Criminal Justice in America
CJ 2600

Chapter 4
James J. Drylie, Ph.D.
Criminal Law

• Law is a rule of conduct that is generally found in the form of a statute.

• Law proscribes or mandates certain forms of behavior.
  – Civil law
  – Criminal law
  – Constitutional law
Statutory Law

• The written or codified laws that are enacted by a government body or agency having the power to make laws.

• The majority of statutory laws are passed by the legislative branch of government.
  – Federal
  – State
  – County
  – Local
Penal Code

• The written, organized, and complete form of the criminal laws of a jurisdiction.
  – The penal code shall include the extent of appropriate punishment for the offense committed.
Case Law

• Case or procedural law is the body of judicial precedent, historically built on legal reasoning and past interpretations of statutory laws that serves as a guide to decision making, especially, in the courts.
  – *Miranda v. Arizona*
  – *Mapp v. Ohio*
  – *Terry v. Ohio*
  – *TLO v. NJ*
Common Law

• Law originating from usage and custom rather than from written statutes.

• The term refers to an unwritten body of judicial opinion originally developed by English courts. These laws are based on
  – Custom
  – Traditions
  – Precedent
    • Past practice becomes precedent, precedent becomes tradition, and tradition is the cornerstone of society and organizations.
Man v. Law

• The *Rule of Man* is the practice and application of law based on individual interpretation.
  – Commonly found in dictatorial systems.
    • Non-rational
    • Whimsical
    • Draconian

• The *Rule of Law* is the maxim that an orderly society must be governed by established principles and codes applied uniformly and fairly to all members.
The Rule of Law

• Is considered the greatest political achievement of our culture.
• Has been called “the foundation of liberties in the Western world.”
• Provides for *due process*.
• Due process is a check on arbitrary state powers.
• High degree of objectivity
Jurisdiction

- The authority to hear a case.
- Often confused with geographic responsibility.
  - General
  - Limited
What do laws do?

• Maintain order in society
• Regulate human interaction
• Enforce moral beliefs
• Define the economic environment
• Enhance predictability
• Promote orderly social change
• Sustain individual rights
• Redress wrongs
• Identify wrongdoers
• Mandate punishment and retribution
Jurisprudence

• The philosophy of law
• The science of law
• The study of law
Types of law

• Criminal
• Civil
• Administrative
• Case
• Procedural
Criminal law

• The body of rules and regulations that define and specify the nature of an punishments for offenses of a public nature or wrongs committed against the state or society.
  – Also called penal law, or the penal code.

• Crime compromises public order.

• Guilty offenders are expected to be punished.
  – Punishment is philosophically justified.
• Substantive criminal law – describes what constitutes particular crimes and offenses.
  – Deals directly with specifying the nature of, and appropriate punishment for each particular offense.

• Procedural law – specifies acceptable methods for dealing with violations of substantive laws, especially in the context of the judicial setting.
  – The enforcement of written law.
Civil Law

• Governs relationships between and among people, businesses and other organizations, and the agencies of government at all levels.
  – Tort – a wrongful act, damage or injury not involving breach of contract.
    • Private or civil wrong or injury (not to be confused with trauma).
Administrative Law

• The body of regulations created by governments to control, activities related to
  – Industry
  – Business
  – Individuals
    • Examples include
      – Importing/exporting of goods
      – Immigration
      – Agriculture
      – Product safety
      – Communications
Case Law

• Originates from judicial decisions.
• Case law sets legal precedent.
  – A legal principle that ensures that previous judicial decisions are authoritatively considered and incorporated into future cases.
  – *Stare decisis* – a legal principle that requires that in subsequent cases on similar issues of law and fact, courts are bound by earlier decisions and those of higher courts.
Procedural Law

• Another form of statutory law.
• A body of rules that determine proceedings by which legal rights are enforced.
• Examples include
  – General rules of evidence
  – Search & seizure
  – Arrest procedures
  – Trial procedures
The General Categories of Crime

• Violations vary in type and severity.
  – Felonies
  – Misdemeanors
  – Offenses
  – Treason & espionage
  – Inchoate crime
• Felonies – are serious crimes:
  – Murder
  – Rape
  – Robbery
  – Aggravated assault
  – Burglary
  – Arson
• Punishment for felonies ranges from imprisonment to death.

• Misdemeanors – are less serious offenses.
  – Punishment is usually less than one year in jail.
    • Simple assault
    • Possession of burglary tools
    • Bad checks
    • Disturbing the peace
    • False police reports
• Offenses – minor, quasi-criminal violations.
  – Public urination
  – Jaywalking
• Inchoate crimes – are those crimes that have not been completed.
  – Criminal attempt
  – Conspiracy

• Treason & espionage involve the aiding of foreign governments or agents by US citizens in the overthrow of the US government.
  – Treason is the only crime mentioned in the US Constitution.
The Criminal Act

• Two components:
  – *Actus Reus* The guilty act
  – *Mens Rea* The guilty mind. The intent or state of mind that is concurrent with the criminal act.
    • *Mens rea* can be distinguished into four levels of culpability:
      – *Purposely*
      – *Knowingly*
      – *Recklessly*
      – *Carelessly*
    • Strict liability offenses require no culpable mental state. The act in and of itself is a violation of law.
      – Speeding
      – Statutory rape
      – Child pornography
Other features of crime

- Causation – the concurrence of a guilty mind and a criminal act may cause harm.
- Harm – occurs in any crime, although not all harms are crimes.
- Legality – behavior cannot be illegal if no law exists that prohibits it.
- Punishment – the principle holds that no crime is said to have been committed if no punishment has been specified.
- Necessary attending circumstances – are the facts surrounding the criminal event. They include time, place, and in some cases the degree of seriousness.
Elements of crime

• Element – one or more of the essential features of that crime as specified by law.
  – Murder is an unlawful killing of a human by another human.
  – Varying degrees
    • Murder
    • Aggravated manslaughter
    • Manslaughter
    • Death by auto/vessel

• Corpus Delicti – the “body of the crime.”
  – Two aspects of corpus delicti
    • A certain result has been produced as a result of the act.
    • A person(s) is criminally responsible for the act.
Criminal Defense

• The US legal system generally recognizes four broad categories of defense:
  – Alibi
  – Justification
  – Excuses
  – Procedural

• Alibi – is a claim of outright innocence.

• Justification – involvement based on necessity.
  – Self-defense
  – Defense of others
  – Resisting unlawful arrest

• Excuses
  – Duress/coercion
  – Age or “infancy”
  – Consent
- Involuntary intoxication (pathological intoxicant)
- Cultural
- Provocation
- Insanity
- Diminished capacity
- Mental incompetence

- Insanity defense is based on claims of mental illness.
  - *M’Naughen Rule* first use of insanity defense.
    - In 1844 Daniel M’Naughten was first person found NGBRI
      - Irresistible impulse
        - 1994 case of Lorena Bobbitt
      - The Durham Rule
      - Temporary Insanity
• Procedural Defenses
  – Entrapment
  – Double jeopardy
  – Collateral estoppel
  – Selective prosecution
  – Denial of speedy trial
  – Prosecutorial misconduct
  – Police corruption