

CRIMINAL JUSTICE AND THE RULE OF LAW

OUTLINE

- Foundations of Criminal Law
- Substantive Criminal Law
- Procedural Criminal Law
- The Supreme Court Today

CHAPTER 4

CRIMINAL JUSTICE AND THE RULE OF LAW

LEARNING OBJECTIVES

After covering the material in this chapter, students should understand:

1. The development of American criminal law from the English common law system
2. The sources of criminal law
3. The principles of substantive criminal law
4. The accepted defenses and their justifications in substantive criminal law
5. The importance of procedural due process
6. The expansion of the meaning of the Bill of Rights and its protections for criminal defendants

CHAPTER SUMMARY

Criminal law focuses on prosecution and punishment of people who violate specific laws enacted by legislatures, while civil law concerns disputes between private citizens or businesses. Criminal law is divided into two parts: substantive law that defines offenses and penalties, and procedural law that defines individuals' rights and the processes that criminal justice officials must follow in handling cases. The common law tradition, which was inherited from England, involves judges' shaping law through their decisions. Criminal law is found in written constitutions, statutes, judicial decisions, and administrative regulations.

Substantive criminal law involves seven important elements that must exist and be demonstrated by the prosecution in order to obtain a conviction: legality, *actus reus*, causation, harm, concurrence, *mens rea*, punishment. The *mens rea* element, concerning intent or state of mind, can vary with different offenses, such as various degrees of murder or sexual assault. The element may also be disregarded for strict liability offenses that punish actions without considering intent. Criminal law provides opportunities to present several defenses based on lack of criminal intent: entrapment, self-defense, necessity, duress (coercion), immaturity, mistake, intoxication, and insanity. Standards for the insanity defense vary by jurisdiction with various state and federal courts using several different tests.

The provisions for the Bill of Rights were not made applicable to state and local officials by the U.S. Supreme Court until the mid-twentieth century, when the Court incorporated most of the

Bill of Rights' specific provisions into the due process clause of the Fourteenth Amendment. The Fourth Amendment prohibition of unreasonable searches and seizures has produced many cases questioning the application of the exclusionary rule. Decisions by the Burger and Rehnquist Courts during the 1970s, 1980s, and 1990s have created several exceptions to the exclusionary rule and given greater flexibility to law enforcement officials. The Fifth Amendment provides protections against compelled self-incrimination and double jeopardy. As part of the right against compelled self-incrimination, the Supreme Court created *Miranda* warnings that must be given to suspects before they are questioned. The Sixth Amendment includes the right to counsel, the right to a speedy and public trial, and the right to an impartial jury.

The Eighth Amendment includes protections against excessive bail, excessive fines, and cruel and unusual punishments. Many of the Supreme Court's most well known Eighth Amendment cases concern the death penalty, which the Court has endorsed, provided that states employ careful decision-making procedures that consider aggravating and mitigating factors.

CHAPTER OUTLINE

I. FOUNDATIONS OF THE CRIMINAL LAW

A. Substantive Law and Procedural Law

Law must proscribe an act before it can be regarded as a crime and have accompanying punishment. Civil law concerns contracts, property, and personal injuries. Criminal law concerns conduct that is punished by the government.

Criminal law is divided into substantive and procedural law.

Substantive law:

Procedural law:

B. Sources of Criminal Law

Earliest known codes are the Sumerian (3100 B.C.) and the Code of Hammurabi (1750 B.C.). These written codes were divided into sections to cover different types of offenses.

1. **Common Law:**

2. **Written Law.**

C. Felony and Misdemeanor

D. Criminal Law versus Civil Law

II. SUBSTANTIVE CRIMINAL LAW

A. Seven Principles of Criminal Law

1. **Legality**

2. *Actus reus:*

3. **Causation:**

4. **Harm:**

5. **Concurrence:**

6. **Mens rea** (a guilty state of mind):

7. **Punishment:**

B. Elements of a Crime

C. Statutory Definitions of Crimes

1. **Murder and Non-Negligent Manslaughter:**

2. **Rape**

D. Responsibility for Criminal Acts

1. **Entrapment**

2. **Self-defense**

3. **Necessity**

4. **Duress (or coercion)**

5. **Immaturity:**

6. **Mistake of fact**

7. **Intoxication**

8. **Insanity**

III. PROCEDURAL CRIMINAL LAW

Procedural due process assures that accused offenders are accorded certain rights and protections in keeping with the Constitution of the United States. Procedures used may seek to advance truth seeking (e.g., trial by jury) or to prevent improper governmental actions (e.g., unreasonable searches and seizures).

A. Bill of Rights

B. The Fourteenth Amendment and Due Process

C. The Due Process Revolution

D. Fourth Amendment: Unreasonable Searches and Seizure

E. Fifth Amendment: Self-Incrimination & Double Jeopardy

F. Sixth Amendment: Right to Counsel and Fair Trial

1. **The Right to Counsel:**

2. **The Right to a Speedy and Public Trial:**

3. **The Right to an Impartial Jury:**

G. Eighth Amendment: Fines, Bail, and Punishment

1. **Release on bail:**

2. **Excessive fines**

3. **Cruel and unusual punishment.**

IV. THE SUPREME COURT TODAY

KEY TERMS, CASES AND PEOPLE

legal responsibility

entrapment

civil law

procedural due process

substantive criminal law

self-incrimination

procedural criminal law

double jeopardy

common law

fundamental fairness

constitution

incorporation

statutes

grand jury

case law

indigent defendants

administrative regulations

Earl Warren

civil forfeiture

Warren Burger

inchoate offense

Bill Clinton

mens rea

King John of England

strict liability

William Rehnquist

