**SOC 3395: Criminal Justice & Corrections**

**Lectures 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 defenses:

(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 defenses:

(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 conscious

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 defenses:

(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-defense*: 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

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\* Anti-gang legislation:

- 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,

an important conviction of Hell’s Angels associates occurred

later.

\* 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, but problems

remain.

**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)