

Criminal Law Outline
Professor Crump

1. Foundations

criminal law: statutory

1. formal logic; elements
2. how to read a statute
3. relation to common law

People v. Keeler

1. statute: elements
2. how to interpret--history, decisions, legislative intent, words, general principles, constitution

notes after Keeler

1. the dissent: rationale
 2. formalism v. instrumentalism
 3. "strict construction?"
 4. amendment: "or a fetus"
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- mens rea
 - actus reus (act, circumstances, result)
 - Calif. murder statute: mens & actus
 - problem: "killing a cloned human"
 1. in a frenzy of regret
 2. accidentally (recklessly)
 3. failing to supply nutrients

United States v. Zandi

possession as a crime
constructive possession

1. actus reus?
2. mens rea?
3. hypothets: (a) arrest before knowledge pkg has arrived; (b) buy-burn by brother overseas; (c)

jury unsure whether Zandi
believed opium in pkg

4. conspiracy or attempt

proof beyond a reasonable doubt

1. contrast civil burden
2. knowledge in Zandi: what does "knowledge" mean?
3. the hypothetical unsure jury in Zandi
4. the jury's proof standard contrasted to the reviewing court's

"Criminal Law (5303):

substantive criminal law; basic concepts [of the criminal process]; elements of crime; theories of punishment [i.e. sentencing]."

"basic concepts" means the burden of proof, screening mechanisms, & stages of a criminal case.

also, usually covered: legitimacy of the criminal law; victims' rights, etc.

2. Homicide

"Penna. Pattern"

murder = "malice aforethought"

1. misnomer (wise to use misnomer; jury instructions?)
 2. express = intent
 3. implied = "abandoned & malignant heart" (metaphor useful?)
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Penna Pattern cont'd

1. murder 1st deg
 2. murder 2d deg
 3. vol mansl: "sudden quarrel" or "heat of passion"
 4. invol mansl ("w'out due caution/circumspection")
 5. [negligent homicide]
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Murder = mal. afore

1st deg = "premeditated," "deliberate"

2d deg = not

Cw. V. Carroll:

instant premeditation?

- 1.-2. what if jury?
 3. does this mean no 2d degree?
 4. misnomer of malice aforethought?
 5. jury understanding?
-

People v. Anderson:

stabbing pursuit

1. prep; 2. means; 3. motive

What is premeditation?

Planning, care, appreciatn, motive?

1. random: as bad as planned?
 2. jury "discretion": desirable?
 3. what's wrong in Anderson?
a. statute; b. court's review;
c. both; d. neither
 4. are Carroll & Anderson backward?
 5. MPC approach: no degrees
 - 6.-7. Perez: "manner of killing";
does intent = premeditation?
-

Pa. pattern: historical
malice aforethought=

1. intent,
2. serious bod injury,
3. "depraved heart," or

4. felony.

MPC critique:

"arbitrary symbol"

1. vague; arbitrary
 2. policy: bad grading
-

a vague, metaphorical instruction to the jury:

"If you decide that the accused is as EVIL

as a POMEGRANATE,

then it is your duty to convict; if not, you must acquit."

--this gives jury "discretion"

--but is that a good thing?

counsel's job: voir dire, opening statement, jury argument

- purposes of argument
 - order: P, D, P
 - structure: similarity to IRAC; differences; "example" method; evidence (inferences & credibility); ultimate values (emotion)
-

voluntary manslaughter

1. passion as negating malice (or as a separate factor)
 2. requirements: a. adequate cause, b. ordinary person, c. timing, d. victim
 3. instruct jury: when "raised" by evidence
-

Maier v. People

1. assault w/intent to murder
2. intent to assault (even to kill) not enough; malice
3. what is relevance of passion evidence?

Problem: Cw. v. Carroll

1. how argue manslaughter to jury?
2. impact of the burden of proof?
3. changing facts: a. more or less time? b. D kills police officer? c. greater or lesser vehemence in the disagreement?

"depraved heart": unintended malice
meanings: 1. wickedness (badness in general); 2. recklessness

Cw. v. Malone: Russian roulette

1. "accidental murder"?
2. how instruct jury (depraved heart v. outrageous recklessness)
3. accident that isn't a crime: Malone's own story
4. depraved heart v. involuntary manslaughter (People v. Berry)

invol manslaughter

[Tx: manslaughter]

Cw. v. Feinberg: the Sterno case

1. why not murder?
"knowledge" v. "recklessness"
2. why Feinberg not neg hom?
"recklessness" v. "crim neg."
"crim neg." v. "civil neg."
3. homicides: distinct crimes, or sliding scale?
4. recall People v. Berry: murder, involuntary ms, or neg hom?

Texas (modified MPC):

1. murder? 19.02
(b)(1): intent, knowl
(b)(2): intent, SBI
- [2. vol. manslaughter?]
19.02(d): included in murder;
reduces sentencing range

3. [invol] mansl?

19.04: "recklessness"

4. crim. neg. hom?

19.05: "crim neg"

[5. capital murder = "murder plus"]

Tx. PC § 6.03

intent

knowledge

recklessness

crim. negligence

[strict liability]

Dan shoots & kills Vic.

1. wants to kill him
 - 1a. aims carefully at him, not caring.
 - 1b. wants to injure.
2. just heard, Vic stole his girlfriend
3. shoots at target, aware pedestrians frequently behind it
4. shoots at target, unaware of frequent pedestrians
- [5. robs Vic & kills, execution style]

Sentence reduction charge:

If D proves in the affirmative, by a preponderance of the ev., that he caused the death under the immediate influence of sudden passion arising from an adequate cause, you will so say by your verdict....

Therefore, if you find by the prepond...that Martinez caused the death of Cox [sudden passion adequate cause]..., verdict.

If you so find, you shall fix d's sentence at any term of years from 2-20.

"adequate cause" means....

[19.02(a)(1)]

"sudden passion"

means....[19.02(a)(2)]

If you do not so find by a preponderance, you shall consider the range of sentence of 5-99 or life.

We, the jury, find that Martinez by a preponderance caused death under...[sudden pass., adequate cause], and fix his sentence at _____ [2-20].

[Alternate form verdict:

5-99 or life _____

two Texas cases

--typicality

1. Rivera v. State:
 - Timotheo stabbed; Gilbert shot
 - legal & factual sufficiency
 - "parties" concept
 - 4 kinds of murder:
 - intent/cause death
 - intent/cause ser. bod. inj.
 - as party, intent/death
 - as party, intent/SBI
 - "application ¶"
 - excused juror
2. Martinez: stabbed more than 2 dozen times; claims defending vs. same-sex assault; expert: blood spatters inconsistent.
 - claimed error: [invol.] manslaughter omitted.
 - what's a lesser included?
 - what's manslaughter?
 - why no error?

- what about "voluntary" manslaughter?

Notes (Supp.)

1. judges' "politics"?
2. Rivera's "application ¶"
3. Martinez: how use "sudden passion . . . adequate cause"?
4. does Martinez qualify?
5. [invol] manslaughter?

the felony murder doctrine: implied malice

limits of fel murder

1. "dangerousness"?
 - a. "dangerous felony?"
 - b. "dangerous act"
2. merger--a lesser included [homicidal] crime shouldn't be used as predicate
3. in furtherance
4. causation
 - a. "agency" approach--only acts of D
 - b. proximate cause
 - c. broader cause (but-for; "set in motion")

felony-murder

People v. Hansen:

shot into inhabited home; 13-yr-old girl hit in head.

- Cal: "imputed" malice, homicide caused in course of "inherently dangerous felony"
- why the rule? justice? deterrence? other?
- dangerous "felony," or dangerous "act"?
- the "merger" issue: not an assault

- see Texas 19.02(b)(3)

Roth & Sundby [not read]

(against fel murder)

1. "patchwork" attempts to mitigate
2. most serious sanction shouldn't be for accident
3. deterrence illogical
 - a. how deter unintended act?
 - b. felons won't know the rule
4. transferred intent/ constructive malice: illogical
5. retributive purpose operates "regardless of culpability"

Crump [not read]

(defense of fel murder doctrine)

1. rational classificatn, grading: robbery w/death isn't just a robbery.
 2. condemnation: human life. condemnation "operates on the upright"--society, victim.
 3. deterrence--opponents' assumptions
 - [4. other arguments]
 - [5. limits aren't patchwork but related to purposes; every crime has limits]
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The Lawyering Problems:

What Are They About?

lawyering strategies: what areas?

1. negot/agreemt
2. documt prep
3. persuasion
4. client relatn's
5. malpractice preventn
6. the process itself

7. strategy

8. uncertainty/ adaptation

why see "how it works"?

1. changes the theory
2. shows difficulty:
 - a. management of crowded systems
 - b. time
 - c. task definition
 - d. facts
 - e. law
 - f. failure
 - g. personal issues
 - h. distraction
 - i. adaptation
3. prof. competencies
 1. case analysis is only one
 2. it is intellectually easier than some
 3. it is less important than some

what get out of it?

1. estimating effort
 - a. recognize steps
 - b. recognize difficulty
2. client
 - a. information
 - b. cooperation
 - c. protection
 - d. appreciation (fee)
 - e. result
 - f. malpractice
3. documents
 - a. ambiguous facts
 - b. hidden issues
 - c. errors
 - d. efficiency
 - e. drafting vs. doc prep.

- f. adversary vs. cooperative
- g. specific vs. general
- 4. persuasion
 - a. law v. facts
 - b. ambiguous facts
 - c. messy facts
 - d. unfavorable facts/law
 - e. credibility
 - f. language
 - g. audience
 - h. tactics
 - i. objectives
- 5. malpractice
 - a. difficulties
 - b. possibilities
 - c. prevention
 - d. remediation
- 6. process
 - a. steps
 - b. pressure points
 - c. legal stds
 - d. facts
 - e. legal purposes
 - f. strategic purp

Not only do I not know how to do what I'm assigned to do . . . ,
I don't even understand what it is I'm supposed to do!

3. *Elements of Crimes*

break this into elements:

"A person commits an offense if s(he) knowingly enters a private place on a Sunday with intent to defraud and manifests loud, raucous or belligerent behavior toward any person or animal while bearing a firearm on or about

his/her person, unless the person is acquainted with any person who regularly inhabits the private place so entered."

an unprovable offense [why?]

". . . a person who keeps within the territory of the city any number of [list of animals], and who is not in the business of boarding animals, is guilty of a misdemeanor."

What elements in DWI?

- main statute, 49.04
 - additional provisions (revised list)
 - the "drunk, drugged or sleepy" apparent "wheelchair pedestrian"
- "Harassment"--(1) why hard to prosecute? (2) no crime if caller (3) no crime unless "obscene"

Tx. P.C. § 6.01: voluntary act, omission, possession

"actus reus" also includes: act, circumstances, result

what is actus reus for

- murder? § 19.02(a)(1)
- attempted murder? § 15.01
- felony murder? § 19.02(a)(3)

People v. Newton: unscheduled N.Y. landing; D has weapon.

1. voluntary act?
2. he "caused" the landing!
3. voluntary act & strict liability

United States v. Plaza Health: what is the actus reus? ("point source")

causation: Rivera

omission: Jones--concept of "duty"

possession: Zandi, Newton

1. an act, condition, or what?

2. constructive possn & the jury
3. "suddenly realized" possession (coupled w/not getting rid of it)?

"status" related offenses: Robinson, Powell

"loitering"

1. physical elements?
2. due process?
3. mens rea?

mens rea:

MPC: purpose, knowledge, recklessness, criminal negligence?

1. mens rea for loitering
2. purpose v. knowledge; the "I-don't-care" killing
3. to which elements does the mens rea apply?
4. reckless, crim negligent, simple negligence: State v. Warden (the careless doctor whose patient died)

United States v. Plaza

"knowingly" disch

"knowing" endangermt

1. D's argument
2. MPC "knowingly"?
3. Cong. rejected MPC
4. "awareness" of "high probability"

mens rea variations (notes)

1. ostrich problem: the drug courier; United States v. Sanchez-Robles
 - (a) is the negligence comparison apt?
 - (b) is there really no middle ground?
 - (c) the misdemeanor ostrich who commits a felony

2. transferred intent: the drug courier
3. specific intent v. general: Maher
4. strict liability: when? why?

1. false stmt to obtain gambling license: mail fraud? COVERS: "artifice to (a) defraud or (b) obtain propty"

2. intentional damg to computer data owned by corporation. Computer fraud? COVERS "damage to individual"

interpreting the elements?

formalism

instrumentalism

1. murder statute, construed by each
2. Douglas's penumbra, Black's no provisn

natural law

positivism

1-2. Iredell & Chase

3. rt to define "meaning of universe"?

Bobbitt's 6 Interp Modalities

textual

historical

structural

doctrinal

prudential

ethical

1. const of death penalty
2. different interp of Bible?
3. which modalities superior/disfavored?

4. Settlement: Plea Bargaining [and Lawyering Strategies]

Language: "They offered that tush hog

Billy Ray Bonebreaker a dime, but he never sensed how much of a whale he really was and so he rolled the dice and got popped for ninety-nine rodeos."

--what does this mean?

--what does it imply about speaker's attitude twd process?

-
1. the case against settlement
 2. the case for settlement
- (Does the case against settlement depend on an unspoken assumption that conviction in a single trial by a single jury is absolutely accurate or universally authoritative, & conviction by plea of guilty is not?)
-

Gross/Seyverud

1. jury trial = scarce resource.
 2. not to be wasted.
 3. far scarcer than believed.
 4. settlement = norm.
 5. adjudicatn = rare xceptn.
 6. usually adjudicatn = disaster for at least 1 pty.
 7. why so few jury trials?
 8. why does a trial result?
 9. reform?
 10. your role as a trial lawyer?
-

why settlement? 12 judges,
30,000 indictmts
= less than 5 min. per case on most.

"solutions"?

- screening; selectivity
 - more courts
 - decriminalization
 - reform (radically alter jury trials)
 - regard settlement as acceptable
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Guilty Plea Process

Fed. R. Crim. P. 11

Tex. Code Crim. P.

1. written waiver
2. written approval
3. evidence
4. admonitions
5. voluntariness

Tullos v. State:

indictmt = threatened.

stipulation = stabbed.

2d case, admonition defective.

Decotiis & Steele, "Skills of the Lawyering Process"

1. "capabilities": which?
 2. reading, writing, case analysis, research?
 3. skilled generalists, here; contrast other practitioners
 4. teaching documt prep: start w/legal pad?
 5. relevance of law schl?
 6. Nimmer report
 - a. bleak--professors conform perceptn to fit own behavior(!)
 - b. Festinger's theory of cognitive dissonance
 7. Nielsen: a "hoax"? why done this way, then? (easier?)
-

dealmaking: contract elements

1. why study?
 - a. a second contracts course?
 - b. nontraditnl here
2. five (6?) elts/contract
 - a. parties?
 - b. preconditions?

- c. obligatns/opponent? - physicalities
- d. obligatns/client? - mediator
- e. breach & remedies? - feigned emotion
- f. terminatn? - test/strength

client relations

1. why effort projectn?
2. defining problem
3. "niceness"
4. how project effort?
 - a. attention (phone)
 - b. do somethg now
 - c. prob/important
 - d. suit: uniform
 - e. sell 'em paper
 1. every paper
 2. Dear Mr. Jones
 - f. bill projects effort
5. accept addl responsbl
6. community

negotiation methods

- firm, fair offer
- THE negot method:
 - unreas 1st
 - conceal point
 - pretend reas
- other techniques
 - merits
 - blame client
 - reverse psych
 - agenda
 - drafter
 - barg chip
 - time
 - collateral cons
 - whipsaw
 - focal points
 - clubbiness

Graham: docket mgmt

1. pros's "enemy # 1"?
2. why?
3. how respond?
4. increase offer for late acceptnc?
5. legit delays--how handle?
6. early sure trial setting [compare CJRA]

malpractice avoidance

1. 3 biggest areas, complaints
2. examples
 - a. 2 co-workers
 - b. "found/poker game"
 - c. client's story = innocence; wants to plead g.
 - d. "changed" story
 - e. parents hire
 - f. burg d pleads
 - g. "ridiculous" offer
3. clients' character?
4. document it

conviction rates (trial)

1. different, today?
 2. conviction rate
 - a. prejudiced juries?
 - b. another explanatn?
 3. Crump's theory: rate should be 85-90%
 4. judge vs. jury
 5. offer vs. adjudicatn
-

5. *The Burden of Proof*

const req'mt/proof: Winship

1. what provision?
2. how so conclude?
(a. text, b. hist., c. struct., d. doct., e. policy, f. ethic)
3. what is meaning?
4. effects (juvenile)

what about an issue not an "element"?

1. Mullaney: passion negates malice
2. Patterson: passion independent of malice
3. play upon words?
4. elements, defenses, & aff. defenses
5. passion killing in Tex.
- 6.-7. what should be element, defense, aff. def?

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1. Tex. P.C. 2.01: elements/exceptions
 2. should court define? (Paulson)
 3. defense formulas
 4. prosecution formulas
 5. examples
 6. circumstantial suffice?

the "n" controversy: how many guilty to be freed?

1. $1 \leq n \leq 1,000$?
2. n skeptics
3. n & crime rate?
4. does acceptable n value exist?
5. unacceptable if n affected by prejudices?
6. only better is better?

costs/err/acquittal: Langley case

1. critique jury (argument: acquittal was wrong--or right?)

2. was this an "error"? what costs?
3. does "reasonableness" of doubt depend on harmfulness of acquittal error?

costs/err/conv.

1. the protections
2. "We're Sorry": why didn't protectns work?
3. costs/erroneous conv.
4. the ethical q: erroneous acquittal preferred?
5. real-world ethics: case for saying erroneous acquittal not ethically superior?

Stogsdill v. State: hair evidence, Kump's evidence, etc.

1. critique? (deference to jury?)
2. cumulative, circumstantial?
3. TV: "motive, opportunity, means"
4. other questionable elements?
5. "manner & means unknown"?

DNA & Statistics

1. would DNA change Stogsdill? (sorry, but no)
2. "where's the DNA?"
3. experts needed, DNA
4. what does "1 in a million" mean?
5. when DNA is powerful: product rule & Bayes' Theorem
6. popular understanding of Bayes
7. how good is DNA? (lab errors)

eyewitness ev:

1. "preferred"? why?
2. "better" than sci or circumstantial?
3. serial crimes: law enforcement method?
4. experts on ID?

5. factors?
6. instructions?

experts on ID:

factors

1. forgetting curve
2. stress = distortion
3. assimilation
4. feedback
5. confidence ≠ accuracy
6. second-ID transfer
7. cross-racial

other burdens (not trial, guilt, elements)

1. true defenses?
2. redraft: difficult elements, change to D's defenses/reductns?
3. sentencing
4. screening stages
5. presumptions?

procedures influencing proof burden

1. evidence: similar crimes
2. joinder/similar crimes
3. pretrial motions
4. confessions statute
5. corroboration as a proof element

6. *The Stages in a Criminal Case: Screening Mechanisms*

arrest etc.

1. warrantless
 2. probable cause
 3. warrant
commitment
capias
 4. complaint
 5. examining tr (prelim hearing)
-

bail; indictment

1. bond factors: ensure compliance, not oppressn, offense, ability, safety
2. personal bond
3. amount: e.g., repeat mult. robbery
4. grand jury indictment
formal requisites
information
5. omission/formality
6. represent witness?

other screening:

1. arraignment
 2. appt. counsel
 3. attack indictmt
mot/set aside
exc/substance
exc/form
amendmt
 4. dismissal
 5. post-tr motions
 6. expunction
 7. habeas corpus
-

7. *Assault & Related Offenses*

State v. Boutin: "[1] attempt to cause or [2] purposely, knowingly, or recklessly cause bodily injury"

22.01 assault

- .021 agg assault
[attempted murder]
- .04 injury/child
- .05 deadly conduct
- .07 terroristic threat

specific intent assaults

sexual assault (rape)

1. actus reus: force, etc.; nonconsent;

sexual act

- how much force (what kind)?
- what is nonconsent?
- 2. mens rea
- does it attach only to sexual act?
- does it attach only to sexual act plus force?
- does it attach to sexual act; plus force, plus nonconsent?

(knowledge of nonconsent, recklessness, or crim negligence?)

22.011 basic sexual asslt

1. (a) D (b) intent, knowl, (c) causes (d) penetratn (e) anus or fem sexual org (f) w/out consent
2. What is "w/out consent"?
3. What mental state?
4. Is intent to do act enough, or does D need to know/intend nonconsent?

22.011 sex asslt/child

["strict liab?"]

22.021 agg sex asslt

[by threat SBI; DW]

[amendment]

20.03-.04 kidnap; agg

20.01(2) abduct

20.02 unlawful restraint

8. General Defenses

1. self-defense
2. defense of another:
"step into shoes" vs.
[Tx. § 9.33] reasonable belief
3. defense/propty, § 9.41-44
"when & to degree reas belief immed necess"
[deadly force]

["device"]

4. law enforcement, § 9.51
when & to degree reas believes necess & reas believes valid
[deadly force]
[civil liability]
5. resist/arrest, § 9.31(c)
usually: NO!
exception: unreas force, first necessity, § 9.22
7. public duty, § 9.21
8. discipline, § 9.61-62

self-defense

NY: (1) D may (2) when (3) to extent (4) reas believes (5) necessary (6) defend (7) reas believes (8) use or imminent (9) unlawful physical. For deadly force: (10) about to use deadly force or commit [felonies].

objective std (why?)

MPC: subjective (limited)

TEX: when & to degree

he reas believes immed necessary to protect agnst others use unlawful force
duress & entrapment

1. duress: *Contento-Pachon*:
"imminent death/SBI"
TX: § 8.05 similar; affirmative defense
 2. entrapment
Russell: subjective
dissent: objective
TX: § 8.06, requires both:
"induced" by "persuasion . . . likely to cause"
-

insanity definitions

1. *M'Naghten*: cognitive--
knowledge of act/wrong
 2. "irresistible impulse"
 3. *Durham*: "product" of "mental
disease/defect" [rejected]
 - responsibility v. determinism
 - strategy (deterrence) v.
determinism
 - meaning of "product"?
-

insanity cont'd:

what about:

- compulsive gambling as
defense/robbery?
 - intoxication, alcoholism-related?
 - severe environmental deprivation
("rotten social bkground
defense")?
 - clinical depression, postpartum
onset?
 - PTSD; rape trauma syndrome?
 - XYY syndrome?
-

more insanity definitions

4. *Freeman*: MPC
criticisms of M'Naghten
"as a result/mental defect, lacks
subst capacity/appreciate
wrongfulness or conform
conduct" [since John Hinckley,
widely rejected]
 5. abolition; guilty but insane
 6. TX: § 8.01, M'Naghten-like
affirmative defense
-

- intoxication
Tx § 8.04
- mistake/fact
Tx § 8.02

reas belief,
negates mental
• mistake/law
Tx § 8.03
no defense, but
aff defense:
reas belief +
written documt

9. *Theft and Related Offenses*

larceny

1. property
2. of another
3. caption
4. asportation
5. intent/deprive

larceny by trick

1. poss'n obtained
2. trick, not caption

false pretenses

1. title obtained
2. by deception

embezzlement

1. fraudulent
 2. appropriation of
 3. prop of another
 4. by entrusted
-

consolidation of theft offenses

1. the problem
 2. the solution
- Tx. 31.03:
1. appropriate [defn: exercise
control]
 2. property [defn]
 3. intent to
 4. deprive [defn: perm or extended]
 5. the owner

6. w/out effective consent [defined]
 - remaining issues; theft/services? § 31.04; services defined.
 - temporary deprivation? UUV, § 31.07
 - forgery, § 32.21
 - check, § 32.41(a)(b)
 - related offenses

receiving stolen prop

1. defined as theft.
2. why?
3. importance
4. difficulties; solutions
 - a. proof/knowledge
 - b. corroboration
 - c. similar transactions
 - d. record keeping
 - e. stings by law enf

10. "Theft-Plus" Offenses

- robbery
 1. course/theft
 2. intent/control
 3. reckless inj/knowing threat
- agg robbery: SBI/DW/etc.
- Burglary
 1. enters
 2. bldg or portion
 3. not open/public
 4. intent

or: concealment;
entry & obj crime

- extortion
 1. intent/extort
 2. money/value
 3. interstate comm

4. threat/injure: prop; reputatn; crime
 - Hobbs Act
 1. robbery/extortion
 2. commerce
 3. extortion [defined]:
under color/official right
 - bribery: Tex. § 36.02

11. Sentencing

general justificatns of sentence

1. rehabilitation
2. incapacitation
3. deterrence
 - a. specific deterrence
 - b. general deterrence
4. retribution
 - a. "revenge" or "justice"?
 - b. blameworthiness
 - c. proportionality
 - d. uniformity

Ethical Philosophies

Teleology = nature & purpose

consequentialism

utilitarianism

Bentham, Mill

Deontology = non-purposive

(not cost/benefit)

Kant

imitation principle

categorical imperative

- 1 Utilitarianism & slavery--slave owners wd like. But Kantianism opposes; why?
- 2 Utilitarianism & vulnerable minorities: how treat ADA, confiscation of amusemt park?

- 3 Kant: conflicting categorical impto? (performance of promise illegal?)
- 4 Kant: must you tell truth to terrorist (neighbor in closet?) or: contract bankrupts promisor w/negligible benefit

consequentialism v. deontology

- pun dmgs seen as mkt corrective, vs as retributive, proportional justice
 - the Advil problem?
 - death p, drunk drivers?
 - synthesis?
diff ways of same thing?
- 1 conseq; deontol at "borders"?
 - 2 BMW v. Gore: reprehens, ratio, comparables--
deontol measures of pun dm?
what role for conseq?
 - 3 efficient breach/K: conseq?
deontol?

Kant on punishment

1. non-objectification
2. blameworthiness
3. equality; jus talionis
4. ∴ must punish guilty (even if not utilitarian).

objections

1. eye-for-eye unworkable
2. in practice: poorer class
3. utilitarianism is important
4. "cast first stone"
5. shared guilt

result: mixed feelings

utilitarians and retribution

1. "condemnation"

2. works on upright people
3. many facets
vindication (reinforcement)
solidarity
auth disavowal
symbolic nonacquiescence
absolution

Gregg v. Georgia: death penalty goals of deterrence, justice

1. incapacitation, too?
2. should rehabilitation be a factor?
3. arguments against?

United States v. Bergman

- 4 months/prison
--the "4 factors": rehabilitation, deterrence, incapacitation, retribution
--probation or prison?
--"measuring" the sentence
1. goal inconsistencies
 2. "have you ever . . . nursing home?"
 3. "disparity"

-
1. broad-range discretn [indeterminate sentence]
 2. determinate
 - a. mandatory?
 - b. intermediate
 - narrowed range
 - factors determine
 - guidelines
etc.
 - c. charge, bargaining, parole too?
 3. Calif. system
 4. Wilkins system

issues in determinate

1. complexity/confusion

2. discretionary better?
3. distortion
4. cost
5. plea bargaining
6. responsiveness/change
7. sentencing goals
 - note conflict
 - a. rehabilitation
 - b. deterrence
 - c. incapacitation
 - d. retrib justice
8. right level/discretion
9. hardest cases: conflicting goals

The federal sentence guidelines

1. base offense level
 2. relevant conduct
 3. specific offense characteristics
 4. adjustments
 - a. victim-related
 - b. role in the offense
 - c. obstruction
 - d. multiple counts
 - e. acceptance of responsibility
 5. criminal history category
 6. sentencing table
 7. departure
 8. probation; mandatory minimum/maximum
-
1. "Bubba Shot the Juke Box . . . Last Night"; \$10,000 total loss; previous 3-yr conviction; plea to malicious destruction
 2. Bubba also shoots & kills bar owner; voluntary mansl.
 3. critiquing guidelines vs. discretion
 4. factors of retardation, employment, wealth, etc.

-
- guideline interpretation [what's "obstruction"?)
 - preponderance std
1. why?
 2. due process?

Calculatn in Scheele case:

1. no rules/evi
2. drug tables
3. estimate
4. degree/precision
5. is this "preponderance"?
6. proportionality?

sentence options

1. incarceration
 - parole issues
 - parole limits
 - enhancements, e.g. Tx. 12.42(c) (1 prior)
 - Tx. 12.42(d) (2 priors)
 2. probation: Fed
 - eligibility
 - term
 - conditions:
 - mand/uniform
 - others
 - confinement
-
3. commun correctns
 - Tx. (not "probation")
 - authority/eligibility
 - term
 - nonqualifying offenses
 - boot camp
 - confinement as conditn
 - community svc
 - violations
 - revocation--no jury, indictmt, reas doubt, or crime req'd

4. monetary
restitution
fine
[forfeiture]
-

sentencing hearing: Tx

1. jury election
when elect?
good law?
 2. the process: jury
relevant evid
crim record;
character;
unadjudicated
 3. PSI (judge)
Fed j must
D: interview?
"hearing": papers?
D object/writing;
affidavits
-

capital murder, § 19.03:

"murder-plus"

[2/3 are robbery-murders]

sentence hearing

relevant evid except

excluded/Constitution

3 questions:

violence

anticipation

[mitigation]

burden/proof

against death p:

1. barbarism?
2. innocence errors?
3. causes murders?
4. race discrim?
5. blameworthiness errors?

pro death p:

1. deterrence?
 2. incapacitation?
 3. justice?
-

12. *Inchoate (Preparatory) Offenses*

attempt

1. four types
try & fail, interrupt, mistake,
desistance
2. elements:
 - a. specific intent
 - b. sufficient act
 - (1) substantial step
 - (2) more than prep
 - (3) others

3. Tx: § 15.01

attempt "defenses"

1. renunciation
voluntary, complete
avoid/commission
2. impossibility
 - a. "factual"--NO
 - b. "false legal"--NO
 - c. true legal--YES
 - d. inherent--?

crim instrumt, § 16.01

solicitation, § 15.03

conspiracy:

- 2+ people, agreemt,
purpose/intent, felony/crime,
overt act
- conspiracy-related procedures
- agreemt: how formal?
- mens rea: is knowlg enough?
- Tx § 15.02
- overt act: can it be innocent
(noncrime)?

- renunciation
-

13. Vicarious Liability (Multiple Parties)

vicarious liability

[guilt based on acts of another]

1. usual rules: aid & abet or aid & encourage
 2. Pinkerton liability
 - a. based on consp
 - b. but liab is for completed crime
 - c. agency basis
 - d. scope, furtherance, foreseeability
 - e. Texas' version, 7.02(b)
-

multiple parties

1. common l: principal 1st, 2d; accessory before, after
 2. federal: aid & abet
 3. how much aid?
 4. mens rea?
 5. Texas: "parties"
-
1. Tx. 7.02(a)
 - a. culpable mental, nonresponsible agent
 - b. intent/promote, aid, encourage, etc.
 - c. duty/prevent, etc.
 2. after: hindering, compounding
 3. corporate: 7.22-24, for usual felony, reckless toleration, high managerial; diligence
 4. individuals; "throwdown prisoners"
-

RICO elements

--civil (treble damages) & criminal

1. assoc/enterprise
2. interstate comm
3. conduct/participate
4. enterprise affairs
5. pattern/racketeering
 - a. at least 2
 - b. named crimes
 - c. w/in 10 yr.
 - d. continuous
 - e. related

RICO forfeiture: interest acquired or maintained in violatn

14. Contraband Offenses

controlled substances: Tx.

1. schedules
 2. registration
 3. precursor reports
 4. penalty groups
 1. e.g., heroin
 - 1A. LSD
 2. e.g., psilocibin
 3. e.g., barbiturates
 4. e.g., "Robo"
 5. manufacture [defn]
 6. delivery [defn]
 7. possession
-

search warrant

1. prob cause [affidavit]
 - a. basis/knowl
 - b. credibilitymust extend to
 - a. specific offense
 - b. evidence
 - c. location
2. court's order
 - a. state/Tx.

- b. name items
[statute lists]
- c. place
- d. command
- e. date, sign

possession

- 1. "actual care, custody, control, mgmt"
 - 2. mens rea: intent/knowl
 - 3. evidence sufficiency
 - a. personal possession
 - [b. negate others?]
 - c. close proximity
 - d. recent use
 - e. occupancy
-

15. Non-Criminal Crime Reduction

non-criminal remedies

- I. forfeiture: (a) basis & extent; (b) is it really civil; (c) transportation-related
 - II. licensing
 - III. other
 - IV. preventive detention/civil commitment
-

- 1. architecture
 - 2. behavior modification
 - 3. transportation
 - 4. pvt security and suits
 - 5. civil/admin penalites
 - 6. police prevention
 - 7. mediation; confrontation
 - 8. the economy; societal
 - 9. quality-of-life
 - 10. social spending
 - 11. decriminalization
-

16. Victim/Survivor Issues

victims' issues

- A. compensation
 - B. notice, information, warning, protection
 - C. participation
 - D. justice; resolution
 - E. solidarity; understanding
 - F. crime defn; process; humane treatment
 - G. official liability
 - H. offender confrontation
-

17. Criminalization: Legitimacy

legitimacy/criminalization

- 1. notice?
 - 2. definition?: "reas people not have to guess"
 - a. citizens, complying
 - b. law enf, arrest
 - c. judge/jury, adjudicate
 - 3. ex post facto: com l crime? strict against govt? interpret? evolve?
 - 4. crime and harm
 - 5. better alternative?
-

18. Lawyer Lifestyle Issues

- 1. What % dissat?
where I want you to be (satisfied)
- 2. Why these stats?
- 3. Compare physcns
- 4. what makes diff?
(do we know?)
- 5. why this coverage? mushy content

uncertain answers

"depressing"?

6. if trying to avoid pitfalls, what will be nature of what you study?

(a) pleasant things

(b) unpleasant ones

the goal (remember!)

7. time usage

billable rec'ds

administrative

personal life

short tm deadlns

long tm deadlns

wipeouts (flex)

(most imp variable?)

8. adversary sys

oppos attys

oppos parties

judges

rules

cost

unpredict

unintended

9. people/"your side"

clients

morals

intellect

popular knowl

attitude/you

co-counsel

employees

saying "NO"

What Rambo does: push, trip, passive-aggress, waste time & \$, offend,

accuse, collateralize; make as

unpleasant as possible, as a strategy

What Rambo does to you and your

client: anger, stress, time, mistakes, capitulation, \$

Why it's hard to "call the law" on Rambo

What to do: slow down; explain client; act normal; careful about adopting tactics; or going to judge

10. business mgmt

business plan?

financing?

[KONTEST]

personnel?

equip/inventory?

style?

accounting?

systems?

govt/employr?

change/technology?

11. stress

what it is

what produces

what it does

managing

12. relatnships

13. dealing w/failure

law sch

practice

Lombardi

14. anger

15. health

16. subst abuse
