

**SOC 3395: Criminal Justice & Corrections**  
**Lecture 4&5: Criminal Law & Criminal Justice in**  
**Canada II:**

In the next 2 classes we will consider:

- (i) Canadian constitutional mechanics;
- (ii) Types of law;
- (iii) Criminal defenses
- (iv) Case illustrations of *mens rea* and *actus reus*;

We will then move on to conclude Chapter 2, looking at:

- (v) The classification of criminal offences
- (vi) The seriousness of crime
- (vii) Criminal law reform
- (viii) basic criminal procedure.

**Canadian Constitutional Mechanics:**

- \* Comprise rules, practices and procedures in various institutions
- \* Involve a balance between the rights and liberties of individuals and groups
- \* Supreme law is constitution: 1. Limits on government powers  
2. Division of powers
- \* Constitution Act 1982: Charter of Rights and Freedoms
- \* Constitution Act 1867: Federal-Provincial division of powers
- \* Also constitutional conventions exist (e.g. role of supreme court)

- \* Courts since 1982 have power to challenge federal or provincial laws
- \* Charter guarantees many important civil rights, including the legal rights of accused
- \* Limitations:
  1. Applies only to government action
  2. "Reasonable limits" clause
  3. "Notwithstanding" clause
- \* Federal and provincial governments derive powers from Constitution Act
- \* Amendments to constitution require substantial agreement between both levels of government

### **Types of law:**

- \* Two systems of law:
  1. Civil Law system (Quebec)
  2. Common Law system (rest of Canada)
- \* Distinction between:
  1. Public law (e.g. constitutional, criminal, and tax)
  2. Civil law (e.g. contracts, torts, property, business)
- \* Distinction not always watertight (e.g. assaults)
- \* Criminal law an important form of public law:
  1. Exclusive federal power
  2. Provincial administration
- \* Major source federal Criminal Code

## Legal Defenses and the Law

\* There are two broad groups of defences:

(1) *Excuses*: as certain conditions exist, the accused is relieved of criminal liability; and

(2) *Justifications*: the conduct is not wrong in the context in which it occurs.

\* Excuse defences:

(1) *Age*: no criminal liability under 12; diminished responsibility 12-18;

(2) *Mental disorder*: "disease of the mind" rendering an accused incapable of appreciating nature/quality of act or knowing it is wrong;

(3) *Automatism*: individuals in a dissociative state/not in control of their movements; and

(4) *Mistake of fact*: committing an act which would not be illegal had the accused's honest belief in the circumstances been true.

\* Justification defences:

(1) *Duress*: the wrongful threat of another compelling one to commit an act they would not have otherwise;

(2) *Necessity*: avoiding immediate peril or danger by committing a harmful act for which there was no reasonable alternative;

(3) *Self-defence*: committing an act by using as much force as reasonably necessary to prevent serious harm to oneself or property;

(4) *Provocation*: a wrongful act or insult deprives the accused of self-control (only used in murder to reduce charge to manslaughter);

(5) *Entrapment*: the police or government agents deceive, induce or sets up an accused to commit an illegal act (no acquittal, but stay of proceedings).

\* Most of these defenses, in one way or another, speak to the requisite *mens rea* or *actus reus* of an offense. Let's consider a couple of examples further.

### **Case illustrations of *mens rea*, *actus reus* and Criminal Defences**

\* Only the appropriate coincidence of both elements can lead to a conviction.

#### Murder:

##### R. v. Cooper:

- Accused blacked out while strangling victim.
- Argued no *mens rea*.
- Majority ruled *mens rea* need not overlap entirely so long as coincides at some point.
- Minority disagreed, requiring conscious knowledge of likelihood of death.

-Objective vs. subjective standards:

1. What reasonable person could be expected to intend
2. What accused actually did intend.

### Dangerous Driving:

-Illustrates nature of *mens rea* changes as one moves between offences

-Look at section in criminal code for context of *mens rea* required.

-Here no need of proving positive intention as standard is recklessness

-*Mens rea* can be satisfied on objective standard of negligence ("reasonable conduct"). No need to prove subjective mental state.

### Parties to an Offence:

-Parties to an offence may be held as criminally responsible as perpetrators

-Requires:

1. Act or omission that aids the offender, or
2. A common intention to carry out an unlawful purpose

-May be simple or complex.

1. Driving getaway car for bank robber
2. Watching someone you dislike get beaten up by friend.

## **Criminal Defenses**

\* Many defenses based on violation of an accused rights under Charter.

\* Most others related to lack of *mens rea* for the crime.  
Examples:

- |                 |                    |
|-----------------|--------------------|
| 1. Self defense | 4. Mistake of Fact |
| 2. Entrapment   | 5. Drunkenness     |
| 3. Duress       | 6. Insanity        |

R. v. Tom:

- Very intoxicated accused struck police officer with rock
- Had shown little understanding moments before when given rights
- Argued so drunk did not have requisite *mens rea* for assault charges
- Trial judge convicted on basis of recognition of officer/ conversation
- Appeal Court reversed ruling: lack of comprehension/ conversation made no sense

### R. v. Pappajohn:

- Accused and victim went to accused's home and engaged in sexual activity after much drinking
- Accused later charged with sexual assault by victim.

- Argued honest, but mistaken belief in victim's consent: no *mens rea*

- Presence of circumstantial evidence of consent

- Accused convicted: jury did not believe him.

Defense still

theoretically available in other cases if jury believes accused.

### R. v. Sansregret:

- Victim broke up with accused after stormy relationship.

- Accused broke in several times, assaulted victim, and, out of fear, victim engaged in sexual activity/ held out hope of reconciliation.

- Accused charged with sexual assault. Argued honest, but

- mistaken belief in victim's consent: no *mens rea*.

- Accused convicted: "He saw what he wanted to see, heard what he wanted to hear, believed what he wanted to believe."

Ultimately:

- The defense of mistake of fact remains a legal possibility
- It cannot be simply a subjective test of the accused's intention.
- Wholly unreasonable beliefs, however honestly held, are not likely to negate *mens rea*

## **The Classification of Criminal Offences**

\* Federal government classifies crimes & sets penalties:

- indictable offences (most serious)
- summary conviction offences (less serious)
- hybrid offences (Crown can pursue either way)

\* Summary conviction offences:

- provincial court hears case
- up to 6 months or \$2000 fine (exception sexual assault)
- time served provincially

\* Indictable offences:

- may be heard in provincial court, superior court, or in either with judge & jury (depends on seriousness)
- some sentences automatic, most have maximum penalties with "range" of sentences
- time served either provincially or federally (2 year cut-off point)



\* Hybrid offences:

- Crown prosecutor may decide to either proceed by indictment or summary conviction
- Weighs various factors such as offender's record, police report, circumstances, etc.
- Decision has major impact in many areas (sentence, appeals, etc.)

### **The Seriousness of Crime:**

\* Criminal statutes set out penalties reflecting seriousness of crime:

- different levels or "degrees" in certain offences like sexual assault & homicide
- seriousness of crime defined in terms of its social functions:

*mala in se* (high consensus crime/ "evil in itself")

*mala prohibita* (less consensus / morality offences)

### **Criminal Law Reform:**

\* New laws are continually introduced; old ones repealed or changed

- things once legal are now offences

- things once offences are now legal

\* Anti-gang legislation (1997):

- anyone guilty of crime for benefit of/ in association with a criminal organization subject to tougher penalties
- tougher procedures such as electronic surveillance, seizure of proceed of crime, reverse onus on bail, etc
- critics argue law impractical, redundant, unlikely to solve problem of organized crime
- 2001 amendments went further (broader definitions & additional offences) & added even more power to CJS officials (wiretapping, immunity for police for actions taken)
- critics: "authorizing police to break the law is a perversion of the rule of law" (i.e. erodes civil rights)
- While a subsection was struck down by the B.C. Supreme Court in 2004, an important conviction of Hell's Angels associates occurred in 2005.

\* Panhandling:

- public concern over relationship between "disorder" & crime
- Ontario passed provincial statute offence against "aggressive

panhandling,” punishable by fines/ short jail terms  
- controversial: critics: vague/ discriminate against the poor/ fail to deal with root cause of problem  
- supporters: no blanket prohibition/ citizens want laws/ streets are safer as a result  
- court challenges to such laws are ongoing, though a provincial court judge ruled the law constitutional in 2001.

### **Conclusion:**

- \* Our CJS attempts to protect society/ citizens through (federally) developing, & (provincially) administering & enforcing the law
- \* Crimes classified as indictable, summary conviction, or hybrid depending on seriousness
- \* Our understanding of criminal conduct changes over time as crime becomes more complex & society changes. Procedural & substantive changes result
- \* Despite the formal legal standards & safeguards, the public often has different views than legal professionals (e.g. seriousness of crime & sentences given)