime on different days, or breaching two provisions in the same act with one crime, count for different offenses?

## Holding

Generally, yes: Repeating the same crime on a different day counts as a separate offense. Through establishing the “same elements test” or “Blockburger test”, the same crime can create separate offenses under different provisions so long as an additional fact is required.

## Decision

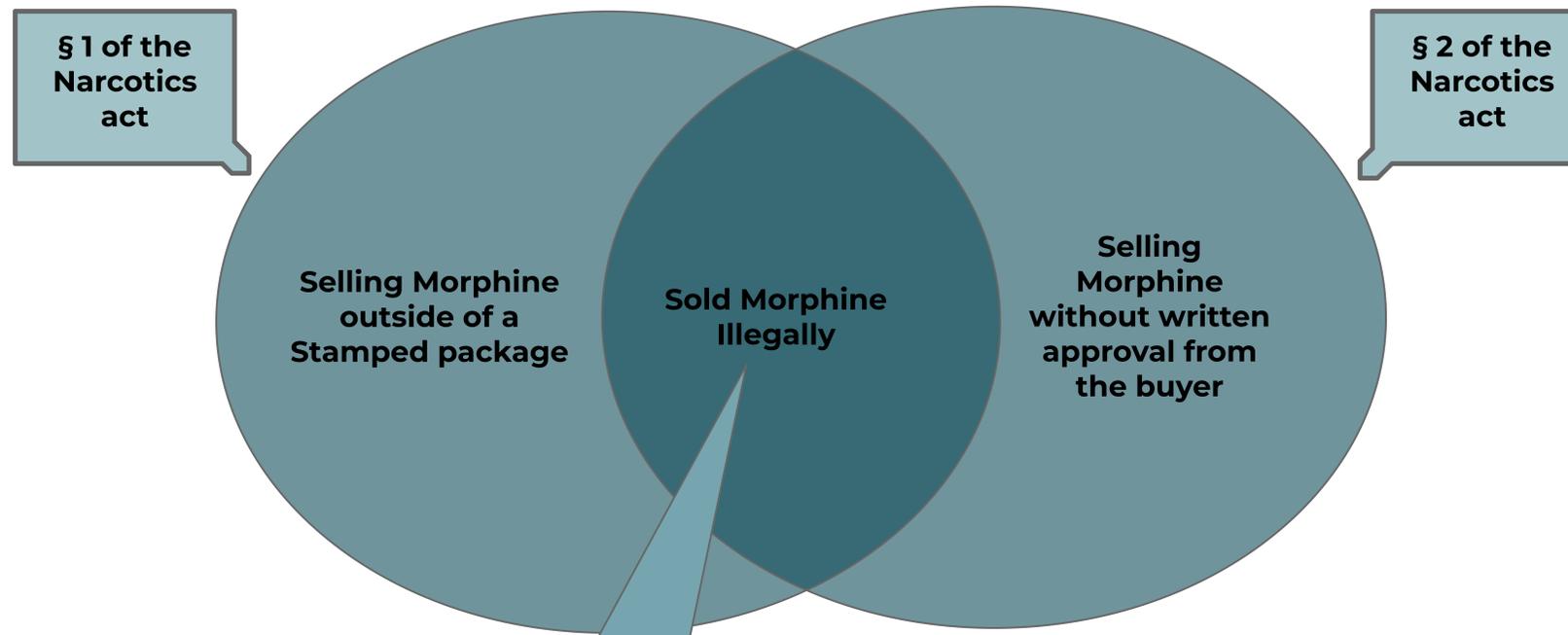
Justice Sutherland wrote the opinion for a unanimous court. The court held that, in relation to the plaintiff’s first claim, the two sales were separate and distinct despite occurring in a small window of time and with the same participants. The seller clearly sold additional morphine in a different transaction; the sale the following day was not a result of “original impulse”, but of a new one. The court uses precedent such as *Ebeling v. Morgan* to support this. The court also dismisses Blockburger’s second claim: Using language from *Morey v. Commonwealth*, a case from the Massachusetts supreme court, the court finds that the same offense broke multiple provisions, using a “same elements test”. The test says that a single act (in this case, a sale of morphine) “may be an offense against two statutes ... if each statute requires proof of an additional fact which the other does not.” Finally, Justice Sutherland acknowledged that the judgement was harsh, especially in this case, but affirmed that change would need to come from the legislative branch, not judicial.

## Impact

While information about Harry Blockburger is minimal, it is assumed he was forced to fulfill his sentence ordered by the court. The case legitimized the Harrison Narcotics act, which is cited as the beginning of the criminalization of addiction. While the act mainly applied to narcotics, it was eventually superceded by the Controlled Substances Act in 1970.

## Significance

*Blockburger v. United States* is considered a landmark case in the application of double jeopardy, even though the ruling itself never mentions the 5th amendment. The “same elements test” or “Blockburger test” has been used in many criminal cases for many types of criminal acts. The ruling was challenged by *Grady v. Corbin* (1990), which prevented using facts from one offense to prove another offense. However, this was overruled by *U.S. v. Dixon* (1993), making Blockburger a legal standard to this day.



## Blockburger Test

The government can only prosecute an individual for violating two different statutes in a single crime or act if each statute requires an element or fact for the government to prove, independent of the other statute.

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