

“Criminal Law”.

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

- First Things First: The Nature And Limits Of Criminal Law.
- Constitutional Limits On Criminal Law
- The General Principles Of Criminal Liability: Actus Rea

Topic : First Things First: The Nature And Limits Of Criminal Law

Topic Objective:

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

- Defining (what crime is, as well as quasi-crimes of Omission)
- Classifying (crimes by statutory scheme, evil, penalty, or jurisprudence)
- Grading (crimes by seriousness, or amount of social harm)
- Prohibiting (social control for the betterment of society)
- Punishing (allows a government to inflict pain on its own citizens)

Definition/Overview:

Crimes: Crimes, we might initially say, are kinds of conduct that are defined by the law as wrong. However, even this crude initial approximation must be qualified. First, we can say that crime always involves conduct only if we stretch the meaning of that term so far as to empty it of substantial content we can (whether justly or not) be held criminally liable not merely for what we do, or fail to do, but for what we are, perhaps even for what we think for what we intend, for instance. But for the moment we can talk of conduct, since it captures the most familiar kinds of crime. Second, we must not, or must not yet, read wrong here as morally wrong: it will be a further question whether the criminal law either must of its very nature, or should as a matter of normative theory, portray the conduct it criminalises as morally wrong; all we should say so far is that it portrays it as being in some way wrong or defective, something that those bound by the law should not do (this point is often expressed by saying that the criminal law prohibits the conduct that it defines as criminal, but that this is misleading). That is, for instance, the defining difference between a law that defines a certain kind of conduct as a crime which is punishable by a fine, and one that subjects that conduct to

a tax: both laws might be intended to reduce the incidence of the conduct, but the former, unlike the latter, does by defining and punishing it as wrong.

Key Points:

1. Crimes differ from extra-legal wrongs in that they are defined as wrongs by the law: they are not, or not just, wrongs in terms of some extra-legal social standard of morality, prudence, or etiquette, but wrongs that are defined and recognised as such by the law. (This leaves open the question of whether the criminal law can create wrongs, or whether it rather gives formal recognition to wrongs whose wrongfulness is initially determined by extra-legal standards.) But not all legally defined wrongs are criminal wrongs.

We can usefully begin by identifying some of the salient features of the systems of criminal law with which we are familiar (contemporary systems of municipal criminal law): features by which we can distinguish the criminal law both from non-legal phenomena and from other types of law. It would be unproductive to ask whether all these are strictly necessary features of criminal law, or whether we might still count a practice that lacked one or more of them as a system of criminal law; the most we can sensibly claim is that these are defining features of the paradigm of criminal law as we understand and experience it.

- 1.1. First, some legal systems distinguish between crimes properly speaking and other kinds of penalised conduct. So German law distinguishes Strafrecht and Straftaten (criminal law and crimes) from Ordnungswidrigkeitenrecht and Ordnungswidrigkeiten (regulations and violations; Weigend 1988); and the American Law Institute's Model Penal Code distinguishes crimes from violations (s. 1.04). Violations might include conduct that other legal systems count as criminal, although even in systems in which it counts formally as criminal, it is often seen as not really criminal (thus German Ordnungswidrigkeitenrecht includes many traffic violations that English law defines as crimes, although many drivers would deny that they are real crimes). They are distinguished from crimes by the procedures for dealing with them, the relative mildness of the sanctions they attract, and the absence of some of the other consequences that typically attach to conviction for a crime such as a criminal record. I will not discuss this distinction further here, save to note that it can be justified (if it is justifiable) either on pragmatic grounds mere violations are not

dangerous enough to justify mobilising the expensive resources of the criminal justice system; or on principled grounds they do not involve serious enough wrongs to merit the condemnation that a criminal conviction,

- 1.2.** Second, most legal systems distinguish criminal from civil wrongs: wrongs that ground a criminal prosecution, from those that ground a civil case for damages brought by the injured party. We can clarify the concept of crime by focusing on this distinction. The same conduct often constitutes both a criminal and a civil wrong, as is shown most dramatically when, after a failed prosecution or a decision not to prosecute, the victim or her family bring a civil case for damages against the alleged wrongdoer: but we can still usefully ask what the difference is between defining and treating conduct as a criminal wrong and defining and treating it as a civil wrong.
- 1.3.** Civil wrongs are typically treated as private matters in the sense that it is for the victim to investigate what happened, to identify the alleged wrongdoer, and to bring a case against him. The law provides the institutions (the courts, arbitration panels) through which that case can be brought; it lays down the norms by reference to which the case is decided; it specifies what remedies are available; it might also help successful plaintiffs to extract damages from unwilling defendants. But it is for the injured party to bring, or to decide not to bring, a case; to pursue, or to abandon, that case; to insist on extracting the damages the court awarded, or to forgo them. The case is described and understood as P v D: P sues D, and the case thus belongs to her. The criminal law, however, provides for the public investigation, prosecution and punishment of crimes: for a police force, tasked with investigating (as well as preventing) crime and detecting criminals; for a system of criminal courts, in which defendants are tried for the crimes that they are alleged to have committed (and whose workings are structured by a complex array of procedural rules and requirements); for a system of punishments that will be imposed by the courts, and administered by other institutions and officials. Now the police act in the name and with the authority not just of the victim, but of the whole polity; it is for the prosecuting authority, not for the victim, to decide whether, and on what charge, anyone will be prosecuted. If the victim does not want the case to go to court, the prosecutors will in fact often not proceed with it because it would be hard to do so without the victim's willing co-operation, or out of concern for the victim's feelings;

but cases can be prosecuted despite the victim's unwillingness (this can be an important issue for prosecutors dealing with domestic violence). When the case comes to court, it is described not as P v D, but as State v D, or People v D, or Queen v D: D is prosecuted not by an individual victim, but by the polity, in societies that have not yet shaken off the trappings of undemocratic monarchy, by its sovereign. (Some legal systems allow the possibility of private prosecutions; this is one of several ways in which the distinction between criminal and civil law is neither sharp nor watertight.)

- 1.4.** The difference between the public character of criminal wrongs and the private character of civil wrongs is also evident in the outcomes of the two kinds of legal process. A civil case typically results in a finding either for the plaintiff, or for the defendant; if the plaintiff wins, the defendant may have to pay her damages, as compensation for the harm that she suffered, and for which she has sued. Criminal cases, by contrast, result in a conviction or an acquittal; if the defendant is convicted, he is liable to suffer a punishment. Criminal convictions express an explicit condemnation of the defendant: he has been proved guilty of doing wrong, and the verdict is focused on that wrong. A verdict for the plaintiff in a civil case will typically imply that the defendant acted wrongfully, but the focus of the case, and thus of the verdict, is more on who should pay for whatever harm was caused.
- 1.5.** Finally, the punishments imposed for crimes differ from the damages that are awarded as a result of a civil suit and not just in the fact that whereas the successful plaintiff can forego the damages she is awarded; it is not for the victim of a crime to decide whether the sentence imposed by the court should be carried out. Often punishments take a different material form from civil damages, as when an offender is imprisoned or put on probation. Even when their material form does not differ, however (as when a convicted offender is fined 1,000, and the defendant who loses a civil case is ordered to pay 1,000 in damages), their meanings differ. First, even if the severity of criminal punishments is to some degree determined by the extent of the harm caused (itself a controversial matter), it typically also depends on the nature and degree of the offender's culpability for that harm: someone who kills or injures recklessly can expect to be punished more severely than someone who causes death or injury by a negligent act or omission. Civil damages, however, are proportioned to

the harm actually caused; some kind of culpability, such as negligence, might be a threshold requirement, in that the plaintiff must prove that the defendant was at least negligent in relation to the harm he caused; but the damages are not proportioned to the degree of the defendant's culpability, since their purpose is simply to provide compensation for the harm caused. Second, punishments are intended to be painful or burdensome, whereas civil damages are not (indeed, this is standardly cited as a defining feature of punishment). If I am ordered to pay 1,000 compensation for damage that I negligently caused to your property, making that payment might be burdensome for me, if I am not well off, or no burden at all, if I am rich (or have suitable insurance): but the damages serve their purpose in either case. If, however, I am fined as punishment for a crime, that fine is intended to be burdensome: that is why many sentencing authorities aim to proportion fines to the offender's means, to ensure that both rich and poor offenders are burdened fairly and proportionately; and that is what is wrong with the idea that one might take out insurance to cover the cost of fines.

2. These distinctions between criminal and civil outcomes are often blurred in practice. For instance, English criminal courts can include a compensation order in the sentence that they impose, thus bringing a dimension of civil law into the criminal process some civil systems allow for the award of punitive damages, which are intended to burden the defendant. More generally, civil plaintiffs might be seeking an apology rather than damages that could compensate for the material harm they have suffered this is often true in libel cases, for instance, or in cases in which bereaved parents sue the hospital or corporation that negligently caused their child's death: in such cases, any damages that are awarded might best be rationalised as a way of giving material form and force to the apology; but if they are to serve that role, they must be burdensome. Nonetheless, we can still draw a useful analytical distinction between two paradigms: a civil paradigm, which focuses on harm that has been caused and on the question of where the costs of that harm should fall; and a criminal paradigm, which focuses on a wrong that has been done and on the question of who if anyone should be condemned and punished for that wrong. The civil paradigm is a matter of private law in the sense that it aims to provide compensation and satisfaction for the aggrieved plaintiff, if she chooses to pursue the case; the criminal paradigm is, by contrast, a matter of public law in the sense that the case is brought and

the punishment is imposed in the name and on behalf of the whole polity rather than any individual victim.

3. The Criminal Law has much power. In fact, it's too powerful. We need to have checks or limits on this power, which is what this lecture is about. We now have a sketch of the criminal law as a distinctive kind of human institution. This then raises three further questions. First, should we have such an institution at all? Second, if we should, what goals or purposes should it serve? Third, what should its content be, or how should that content be determined: what kinds of conduct should be criminal, and how should we go about deciding that issue?

4. The following limits on Criminal Law are in alphabetical order:

- **Adversary System:** A limitation on Criminal Law that controls the establishment of guilt. It guarantees the average citizen the right to have a prosecutor and a defense counsel oppose each other in a trial if they are unwilling or unable to dispose of the case prior to trial. The prosecution also has the burden of proof, initially.
- **Bill of Attainder:** This refers to any legislative act which inflicts punishment without a criminal trial. It has been prohibited since 1867 and its original purpose was to eliminate lynching. Its modern use is most closely related to government regulation of certain professions and the privileges of executive immunity. For example, it prohibits loyalty oaths to practice law, and allows Presidents to refuse to turn over private documents to special prosecutors.
- **Bill of Rights:** The first ten amendments to the Constitution limit the ability of government to define certain acts as criminal, and also have important things to say about the enforcement of Criminal Law.
- **Corpus Delicti:** This Latin phrase meaning "body of the crime" means that the prosecution must prove ALL elements of a crime. To do this, the prosecution must consult the specific statute of the state that has jurisdiction. Although there are presumptions that the prosecution will also prove the identity of the accused and be able to produce a victim, those factors are NOT technically part of the concept of Corpus Delicti. For example, the corpus delicti of burglary consists of six elements:
 - Breaking
 - and entering

- the dwelling
 - of another
 - at nighttime
 - with the intent to commit a felony therein
- In the law of homicide, however, one of the elements is:
 - the death, and in this case, the ability to find or account for the body is part of the corpus delicti of homicide
- **Corroboration of Confession:** The general rule is that a conviction cannot rest alone upon an accused's out of court confession. Admission of the confession is only permitted if proof of Corpus Delicti will be presented later.
- **Cruel and Unusual Punishment:** This is an 8th Amendment protection where the words "cruel" and "unusual" have never really been adequately defined. A piecemeal approach has been followed in which the distinction is made between "ancient" and "modern" forms of punishment with the assumption being that ancient methods are unconstitutional and most modern methods are upheld. Recent issues have involved the question of proportionality, where habitual offenders with prior records receive stiffer sentences for the same crime as those committed without prior records.
- **Double Jeopardy:** The same sovereign entity cannot prosecute the same individual twice for the same act or the same crime. This gets at the matter of Jurisdiction, and what is theoretically possible and what is done in practice. As a practical matter, both federal and state governments do NOT prosecute the same person, although they theoretically could, unless there are some dissimilarities to be found in the nature of the crime OR the first jurisdiction to prosecute does so unsuccessfully.
- **Due Process of Law:** A phrase found in the 5th & 14th Amendment as well as every state constitution which forbids the government from taking life, liberty, or property without due process of law. At the fundamental level, due process ensures at a minimum the right to fair notice and a fair hearing. On other levels, it guarantees certain inalienable rights and freedoms. On a practical level, it is usually determined by various balancing tests that pit the needs of the individual against the needs of the government. The implied right to privacy also prohibits making crimes out of behavior protected by the right of privacy.
- **Equal Protection of Law:** The government cannot make a law applicable to only one sex, race, or religion or treat one group of citizens differently from other groups without a rational reason. This idea is related to the notion of Due Process at the level of fundamental freedom,

tying together fairness and inalienable right. The principle is that all persons must be treated alike, not only in law enactment but in law enforcement. Historically, it was used to strike down miscegenation laws, and contemporary examples would include the "powder-rock" cocaine controversy for blacks and "sexual harassment" statutes for women.

- **Ex Post Facto Laws:** Both the federal and state governments are prohibited from altering the law in any way so as to be detrimental to an accused person retroactively. This can occur in many ways:
 - the legislature passes a new law, and someone is prosecuted for committing the act before the law was enacted (unless there is a "savings" clause in the statute);
 - the legislature increases the penalties for an existing law, and someone is punished under the new penalty when they committed the act while the old penalty was in effect;
 - the legislature decreases the burden of proof, or in any way makes it easier for the prosecution to convict, persons who committed crime under the old system must be tried under the old rules.; and
 - the legislature adjusts the amount of good time credit or eligibility for parole to alleviate prison overcrowding, and then restores the old formula once the overcrowding problem has been solved
- **Jurisdiction:** The court system is organized by this, and there are three different types of jurisdiction: person, place, and type of crime. Different courts are limited by jurisdiction in what cases can be brought before them.
- **Presumption of Innocence:** All the presumptions of law independent of evidence are in favor of the accused, and every person is presumed innocent until proven guilty. This concept is closely related to the reasonable doubt standard and the notion of moral certainty. Reasonable doubt is the last presumption of innocence in criminal procedure, and actually it's an "entitlement" to the benefit of acquittal. Moral certainty is a term for the judgment call that remains to be made after reasonable doubt has been eliminated.
- **Status Offenses:** The law cannot make being a certain kind of person a crime. This determination is made through analogy with a chronic medical condition: the law cannot criminalize having a "common cold". Most cases of chronic alcoholism don't qualify, but drug laws criminalizing the status of being an "addict" do. In practice, the law has many kinds of status offenses.

- **Statute of Limitations:** This places a time limit on the period from commission of the offense to filing of the criminal charges. The Supreme Court has decided that it only applies when the suspect is in custody. States are free to devise their own statutes of limitations, and there is widespread variation, but in general, misdemeanors usually have one year, and felonies longer. There are two ways to extend the statute of limitations:
 - an arrest warrant extends it indefinitely or for a specified period of time; or
 - Tolling the statute of limitations by not counting the period of time equal to the accused's absence from the jurisdiction.
- **Void-for-Overbreadth Doctrine:** This makes a statute or ordinance unconstitutional if the manner in which it is written has an unnecessarily broad sweep and invades the area of protected freedoms. Overbreadth occurs when a prohibition overlaps on a prescription, that is, citizens steer clear of good behavior because they are afraid of accidentally committing criminal behavior. When 1st Amendment issues are at stake (an area guarded closely to prevent any crimes being made out of free speech), the courts must consider this doctrine in conjunction with the void for vagueness doctrine, but in many cases, the two doctrines are applied separately. Ordinances that prohibit panhandling, for example, are overbroad if they describe the offense as "annoying" passerbys because what is annoying to some people does not annoy others.
- **Void-for-Vagueness Doctrine:** This requires that legislatures use clear and precise language so that people of common intelligence do not have to guess at the meaning of a law or its application. If the language of a statute or ordinance is vague, it is unconstitutional, and the law must be struck down. Sometimes, the doctrine is applied just to the words, like "ill repute" or "lewd", and at other times, whether the law entraps citizens or is difficult for police to enforce is considered. A modern example would be the "racial profiling" controversy.
(Discussion)

Topic : Constitutional Limits On Criminal Law

Topic Objective:

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

- Limits on governmental authority to create power exists in democracies
- Lawyers cannot predict all possible variations which might arise under a statute

- Equal protection under law is not the same as treating every person exactly the same under law

Definition/Overview:

The United Kingdom does not have a single legal system due to it being created by the political union of previously independent countries with Article 19 of the Treaty of Union guaranteeing the continued existence of Scotland's separate legal system. Today the UK has three distinct systems of law: English law, Northern Ireland law and Scots law. Recent constitutional changes will see a new Supreme Court of the United Kingdom come into being in October 2009 that will take on the appeal functions of the Appellate Committee of the House of Lords. The Judicial Committee of the Privy Council, comprising the same members as the Appellate Committee of the House of Lords, is the highest court of appeal for several independent Commonwealth countries, the UK overseas territories, and the British crown dependencies.

Key Points:

1. Void-for-Vagueness Doctrine

1.1. Similar to ex post facto laws

- vaguely defined laws fail to warn private individuals of what the law forbids
- they can permit arbitrary action by government officials
- The U.S Supreme Court concluded that vague laws deny individuals their right to due process.

2. Arguments for Void-for-Vagueness Doctrine

Criminal punishment deprives individuals of life (capital punishment), liberty (imprisonment) or property (fines) The Fifth and Fourteenth Amendments to the U.S Constitution ban both federal and state governments from taking any persons life, liberty or property without due process of law. Failure to warn persons adequately of what the law forbids, and allowing officials the chance to define arbitrarily what the law forbids, denies individuals life, liberty and property without due process.

2.1. Kolender v. Lawson

The Supreme Court decided the more important aspect of the vagueness doctrine is not actual notice to private individuals. The requirement that a legislature establish minimal guidelines to govern the actions of law enforcement is the more important principle element of the vagueness doctrine.

2.2. State v. Metzger (1982)

This case is a good example of how one court applied the void-for-vagueness doctrine. The Nebraska Supreme Court held that a Lincoln, Nebraska, city ordinance that made it a crime to commit any incident, immodest, or filthy act was void-for-vagueness.

3. Equal Protection

In addition to the Constitution states that no state: shall deny to any person within its jurisdiction equal protection of the laws.

Equal protection does not require the government to treat everybody exactly the same. A good example: Ranking criminals as habitual due process guarantee, the 14th Amendment to the U.S. offenders vs. first-time offenders.

4. Free Speech

The Supreme Court has expanded the meaning of speech to state that it does not end with the spoken or written word. 1st Amendment does not protect:

- **Obscenity:** Material whose predominant appeal is to nudity, sex, or excretion
- **Profanity:** Irreverence toward sacred things, particularly the name of God
- **Libel & slander:** The former: defamation expressed in print, writing, pictures, or signs; the latter: defamation by the spoken word
- **Fighting words:** Words that are likely to provoke the average person to retaliation and, thereby, to cause a breach of the peace
- **Clear and present danger:** Expression that creates a clear and present danger of an evil, which legislatures have the power to prohibit.

5. R.A.V. v. City of St. Paul

In this case, the U.S Supreme Court ruled that the St. Paul ordinance violated the First Amendment. It would allow the proponents of racial tolerance and equality to use fighting words to argue in favor of tolerance and equality. It would, however, prohibit similar use by those opposed to racial tolerance and equality. Why aren't they protected? Because they're not an essential element of any exposition of ideas,

and are of such slight value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. These exceptions also create the opportunity for the government to make these kinds of expression a crime depending on the manner, time, and place of expression.

5.1. Hate Crimes

In People v. Rokicki 718 N.E.2d 333 (Ill.App. 1999) The court ruled that the hate crime statute was not held to be unconstitutional when the predicate offense is disorderly conduct because:

- Statute reaches only conduct & does not punish speech itself
- Statute does not impermissibly discriminate based on content
- Statute does not impede/slow the exercise of first amendment rights

Some other free speech issues:

- panhandling (Begging)
- flag burning
- squeegee wipers
- wearing clothing with rude or obscene comments or pictures

5.2. Right to Privacy Issues

- Privacy is not mentioned in the Constitution, however, case law addresses it
- Bowers v. Hardwick case, which was overturned by Lawrence v. Texas

6. Griswold v. Connecticut (1965)

U.S Supreme Court decided there is a constitutional right to privacy, a right that bans all governmental invasions of the sanctity of a man's home and the privacies of life.

Griswold was the first case that specifically recognized the fundamental constitutional right to privacy when it struck down a Connecticut statute that made it a crime for married couples to use contraceptives.

6.1. Cruel & Unusual Punishments

The 8th Amendment commands that cruel and unusual punishments shall not be inflicted. The U.S. Supreme Court has ruled there are two kinds of cruel and unusual punishments:

- o barbaric punishments
- o punishments that are disproportionate to the crime committed (Solem v. Helm 1983, 284)

6.2. Proportional Punishments

The principle of proportionality states that punishments should fit the crime. Historically, this principle was practiced during the time of the Magna Carta. It was adopted in the United states in 1910.

7. Weems v. U.S.

The U.S Supreme Court applied the principle of proportionality for the first time in this case. The Court ruled that the punishment was cruel and unusual, because it was disproportionate to his crime. The Weems case banned disproportionate punishment in federal criminal justice.

7.1. Child Rape as a Capital Offense

Supreme Court said, essentially It could be! Most states do not have the death penalty for non-homicide cases See: Louisiana v. Anthony Wilson & Dewayne Bethley

7.2. Proportionality & the Death Penalty for the Mentally Retarded

The U.S Supreme Court ruled that executing anyone who proved the three elements in the American Association of Mental Retardation definition applied to them violated the ban on cruel and unusual punishment. AAMR elements include the person has substantial intellectual impairment. That impairment impacts the everyday life of the mentally retarded individual. Retardation is present at birth or during childhood

7.3. Proportionality & the Death Penalty for Juveniles

By a 5-4 vote in 2005, the U.S Supreme Court held that the Eighth and Fourteenth Amendments forbid the execution of offenders who were under the age of 18 when they committed their crimes.

7.4. Three-Strikes Laws

The U.S Supreme Court has ruled that three-strikes laws are constitutional. This ruling was decided in Ewing v. California, where the Court upheld the

constitutionality of California's three-strikeslaw. Despite the controversy, three-strikeslaws are popular and have been passed in 24 states.

8. Ex Post Facto Laws

Article I, Section 9, of the U.S. Constitution commands: No state shall . . . pass any ex post facto law. . . (a law that defines crimes after the behavior it defines takes place). The ex post facto prohibition has two major goals: To give fair warning to private individuals, by ensuring that legislatures give them fair warning about what is criminal, and that they can rely on that requirement. To prevent vindictive legislation and arbitrary action by government officials.

9. Ex Post Facto Laws: 3 goals

- Criminalizes an act that was previously not criminal when it was committed
- Increases the punishment for a crime after the crime was committed
- Takes away a defense that was available to a defendant when the crime was committed

Topic : The General Principles Of Criminal Liability: Actus Rea.

Topic Objective:

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

- Understand Attendant circumstances
- Describe Criminal acts vs. criminal conduct
- Identify Failure to act & actus reus

Definition/Overview:

Criminal Liability: The imposition of criminal liability is only one means of regulating corporations. There are also civil law remedies such as injunction and the award of damages which may include a penal element.

Generally, criminal sanctions include imprisonment, fines and community service orders. A company has no physical existence, so it can only act vicariously through the agency of the human beings it employs. While it is relatively uncontroversial that human beings may commit crimes for which punishment is a just desert, the extent to which the corporation should incur liability is less clear. Obviously, a company cannot be sent to jail, and if a fine is

to be paid, this diminishes both the money available to pay the wages and salaries of all the remaining employees, and the profits available to pay all the existing shareholders. Thus, the effect of the only available punishment is deflected from the wrongdoer personally and distributed among all the innocent parties who supply the labour and the capital that keep the corporation solvent.

Key Points:

1. Crimes of criminal conduct

1.1. Consist of 3 elements:

- Actus reus
- A criminal act (the physical element of a crime)
- A criminal intent (the mental element of a crime)
- Purposely
- Knowingly
- Recklessly
- Negligently
- strict liability

1.2. Concurrence

- Act and intent are joined

1.3. Causation

- Criminal conduct produces criminal harm as defined in the criminal statute

1.4. Resulting harm

- The specific result defined in the criminal statute
- Criminal homicide is defined according to criminal statutes as the criminal conduct that causes one's death

1.5. Voluntary Acts

Only voluntary acts qualify as actus reus. American Law Institute (MPC) defines actus reus: A person is guilty of an offense unless his liability is based

on conduct that includes a voluntary act. The case of **Brown v. State** is an example of a case that addressed the issue of voluntary acts.

1.6. Voluntary Acts & Actus Reus

- o Criminal law punishes people.
- o We can only punish people we can blame.
- o We can only blame people who are responsible for their actions.
- o People are only responsible for their voluntary actions.

1.7. Involuntary Acts = lack of actus reus

- o Sleepwalking
- o Unconscious (ex: involuntary intoxication)
- o Seizures
- o Accidents
- o Affected by other causative factors (concussion, hypnotized, etc.)
- o In **King v. Cogdon**, what did the court say about Mrs. Cogdon's somnambulism?
- o That since she was **NOT CONSCIOUS** of her act, she was not liable!

1.8. Status as an Act **Powell v. Texas**

- o Was drunkenness a crime?
- o The status of being an alcoholic or drunk?
- o Court said No, it wasn't a crime merely to be a drunk or alcoholic

1.9. Actus Reus and The Constitution

The U.S Supreme Court considered the question Is actus reus a constitutional command? twice in the 1960s.

2. Legal duties are created in three ways:

- Statutes
- Contracts
- Special relationships
- The U.S Supreme Court upheld a conviction for failure to act in **Commonwealth v. Pestinakas**

3. Failure to Act

- 37 neighbors in the **Kitty Genovese** case ignored her pleas for help for more than half an hour, watched the killer stalk and stab her in three separate attacks.

4. Possession as an Act

- Possession is not an action, it is a passive condition.
- The most common of the possession crimes is the possession of weapons, illegal drugs, and paraphernalia.

5. Two aspects of possession:

- Control of items and substances
- Awareness of the control
- In Miller v. State, the issue of possession was addressed.

6. Control

6.1. Types of Control:

- o Actual
- o Constructive possession
- o In your car, your apartment, etc.

7. Criminal Liability

7.1. Actus Reus (criminal act)

We punish people for what they do, not for what they intend to do, or for who they are.

7.2. Mens rea (criminal intent)

- o Punishment (at least for serious crimes) depends on the blameworthiness of the intent that triggers the criminal act
- o Concurrence
- o Criminal intent (mens rea) has to trigger criminal acts (actus reus) and cause criminal harm

Who can or cannot be liable for crime?

Examples of persons who CANNOT be held liable for a crime include:

- o A seven-year-old child
- o An individual who was mentally incapacitated at the time the crime was committed

8. Crimes of criminal conduct

- Criminal conduct means an act was triggered by criminal intent.
- The concurrence of criminal intent and action, meaning an act set in motion by intent.
- Proximate Cause rule
- Crimes in which criminal conduct produces a criminal harm
- The crime of burglary is an example of a criminal conduct crime:
- It consists of the actus reus of breaking and entering.
- This is triggered by the mensrea of stealing an iPod.
 - In Section 2 of this course you will cover these topics:
 - The General Principles Of Criminal Liability: Mens Rea, Concurrence, And Causation.
 - Defenses To Criminal Liability: Justifications.
 - Defenses To Criminal Liability: Excuses

Topic : The General Principles Of Criminal Liability: Mens Rea, Concurrence, And Causation

Topic Objective:

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

- Understand the Role of mental elements
- Define Blame & punishment
- Identify Proving state of mind
- Describe General intent
- Discuss The 4 mental states
- Highlight Strict liability
- Brief the term Causation
- Discuss Mistake of fact & ignorance of law

Definition/Overview:

MensRea: In criminal law, mens rea the Latin term for "guilty mind" is usually one of the necessary elements of a crime. The standard common law test of criminal liability is usually expressed in the Latin phrase, actus non facit reum nisi mens sit rea, which means that "the act does not make a person guilty unless the mind is also guilty". Thus, in jurisdictions with due process, there must be an actus reus accompanied by some level of mens reo to constitute the crime with which the defendant is charged (see the technical requirement of concurrence). The exception is strict liability crimes (in the civil law, it is not usually necessary to prove a subjective mental element to establish liability, say for breach of contract or a tort, although if intentionally committed, this may increase the measure of damages payable to compensate the plaintiff).

Concurrence: In Western jurisprudence, concurrence, (or contemporaneity or simultaneity), is the apparent need to prove the simultaneous occurrence of both actus reus ("guilty action") and mens rea ("guilty mind"), to constitute a crime, except in crimes of strict liability. In theory, if the actus reus does not hold concurrence in point of time with the mens rea then no crime has been committed.

Causation: Causation is the "causal relationship between conduct and result." That is to say that causation provides a means of connecting conduct, complete with actus reus, with the resulting harm or result element. It should be noted that causation is only applicable where a result has been achieved and therefore is immaterial with regards to inchoate offenses.

Key Points:**1. Specific Intent**

A designated state of mind required to commit the particular crime; Usually outlined in the law or statute. For example:

- With the intent to disfigure
- Mayhem: With the intent to defraud
- Embezzlement or forgery: With the intent to kill
- Murder: Usually limited to attitudes with subjective fault

2. Transferred Intent

Also referred to as constructive intent; assumes a liability to the perpetrator for unintended consequences of the act Like:

- A criminal justice student gets an F on his final, and is enraged by this. He decides to take out his anger on his professor by shooting him with a shotgun but, in the process of shooting his professor, he misses and hits one of his fellow classmates, causing his death.
- In *People v. Dismone*, the court addressed the issue of general and specific intent.

3. Criminal Negligence

- Such as failure to ensure proper care or control while performing an act
- Or in a culpable (wrongful) failure to perform a duty
- Usually with wantonness, flagrant or reckless disregard for the safety of others
- Examples:
 - Criminally negligent homicide
 - Negligent endangerment of a child

4. Negligence

The test for negligence is totally objective. Person should have known. Even though, in fact, the person did not know he/she was creating risks. Negligence is all about creating risks unconsciously. Negligent defendants have to create unjustifiable risks that deviate from the ordinary standards of behavior.

4.1. Liability without Mens Rea: Strict Liability

U.S. Supreme Court upheld power of legislatures to create strict liability offenses to protect the public health and safety. Must make clear imposing liability without mens rea

5. Motive

Is motive an essential crime element? No, however...It is the desire or inducement which incites or stimulates a person to do an act as opposed to intent, which is the

purpose or resolve to do an act. But not the reason for it; Motive is also important in some defenses

6. Principle of Concurrence

Principle of concurrence applies to both crimes

- Criminal conduct AND
- Crimes of criminal conduct that causes criminal harm

7. Concurrence

Principle of concurrence requires

- Trigger a criminal act (actus reus)
- Criminal intent (mens rea)
- Angela hates her roommate Katie and plans to kill her by running her over with her Hummer but, as Angela is heading to run over Katie, a complete stranger runs Katie over with his Jeep. Angela runs over to Katie's body and is dancing around it gleefully.
- Concurrence here means that the criminal conduct has to produce the criminal harm, it cannot be a coincidence.

8. Ignorant and Mistake of Law and/or Fact

- Ignorance of the law is no defense, but mistake of fact is a defense
- Ignorance of the law is an absence of knowledge about facts or law, while mistake of the law is when you are wrong about them, i.e. you believe they are one thing, when they are really another.

9. Mistake of Fact

- Facts exist
- Facts are NOT impressions
- Initially, mistakes of fact are believed to be true

9.1. Elements of Mistake Fact

Rules of law express objective meanings. Only authorized competent officials can declare what is objective. Only official interpretations are legal

10. Principle of Causation

Principle of causation is about attribution (also called imputation) This is when the law holds an actor accountable for the results of his/her conducts. Causation applies to bad-result crimes

10.1. Elements of Causation

- **Factual cause:** Also called but for cause of death or other bodily harm
- **Legal cause:** Also called proximate cause of death or other bodily harm

The case of Commonwealth v. McClosky should help you better understand the principle causation

11. Types of Intent

- **General:** Used commonly in cases to mean the intent to commit any criminal act defined as the actus reus in a criminal statute
- **Specific:** Specific Intent Crimes are characterized by the adjectives like deliberate, intended, planned

12. Elements of Intent

Modal Penal Codes Mental Attitudes

- Purpose
- Knowledge
- Recklessness
- Negligence

13. General Intent Crimes

- Inferred from your actions or failure to act
- When prohibited or commanded by law
- Often, by doing something intentionally
- Some courts define general intent such that it is synonymous with mens rea, and includes both subjective and objective faults
- In Commonwealth v. Gaines, the court defined general intent as an unconscious action or a reflex

Topic : Defenses To Criminal Liability: Justifications

Topic Objective:

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

- Understand the Pleading justification means defendants admit their actions & deny responsibility
- Describe the Pleading excuse means defendants admit their actions & that they were wrong for doing so

Definition/Overview:

Justifications. In jurisprudence, an excuse or justification is a form of immunity that must be distinguished from an exculpation. In this context, "to excuse" means to grant or obtain an exemption for a group of persons sharing a common characteristic from a potential liability.

"To justify" as in justifiable homicide means to "vindicate" or show the justice in the particular conduct. Thus, society approves of the purpose or motives underpinning some actions or the consequences flowing from them (see Robinson), and distinguishes those where the behavior cannot be approved but some excuse may be found in the characteristics of the defendant, e.g. that the accused was a serving police officer or suffering from a mental illness. Thus, a justification describes the quality of the act, whereas an excuse relates to the status or capacity (or lack of it) in the accused. "To exculpate" means to free a particular individual from culpability after he or she has caused loss or damage and to represent this in a

judgment that is either an acquittal or mitigates sentencing in the criminal law, or reduces or extinguishes the liability to pay compensation to the victim in the civil law.

Key Points:

1. Justifications & Excuses

- **Justification:** A person was responsible for what he did but, under the circumstances, what he did was right.
- **Excuse:** What a person did was wrong but, under the circumstances, he was not responsible for what he did.
- **Defenses:** Defendants prove they were in different place during crime so their guilt is allegedly impossible
- **Justification:** Defendants accept responsibility; Claim actions were appropriate under the circumstances
- **Affirmative Defense**

- o **Defendants have:**

- Responsibility to prove defenses

- o **Government has:**

- Responsibility to disprove defenses

- o **Perfect vs. Imperfect Defenses**

- Imperfect defenses

- Reduce crime to a lesser offense

- **Self-Defense**

- o **Elements:**

- Non-aggressor

- Reasonable belief in danger

Imminent danger

Reasonable use of force to repel imminent attack

No retaliation

Only prevention of immediate attack

- Reasonable Belief in Danger

1.1. State v. Goetz: Facts

- Four youths get on subway
- Goetz boards train
- Canty approaches, possibly Allen, & says to Goetz, Give me five dollars.
- Goetz stands, pulls gun and shoots 4 shots in rapid succession
- Surveys situation, says, you seem to be all right, heres another, then shoots Cabey again
- If I had more bullets I would have shot them again, and again, and again. (Goetz)

1.1.1. State v. Goetz: Statute revised

A person may not use deadly physical force upon another person unless and to the extent he reasonably believes that such other person is committing or attempting to commit a robbery.

1.2. Retreat Doctrine

Retreat rule: Retreat mandatory if you reasonably believe retreat will not unreasonably put you in danger of death or serious bodily harm

Stand-your-ground rule: If you did not start fight, stand your ground & kill if needed

1.3. Defense of Others (DOO)

Specifically limits use of force or violence in protection of others. In situations where the person attacked would have been justified in using such force or violence to protect him or herself. Some states have included:

Lovers

Friends

1.4. Defense of Home & Property

Actually, many modern statutes limit use of deadly force unless: belief intruders will commit crimes of violence against occupants

1.4.1. Necessity

General principle of necessity

Justifies choosing commission of lesser crime in order to avoid punishment of greater crime

Perpetrator must reasonably believe their choice to commit a lesser crime was absolutely needed

1.5. High value placed on right to live free 4 exceptions:

No serious injury results from consensual crime

Injury happens during a sporting event

Conduct benefits consenting person

Consent is to sexual conduct

Topic : Defenses To Criminal Liability: Excuses**Topic Objective:**

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

- Understand Pleading excuse means defendants admit their actions & that they were wrong for those actions
- Discuss Insanity must consider capacity & few succeed
- Describe Juvenile justice is different in that their judges can use discretion to transfer a juvenile to adult criminal court

Definition/Overview:

Excuses: In jurisprudence, an excuse or justification is a form of immunity that must be distinguished from exculpation.

Key Points:**1. Insanity as a Defense**

Insanity is valid only if it seriously damages capacity of defendant to control his/her actions. Insanity is not the same as mental defect defence. Few people actually plead insanity. Even fewer succeed today, it is not uncommon for insanity defendants to have burden of proof

2. Right-wrong test elements**2.1. Focuses on reason (i.e. cognition): 3 elements:**

- Mental disease (e.g. paranoia) or defect (e.g. retardation)
- Cognitive impairment
- Defendant doesn't know:
 - nature & quality of their act
 - difference between right & wrong
 - Mental disease or defect causes cognitive impairment

2.2. Mental Disease or Defect (MDD)

- MDD caused substantial lack of capacity

2.3. MDD elements:

- appreciate conduct as criminal
- or conform conduct to what law requires

2.4. Irresistible Impulse Test Focuses on volition 3 elements:

- Mental disease or defect
- Volitional impairment\
- Defendant has no control of conduct
- Mental disease or defect
- Causes inability to control conduct

2.5. Substantial Capacity Test

The test focuses on reason and will Elements:

- Mental disease or defect
- Lacks substantial capacity to:
- appreciate conduct as criminal or conform conduct to what law requires

2.6. Product-of-Mental-Illness Test

The test has been controversial

- Defined: Determines if a crime was a product of mental disease or defect
- Historically: Some criticism in 1950s asserted Freudian psychology could cure

2.7. Individual & social diseases

Courts often allow:

- Testimony of experts
- Cross-examination of experts

- Treatment & hospitalization info
- Conduct & statements of defendant
- before, during, & after crime
- Observations of people familiar with defendants activities immediately prior to crime

Children were divided into three categories for the purpose of deciding their capacity to commit crimes:

- Under 7 Children had no criminal capacity
- Ages 7-14 Children were presumed to have no criminal capacity, but the presumption could be overcome.
- Over 14 Children had the same capacity as adults.

2.8. Age Today

- Statutes decide when young people can be convicted of crimes
- Most juvenile court statutes place no lower age limit on delinquency
- They all place an upper age limit, almost always 18.
 - In Section 3 of this course you will cover these topics:
 - Parties To Crime And Vicarious Liability
 - Inchoate Crimes: Attempt, Conspiracy, And Solicitation.
 - Crimes Against Persons I: Criminal Homicide

Topic : Parties To Crime And Vicarious Liability

Topic Objective:

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

- Understand the difference between parties to a crime & vicarious liability
- Understand parties crime and vicarious liability

Definition/Overview:

Vicarious Liability: The legal principle of vicarious liability applies to hold one person liable for the actions of another when engaged in some form of joint or collective activity. For the civil law system, see vicarious liability. For liability attributed to a corporation, see corporate liability. For liability between joint principals, see common purpose.

Key Points:**1. Those directly involved in commission of any of the following:**

- Crime
- Aid & abet
- Advise
- Plan or encourage commission of any crime

2. Parties To A Crime Today

As number of capital crimes reduced, so did need for complicated laws of principals and accessories

- Only 2 parties to crime exist today:
 - **Accomplices:** Participants before & during commission of a crime
 - **Accessories:** Participants after crimes are committed
- Anyone who:
 - Harbors
 - Conceals or aids principal
 - Avoids or escapes arrest, trial conviction, or punishment
 - Accessories are usually punished for misdemeanors
 - Looked at as obstructors of justice
 - Not felons
- An accomplice is:
 - Liable to prosecution for identical offense charged against defendant on trial

- Cause in which testimony of accomplice is given
- State v. Ulvinen: Minnesota Supreme Court addressed the issue of an accomplice
- VL bases liability on: Relationship between person who commits crime and someone else
- Enterprise Vicarious Liability
 - Difficulty under any circumstances in successfully applying VL to convict & punish individuals for business crimes
 - Mental element difficult to prove
 - Corporation cannot have state of mind
- Prosecutors rely on two elements:
 - **Strict liability:** Removes mental element
 - **Vicarious liability:** Attaches intent of managers & agents to corporation
- Individual Vicarious Liability
 - Under this theory (of VL), Master (e.g. organizational leader) has liability for illegal conduct of servant (i.e. rank & file employee or subordinate)
 - Master is only responsible for actions of servant in course of employment under master
- Vicarious Liability of Individuals
 - Most cases of VL involve employer-employee relationships
 - 2 types of individual VL: Vehicle owner
- Parent-Child Liability
 - VL statutes based on parent-child relationship
 - Liability of parental responsibility
 - Must be clear in statutes
- Liability for another's crime (2 types)

- Parties to crime establishes when one can be held liable for crimes of others
- Think about complicity
- Vicarious liability establishes
- which types of relationships create criminal liability
- Historical Understanding
 - We have not always thought of the following criminal law aspects in the same way over the years
 - Please pay attention to how we used to think of AND currently think of the following parties to crime:
- Parties to crime at common law 4 types:
 - Principals in the first degree actually commit the crime
 - Principles in the second degree are present when the crimes are committed
 - Accessories before the fact: To help before the crime is committed
 - When not present during commission of a crime
 - Accessories after the fact: Help after the crime is committed

Topic : Inchoate Crimes: Attempt, Conspiracy, And Solicitation

Topic Objective:

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

- Understand inchoate crimes require that the crime was very close to completion
- Describe Act had to go beyond simple thought
- Discuss the preparation made to commit the criminal act
- Describe Tools acquired to commit the act

Definition/Overview:

Inchoate Crimes: An inchoate offence is the crime of preparing for or seeking to commit another crime. The most common example of an inchoate offence is conspiracy.

Inchoate offence has been defined as "Conduct deemed criminal without actual harm

being done, provided that the harm that would have occurred is one the law tries to prevent."

Key Points:

1. Attempts

Vicarious Liability Are called inchoate crimes

2. This simply means the crimes are incomplete

- Model Penal Code (MPC)

2.1. Elements of MPC actus reus:

- o Substantial steps toward completing crime
- o Steps that strongly corroborate actors criminal purpose

3. Requirements

- Requirements of attempt:
 - o Specific intent to commit crime
 - o Direct but ineffectual act done toward its commission

4. Rationale

- Focus is on actus reus as it impacts the act/dangerous conduct
- Justifies punishment
- Helps control dangerous persons
- Can crime commission be impossible?

4.1. Difference between:

- Legally impossible
- Legally not a crime
- e.g. attempting to steal something which is already freely available
- Factually impossible
- Ability to commit that crime does not actually exist
- e.g. attempting to shoot someone to death someone already dead from blood loss based on a stabbing

5. Affirmative Defense

- More than half the states & U.S. government accept affirmative defense of voluntary abandonment
- For liability (People v. Kimball 1981, 347)

5.1. Affirmative defense is:

- Defendants produce evidence of abandonment
- Then government proves abandonment was not voluntary
- Requires beyond reasonable doubt
-
- 6. The Conspiracy word!

A conspiracy is simply if 2 or more people agree to commit a crime requires an overt act (e.g. mapping out the escape route to rob a bank) toward that crime

6.1. Scale of crime:

o Conspiracies can be either small or large Solicitation

o Solicitation is a specific intent crime

o A crime of purpose to attempt to enter yourself & another into the commission of certain offenses

o Prostitution is a classic example of Solicitation Mens Rea

6.2. Basic Elements of Solicitation

o Soliciting another to commit one special crime with intent that crime will be committed when corroboration occurs or two witnesses

6.3. Tests

- Dangerous Proximity to Success
- Physical Proximity
- Indispensable Element
- Unequivocality
- Probable Desistance
- Substantial Steps/MPC
- Legal/Factual Impossibility

Topic : Crimes Against Persons I: Criminal Homicide

Topic Objective:

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

- Understand Criminal Homicide is different from all other crimes because of the finality of its results.
- Discuss the Criminal homicide laws are all about grading the seriousness of the offense.
- Describe Criminal homicide laws apply to corporations, but they are rarely prosecuted.

Definition/Overview:

Criminal Homicide: Homicide refers to the act of killing another human being. It can also describe a person who has committed such an act, though this use is rare in modern English. Homicide is not always an illegal act.

Key Points:**1. Criminal Homicide in Context**

In 2004, there were 16,000 murders and attempted murders reported to the FBI. 1,367,009 violent felonies & attempted violent felonies were reported within same year. These statistics show criminal homicides are rare. It is still a serious crime

2. Meaning of Person or Human Being

The definition of person in criminal homicide presents a problem at both ends of the life cycle. When life begins tells us when a potential victim becomes a victim. When life ends tells us when a real victim is no longer a victim killing another person is central to criminal homicide liability. Born-alive rule Followed in order to define a person and a homicide victim case of *People v. Chavez*

3. Murder

types of homicides are recognized by common law & modern criminal codes

- **Murder:** Killing a person with malice aforethought
- **Manslaughter:** Killing a person without malice aforethought

Common law judges divided homicide into:

- Criminal
- Non-criminal

In 1550s, criminal & non-criminal homicide were further divided into:

- Criminal = murder & manslaughter
- Non-criminal = justifiable & excusable

Malice aforethought split:

- Intentional & unintentional

Elements of murder

- Actus reus
- Mens rea
- Causation
- Death
- Attendant circumstances

3.1. Murder Mens Rea

This includes causing the death of any person either Purposely, Recklessly, Knowingly; it also includes every state of mind included in the concept of malice aforethought

3.2. Degrees of Murder

- o Murder was divided into degrees. Not all murderers should be executed for their offense

3.3. Two types of first-degree degree murder:

- o Premeditated (deliberate intent to kill)
- o Felony murders
- o Only crime type for which death penalty is imposed

3.4. Bifurcation demands death penalty decision be made in 2 phases:

- o A trial to determine guilt
- o A second proceeding to consider aggravating factors for & mitigating factors against

3.5. Byford v. State

Nevada Supreme Court affirmed the death sentence of Robert Byford. He intentionally killed Monica Wilkins with premeditation & deliberation

3.6. Felony Murders

Unintentional deaths during commission of certain felonies:

o Criminal sexual conduct

o Kidnapping

o Robbery

o Arson

o Burglary

Felony murder has 3 elements of rationale:

o Deter offenders

o Reduce violence

o Punish wrongdoers

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

▪ Crimes Against Persons Ii: Criminal Sexual Conduct, Bodily Injury, And Personal Restraint.

▪ Crimes Against Property

Topic : Crimes Against Persons Ii: Criminal Sexual Conduct, Bodily Injury, And Personal Restraint

Topic Objective:

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

- Understand the crimes against persons
- Describe the types of crimes

Definition/Overview:

Criminal Sexual Conduct: Criminal Sexual Conduct refers to criminal activities with a sexual component. This more modern catchall term encompasses rape, sexual battery, molestation, and so on. In some states, criminal sexual conduct is charged by degree, e.g., first degree, second degree.

Key Points:

1. History of Rape Law

As early as 800 A.D., rape was a capital offense in Anglo-Saxon England. In 1796, Blackstone defined 4 elements of rape:

- Sexual intercourse by force or threat of severe bodily harm
- Intentional vaginal intercourse
- Intercourse between a man and a woman who was not his wife
- Intercourse without the woman's consent

2. Victim credibility was decided based on:

- Her chastity
- Whether she promptly reported the rape
- Corroboration by other witnesses

3. Force and Resistance Rule

- force part of rule emphasized
- consent
- resistance part demanded victim prove they did not consent
- Proof = resistance

4. Seriousness of offense was graded based on:

- All sexual penetrations (vaginal, anal, oral) are more serious than contacts

Physical injury to victim aggravates the offense

- Forcible penetrations are more serious than simple nonconsensual penetrations and contacts

5. Rape Actus Reus? What is that?

Governed by force and resistance rule Force or threat of force is the norm Extrinsic force standard. Some force in addition to physical strength needed to penetrate
Intrinsic force standard. Only amount of physical strength needed to penetrate

6. Rape Mens Rea

Rape is a general intent crime; Defendant intends to commit act as defined.

Exceptions to the mens rea element:

- Reckless mistakes
- Negligent mistakes
- No-fault mistakes (i.e. strict liability)

State in the interest of M.T.S. Case:

- CG, 15 living with her mother, M.T.S., and his girlfriend; 11:30 pm CG went upstairs to bed, wearing underpants, bra, shorts, and a shirt

7. Degrees of Rape

- Aggravated rape

- o Victim suffers serious bodily harm
 - o Committed by stranger
 - o Rapist is armed
 - o Rapist has accomplices
 - o **All other rapes are called simple rapes**
- **Bodily Harm**
 - o **Battery is an unwanted and unjustified offensive touching**
 - o **Body contact is essential to the crime of battery**
 - o **Assault is either a threatened or attempted battery depending on how it is defined in the statutes**
- **Stalking involves intentionally scaring another person by:**
 - o **Following**
 - o **Tormenting**
 - o **Harassing**

8. Elements of Battery

The elements of battery:

- Actus reus
- unlawful touching
- injury is a requirement
- Mens rea varies as to whether it requires purposely, knowingly, recklessly, or negligently offensive touching

9. Stalking

Stalking laws Attempt to ensure victims not receive death threat(s) prior to access to help

10. Cyberstalking

Use of Internet, email, or other electronic communication devices to stalk another person through threatening behavior

11. Elements of Stalking

- Stalking mens rea
- Action of stalker must cause victim state of fear
- Stalking actus reus
- Stalking must occur more than once

12. Personal Restraint Crime

- Kidnapping is taking & carrying away
- Another person
- W/intent to deprive personal liberty
- False Imprisonment is implication
- Compelling person to remain where he or she does not wish to remain

13. Elements of Kidnapping

Kidnapping actus Reus involves the act of seizing and carrying away (asportation).

Kidnapping mens rea consists of the specific intent to Confine Significantly restrain or Hold victims in secret

Topic : Crimes Against Property

Topic Objective:

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

- Understand Crimes against other people are of 3 types: taking property, damaging or destroying property, and invading property
- Describe the heart of robbery is the use of actual or threatened force to obtain another's property right now

Definition/Overview:

Property crime: Property crime is a category of crime that includes, among other crimes, burglary, larceny, theft, motor vehicle theft, arson, shoplifting, and vandalism. Property crime only involves the taking of money or property, and does not involve force or threat of force against a victim. Although robbery involves taking property, it is classified as a violent crime, as force or threat of force on an individual that is present is involved in contrast to burglary which is typically of an unoccupied dwelling or other unoccupied building.

Key Points:**1. Taking Other Peoples Property**

Long history of taking others property resulted in expansion of criminal law

Goal = protect property

2. Theft

Most states have consolidated larceny, embezzlement, and false pretences into one offense called theft. Consolidation eliminates artificial need to separate theft into distinct offenses according to their actus reus. Actus reus of theft is taking away or carrying away. Mens rea of theft is acquiring another's property knowingly, purposely, or intentionally.

3. Receiving Stolen Property

It is a crime to receive stolen property. The purpose of making it a crime to receive stolen property is to punish individuals who gain from someone else's theft

4. Elements of receiving stolen property

Actus reus of receiving stolen property is the act of receiving the property. Receiver of property must control property briefly (at minimum). Receiver does not need physical possession. Mens rea of receiving stolen property varies by state

5. Sonnier v. State

A Texas trial court convicted Olga Sonnier of receiving stolen property. Sentenced her to 15 years in prison for knowingly pawning four stolen amplifier speakers for \$275 (worth \$1400). Texas Court of Appeals reversed judgment; So, What is a Robbery? Essentially, robbery is theft accomplished by terrorizing victim. Robbery is really two crimes like Theft and assault. But the criminal law has never treated them that way because robbery is more serious than the sum of two parts.

6. Elements of Robbery

6.1. Robbery mens rea

Intent to take another persons property and keep it permanently. With added intent of immediate force or threat of immediate force

6.2. Robbery actus reus

- Use of force
- Threat of force
- State v. Curley addressed issue of force in robbery.

7. Extortion Also called blackmail

Involves taking someone elses property with the threats of future harm Elements of extortion include:

- **Mens rea:** specific intent to take someone else's property by means of a variety of threats
- **Actus reus:** a wide range of specific threats by which the taking of the property is accomplished

8. Arson

In the 1700s, arson was defined as:

the malicious and willful burning of house or outhouses of another.

Arson has expanded Includes burning of any:

- Building
- Vessel
- Vehicle

Two degrees of arson:

- 1st = homes & other structures or vehicles
- 2nd = unoccupied structures, vehicles or boats

9. Criminal Mischief

Have three forms of harm:

- **Destruction** or damage by fire explosives or other dangerous acts
- **Tampering** with tangible property
- **Deception** or threat causing someone to suffer money loss

10. Burglary

Essence of burglary:

- Simply invading another's property
- No taking is required
- No carrying away or damaging is needed
- Invasion itself is harm
- No bad result is needed

11. Elements of Burglary

- Breaking & entering actus reus
- Dwelling of another Circumstance element During nighttime Circumstance element With intent to commit a felony inside mens rea

12. Examples of Burglary

If a person enters a house with the intent of stealing jewelry, but there was no jewelry present and the person didn't take anything, was the burglary complete?

13. Criminal Trespass (CT)

Less serious crime than burglary; Broader in nature but essence of CT is unwanted presence

13.1. Elements of trespass:

- **Actus reus:** Unauthorized entering
- **Mens rea:** For entering, defendant knowingly has specific intent or strict liability

14. Identity Theft (IT)

- IT is crime committed most often in U.S.
- Affects 9 million+ victims each year
- Motivations for stealing identity vary
- Apprehending IT perpetrators is difficult

- Even more difficult to convict

15. Intellectual Property Theft (IPT)

- IPT costs at least \$250 billion each year
- IPT perpetrators are difficult to catch
- Many IPT incidents go undetected
- IPT perpetrators tend to be:
 - o Smart
 - o Skilled
 - o Highly-motivated

In Section 5 of this course you will cover these topics:

- Crimes Against Public Order And Morals.
- Crimes Against The State

Topic : Crimes Against Public Order And Morals.

Topic Objective:

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

- Understand about Disturbing the Peace
- Describe Constructive disorderly conduct

Definition/Overview:

Public Order Crime: In criminology public order crime is defined by Siegel (2004) as "...crime which involves acts that interfere with the operations of society and the ability of people to function efficiently", i.e. it is behaviour that has been labelled criminal because it is contrary to shared norms, social values, and customs. Robertson (1989:123) maintains that a crime is nothing more than "...an act that contravenes a law." Generally speaking, deviancy is

criminalized when it is too disruptive and has proved uncontrollable through informal sanctions.

Key Points:

1. Various Types of Disturbing the Peace

- Statutory offences
- Penal Code
- Municipal Codes

2. Ordinances

With time requirements

- Element
- Distance
- Audible

3. 416 PC Failure to disperse

Assembly for purpose of disturbing peace or committing an unlawful act refusal to disperse. Requires two or more persons. If damage is caused, liable including cleanup, repairs, etc.

4. Quality of Life Crimes

- Associated with community-based policing
- Vagrancy and loitering are most common
- Intent refers to broken-windows theory
- Essentially, the issue is to keep small crimes that affect the quality of life to a minimum; however, it generally merely displaces crime vs. eradicating root causes of crime.

5. Kolender v. Lawson

Court struck down California statute that combined ancient vagrancy and loitering into a new crime defined as wandering the streets and failing to produce credible identification when a police officer asked. Just like vagrancy statute in Papichristou Court ruled statute was void for vagueness. Police lost the case and a valuable tool; Criticism of vagrancy, panhandling & loitering laws. They are disproportionately enforced with the poor, homeless and minorities

6. Injunctions against Gangs

Injunction to abate public nuisances: Injunctions are a civil remedy; City attorneys ask courts to declare gang activities & gang members public nuisances. Issue injunctions (court orders) to abate (eliminate) the public nuisance

Topic : Crimes Against The State

Topic Objective:

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

- Understand about Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.
- Discuss the issue of Aimed at fighting & preventing international terrorism

Definition/Overview:

State-corporate crime: In criminology, the concept of state-corporate crime or incorporated governance refers to crimes that result from the relationship between the policies of the state and the policies and practices of commercial corporations. The term was coined by Kramer and Michalowski(1990), and redefined by Aulette and Michalowski (1993). These definitions were intended to include all "socially injurious acts" and not merely those that are defined by the local criminal jurisdiction as crime. This is not universally accepted as a valid definition so a less contentious version has been adopted here.

Key Points:**1. The worst crime against the state**

Treason is a fundamental weapon against present allegiance and support to foreign enemies. Most commonly prosecuted crime against the state since September 11, 2001 is providing material support or resources to terrorists or their organizations

2. Treason and the Constitution

Only crime defined in U.S. Constitution; as defined in Article III, Section 3: Treason against the United States shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

3. Treason Actus Reus and Mens Rea

For Treason, actus reus includes:

- One overt act of levying war against U.S
- Giving aid and comfort to U.S. enemies

4. Crimes against Disloyalty

These include:

- Sedition
- Sabotage
- Espionage

4.1. Sedition

Sedition is advocating violent overthrow of government Done by:

- o Seditious speech
- o Seditious writings

- o Seditious conspiracy

5. Smith Act of 1940

Congress made it a crime to conspire to teach or advocate overthrowing the government by force, or to be a member of a group that advocated violent overthrow of government

6. Sabotage

Sabotage is damaging or destroying property for war & defense during national emergencies.

6.1. Sabotage Mens Rea

To purposely obstruct or any of the other acts in actus reus Knowingly obstruct, Negligently obstruct, During war or During national emergency

6.2. Sabotage Actus Reus

To impact war or national defense property via:

- Destroying
- Damaging
- Obstructing
- Interfering with
- Contaminating
- Intentionally producing defective

6.3. Espionage

The common term for espionage is spying The U.S. Criminal Code (2003, Title 18, Chapter 37, 794) separates spying into two crimes:

- o Espionage during peace
- o Espionage during war

6.4. Espionage during Peace EDP is

Turning or attempting to turn over information about national defense to any foreign country. With intent or with reason to believe the information is to be used to either hurt the United States or help any foreign country

7. Espionage during War

Espionage during War is

- Providing any information about troop movements, ships, aircraft, or war materials & any other information which might be useful to an enemy via:

o Collecting

o Recording

o Publishing

o Communicating

o Penalty is death or life in prison

8. Espionage Mens Rea Includes:

Intent to communicate information to enemy during time of war

8.1. Espionage Actus Reus

8.2. Espionage is any attempt

o To elicit information useful to an enemy

o To communicate to benefit an enemy

o To collect, record, or publish

Anti-Terrorism and Effective Death Penalty Act (AEDPA) (1996)

AEDPA covers:

- Use of certain WMD
- Terrorism transcending national boundaries
- Harboring or concealing terrorists
- Providing material support to terrorists
- Providing material support or resources to designated foreign terrorist organizations

9. International Terrorism and Domestic Terrorism

9.1. Two types of terrorism:

- International
- Domestic

They consist of violent acts or acts dangerous to human life either within or outside U.S. Committed, or appear to be committed, with intent to intimidate or coerce a civilian population; to influence government policy by intimidation or coercion; to affect government conduct via:

o Mass destruction

o Assassination

o Kidnapping

9.2. Weapons of Mass Destruction

Weapons of Mass Destruction are:

o any destructive device

o Explosive, incendiary, or poison gas

o Bomb

o Grenade

o Rocket with propellant charge over 4 ounces

Weapons of Mass Destruction are also:

- o Any weapon intended to cause death or serious bodily injury by poisonous chemicals, or their precursors*
- o Any weapon involving a disease mechanism*
- o Any weapon designed to release radiation or radioactivity at a level dangerous to human life*

9.3. Harboring or Concealing Terrorists

- o Harboring or Concealing Terrorists has possible up to 10 years prison*
- o Harboring or Concealing Terrorists actus Reus*
- o Harboring or concealing persons who have committed or are about to commit terrorist-related crimes*
- o Harboring or Concealing Terrorists mens rea*
- o Having knowledge a terrorist-related crime will happen*

9.4. Providing Material Support to Terrorists

Material Support is:

- o Currency or monetary instruments or financial securities*
- o Financial services*
- o Lodging*
- o Training*
- o Expert advice or assistance*
- o Safe houses*
- o False documentation or identification*
- o Communications equipment*

o Facilities

o Weapons, lethal substances, explosives

o Personnel

o Transportation

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