"Introduction to Criminal Law".

In Section 1 of this course you will cover these topics:

- What Is Criminal Law?
- What Is A Crime?
- Crimes Against The Person: Murder

Topic : What Is Criminal Law?

Topic Objective:

At the end of this topic student would be able to:

- Understand Criminal Law History
- Learn about Criminal Law Sanctions
- Understand the Criminal procedure in the United States

Definition/Overview:

This topic addresses the very basics of the American legal system, with an emphasis on the historical sources that form the foundation for understanding criminal law and the study of contemporary legal issues as well as explanations of prominent theories and schools of jurisprudence addressing criminal law.

Key Points:

1. Criminal Law History

The first civilizations generally did not distinguish between civil and criminal law. The first written codes of law were produced by the Sumerians. Around 2100-2050 BC Ur-Nammu, the Neo-Sumerian king of Ur, enacted the oldest written legal code whose text has been discovered: the Code of Ur-Nammu although an earlier code of Urukagina of Lagash is also known to have existed. Another important early code was the Code Hammurabi, which formed the core of Babylonian law. These early legal codes did not separate penal and civil laws.

The similarly significant Commentaries of Gaius on the Twelve Tables also conflated the civil and criminal aspects, treating theft or furtum as a tort. Assault and violent robbery were analogized to trespass as to property. Breach of such laws created an obligation of law or vinculum juris discharged by payment of monetary compensation or damages.

The first signs of the modern distinction between crimes and civil matters emerged during the Norman Invasion of England. The special notion of criminal penalty, at least concerning Europe, arose in Spanish Late Scolasticism, when the theological notion of God's penalty (poena aeterna) that was inflicted solely for a guilty mind, became transfused into canon law first and, finally, to secular criminal law. The development of the state dispensing justice in a court clearly emerged in the eighteenth century when European countries began maintaining police services. From this point, criminal law had formalized the mechanisms for enforcement, which allowed for its development as a discernible entity.

2. Criminal Law Sanctions

Criminal law is distinctive for the uniquely serious potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements. Capital punishment may be imposed in some jurisdictions for the most serious crimes. Physical or corporal punishment may be imposed such as whipping or caning, although these punishments are prohibited in much of the world. Individuals may be incarcerated in prison or jail in a variety of conditions depending on the jurisdiction. Confinement may be solitary. Length of incarceration may vary from a day to life. Government supervision may be imposed, including house arrest, and convicts may be required to conform to particularized guidelines as part of a parole or probation regimen. Fines also may be imposed, seizing money or property from a person convicted of a crime.

Five objectives are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restitution. Jurisdictions differ on the value to be placed on each.

2.1 Retribution

Criminals ought to suffer in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and

consequently, the criminal law will put criminals at some unpleasant disadvantage to "balance the scales." People submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be murdered himself. A related theory includes the idea of "righting the balance."

2.1 Deterrence

Individual deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior. General deterrence aims at society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses.

2.1 Incapacitation

Designed simply to keep criminals away from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment have served the same purpose.

Rehabilitation - Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.

2.1 Restitution

This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any hurt inflicted on the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restitution is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law.

3. Criminal law jurisdictions

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4. International Criminal Court

The Hague Public international law deals extensively and increasingly with criminal conduct, that is heinous and ghastly enough to affect entire societies and regions. The formative source of modern international criminal law was the Nuremberg trials following the Second World War in which the leaders of Nazism were prosecuted for their part in genocide and atrocities across Europe. The Nuremberg trials marked the beginning of criminal fault for individuals, where individuals acting on behalf of a government can be tried for violations of international law without the benefit of sovereign immunity. In 1998 an International criminal court was established in the Hague under what is known as the Rome Statute. This is specifically to try heads and members of governments who have taken part in crimes against humanity. Not all countries have agreed to take part, including Yemen, Libya, Iraq, Israel and the United States.

5. Criminal procedure in the United States

In the United States, criminal prosecutions typically are initiated by complaint issued by a judge or by indictment issued by a grand jury. As to felonies in Federal court, the Fifth Amendment to the United States Constitution requires indictment. The Federal requirement does not apply to the states, which have a diversity of practices. Three states (Connecticut, Pennsylvania, and Washington) and the District of Columbia do not use grand jury indictments at all. The Sixth Amendment guarantees a criminal defendant the right to a speedy and public trial, in both state and Federal courts, by an impartial jury of the State and district wherein the crime was committed, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense. The interests of the state are represented by a prosecuting attorney. The defendant may defend himself pro se, and may act as his own attorney, if desired.

6. Malum In Se and Malum Prohibitum

In most U.S. law schools, the basic course in criminal law is based upon the Model Penal Code and examination of Anglo-American common law. Crimes in the U.S. which are outlawed nearly universally, such as murder and rape are occasionally referred to as malum in se, while other crimes reflecting society's social attitudes and morality, such as drug prohibition and alcohol laws are referred to as malum prohibitum.

7. Criminal Court in England

The Central Criminal Court, better known as the Old BaileyCriminallaw in England and Wales derives from a number of diverse sources. The definitions of the different acts that constitute criminal offenses can be found in the common law (murder, manslaughter, conspiracy to defraud) as well as in thousands of independent and disparate statutes and more recently from supranational legal regimes such as the EU. As the law lacks the criminal codes that have been instituted in the United States and civil law jurisdictions, there is no unifying thread to how crimes are defined, although there have been calls from the Law Commission for the situation to be remedied. Criminal trials are administered hierarchically, from magistrates' courts, through the Crown Courts and up to the High Court. Appeals are then made to the Court of Appeal and then to the House of Lords on matters of law. Further appeals may be possible to the European Court of Justice or European Court of Human Rights.

Procedurally, offenses are classified as indictable and summary offenses; summary offenses may be tried before a magistrate without a jury, while indictable offenses are tried in a crown court before a jury. The distinction between the two is broadly between that of minor and serious offenses. At common law crimes are classified as either treason, felony or misdemeanor.

The way in which the criminal law is defined and understood in England and Wales is less exact than in the United States as there have been few official articulations on the subject. The body of criminal law is considerably more disorganised, thus finding any common thread to the law is very difficult. A consolidated English Criminal Code was drafted by the Law Commission in 1989 but, though codification has been debated since 1818, as of 2007, has not been implemented. Scotland and Northern Ireland have their own legal systems and are distinct jurisdictions within the United Kingdom of Great Britain and Northern Ireland.

8. Selected criminal laws

Many laws are enforced by threat of criminal punishment, and their particulars may vary widely from place to place. The entire universe of criminal law is too vast to intelligently catalog. Nevertheless, the following are some of the more known aspects of the criminal law.

9. Elements v criminal

The criminal law generally prohibits undesirable acts. Thus, proof of a crime requires proof of some act. Scholars label this the requirement of an actus reus or guilty act. Some crimes particularly modern regulatory offenses require no more, and they are known as strict liability offenses. Nevertheless, because of the potentially severe consequences of criminal conviction, judges at common law also sought proof of an intent to do some bad thing, the mens rea or guilty mind. As to crimes of which both actus reusand mens rea are requirements, judges have concluded that the elements must be present at precisely the same moment and it is not enough that they occurred sequentially at different times.

10. Actus reus

An English court room in 1886, with Lord Chief Justice Coleridge presidingActus reus is Latin for "guilty act" and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an omission to act. For example, the act of A striking B might suffice, or a parent's failure to give food to a young child also may provide the actus reusfor a crime.

Where theactus reus is a failure to act, there must be a duty. A duty can arise through contract, a voluntary undertaking, a blood relation with whom one lives, and occasionally through one's official position. Duty also can arise from one's own creation of a dangerous situation. Occasional sources of duties for bystanders to accidents in Europe and North America are good samaritan laws, which can criminalise failure to help someone in distress (e.g. a drowning child).

An actus reus may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be the but for cause and proximate cause of the harm. If more than one cause exists (e.g. harm comes at the hands of more than one culprit) the act must have "more than a slight or trifling link" to the harm.

Causation is not broken simply because a victim is particularly vulnerable. This is known as the thin skull rule. However, it may be broken by an intervening act (novus actus interveniens) of a third party, the victim's own conduct, or another unpredictable event. A

mistake in medical treatment typically will not sever the chain, unless the mistakes are in themselves "so potent in causing death.

11. Mens rea

The English fictional character Robin Hood had the mens rea for robbing the rich, despite his good intentions of giving to the poorMens reais another Latin phrase, meaning "guilty mind." A guilty mind means an intention to commit some wrongful act. Intention under criminal law is separate from a person's motive. If Mr. Hood robs from rich Mr. Nottingham because his motive is to give the money to poor Mrs. Marion, his "good intentions" do not change his criminal intention to commit robbery.

A lower threshold of mens rea is satisfied when a defendant recognises an act is dangerous but decides to commit it anyway. This is recklessness. For instance, if C tears a gas meter from a wall to get the money inside, and knows this will let flammable gas escape into a neighbour's house, he could be liable for poisoning. Courts often consider whether the actor did recognize the danger, or alternatively ought to have recogniseda risk. Of course, a requirement only that one ought to have recognized a danger (though he did not) is tantamount to erasing intent as a requirement. In this way, the importance of mens reahas been reduced in some areas of the criminal law.

Wrongfulness of intent also may vary the seriousness of an offense. A killing committed with specific intent to kill or with conscious recognition that death or serious bodily harm will result, would be murder, whereas a killing effectedby reckless acts lacking such a consciousness could be manslaughter. On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, mens rea is transferred from the intended target to the person who actually was struck.

12. Strict liability

Strict liability can be described as a "but for" cause of harm on part of the defendant. "But for" the action or product that caused the harm, nothing bad would have happened. Not all crimes require bad intent, and alternatively, the threshold of culpability required may be reduced. For example, it might be sufficient to show that a defendant acted negligently, rather

than intentionally or recklessly. In offenses of absolute liability, other than the prohibited act, it may not be necessary to show anything at all, even if the defendant would not normally be perceived to be at fault. Most strict liability offenses are created by statute, such as crimes against the traffic or Highway Code.

13. Fatal offenses

A murder, defined broadly, is an unlawful killing. Unlawful killing is probably the act most frequently targeted by the criminal law. In many jurisdictions, the crime of murder is divided into various gradations of severity, e.g., murder in the first degree, based on intent. Malice is a required element of murder. Manslaughter is a lesser variety of killing committed in the absence of malice, brought about by reasonable provocation, or diminished capacity. Involuntary manslaughter, where it is recognized, is a killing that lacks all but the most attenuated guilty intent, recklessness.

14. Settled insanity is a possible defense

Many criminal codes protect the physical integrity of the body. The crime of battery is traditionally understood as an unlawful touching, although this does not include everyday knocks and jolts to which people silently consent as the result of presence in a crowd. Creating a fear of imminent battery is an assault, and also may give rise to criminal liability. Non-consensual intercourse, or rape, is a particularly egregious form of battery

15. Property offenses

Property often is protected by the criminal law. Trespassing is unlawful entry onto the real property of another. Many criminal codes provide penalties for conversion, embezzlement, theft, all of which involve deprivations of the value of the property. Robbery is a theft by force.Fraud in the UK is a breach of the Fraud Act 2006 by false representation, by failure to disclose information or by abuse of position.

16. Participatory offenses

Some criminal codes criminalize association with a criminal venture or involvement in criminality that does not actually come to fruition. Some examples are aiding, abetting,

conspiracy, and attempt. However, in Scotland, the English concept of Aiding and Abetting is know as Art and Part Liability.

Topic : What Is A Crime?

Topic Objective:

At the end of this topic student would be able to:

- Understand Criminalization
- Learn about the Natural-law theory
- Understand various types of Crimes and classification

Definition/Overview:

Crime: Societies define crime as the breach of one or more rules or laws for which some governing authority or force may ultimately prescribe a punishment.

The word crime originates from the Latin crimen (genitive criminis), from the Latin root cernōand Greek κρινω = "I judge". Originally it meant "charge (in law), guilt, accusation".

Key Points:

1. Criminalization

One can view criminalization as a procedure intended as a pre-emptive, harm-reduction device, using the threat of punishment as a deterrent to those proposing to engage in the behavior causing harm. The State becomes involved because they usually believe costs of not criminalizing (i.e. allowing the harms to continue unabated) outweigh the costs of criminalizing it (i.e. restricting individual liberty in order to minimize harm to others). Criminalization may provide future harm-reduction even after a crime, assuming those incarcerated for committing crimes are more likely to cause harm in the future.

Criminalization might be intended as a way to make potential criminals pay for their crimes. In this case, criminalization is a way to set the price that one must pay (to society) for certain actions that are considered detrimental to society as a whole. In this sense criminalization can be viewed as nothing more than State-sanctioned revenge. When society deems informal relationships and sanctions insufficient to create and maintain a desired social order, there

may result more formalized systems of social control imposed by a government, or more broadly, by a State. The label of "crime" and the accompanying social stigma normally confine their scope to those activities that are injurious to the general population or the State, including some that cause serious loss or damage to individuals. The label is intended to assert an hegemony of a dominant population, or to reflect a consensus of condemnation for the identified behavior and to justify a punishment imposed by the State, in the event that an accused person is tried and convicted of a crime. Usually, the perpetrator of the crime is a natural person, but in some jurisdictions and in some moral environments, legal persons are also considered to have the capability of committing crimes.

2. States control the process of criminalization because

- Even if victims recognize their own role as victims, they may not have the resources to investigate and seek legal redress for the injuries suffered: the enforcers formally appointed by the State have the expertise and the resources.
- The victims may only want compensation for the injuries suffered, while being indifferent to a possible desire for deterrence on the fundamental divergence between the private and the social motivation for using the legal system).
- Fear of retaliation may deter victims or witnesses of crimes from taking any action. Even in policed societies, fear may inhibit reporting or co-operation in a trial.
- Victims alone may lack the economies of scale which might allow them to administer a penal system, let alone collect any fines levied by a court (see Polinsky (1980) on the enforcement of fines). Garoupa & Klerman (2002) warn that a rent-seeking government has as its primary motivation to maximize revenue and so, if offenders have sufficient wealth, a rent-seeking government will act more aggressively than a social-welfare-maximizing government in enforcing laws against minor crimes (usually with a fixed penalty such as parking and routine traffic violations), but more laxly in enforcing laws against major crimes.

3. Natural-law theory

Justifying the State's use of force to coerce compliance with its laws has proven a consistent theoretical problem. One of the earliest justifications involved the theory of natural law. This posits that the nature of the world or of human beings underlies the standards of morality or constructs them. Thomas Aquinas said: "the rule and measure of human acts is the reason, which is the first principle of human acts" (Aquinas, ST I-II, Q.90, A.I), i.e. since people are

by nature rational beings, it is morally appropriate that they should behave in a way that conforms to their rational nature. Thus, to be valid, any law must conform to natural law and coercing people to conform to that law is morally acceptable. William Blackstone (1979: 41) describes the thesis:

> "This law of nature, being co-evalwith mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."

But John Austin, an early positivist, applied utilitarianism in accepting the calculating nature of human beings and the existence of an objective morality, but denied that the legal validity of a norm depends on whether its content conforms to morality. Thus in Austinian terms a moral code can objectively determine what people ought to do, the law can embody whatever norms the legislature decrees to achieve social utility, but every individual remains free to choose what he or she will do. Similarly, Hart (1961) saw the law as an aspect of sovereignty, with lawmakers able to adopt any law as a means to a moral end.

4. Distinctions

Religious sentiment often becomes a contributory factor of crime. Rioters set fire to many of Ahmedabad'sbuildings during the 2002 Gujarat violence. Governments criminalise antisocial behaviour and treat it within a system of offences against society in order to justify the imposition of punishment. Authorities make a series of distinctions depending on the passive subject of the crime (the victim), or on the offended interest(s), in crimes against:

- personality of the State
- rights of the citizen
- public administration
- administration of justice
- religious sentiment and faith
- public order
- public economy, industry, and commerce
- public morality.

- person and honour.
- patrimony

Or one can categorise crimes depending on the related punishment with sentencing tariffs prescribed in line with the perceived seriousness of the offence with fines and noncustodialsentences for the least serious, and (in some States) capital punishment for the most serious.

5. Types of Crimes

Researchers and commentators may classify crime into categories, including violent crime, property crime, and public order crime.

5.1 U.S. classification

In the United States since 1930, the FBI has tabulated Uniform Crime Reports (UCR) annually from crime data submitted by law enforcement agencies across the United States. Officials compile this data at the city, county, and state levels into the Uniform crime reports (UCR). They classify violations of laws which derive from common law as Part I (index) crimes in UCR data, further categorisedas violent or property crimes. Part I violent crimes include murder and criminal homicide (voluntary manslaughter), forcible rape, aggravated assault, and robbery; while Part I property crimes include burglary, arson, larceny/theft, and motor vehicle theft. All other crimes count as Part II crimes.

Analysts can also group crimes by severity, some common categorical terms including:

- felonies (US and previously UK)
- indictable offences (UK)
- misdemeanors (US and previously UK)
- summary offences (UK)

For convenience, such lists usually include infractions although, in the U.S., they may come into the sphere not of the criminal law, but rather of the civil law. Compare tortfeasance.

6. Crimes in international law

Crimes defined by treaty as crimes against international law include:

crimes against peace

- waging a war of aggression
- crimes of apartheid
- piracy
- genocide
- war crimes
- the slave trade

From the point of view of State-centric law, extraordinary procedures (usually international courts) may prosecute such crimes. Note the role of the International Criminal Court at The Hague in the Netherlands. Popular opinion often associates international law with the concept of opposing terrorism seen as a crime as distinct from warfare.

7. Religion and crime

Socially accepted or imposed religious morality has influenced secular jurisdictions on issues that may otherwise concern only an individual's conscience. Activities sometimes criminalized on religious grounds include (for example) alcohol-consumption (prohibition), abortion and stem-cell research. In various historical and present-day societies institutionalized religions have established systems of earthly justice which punish crimes against the divine will and specific devotional, organizational and other rules under specific codes, such as Islamic sharia or Roman Catholic canon law.

8. Military jurisdictions and states of emergency

In the military sphere, authorities can prosecute both regular crimes and specific acts (such as mutiny or desertion) under martial-law codes that either supplant or extend civil codes in times of war. Many constitutions contain provisions to curtail freedoms and criminalize otherwise tolerated behaviors under a state of emergency in the event of war, natural disaster or civil unrest. Such undesired activities may include assembly in the streets, violation of curfew, or possession of firearms.

9. Employee crime

Two common types of employee crime exist: embezzlement and sabotage. The complexity and anonymity of computers may help sinister employees camouflage their crimes. The victims of the most costly scams include banks, brokerage houses, insurance companies, and other large financial institutions. Most people guilty of embezzlement do not have criminal histories. It is more likely that they have a gripe against their employer, have financial problems, or simply can't resist the temptation of a loop-hole they have found. Screening and background checks on perspective employees can help; however, many laws make some types of screening difficult or even illegal. Fired or disgruntled employees sometimes sabotage their company's computer system as a form of 'pay back'. This sabotage may take the form of a Logic bomb, a computer virus, or creating general havoc. Some places of employment have developed measures in an attempt to combat and prevent employee crime. Places of employment sometimes implement security measures such as cameras, fingerprint records of employees, and background checks. Although privacy-advocates have questioned such methods, they serve the interests of the companies using them. Not only do these methods help prevent employee crime, but they protect the company from punishment and/or lawsuits for negligent hiring.

Topic : Crimes Against The Person: Murder

Topic Objective:

At the end of this topic student would be able to:

- Understand the Legal analysis of murder
- Learn about Intent to kill
- Understand the Origin of Murder
- Learn about Codification

Definition/Overview:

This topic focuses on the first thing most people think of when they hear the word crime. This chapter is intended to provide a broad understanding of a vast and complicated topic. Given

the high profile of murder cases in the media, real life applications to the texts material are easy to find.

Key Points:

1. Legal analysis of murder

Common law murder is defined as the: killing of another human being with a state of mind known as "malice aforethought". The first three elements are relatively straightforward; however, the concept of "malice aforethought" is a complex one that does not necessarily mean premeditation. The following states of mind are recognized as constituting the various forms of "malice aforethought":

2. Intent to kill

Intent to commit a dangerous felony (the "felony-murder" doctrine). Under state of mind (i), intent to kill, the deadly weapon rule applies. Thus, if the defendant intentionally uses a deadly weapon or instrument against the victim, such use authorizes a permissive inference of intent to kill. An example of a deadly weapon or instrument is a gun, a knife, or even a car when intentionally used to strike the victim.

3. Origin of Murder

Murder in religion- One of the oldest known prohibitions against murder appears in the Sumerian Code of Ur-Nammu written sometime between 2100 and 2050 BC. The code states, "If a man commits a murder, that man must be killed."

In Abrahamic religions, the prohibition against murder is one of the Ten Commandments given by God to Moses in (Exodus: 20v13) and (Deuteronomy 5v17) (See Murder in the Bible). The Vulgate and subsequent early English translations of the Bible used the term secretly killethhis neighbor or smiteth his neighboursecretly rather than murder for the Latin clam percusseritproximum. Later editions such as Young's Literal Translation and the World English Bible have translated the Latin occides simply as murder rather than the alternatives of kill, assassinate, fall upon or slay. Christian churches have some doctrinal differences about what forms of homicide are prohibited biblically, though all agree murder is. The term 'Assassin' derives from Hashshashin, a militant Ismaili Muslim sect, active from the eighth to

the fourteenth centuries. This mystic secret society killed members of the Abbasid, Fatimid, Seljuqand Crusader lite for political and religious reasons.

The Thuggee cult that plagued India was devoted to Kali, the goddess of death and destruction. According to the Guinness Book of Records the Thuggee cult was responsible for approximately 2 million deaths. According to Ross Hassig, author of Aztec Warfare, "between 10,000 and 80,400 persons" were sacrificed in the 1487 re-consecration of the Great Pyramid of Tenochtitlan.

4. Codification

The crime of murder was often formally codified after democratic reform in various jurisdictions, legislatures began passing statutes.

5. Legal definition

As with most legal terms, the precise definition of murder varies between jurisdictions and is usually codified in some form of legislation.

6. At Common law

According to Blackstone, English common law identified murder as a Public Wrong. At Common Law, murder is consider to be Malum in se, that is an act which is evil within itself. An act such as murder is wrong/evil by its very nature. And it is the very nature of the act which does not require any specific detailing or definition in the law to consider murder a crime. Some jurisdictions still take a common law view of murder. In such jurisdictions, precedent Case law or previous decisions of the Courts of Law defines what is considered murder. However, it tends to be rare and the majority of jurisdictions have some statutory prohibition against murder.

7. Basic elements of Murder

In common law jurisdictions, murder has two elements or parts:

> the act (actus reus) of killing a person The state of mind (mens rea) of intentional, purposeful, malicious, premeditated, and/or wanton. While murder is often expressed

as the unlawful killing of another human being with "malice aforethought", this element of malice may not be required in every

8. Exclusions

Unlawful killings without malice or intent are considered manslaughter. Justified or accidental killings are considered homicides. Depending on the circumstances, these may or may not be considered criminal offenses. Suicide is not considered murder in most societies. Assisting a suicide, however, may be considered murder in some circumstances.

9. Victim

All jurisdictions require that the victim be a natural person; that is a human being who was still alive at the time of being murdered. Most jurisdictions legally distinguish killing a fetus or unborn child as a different crime, such as illegal abortion of a fetus or the unlawful killing of an unborn child. The distinction between a fetus and an unborn child in these jurisdictions is that a child could survive if it had been born, while a fetus could not.

10. Mitigating circumstances

Some countries allow conditions that "affect the balance of the mind" to be regarded as mitigating circumstances. This means that a person may be found guilty of "manslaughter" on the basis of "diminished responsibility" rather than murder, if it can be proved that the killer was suffering from a condition that affected their judgment at the time. Depression, post-traumatic stress disorder and medication side-effects are examples of conditions that may be taken into account when assessing responsibility.

11. Insanity in Murder

Mental disorder may apply to a wide range of disorders including psychosis caused by schizophrenia and dementia, and excuse the person from the need to undergo the stress of a trial as to liability. In some jurisdictions, following the pre-trial hearing to determine the extent of the disorder, the defense of "not guilty by reason of insanity" may be used to get a not guilty verdict.

In any prosecution for an offense, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. Such lack of criminal responsibility means that at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either: The nature and consequences of such conduct; or That such conduct was wrong.

12. Under the French Penal Code:

ARTICLE 122-1: A person is not criminally liable who, when the act was committed, was suffering from a psychological or neuropsychological disorder which destroyed his discernment or his ability to control his actions. A person who, at the time he acted, was suffering from a psychological or neuropsychological disorder which reduced his discernment or impeded his ability to control his actions, remains punishable; however, the court shall take this into account when it decides the penalty and determines its regime. Those who successfully argue a defense based on a mental disorder are usually referred to mandatory clinical treatment until they are certified safe to be released back into the community, rather than prison.

13. Post-partum depression

Some countries, such as Canada, Italy, the United Kingdom, New Zealand and Australia, allow post-partum depression (also known as post-natal depression) as a defense against murder of a child by a mother, provided that a child is less than a year old (this may be the specific offense of infanticide rather than murder and include the effects of lactation and other aspects of post-natal care).

14. Self-defense

Acting in self-defense or in defense of another person is generally accepted as legal justifications for killing a person in situations that would otherwise have been murder. However, a self-defense killing might be considered manslaughter if the killer established control of the situation before the killing took place. In the case of self-defense it is called a justifiable homicide.

15. Unintentional

For a killing to be considered murder, there normally needs to be an element of intent. For this argument to be successful the killer generally needs to demonstrate that they took precautions not to kill and that the death could not have been anticipated or was unavoidable, whatever action they took. As a general rule, manslaughter constitutes reckless killing, while criminally negligent homicide is a grossly negligent killing.

16. Diminished capacity

In those jurisdictions using the Uniform Penal Code, such as California, diminished capacity may be a defense. For example, Dan White used this defense to obtain a manslaughter conviction, instead of murder, in the assassination of Mayor George Moscone and Supervisor Harvey Milk.

17. Year-and-a-day rule

In some common law jurisdictions, a defendant accused of murder is not guilty if the victim survives for longer than one year and one day after the attack. This reflects the likelihood that if the victim dies, other factors will have contributed to the cause of death, breaking the chain of causation. Subject to any statute of limitations, the accused could still be charged with an offence representing the seriousness of the initial assault.

18. Abolition of the rule

With advances in modern medicine, most countries have abandoned a fixed time period and test causation on the facts of the case. In the UK, due to medical advancements, the "year-and-a-day-rule" is no longer in use. However, if death occurs three years or more after the original attack then prosecution can take place only with the Attorney-General's approval. In the United States, many jurisdictions have abolished the rule as well. Abolition of the rule has been accomplished by enactment of statutory criminal codes, which had the effect of displacing the common-law definitions of crimes and corresponding defenses. In 2001, the Supreme Court of the United Statesheld that retroactive application of a state supreme courtdecision abolishing the year-and-a-day rule did not violate the Ex Post Facto Clause of Article I of the United States Constitution.

19. Demographics

An estimated 520,000 people were murdered in 2000 around the globe. Two-fifths of them were young people between the ages of 10 and 29 who were killed by other young people.

Murder rates vary greatly among countries and societies around the world. In the Western world, murder rates in most countries have declined significantly during the 20th century and are now between 1-4 cases per 100,000 people per year. Murder rates in Japan, Ireland and Iceland are among the lowest in the world, around 0.5; the rate of the United States is among the highest of developed countries, around 5.5 in 2004, with rates in larger cities sometimes over 40 per 100,000.

Within the Western world, nearly 90% of all murders are committed by males, with males also being the victims of 74.6% of murders (according the US Department of Justice). There is a sharp peak in the age distribution of murderers between the ages of 17 and 30. People become decreasingly likely to commit a murder as they age. Incidents of children and adolescents committing murders are also extremely rare, notwithstanding the strong media coverage such cases receive.

The following absolute murder counts per-country are not comparable because they are not adjusted by each country's total population. Nonetheless, they are included here for reference. There are an estimated 55,000 murders in Brazil every year, about 30,000 murders committed annually in Russia, approximately 25,000 murders in Colombia (in 2005, murders went down to 15,000), approximately 20,000 murders each year in South Africa, approximately 17,000 murders in the United States (666,160 murders from 1960 to 1996), approximately 15,000 murders in Mexico, approximately 11,000 murders in Venezuela, approximately 6,000 murders in El Salvador, approximately 1,600 murders in Jamaica, approximately 1000 murders in France, approximately 580 murders per year in Canada, and approximately 200 murders in Chile. The murder rate in Port Moresby, Papua New Guinea is 23 times that of London. 32,719 murder cases were registered across India in 2007. The Pakistan reported 9,631 murders. UNICEF has reported that in India, more than 5,000 brides are killed annually because their dowries are considered insufficient.

Murder is the leading cause of death for African American males aged 15 - 34. In the year 2005 the Black homicide victimization rate was 6 times higher than the rate for Whites at

20.6 per 100,000, with 94% of Black homicide victims being killed by a Black offender. In London in 2006, 75% of the victims of gun crime and 79% of the suspects were "from the African/Caribbean community." Murder demographics are affected by the improvement of trauma care, leading to reduced lethality of violent assaults - thus the murder rate may not necessarily indicate the overall level of social violence.

Development of murder rates over time in different countries is often used by both supporters and opponents of capital punishment and gun control. Using properly filtered data, it is possible to make the case for or against either of these issues. For example, one could look at murder rates in the United States from 1950 to 2000, and notice that those rates went up sharply shortly after a moratorium on death sentences was effectively imposed in the late 1960s. This fact has been used to argue that capital punishment serves as a deterrent and, as such, it is morally justified. Capital punishment opponents frequently counter that the United States has much higher murder rates than Canada and most European Union countries, although all those countries have abolished the death penalty. Gun control advocates further point out that, unlike the United States, many European countries disallow gun ownership by private citizens but Switzerland has the least restrictive firearm laws and corresponding higher gun murder deaths. Canada introduced a comprehensive Firearms Certificate program in 1977, which was followed by a sharp decline in its homicide rate (and its firearm homicide rate) however firearm homicide rates have crept back up to pre-1977 levels by 2005 even though the overall rate remains less. Overall, the global pattern is too complex and, on average, the influence of both these factors may not be significant and could be more social, economic and cultural.

In Section 2 of this course you will cover these topics:

- Crimes Against The Person: Violence
- Crimes Against Property
- Treason, Terrorism, And Wartime Criminal Justice

Topic : Crimes Against The Person: Violence

Topic Objective:

At the end of this topic student would be able to:

- Understand the Psychology and sociology of Violence

- Learn about Law of Violence
- Understand Religious and political ideology

Definition/Overview:

This topic explains a broad exposure of mans inhumanity to man and illustrates the various ways that the law has attempted to prevent and punish such actions. Here the crimes that cause harm to other people, not including murder, are listed and placed within the context of criminal law.

Key Points:

1. Psychology and sociology of Violence

The causes of violent behavior in humans are often topics of research in psychology and sociology. Neurobiologist Jan Volavka emphasizes that for those purposes, violent behavior is defined as overt and intentional physically aggressive behavior against another person. Scientists disagree on whether violence is inherent in humans. Among prehistoric humans, there is archaeological evidence for both contentions of violence and peacefulness as primary characteristics. Since violence is a matter of perception as well as a measurable phenomenon, psychologists have found variability in whether people perceive certain physical acts as 'violent'. For example, in a state where execution is a legalisedpunishment we do not typically perceive the executioner as 'violent', though we may talk, in a more metaphorical way, of the state acting violently. Likewise understandings of violence are linked to a perceived aggressor-victim relationship: hence psychologists have shown that people may not recognise defensive use of force as aggressive or violent at all, even in cases where the amount of force used is significantly greater than in the original aggression.

2. Diagnosis of psychiatric disorder

The American Psychiatric Association planning and research committees for the forthcoming DSM-V (2012) have canvassed a series of new Relational disorders which include Marital Conflict Disorder WithoutViolence or Marital Abuse Disorder (Marital Conflict Disorder With Violence). Couples with marital disorders sometimes come to clinical attention because the couple recognize long-standing dissatisfaction with their marriage and come to the clinician on their own initiative or are referred by an astute health care professional.

Secondly, there is serious violence in the marriage which is -"usually the husband battering the wife" . In these cases the emergency room or a legal authority often is the first to notify the clinician. Most importantly, marital violence "is a major risk factor for serious injury and even death and women in violent marriages are at much greater risk of being seriously injured or killed (National Advisory Council on Violence AgainstWomen 2000)." The authors of this study add that "There is current considerable controversy over whether male-to-female marital violence is best regarded as a reflection of male psychopathology and control or whether there is an empirical base and clinical utility for conceptualizing these patterns as relational.

3. Law of Violence

Sociologist Max Weber stated that state power is the monopoly on the legitimate use of physical force on a specific territory. Law enforcement is the main means of regulating nonmilitary violence in society. Governments regulate the use of violence through legal systems governing individuals and political authorities, including the police and military. Most societies condone some amount of police violence to maintain the status quo and enforce laws. However, German political theorist Hannah Arendt noted: "Violence can be justifiable, but it never will be legitimate ... Its justification loses in plausibility the farther its intended end recedes into the future. No one questions the use of violence in self-defence, because the danger is not only clear but also present, and the end justifying the means is immediate". In the 20th century in acts of democide governments may have killed more than 260 million of their own people through police brutality, execution, massacre, slave labor camps, and through sometimes intentional famine.

Violent acts that are not carried out by the military or police and that are not in self-defence are usually classified as crimes, although not all crimes are violent crimes. Damage to property is classified as violent crime in some jurisdictions but not in others. It is usually considered a less serious offense unless the damage injures, or potentially could injure, others. Unpremeditated or small-scale acts of random violence or coordinated violence by unsanctioned private groups usually are prosecuted. While most societies condone the killing of animals for food and sport, increasingly they have adopted more laws against animal cruelty.

4. War violence and the law

War is a state of prolonged violence, large-scale conflict involving two or more groups of people, usually under the auspices of government. War is fought as a means of resolving territorial and other conflicts, as war of aggression to conquer territory or loot resources, in national self-defense, or to suppress attempts of part of the nation to secede from it.

Since the Industrial Revolution, the lethality of modern warfare has steadily grown. World War I casualties were over 40 million and World War II casualties were over 70 million.

Nevertheless, some hold the actual deaths from war have decreased compared to past centuries. In War Before Civilization, Lawrence H. Keeley, a professor at the University of Illinois, calculates that 87% of tribal societies were at war more than once per year, and some 65% of them were fighting continuously. The attrition rate of numerous close-quarter clashes, which characterize endemic warfare, produces casualty rates of up to 60%, compared to 1% of the combatants as is typical in modern warfare. Stephen Pinker agrees, writing that in tribal violence, the clashes are more frequent, the percentage of men in the population who fight is greater, and the rates of death per battle are higher.

Jared Diamond in his award-winning books, Guns, Germs and Steel and The Third Chimpanzee provides sociological and anthropological evidence for the rise of large scale warfare as a result of advances in technology and city-states. The rise of agriculture provided a significant increase in the number of individuals that a region could sustain over hunter-gatherer societies, allowing for development of specialized classes such as soldiers, or weapons manufacturers. On the other hand, tribal conflicts in hunter-gatherer societies tend to result in wholesale slaughter of the opposition (other than perhaps females of child-bearing years) instead of territorial conquest or slavery, presumably as hunter-gatherer numbers could not sustain empire-building.

5. Religious and political ideology

Many Ahmedabad buildings were set on fire during 2002 Gujarat violence Religious and political ideologies have been the cause of interpersonal violence, and violent riots, political repression, ethnic cleansing and genocide throughout history. Ideologues often falsely accuse others of violence, such as the ancient blood libel against Jews, the medieval accusations of

casting witchcraft spells against women, caricatures of black men as violent brutes that helped excuse the late nineteenth century Jim Crow laws in the United States, and modern accusations of satanic ritual abuse against day care center owners and others. Both supporters and opponents of the twenty-first century War on Terrorism regard it largely as an ideological and religious war. Vittorio Bufacchi describes two different modern concepts of violence, one the minimalist conception of violence as an intentional act of excessive or destructive force, the other the comprehensive conception which includes violations of rights, including a long list of human needs. These concepts are reflected in conflicts between left wing anti-capitalists and right wing pro-capitalists. Anti-capitalists assert that capitalism is violent. They believe private property, trade, interest and profit survive only because police violence defends them and that capitalist economies need war to expand. Many contest calling any form of property damage violent. Similarly, many anti-capitalists lambast what they call structural violence which denotes a form of violence in which social institutions kill people slowly by preventing them from meeting their basic needs, often leading further to social conflict and violence. Supporters of capitalism are wary of a wide definition of violence that requires the state and its violent enforcement agencies to fulfill all needs denied by structural violence. However, unlike those critics who support state capitalism, free market supporters argue that it is violently enforced state laws intervening in markets which cause many of the problems anti-capitalists attribute to structural violence. Throughout history, most religions and individuals like Mahatma Gandhi have preached that humans are capable of eliminating individual violence and organizing societies through purely nonviolent means. Gandhi himself once wrote: A society organized and run on the basis of complete non-violence would be the purest anarchy. Modern political ideologies which espouse similar views include pacifist varieties of voluntarism, mutualism, anarchism and libertarianism.

6. Health and prevention

The Centers for Disease Control and Prevention (CDC) defines violence as "Injury inflicted by deliberate means", which includes assault, as well as "legal intervention, and self-harm". The World Health Organization (WHO) in its first World Report on Violence and Health defined violence as "the intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopmentor deprivation." WHO estimates that each year around 1.6 million lives are lost worldwide due

to violence. It is among the leading causes of death for people ages 15-44, especially of males. Recent estimates for murders per year in various countries include: 55,000 murders in Brazil, 30,000 murders in Russia, 25,000 murders in Colombia, 20,000 murders in South Africa, 15,000 murders in Mexico, 14,000 murders in the United States, 11,000 murders in Venezuela, 6,000 murders in El Salvador, 1,600 murders in Jamaica, 1000 murders in France, 500 murders in Canada, and 200 murders in Chile.

7. Structural violence

This form of violence corresponds with the systematic ways in which a given social structure or social institution kills people slowly by preventing them from meeting their basic needs. The proof of concept is given by Andr Gernez : he observed hundreds of millions of deaths caused by degenerative diseases avoidable by a cheap and simple prevention protocol.

8. Violence in the media

Media violence research Government censorship has sometimes addressed violence in media. In the United States the FCC regulates television and radio, as does the CRTC in Canada. Media also self-regulate, as through many movie ratings and the Entertainment Software Rating Board for video games. Violent content has been a central part of video game controversy. Critics like Dave Grossman and Jack Thompson argue that violence in games hardens children to unethical acts.

Topic : Crimes Against Property

Topic Objective:

At the end of this topic student would be able to:

- Understand Theft and Receiving and its classification in Crimes against property
- Learn about Property lawfully in someone's possession
- Learn about Dishonest interference with merchandise
- Discuss and explain the Passing of valueless cheques

Definition/Overview:

This topic focuses on crimes that are committed against individual people to those that are involving property. This chapter is designed to give students a broad exposure to the various crimes in this category.

Key Points:

1. Theft and Receiving

A person is guilty of theft if the person deals with property dishonestly and without the owner's consent. The person must also intend either to deprive the owner permanently of the property, or to make a serious encroachment on the owner's proprietary rights.

Receiving stolen property from another is punishable as a form of theft. The charge may be described either as 'theft' or 'receiving'. If a person is charged with receiving, the court may, if satisfied beyond reasonable doubt that the defendant is guilty of theft but not that the theft was committed by receiving stolen property from another, find the defendant guilty of theft.

2. Property lawfully in someone's possession

A person may commit theft of property that has come lawfully into his or her possession. An example is theft of property by an employee.

3. Misuse of powers

If force is used or threatened in a theft, the offence becomes the more serious charge of robbery. A person who commits theft is guilty of robbery if the person uses, or threatens to use, force against another in order to commit the theft or to escape from the scene of the offence. The force or threat must occur at the time of, or immediately before or after, the theft.

4. Robbery

If force is used or threatened in a theft, the offence becomes the more serious charge of robbery. A person who commits theft is guilty of robbery if the person uses, or threatens to use, force against another in order to commit the theft or to escape from the scene of the offence. The force or threat must occur at the time of, or immediately before or after, the theft.

5. Dishonest interference with merchandise

A person who dishonestly interferes with merchandise, or a label attached to merchandise, so that the person or someone else can get the merchandise at a reduced price is guilty of an offence. (A dictionary definition of 'merchandise' is 'things for sale in a store'.

6. Deception

Deception is an offence to someone and, by doing so, to yourself or someone else, or to cause someone. Common examples of deception are drawing money from an automatic teller machine knowing there are insufficient funds, or purchasing goods with another person's credit card without that person's permission to use it.

7. Illegal use

Driving, using (even as a passenger), or interfering with a motor vehicle knowing that such use is without the owner's consent is a serious offence under the Criminal Law Consolidation Act 1935 [s.86A]. The maximum penalty for a first offence is up to two years in gaol. For a second offence, the penalty is a minimum of three months up to a maximum of four years gaol. A person convicted of illegal use of a motor vehicle will also be disqualified from driving for at least twelve months [s.86A(2)]. This applies to both first and subsequent offences.

8. Passing valueless cheques

Any person who obtains any goods, money, credit, benefit or advantage by passing a cheque which is not paid on presentation is guilty of an offence carrying a maximum penalty of two years imprisonment or $10,000 fine [Summary Offences Act 1953 s.39].

A defenceexists if a person can show that at the time he or she had reasonable grounds for believing the cheque would be paid in full on presentation and he or she had no intent to defraud. The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the cheque was drawn is not of itself a defence.

9. Serious criminal trespass

This offence applies if a person enters or remains in a place (other than a place that is open to the public) with the intention of committing an offence involving theft, or against a person (such as assault), or against property (such as arson).

10. Unlawful possession

It is an offence for a person to have in his or her possession goods which the police suspect have been unlawfully obtained. Once the police establish a reasonable suspicion that the goods were unlawfully obtained, the person must prove, on the balance of probabilities, that

the goods were lawfully come by. Unlawful possession is generally used when a person has stolen goods in their possession but the prosecution are unable to establish that they are responsible for the theft itself.

11. Damaging Property

It is an offence to intentionally or recklessly damage another person's property. The damage need not be intentional. For example, being involved in a brawl (other than by way of self defence or defence of another) is also reckless behaviour and any damage may also constitute the offence of property damage.

12. Bill posting and graffiti

It is an offence for a person, without lawful authority, to attach a handbill, poster or placard to a building, wall, fence, structure, road, footpath or object.

Topic : Treason, Terrorism, And Wartime Criminal Justice

Topic Objective:

At the end of this topic student would be able to:

- Understand the Purposes of the laws
- Learn about Treason
- Understand the Conduct of warfare

Definition/Overview:

This topic explains the intricacies of criminal law during times of conflict. Historical background on wartime precedents provides the necessary structure on which to hang all future wartime criminal justice discussions. Following the 09/11/01 terrorist attacks, this topic has become one of great emphasis and debate. It seems likely that this area of jurisprudence will be developing quickly in the near future. Legal professionals with an understanding of the tools used to reign in crime during times of war as well as the limitations of those tools are becoming increasingly needed in todays globalizedworld.

Key Points:

1. Purposes of the laws

It has often been commented that creating laws for something as inherently crimefuland lawless as war seems like a lesson in absurdity. However, based on the adherence to what

amounted to customary international law by warring parties through the ages, it was felt that codifying laws of war would be beneficial.

Some of the central principles underlying laws of war are:

- Wars should be limited to achieving the political goals that started the war (e.g., territorial control) and should not include unnecessary destruction;
- Wars should be brought to an end as quickly as possible;
- People and property that do not contribute to the war effort should be protected against unnecessary destruction and hardship;
- To this end, laws of war are intended to mitigate the evils of war by:
- Protecting both combatants and noncombatants from unnecessary suffering;
- Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians;
- Facilitating the restoration of peace.

2. Treason

In law, **treason** is the crime that covers some of the more serious acts of disloyalty to one's sovereign or nation. Historically, treason also covered the murder of specific social superiors, such as the murder of a husband by his wife (treason against the king was known as high treason and treason against a lesser superior was petit treason).

3. Terrorism,

According to the Merriam-Webster online dictionary, is the systematic use of terror, "violent or destructive acts (as bombing) committed by groups in order to intimidate a population or government into granting their demandsAtpresent, there is no internationally agreed upon definition of terrorism. Common definitions of terrorism refer only to those acts which:

- are intended to create fear (terror),
- are perpetrated for an ideological goal (as opposed to a materialistic goal or a lone attack), and
- deliberately target (or disregard the safety of) non-combatants

The word terrorism is politically and emotionally charged, and this greatly compounds the difficulty of providing a precise definition. The presence of non-state actors in widespread armed conflict has created controversy regarding the application of the laws of war. The

history of terrorist organizations suggests that they do not practice terrorism only for its political effectivenessIndividual terrorists are also motivated by a desire for social solidarity with other members of their organisation Terrorism has been practiced by a broad array of political organizations for furthering their objectives. It has been practiced by both right-wing and left-wing political parties, nationalistic groups, religious groups, revolutionaries, and ruling governments.

4. Conduct of warfare

Among other issues, the laws of war address declaration of war, acceptance of surrender and the treatment of prisoners of war; military necessity along with distinction and proportionality; and the prohibition of certain inhumane weapons which cause unnecessary suffering. It is a violation of the laws of war to engage in combat without meeting certain requirements, among them the wearing of a distinctive uniform or other distinctive signs visible at a distance, and the carrying of weapons openly. Impersonating soldiers of the other side by wearing the enemy's uniform is allowed, though fighting in that uniform, like fighting under a white flag, is perfidy which is forbidden, as is the taking of hostages.

5. Land warfare

The **Law of Land Warfare** is that part of the **Laws of War** applicable to the conduct of warfare on land (territory) and to relationships between belligerents and neutral states. This article, derived from public domain government sources, generally describes the law as internationally understood. The conduct of armed hostilities on land is regulated by the law of land warfare which is both written and unwritten.

6. Declaration of war

Some treaties, notably the UN charter (1945) Article 2, and some other articles in the charter, seek to curtail the right of member states to declare war; as does the older Kellogg-Briand Pact of 1928 for those nations who ratified it. The Kellogg-Briand Pact was used against those charged at the Nuremberg War Trials in Germany post-World War II for waging an aggressive war.

7. Violations and applicability

Parties are bound by the laws of war to the extent that such compliance does not interfere with achieving legitimate military goals. For example, they are obliged to make every effort to avoid damaging people and property not involved in combat, but they are not guilty of a war crime if a bomb mistakenly hits a residential area.

By the same token, combatants that use protected people or property as shields or camouflage are guilty of violations of laws of war and are responsible for damage to those that should be protected.

8. Prohibitory effects

Well-known examples of such laws include the prohibition on attacking doctors or ambulances displaying a Red Cross, a Red Crescent or other emblem related to the International Red Cross and Red Crescent Movement (this sometimes leads to confusion when the British military is involved, where certain regiments use the English flag, which is also a red cross). It is also prohibited to fire at a person or vehicle bearing a white flag, since that indicates an intentto surrender or a desire to communicate. In either case, the persons protected by the Red Cross or white flag are expected to maintain neutrality, and may not engage in warlike acts; in fact, engaging in war activities under a white flag or red cross is itself a violation of the laws of war known as perfidy.

9. Remedies for violations

During conflict, punishment for violating the laws of war may consist of a specific, deliberate and limited violation of the laws of war in reprisal. Soldiers who break specific provisions of the laws of war lose the protections and status afforded as prisoners of war, but only after facing a "competent tribunal" (GC III Art 5). At that point they become an unlawful combatant but they must still be "treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial", because they are still covered by GC IV Art 5. For example in 1976 foreign soldiers fighting for FNLA were captured by the MPLA in the civil war that broke out when Angola gained independence from Portugal in 1975. In the Luanda Trial, after "a regularly constituted court" found them guilty of being mercenaries, three Britons and an American were shot by a firing squad on July 10, 1976. Nine others were imprisoned for terms of 16 to 30 years.

Spies and terrorists may be subject to civilian law or military tribunal for their acts and in practice have been subjected to torture and/or execution. The laws of war neither approve nor condemn such acts, which fall outside their scope. However, nations that have signed the UN Convention Against Torture have committed themselves not to use torture on anyone for any reason. Citizens and soldiers of nations which have not signed the Fourth Geneva Convention are also not protected by it (Article 4: "Nationals of a State which is not bound by the Convention are not protected by it".), whether they are spies or terrorists. Also, citizens and soldiers of nations which have not signed and do not abide by the Third and Fourth Geneva Conventions are not protected by them. (Article 2, of both Conventions: "[The High

Contracting Parties] shall furthermore be bound by the Convention in relation to [a Power which is not a contracting party], **if** the latter accepts and applies the provisions thereof". note: emphasis added)

In Section 3 of this course you will cover these topics:

- Crimes Against The State
- Social Crimes
- Common Law Defenses

Topic : Crimes Against The State

Topic Objective:

At the end of this topic student would be able to:

- Understand State crime in criminal law
- Learn about Crimes against the state International View

Definition/Overview:

This topic is designed to introduce students to the elements of and defenses to crimes that erode the integrity of the state.

Key Points:

1. State crime in criminal law

In criminology, **state crime** is activity or failures to act that break the state's own criminal law or public international law. For these purposes, Ross (2000b) defines a "state" as the elected and appointed officials, the bureaucracy, and the institutions, bodies and organisations comprising the apparatus of the government. Initially, the state was the agency of deterrence, using the threat of punishment as a utilitarian tool to shape the behaviour of its citizens. Then, it became the mediator, interpreting society's wishes for conflict resolution. Theorists then identified the state as the "victim" in victimless crimes. Now, theorists are examining the role of the state as one of the possible perpetrators of crime (Ross, 2000b) whether directly or in the context of state-corporate crime.

2. Crimes against the state International View

As International crimes, a state may engage in state terror and terrorism, torture, war crimes, and genocide. Both internationally and nationally, there may be corruption, state-corporate crime, and organized crime. Within its territorial borders, some crimes are either the result of situations where the state is not the direct criminal actor, e.g. arising from natural disasters or through the agency of bodies such as the police. More usually, the state is directly involved in excessive secrecy and cover-ups, disinformation, and unaccountability (including tax evasion by officials) which often reflect upper-class and nonpluralistic interests, and infringe human rights (Ross, 2000a). One of the key issues is the extent to which, if at all, state crime can be controlled. Often state crimes are revealed by an investigative news agency resulting in scandals but, even among first world democratic states, it is difficult to maintain genuinely independent control over the criminal enforcement mechanisms and few senior officers of the state are held personally accountable. When the citizens of second and third world countries which may be of a more authoritarian nature, seek to hold their leaders accountable, the problems become more acute. Public opinion, media attention, and public protests, whether violent or nonviolent, may all be criminalised as political crimes and suppressed, while critical international comments are of little real value.

3. Treason

In law, treason is the crime that covers some of the more serious acts of disloyalty to one's sovereign or nation. Historically, treason also covered the murder of specific social superiors, such as the murder of a husband by his wife (treason against the king was known as high treason and treason against a lesser superior was petit treason). A person who commits treason is known in law as a traitor.

Oran's Dictionary of the Law (1983) defines treason as: "...[a]...citizen's actions to help a foreign government overthrow, make war against, or seriously injure the [parent nation]." In many nations, it is also often considered treason to attempt or conspire to overthrow the government, even if no foreign country is aided or involved by such an endeavour.

Outside legal spheres, the word "traitor" may also be used to describe a person who betrays (or is accused of betraying) their own political party, nation, family, friends, ethnic group, religion, social class, or other group to which they may belong. Often, such accusations are

controversial and disputed, as the person may not identify with the group of which they are a member, or may otherwise disagree with the group leaders making the charge. See, for example, race traitor.

At times, the term "traitor" has been levelled as a political epithet, regardless of any verifiable treasonable action. In a civil war or insurrection, the winners may deem the losers to be traitors. Likewise the term "traitor" is used in heated political discussion typically as a slur against political dissidents, or against officials in power who are perceived as failing to act in the best interest of their constituents. In certain cases, as with the German Dolchstolegende, the accusation of treason towards a large group of people can be a unifying political message.

Murder is now generally considered the worst of crimes, but in the past, treason was thought of as worse. In English law high treason was punishable by being hanged, drawn and quartered (men) or burnt at the stake (women), the only crime which attracted those penalties (until the Treason Act 1814). The penalty was used by later monarchs against people who could reasonably be called traitors, although most modern jurists would call it excessive. Many of them would now just be considered dissidents.

In William Shakespeare's play King Lear (circa 1600), when the King learns that his daughter Regan has publicly dishonoured him, he says They could not, would not do 't; 'tis worse than murder: a conventional attitude at that time. In Dante Alighieri's Inferno, the lowest circles of Hell are reserved for traitors; Judas, who betrayed Jesus, suffers the worst torments of all. His treachery is in fact so notorious that his name has long been synonymous with traitor, a fate he shares with Benedict Arnold, Marcus Junius Brutus, and VidkunQuisling. Indeed, the etymology of the word traitor originates with Judas' handing over of Jesus to the Roman authorities: the word is derived from the Latin traditorem which means "one who delivers."

4. Misprision of treason

Misprision of treason is an offence found in many common law jurisdictions around the world, having been inherited from English law. It is committed by someone who knows a treason is being or is about to be committed but does not report it to a proper authority. It is therefore unusual in that it is a criminal offence which may be committed through inaction.

5. Sedition

Sedition is a term of law which refers to covert conduct, such as speech and organization, that is deemed by the legal authority as tending toward insurrection against the established order. Sedition often includes subversion of a constitution and incitement of discontent (or resistance) to lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are seditious libel. A seditionist is one who engages in or promotes the interests of sedition.

Because sedition is typically considered a subversive act, the overt acts that may be prosecutable under sedition laws vary from one legal code to another. Where those legal codes have a traceable history, there is also a record of the change of definition for what constituted sedition at certain points in history. This overview has served to develop a sociological definition of sedition as well, within study of persecution.

The difference between sedition and treason consists primarily in the subjective ultimate object of the violation to the public peace. Sedition does not consist of levying war against a government nor of adhering to its enemies, giving enemiesaid, and giving enemies comfort. Nor does it consist, in most representative democracies, of peaceful protest against a government, nor of attempting to change the government by democratic means (such as direct democracy or constitutional convention).

Put simply, sedition is the stirring up of rebellion against the government in power. Treason is the violation of allegiance to one's sovereign or state and has to do with giving aid to enemies or levying war. Sedition is more about encouraging the people to rebel, where treason is actually betraying the country. Sedition laws somewhat equate to Terrorism and Public Order laws.

Topic : Social Crimes

Topic Objective:

At the end of this topic student would be able to:

- Understand The Governance Strategy of the New Crime Prevention
- Understand The Social Policy Deficiencies of the New Crime Prevention

- Learn about The public goods problem

Definition/Overview:

This topic is an introduction to the category of crimes that are sometimes referred to as victimless crimes. Although there is no clear victim, individual or otherwise, these crimes are purported to be criminal acts because they somehow weaken the moral fiber of society. Both sides of the argument for and against criminalizing such activities are presented as well as how they relate to the criminal justice system.

Key Points:

1. The Governance Strategy of the New Crime Prevention

Contemporary social-scientific experts on crime prevention aspire to be practical and useful, providing governmental policy-makers, and other corporate and private actors, with prescriptions for action. Past research studies are cited, and contemporary programmes are analysed, for the evidence required for evidence-led policymaking

2. The Social Policy Deficiencies of the New Crime Prevention

There are four major social policy deficiencies of the new crime prevention that arise from its privileging of rational public action and individual instrumental rationality, and its inattention to social process and context. These are:

- the problem of compliance;
- the problem of co-ordinated action and trust;
- the problem of latent versus direct effects; and
- the public goods problem

The seemingly common-sense, everyday or natural depiction of many situational measures

3. The public goods problem

A harm like crime is not just an individual cost but also a social cost (Hope & Sparks 2000). The cost of crime not only includes the direct costs incurred by victims but also a range of social costs additionally the latter are not just financial (represented by the costs of the

criminal justice system maintained by the State) but are also generally regarded in most polities as moral costs to society at large, representing the putative consequences of lawlessness, unpunished crime and impunity. Like most public goods (or bads in this case), these social costs are non-rival and non-excludable a person suffering more of such moral costs does not mean that another suffers less; and people cannot be exempted from sharing these moral costs as long as they remain citizens, even if they do not suffer them directly. It follows that security from crime the product of crime prevention activity is also a public good in this sense as well as a private good for individuals.

4. Crime Prevention and Civil Society

Unintended Consequences Both the atomistic of situational crime prevention, and the perspective on society as a wasteland that is at the core of the crime policies of neoliberalgovernments, have forged an unholy alliance that mutually reinforces the deficiencies of both their perspectives. Whilst the former relies on opportunistic actors, the latter has tried a trickle-down model of state authority in crime prevention. In the strategy of responsibilisation, individuals, particularly corporate actors, are encouraged to employ private security and to set up devices of surveillance so as to take a greater share of what formerly had been the monopoly of the state.

5. Co-ordinatingaction and trusts in Social Crimes

Whether it concerns private individuals (the community), local service agencies, or corporate bodies, theidealised method for the creation and delivery of the goods of crime prevention has been that of partnership. There are, of course, many reasons why the call for partnership and co-ordination has abiding political appeal, both generally**.**

The problem of latent and indirect effects. The behaviouralbasis for the new crime sciences posits direct effects of prevention measures on the recipients, usually offenders. The target-hardening of individual dwellings is meant to deter would-be offenders from targeting specifically the dwelling so hardened; while the administration of developmental prevention measures is meant to forestall individuals in receipt of those measures from developing criminal tendencies.

6. Crime

A normative definition views crime as deviant behavior that violates prevailing norms cultural standards prescribing how humans ought to behave normally. This approach considers the complex realities surrounding the concept of crime and seeks to understand how changing social, political, psychological, and economic conditions may affect the current definitions of crime and the form of the legal, law-enforcement, and penal responses made by society.

These structural realities remain fluid and often contentious. For example: as cultures change and the political environment shifts, societies may criminalise or decriminalise certain behaviours, which will directly affect the statistical crime rates, determine the allocation of resources for the enforcement of laws, and (re-)influence the general public opinion.

Similarly, changes in the collection and/or calculation of data on crime may affect the public perceptions of the extent of any given "crime problem". All such adjustments to crime statistics, allied with the experience of people in their everyday lives, shape attitudes on the extent to which the State should use law to enforce any particular social norm. There are many ways in which behaviour can be controlled without having to resort to the criminal justice system.

Indeed, in those cases where no clear consensus exists on a given norm, the use of criminal law by the group in power to prohibit the behaviour of another group may count as an improper limitation of the second group's freedom, and the ordinary members of society may lose some of their respect for the law in general whether the disputed law is actively enforced or not.

Legislatures pass laws (called mala prohibita) that define crimes which violate social norms. These laws vary from time to time and from place to place: note variations in gambling laws, for example. Other crimes, called mala in se, count as outlawed in almost all societies, (murder, theft and rape, for example).

7. Social Deviance

Social deviance is a phenomenon that has existed in all societies where there have been norms. There are two possibilities for how an individual will act in the face of social norms;

conform or violate. There are implicit social norms and explicit social norms. Explicit social norms are not necessarily laws (such as a sign at a computer lab that says food and drink are prohibited). In reality, there is often a blend of conformity and deviance in the ways people behave. Rarely if ever does a person deviate from or conform to all norms. Furthermore, some behaviors in themselves reflect both conformity and deviance at once. Consider breaking the speed limit, which is technically a legal violation, but which is also conformist, particularly on freeways where motorists "go with the flow." That is a critical feature of deviance, conformity, and norms. Relativity abounds. That is, norms can change over time (e.g. women in the paid labor force), depend on situational context (e.g. laughing at a party as opposed to doing so at a funeral), depend on statuses (e.g. an adolescent blowing up neighbors' mailboxes as opposed to an elderly woman doing so), and any number of other factors. But it's not all relative. There are forms of deviance (and certain norms) that are about as universal as anything in the social sciences can be, such as when one maliciously harms a child. In light of the way we think about norms, deviance, and conformity, many thinkers throughout history have tried to explain the causes behind deviance.

Topic : Common Law Defenses

Topic Objective:

At the end of this topic student would be able to:

- Understand Common law Tradition and Defense
- Understand Legal Tradition and Common Law

Definition/Overview:

This topic provides relevant information pertaining to Common Law Defenses and is intended to give students a basic understanding of typical defenses used in criminal trials. It is important that paraprofessionals understand these, whether they will be helping the defense team or preparing to counter these defenses as a member of the prosecution team.

Key Points:

1. Common law Tradition and Defense

Because the adversarial and inquisitorial processes differ in how they believe truth is best determined, the two procedures give different authority to different legal actors. The inquisitorial process believes the truth will emerge if everyone works together to determine what happened in a particular case. The judge, prosecutor, and defense attorney are all investigators who are expected to bring to court whatever information they have that is relevant. The lawyers are rather passive and the judge (as the lead investigator) takes an active role by determining who will be called to testify and by asking most of the questions. Even the defendant is expected (but not required) to be cooperative; this cooperation extends to supplying information to investigators and answering questions at trial.

2. Adversarial system and Common Law

Under the adversarial system power is shared by the prosecution, defense, and court. The prosecutor represents the state in trying to prove the defendant's guilt. The defense attorney argues the client's innocence and ensures that the accused has the benefit of all the legal protections to which her or she is entitled. The judge guarantees that the players abide by the rules. This system of checks and balances differs from that of the inquisitorial process, which concentrates power in the judge.

3. Legal Tradition and Common Law

Legal tradition should not be confused with legal system however. When reference is made to a legal system, attention is drawn to the specific agencies (e.g., police, courts, corrections) and procedures (e.g., reading the Miranda warning) used to carry out the concepts of a legal tradition.

4. Common Law Countries and Defense

In addition to the reliance on precedent, common lawcountries are distinguished from those following other legal traditions by their use of the adversarial process and a jury. Believing that truth in a case will unfold from a free and open competition over which side has the correct facts, the adversarial process positions the prosecution and defenseas opponents in a contest. Each side presents evidence supporting their position and challenges evidence presented by the other side. The judge serves as a referee in this contest by ensuring that the players abide by the rules. Observing the contest are laypeople who were selected as jurors and charged with deciding whether the prosecution has proved its claims against the defendant or if the defense has placed sufficient doubt in the jurors minds regarding the

prosecution's claims. Countries differ in the specific structure and procedures they establish for their legal system, but if they maintain that laworiginates in custom, they are included among those countries following the common law legal tradition.

5. Absolute defense

Absolute defense is a legal concept for a factual circumstance or argument that, if proven, will end the litigation in favor of the defendant. The concept is not a rigid one. Statutes frequently use the term merely as a synonym to "full" or "complete". It is more often used, however, as a term of art in both criminal and civil law to refer to an underlying set of facts and laws, not raised by the complaint or indictment, which will require the defendant's dismissal even if the factual allegations of the complaining pleading are true.

Another characteristic of an absolute defense is that, once it is pled and proven, it is not subject to mitigation or collateral attack.

Examples of absolute defenses include

* Truth of an allegedly libelous statement (in modern defamation): a person cannot be made to pay damages for a defamatory statement, if the person can show that the statement is true (even if the statement is damaging, and the person said it in bad faith). This is the case in some juridictions, including the United States, but not in others, including England and Wales.

* Self-defense in a battery case: a person cannot be held criminally liable for battery if they can prove Right of self-defense under certain circumstances (e.g. where retreat was impossible, and where the use of force was not excessive).

* Different kinds of immunity can provide an absolute defense. Probably the strongest of these is sovereign immunity -- in the United States, the federal government cannot be sued in damages unless it agrees to waive its immunity, usually by legislation allowing specific claims to be brought.

Use of the word "absolute" sometimes causes confusion, because even in the law "absolute" is sometimes used simply as a synonym for "full" or "complete". As a term or art, however, there are many complete defenses which are not customarily called absolute. Most notably, innocence, while a complete defense to a criminal charge, is not generally termed "absolute", because it involves a material fact of the pleading. On the other hand, double jeopardy is more likely to be termed an absolute defense; an indictment or (other criminal initiating pleading) does not have to state that the defendant has not previously been tried on the crime, but once a defendant shows that he has been previously tried for a crime, his dismissal is required by the US Constitution.

Both an absolute defense and a complete defense must be distinguished from a partial defense. With a partial defense, the litigant hopes to mitigate the outcome of the litigation, or limit culpability, but the liability is not eliminated. Examples include diminished capacity to understand the wrongfulness of the action, or a mistake of fact that affected the intention of the litigant.

6. Affirmative Defense

An affirmative defense is a category of defense used in litigation between private parties in common law jurisdictions, or, more familiarly, a type of defense raised in criminal law by the defendant. Affirmative defense can be classified as either a justification defense or an excuse defense.[1] Affirmative defenses operate to limit, excuse or avoid a defendant's criminal culpability or civil liability, even though the factual allegations of plaintiff's claim are admitted or proven. In fact, the defendant usually must affirm that the facts asserted by the plaintiff are correct in asserting their own defense, hence, "affirmative" defense.

A clear illustration of an affirmative defense is self-defense.[2] In its simplest form, a criminal defendant may be exonerated, if he can demonstrate that he had an honest and reasonable belief that his conduct was necessary to protect himself against another's use of unlawful force.

Mistake of fact is another affirmative defense, usually used in combination with another, in which the defendant asserts that he reasonably believed the culpable act was necessary based on his observation, though given complete knowledge of the situation it is clear that the act was unwarranted. Self defense is still valid even if the defendant mistakenly believed he was in imminent danger of harmful or offensive bodily contact.

Among the most controversial affirmative defenses is the insanity defense,[3] whereby a criminal defendant, shown to be insane at the time of their crime, seeks commitment to a mental institution in lieu of imprisonment.

Most affirmative defense must be timely plead by a defendant in order for the court to consider them, or else they are considered waived by the defendant's failure to assert them. The classic unwaivableaffirmative defense is lack of subject-matter jurisdiction. What constitutes timely assertion is often itself the subject of contentious litigation.

Because an affirmative defense requires an assertion of facts beyond those claimed by the plaintiff, generally the party making an affirmative defense bears the burden of proof.[4] The burden of proof is typically lower than beyond a reasonable doubt. It can either be proof by clear and convincing evidence or a preponderance of the evidence. In some cases or

jurisdictions, however, the defense must only be asserted, and the prosecution has the burden of proving beyond a reasonable doubt that the defense is not applicable.

Rule 8 of the Federal Rules of Civil Procedure governs the assertion of affirmative defenses in civil cases filed in the United States district courts. Rule 8(c) specifically enumerates the following defenses: "accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense."

In Section 4 of this course you will cover these topics:

- Constitutional Rights Before Arrest
- Constitutional Rights After Arrest

Topic : Constitutional Rights Before Arrest

Topic Objective:

At the end of this topic student would be able to:

- Understand the implications of Before arrest Rights and the Law in the constitution
- Learn about History of the Constitutional Rights and Arrest in America
- Understand Probable cause and Arrest

Definition/Overview:

This topic gives the student an introduction to the rights guaranteed to a person suspected of committing a crime.

Key Points:

1. Before arrest Rights and the Law in the constitution

The Fourth Amendment specifies that any warrant must be judicially sanctioned for a search or an arrest, in order for such a warrant to be considered reasonable. Warrants must be supported by probable cause and be limited in scope according to specific information supplied by a person (usually a law enforcement officer) who has sworn by it and is therefore accountable to the issuing court. The Fourth Amendment only applies to governmental actors.

It does not guarantee a right to be free from unreasonable searches and seizures conducted by private citizens or organizations. The Bill of Rights originally only restricted the power of the federal government. However, in Mapp v. Ohio, 367 U.S. 643 (1961), the Supreme Court ruled that the Fourth Amendment is applicable to state governments by way of the Due Process Clause of the Fourteenth Amendment. Moreover, all state constitutions contain an analogous provision. The Fourth Amendment applies to criminal law, but not civil law, as affirmed by the Supreme Court in 1855 in the Murray v. Hoboken Land.

2. History of the Constitutional Rights and Arrest in America

In Colonial America, legislation was explicitly written to enforce English revenue gathering policies on customs. Until 1750, all handbooks for justices of the peace, the issuers of warrants, contained or described only general warrants. William Cuddihy, Ph.D. in his dissertation entitled The Fourth Amendment: Origins and Original Meaning, claims there existed a "colonial epidemic of general searches." According to him, up until the 1760s, a "man's house was even less of a legal castle in America than in England" as the authorities possessed almost unlimited power and little oversight.

In 1756, the province of Massachusetts enacted legislation that barred the use of general warrants. This represented the first law in American history curtailing the use of seizure power. Its creation largely stemmed from the great public outcry over the Excise Act of 1754, which gave tax collectors unlimited powers to interrogate colonists concerning their use of goods subject to customs and permitted the use of a general warrant known as a writ of assistance, allowing them to search the homes of colonists and seize prohibited and uncustomed goods. A crisis erupted over the writs of assistance on December 27, 1760 when the news of King George II's October 23 death arrived in Boston. All writs automatically expired six months after the death of the King and would have had to be re-issued under the name of the new King, George III, in order to remain valid.

3. Probable cause and Arrest

At common law, a police officer could arrest an individual if that individual committed a misdemeanor in the officer's presence or if the officer had probable cause to believe that the individual was committing a felony. For misdemeanor, a probable cause to believe that a wrongdoer committed a 'misdemeanor' is not sufficient for an arrest. The police officer has to actually witness the misdemeanor. The standards of probable cause differ for an arrest and a search. The government has a probable cause to make an arrest when "the facts and circumstances within their knowledge and of which they had reasonably trustworthy

information" would lead a prudent person to believe that the arrested person had committed or was committing a crime. A probable cause to arrest must exist before the arrest is made. Evidence obtained after the arrest may not apply retroactively to justify the arrest.

4. Warrant and Arrest

Under the Fourth Amendment, law enforcement must receive written permission from a court of law, or otherwise qualified magistrate, to lawfully search and seize evidence while investigating criminal activity. A court grants permission by issuing a writ known as a warrant. A search or seizure is generally unreasonable and unconstitutional, if conducted without a valid warrant, and the police must obtain a warrant whenever practicable. Searches and seizures without a warrant are not automatically unreasonable, unless one of the specifically established and well-delineated exceptions to the warrant requirement is applicable.

5. Exclusionary rule and Constitutional Powers

One way courts enforce the Fourth Amendment is with the exclusionary rule. The rule provides that evidence obtained through a violation of the Fourth Amendment is generally not admissible by the prosecution during the defendant's criminal trial.

The Court adopted the exclusionary rule in Weeks v. United States, 232 U.S. 383 (1914), prior to which all evidence, no matter how seized, could be admitted in court. Additionally, in Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920) and Nardonev. United States, 308 U.S. 338 (1939), the Court ruled that tips resulting from illegally obtained evidence are also inadmissible in trials as fruit of the poisonous tree. The rule serves primarily to deter police officers from willfully violating a suspect's Fourth Amendment rights. The rationale behind the exclusionary rule is that if the police know evidence obtained in violation of the Fourth Amendment cannot be used to convict someone of a crime, they will not violate it. In delivering the opinion of the Court, Justice Frankfurter, in Wolf v. Colorado,338 U.S. 25 (1949), rejected incorporation of the Fourth Amendment by way of the Fourteenth Amendment.Later, in Mapp v. Ohio, 367 U.S. 643 (1961), the Supreme Court explicitly overruled Wolf and made the Fourth Amendment (including the exclusionary rule) applicable in state proceedings as an essential part of criminal procedure.

6. Exceptions

In United States v. Calandra, 414 U.S. 338 (1974), the Supreme Court ruled that grand juries may use allegedly illegally obtained evidence in questioning witnesses because, to hold otherwise, would interfere with the independence of grand jury. The issue of illiegality of

search should be adjudged in a subsequent proceeding, after the defendant has been indicted. In United States v. Leon, 468 U.S. 897 (1984), the Supreme Court, applying the "good faith" rule, held that evidence seized by officers relying in good faith on a warrant was still admissible, although the warrant was later found to be defective. Evidence would be excluded, however, if an officer dishonestly or recklessly prepared an affidavit to seek a warrant, the issuing magistrate abandoned his neutrality, or the warrant lacks sufficient particularity.

The Leon case applies only to search warrants. It remains unclear whether the "good faith" exception applies to warrantless seizures in other contexts. However, the Supreme Court held in Arizona v. Evans, 514 U.S. 1 (1995) and Herring v. United States (2009), that the exclusionary rule does not apply to evidence found due to negligence regarding a government database, as long as the arresting police officer relied on that database in "good faith". The Supreme Court has held the rule does not apply in the following proceedings: probation or parole revocation hearings; tax hearings; deportation hearings; when government officials illegally seize evidence outside the United States; when a "private actor" (i.e., not a governmental employee) illegally seized the evidence; or when the illegally seized evidence is used to impeach the defendant's testimony. Furthermore, in Rakas v. Illinois, 439 U.S. 128 (1978), a defendant has standing to object to the admission of unconstitutionally seized evidence only if such seizure violated his own Fourth Amendment rights; a defendant may not assert another person's rights.

7. Border search exception

Searches conducted at the United States border or the equivalent of the border (such as an international airport) may be conducted without a warrant or probable cause subject to the "border-search" exception. Most border searches may be conducted entirely at random, without any level of suspicion, pursuant to Customs' plenary search authority. However, searches that intrude upon traveler's personal dignity and privacy interests, including strip and body cavity searches must be supported by 'reasonable suspicion.'Two federal Courts of Appeals have ruled that information on a traveler's electronic materials, including personal files on a laptop computer, may be searched at random, without suspicion.

Topic : Constitutional Rights After Arrest

Topic Objective:

At the end of this topic student would be able to:

- Understand Grand Jury Indictment
- Understand The Initial Appearance
- Learn about Plea Negotiations

Definition/Overview:

This topic discusses the criminal procedure, and the rights given to a suspect after arrest.

Key Points:

1. Grand Jury Indictment

The criminal justice process starts with a complaint or information filed with the court by the prosecutor or a grand jury indictment. The Fifth Amendment to the U.S. Constitution requires that all federal felonies must be brought by a grand jury indictment but the states are not bound by this rule so they can use grand juries or not.

2. The Arrest

The arrest can occur at either the scene of a crime or based on warrants or sworn statements ordering a court appearance, typically after the complaint, information or grand jury indictment is filed. All arrests must be based on probable cause or a reasonable belief by an officer that an offense has been committed and the defendant may have committed the offense. The police must advise a defendant of his or her Miranda Rights in connection with making an arrest, taking the suspect into custody, and conducting a custodial questioning of the defendant. The Miranda rule requires the police to advise a suspect of his or her privilege against self-incrimination, the right to remain silent, and the right to have an attorney present during questioning if so desired.

3. The Initial Appearance

At the Initial Appearance the defendant will be notified of the charges and given the opportunity to plead guilty or not guilty. After entering a plea the defendant may also have their bail set or be released, or the judge may order the defendant held in jail until the trial.

4. The Arraignment

An arraignment is the formal presentation of charges in open court and where a judge considers evidence the prosecutor presents to decide whether there is probable cause to support the charges against the defendant. The judge may downgrade or dismiss the charges

and an arraignment may take place several days or weeks after the arrest, depending on the court calendars.

5. Plea Negotiations

In many cases, the prosecutor and a defendants lawyer will negotiate a plea, also known as plea bargaining. In a plea bargain, the prosecutor may offer to reduce or dismiss some of the charges, or recommend a lighter sentence in return for a guilty plea.

6. The Trial

If a plea agreement is not reached the defendant will have a trial. Defendants have a constitutional right in both the federal and state courts to a jury trial, but may waive this right and have a bench trial. In federal court a jury verdict must be unanimous while juries in state courts may have divided verdicts. The Supreme Court has not established a firm rule on how divided a jury may be, but it must be larger than just a simple majority to convict.

7. The Verdict

Once the case is submitted to the jury for deliberation, the jurors retire to deliberate in secret. When the jury reaches a verdict, their finding is read to the defendant in open court. In a bench trial the judge will deliberate as well, but normally a judge does not take as long as a jury to reach a verdict.

8. Sentencing and Sanctions

If the defendant is found guilty, the judge may set a future date for the defendant to be sentenced. In determining the sentence a judge may use a pre-sentence report which provides a uniform assessment of a defendants overall family, medical and criminal background. In most cases the judge decides on the sentence, but in some jurisdictions the sentence is decided by the jury, particularly for capital offenses. Possible sentences range from jail time, fines, time already served or probation.

9. Post-Conviction Appeals and Motions

After the trial a defendant may request appellate review of the conviction or sentence. In some cases defendants have a right to an appeal.

10. Corrections

If a defendant is convicted they may go into some form of custody, either probation, jail or some other alternative. Probation means that the convicted felon does not go to prison but is allowed to return home, usually with some restrictions on what they can do and where they can go. Prison terms are typically served in a city or county jail if the sentence is for a year or less or in a state penitentiary if it is for more than a year. Whether you were arrested at the

crime scene, or after a complaint or a grand jury indictment was filed you should hire a criminal defense lawyer right away. If you are questioned, politely tell the law enforcement authorities or other person questioning you that you would like your lawyer present during questioning, and wait until you are provided one. This is your constitutional right.

In Section 5 of this course you will cover these topics:
- The Constitutional Right To Trial By Jury
- Constitutional Rights Post-Conviction

Topic : The Constitutional Right To Trial By Jury

Topic Objective:

At the end of this topic student would be able to:

- Understand the History of jury trials
- Learn about Connection between England and Rome
- Understand The role of jury trials

Definition/Overview:

Trial by Jury: A jury trial (or trial by jury) is a legal proceeding in which a jury either makes a decision or makes findings of fact which are then applied by a judge. It is be distinguished from a bench trial, in which a judge or panel of judges make all decisions. English common law and the United States Constitution recognize the right to a jury trial to be a fundamental civil liberty or civil right that allows the accused to choose whether to be judged by judges or a jury of peers. The use of jury trials evolved within common law systems rather than civil law systems. Jury trials are of far less importance (or of no importance) in countries that do not have a common law system.

Key Points:

1. History of jury trials

There existedin Ancient Athensa mechanism through which it was assured that no one could elect jurors, called dikaste, for their own trial. For normal cases, the courts were made up of dikastai of 500 citizens. For capital cases, those which involved death, the loss of liberty, exile, the loss of civil rights, or the seizure of property, the trial was before a jury of 1,000 to

1,500 dikastai. It isnt hard to see why the unanimity rule would be unrealistic in this kind of trial, as well as why it should be unstable as a form of government. From the beginning of the republic and in the majority of civil cases towards the end of the empire, there were tribunals with the characteristics of the jury, the Roman judges being civilian, lay and not professional. Capital trials were held in front of juries composed of hundreds or thousands of people in the commitiasor centuries, the same as in Roman trials.

2. Connection between England and Rome

The connection between England and Rome goes back to the time of Julius Caesar, when he conquered the southern part of the British isle. How deep the imprint left by the Roman institutions on the Romanised Celts is difficult to determine. With the fall of the Roman empire and the following "barbarization" of the region, historians doubt that Roman customs and laws survived. The arrival of Roman institutions to England is more widely attributed to William the Conqueror and the Normans during times of greater interest in Roman law.

3. The role of jury trials

In most common law jurisdictions, the jury is responsible for finding the facts of the case, while the judge determines the law. These "peers of the accused" are responsible for listening to a dispute, evaluating the evidence presented, deciding on the facts, and making a decision in accordance with the rules of law and their jury instructions. Typically, the jury only judges guilt or a verdict of not guilty, but the actual penalty is set by the judge. An interesting innovation was introduced in Russia in the judicial reform of Alexander II: unlike in modern jury trials, jurors decided not only whether the defendant was guilty or not guilty, but they had the third choice: "Guilty, but not to be punished", since Alexander II believed that justice without morality is wrong. In France and some countries organized in the same fashion, the jury and several professional judges sit together to determine guilt first. Then, if guilt is determined, they decide the appropriate penalty.

4. Pros and cons

In countries where jury trials are common, juries are often seen as an important check against state power. Other common assertions about the benefits of trial by jury is that it provides a means of interjecting community norms and values into judicial proceedings and that it legitimizes the law by providing opportunities for citizens to validate criminal statutes in their application to specific trials. Alexis de Tocqueville also claimed that jury trials educate citizens about self-government. Many also believe that a jury is likely to provide a more sympathetic hearing, or a fairer one, to a party who is not part of the government or other establishment interest than would representatives of the state.

This last point may be disputed. For example, in highly emotional cases, such as child rape, the jury may be tempted to convict based on personal feelings rather than on conviction beyond reasonable doubt. Former attorney, then later minister of Justice Robert Badinter, remarked about jury trials in France that they were like "riding a ship into a storm," because they are much less predictable than bench trials.

Another issue with jury trials is the potential for jurors to be swayed by prejudice, including racial considerations. An infamous case was the 1992 trial in the Rodney King case in California, in which white police officers were acquitted of excessive force in the violent beating of a black man by a jury consisting mostly of whites without any black jurors, despite an incriminating videotape of the action. This led to widespread questioning about the case and riots ensued. The positive belief about jury trials in the UK and the U.S. contrasts with popular belief in many other nations, in which it is considered bizarre and risky for a person's fate to be put into the hands of untrained laymen. Consider Japan, for instance, which used to have optional jury trials for capital or other serious crimes between 1928 and 1943. The defendant could freely choose whether to have a jury or trial by judges, and the decisions of the jury were non-binding. During the Tōjō-regime this was suspended, arguably stemming from the popular belief that any defendant who risks his fate on the opinions of untrained laymen is almost certainly guilty. Similarly, jury trials were abolished by the government of India in 1960 (this was followed by Pakistan soon afterwards) on the grounds they would be susceptible to media and public influence. One Pakistani Judge called a trial by jury "amateur justice".

5. United States

In the United States every person accused of a felony has a constitutional right to a trial by jury, which arises from Article Three of the United States Constitution, which states in part, "The Trial of all Crimes...shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed." The right was expanded with the Sixth Amendment to the United States Constitution, which states in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." Both provisions were made applicable to the states through the Fourteenth Amendment. Most states' constitutions also grant the right of trial by jury in lesser criminal matters, though most have abrogated that right in offenses punishable by fine only. Also, a person accused of any crime punishable by more than six months imprisonment is also entitled to demand trial by jury; the Supreme Court has

ruled that if imprisonment is for six months or less, trial by jury is not required, meaning a state may choose whether or not to permit trial by jury in such cases.

In the cases Apprendi v. New Jersey (2000) and Blakely v. Washington (2004), the Supreme Court of the United States held that a criminal defendant has a right to a jury trial not only on the question of guilt or innocence, but any fact used to increase the defendant's sentence beyond the maximum otherwise allowed by statutes or sentencing guidelines. This invalidated the procedure in many states and the federal courts that allowed sentencing enhancement based on "a preponderance of evidence", where enhancement could be based on the judge's findings alone. Jurors in some states are selected through voter registration and drivers' license lists. A form is sent to prospective jurors to pre-qualify them by asking the recipient to answer questions about citizenship, disabilities, ability to understand the English language, and whether they have any conditions that would excuse them from being a juror. If they are deemed qualified, a summons is issued.

6. Civil trial procedure

The right to trial by jury in a civil case is addressed by the 7th Amendment, which provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." In Joseph Story's 1883 treatise Commentaries on the Constitution of the United States, he wrote, It is a most important and valuable amendment; and places upon the high ground of constitutional right the inestimable privilege of a trial by jury in civil cases, a privilege scarcely inferior to that in criminal cases, which is conceded by all to be essential to political and civil liberty." In the United States "Civil" denotes non-criminal actions and should not be confused with Civil law jurisdictions.

The 7th Amendment does not guarantee or create any right to a jury trial; rather, it preserves the right to jury trial that existed in 1791 at common law. In this context, common law means the legal environment the United States inherited from England at the time. In England in 1791, civil actions were divided into actions at law and actions in equity. Actions at law had a right to a jury, actions in equity did not. Federal Rules of Civil Procedure Rule 2 says "[t]here is one form of action - the civil action" which abolishes the legal/equity distinction. Today, in actions that would have been "at law" in 1791, there is a right to a jury; in actions that would have been "in equity" in 1791, there is no right to a jury. However, Federal Rule of Civil Procedure 39(c) allows a court to use one at its discretion. To determine whether the action

would have been legal or equitable in 1791, one must first look at the type of action and whether such an action was considered "legal" or "equitable" in 1791. Next, the relief being sought must be examined. Monetary damages alone were purely a legal remedy, and thus entitled to a jury. Non-monetary remedies such as injunctions, rescission, and specific performance were all equitable remedies, and thus up to the judge's discretion, not a jury. In Beacon Theaters v. Westover, the U.S. Supreme Court discussed the right to a jury, holding that when both equitable and legal claims are brought, the right to a jury trial still exists for the legal claim, which would be decided by a jury before the judge ruled on the equitable claim.

7. Waiver of jury trial

The vast majority of U.S. criminal

cases are not concluded with a jury verdict, but rather by plea bargain. Both prosecutors and defendants often have a strong interest in resolving the criminal case by negotiation resulting in a plea bargain. If the defendant waives a jury trial, a bench trial is held. In United States Federal courts, there is no absolute right to waive a jury trial. Only if the prosecution and the court consent may a defendant have a waiver of jury trial. However, most states give the defendant the absolute right to waive a jury trial.

Topic : Constitutional Rights Post-Conviction

Topic Objective:

At the end of this topic student would be able to:

- Understand the Constitutional Rights, Warning and Miranda Rights
- Learn about Significance of 5th Amendment and arrest

Definition/Overview:

This topic is the final chapter addressing criminal procedure. It focuses on the rights afforded to defendants after conviction at trial..

Key Points:

1. Constitutional Rights, Warning and Miranda Rights

In the United States, the Miranda warning is a warning given by police to criminal suspects in police custody, or in a custodial situation, before they are asked guilt-seeking questions relating to the commission of a crime. A custodial situation is one in which the suspect's freedom of movement is restrained although he or she is not under arrest. An incriminating statement by a suspect will not constitute admissible evidence unless the suspect was advised of his or her "Miranda rights" and made a knowing, intelligent, and voluntary waiver of those rights (the term "Miranda rights" is somewhat misleading, as the mandated Miranda warning simply clarifies preexisting Constitutional rights). However, a 2004 Supreme Court ruling upheld state "stop-and-identify" laws, allowing police to require biographical information such as name, date of birth, and address, without arresting suspects or providing them Miranda warnings.

2. Post-Conviction and Constitutional Rights

The Supreme Court did not specify the exact wording to be used when informing a suspect of his or her rights. However, the Court did create a set of guidelines which must be followed. The ruling states:

> ..The person in custody must, prior to interrogation, be clearly informed that he or she has the right to remain silent, and that anything the person says may be used against that person in court; the person must be clearly informed that he or she has the right to consult with an attorney and to have that attorney present during questioning, and that, if he or she is indigent, an attorney will be provided at no cost to represent him or her.

As a result, American English developed the verb Mirandize, meaning "to read to a suspect his or her Miranda rights" (when the suspect is arrested). Notably, the Miranda rights do not

have to be read in any particular order, and they do not have to precisely match the language of the Miranda decision, as long as they are adequately and fully conveyed. California v. Prysock, 453 U.S. 355 (1981) .

3. Typical usage

Though every U.S. jurisdiction has its own regulations regarding what, precisely, must be said to a person when he is arrested or placed in a custodial situation, the typical warning is as follows: The courts have since ruled that the warning must be "meaningful", so it is usually required that the suspect be asked if he understands his rights. Sometimes, firm answers of "yes" are required. Some departments and jurisdictions require that an officer ask "do you understand?" after every sentence in the warning. An arrestee's silence is not a waiver. Evidence has been ruled inadmissible because of an arrestee's poor knowledge of English and the failure of arresting officers to provide the warning in the arrestee's language.

4. Significance of 5th Amendment and arrest

Generally, when defendants invoke their Fifth Amendment right against self-incrimination and refuse to testify or submit to cross-examination at trial, the prosecutor cannot punish them by commenting on their silence and insinuating that it is an implicit admission of guilt. Griffin v. California, 380 U.S. 609 (1965).Since Miranda rights are simply an extension of the Fifth Amendment which protects against coercive interrogations, the same rule also prevents prosecutors from commenting about the postarrestsilence of suspects who invoke their Miranda rights immediately after arrest. Wainwright v. Greenfield, 474 U.S. 284 (1986).However, neither the Fifth Amendment nor Miranda extend to prearrestsilence, so if a defendant takes the stand at trial (thereby waiving his Fifth Amendment rights), the prosecutor can attack his credibility with his prearrest silence (where he failed to turn himself in and confess immediately). Jenkins v. Anderson,447 U.S. 231 (1980). Under the Uniform Code of Military Justice, Article 31 provides for the right against self-incrimination. Interrogation subjects under Army jurisdiction must first be given Department of the Army Form 3881(PDF), which informs them of the charges and their rights, and sign it. The United States Navy and United States Marine Corps require that all arrested personnel be read the "rights of the accused" and must sign a form waiving those rights if they so desire, a verbal waiver is not sufficient.

5. Confusion regarding use

Due to the prevalence of American television programs and motion pictures in which the police characters frequently read suspects their rights, it has become an expected element of

arrest procedure. In the 2000 Dickerson decision, Chief Justice William Rehnquist wrote that Miranda warnings had "become embedded in routine police practice to the point where the warnings have become part of our national culture." Dickerson v. United States 530 U.S. 428(2000). However, police are only required to warn an individual whom they intend to subject to custodial interrogation at the police station, in a police vehicle, or when detained. Arrests can occur without questioning and without the Miranda warningalthough if the police do change their mind and decide to interrogate the suspect, the warning must then be given. In some jurisdictions, a detention differs at law from an arrest, and police are not required to give the Miranda warning until the person is arrested for a crime. In those situations, a person's statements made to police are generally admissible even though the person was not advised of his rights. Similarly, statements made while an arrest is in progress before the Miranda warning was given or completed are also generally admissible. Because Miranda applies only to custodial interrogations, it does not protect detainees from standard booking questions: name, date of birth, address, and the like. Because it is a protective measure intended to safeguard the Fifth Amendment privilege against self-incrimination, it does not prevent the police from taking blood without a warrant from persons suspected of driving under the influence of alcohol. (Such inspections may be incriminatory but not self-incriminatory for a suspect).

6. Equivalent rights in other countries

6.1 Australia

Within Australia, the right to silence derives from common law. The uniform position amongst the states is that neither the judge nor the jury is permitted to draw any adverse inference about the defendant's culpability, where he/she does not answer police questions. While this is the common law position, it is buttressed by various legislative provisions within the states. For instance s.464J of the Crimes Act 1958 (Vic) and s.89 of the Evidence Act 1995 (NSW). It has also been upheld by the High Court in the case of Petty v R (1991) 173 CLR 95. However, where a defendant answers some police questions, but not others, an inference may sometimes be drawn about the questions he refused to answer.

6.2 Canada

The Canadian Charter warning reads (varies by police service): "You are under arrest for (charge), do you understand? You have the right to retain and instruct counsel without delay. We will provide you with a toll-free telephone lawyer referral service, if you do not have your own lawyer. Anything you say can be used in court as evidence. Do you understand? Would you like to speak to a lawyer?"

6.3 England and Wales

Warnings regarding the right against self-incrimination may have originated in England and Wales. In 1912, the judges of the Kings Benchissued the Judges Rules. These provided that, when a police member had admissible evidence to suspect a person of an offence and wished to question that suspect about an offence, the officer should first caution the person that he was entitled to remain silent. The pre-trial operation of the privilege against self-incrimination was further buttressed by the decision in Ibrahim v R [1914] AC 599 that an admission or confession made by the accused to the police would only be admissible in evidence if the prosecution could establish that it had been voluntary. An admission or confession is only voluntary if made in the exercise of a free choice about whether to speak or remain silent:

6.4 France

In France, any person brought in police custody (garde vue) must be informed of the maximal duration of the custody, and a number of rights, in a language that this person understands. Among these rights are: the possibility of warning a relative or employer of the custody, that of asking to be examined by a physician, that of discussing the case with an attorney. Witnesses against whom there exist indictments (or who are cited as suspects) cannot be heard under oath, and thus do not risk prosecution for perjury. Such witnesses must be assisted by an attorney, and must be informed of these rights when heard by the judiciary. Suspects (any person against whom exist plausible causes of suspicion) must be informed of their right to remain silent, to make statements, or to answer questions. In all cases, an attorney can be designated by the head of the bar if necessary.