**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

 - things once offences are now legal

\* 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)