

Common Law

What is Common Law?

- Common law is discursive in problem-solving.
- Rather than relying on rules that are predetermined, we solve the problems as they come, by talking. The story and facts matter and the rules are shaped to fit every situation.
- Collection of specific cases or stories about social problems or conflicts. We resolve them by talking. The law is open to argument - there are different interpretations of rules depending on the story.
- The collection of stories (cases) is a social record that's useful in politics and court. 'Social Diary'.

Dudley & Stephens 1884

- Facts - what's the legal question - what's the legal decision - why did they choose it (legal reasoning)
- John wants to buy a yacht. Needs to bring it Australia so hires a crew to help him out. Gives Dudley (Captain) an amount of money - he wants to keep as much money as possible so he doesn't fix the boat as much as he could. The boat sinks and all four are stuck in a life boat. By day 14 one of them starts getting sick. Day 19, Dudley and Stephens decide to kill and eat the cabin boy (who's sick) and eat him. Rescued on day 24. Dudley and those who save him see nothing wrong with it. Once people hear about the story and decide that they should be punished. England has no law regarding that specific situation - need to discuss and figure out what to do. (Refer to readings of this week)
- Was there a defense of necessity? Court says yes. Some say yes - sometimes it's necessary to not die.
- It's important to think of how things were at that time. There's a big class struggle and political debates. It was the second industrial revolution.
- They were convicted and sentenced to hang. The working class didn't agree so they rebelled and got them out of being hung.
- 'Rather than see the common law as a fixed body of rules and regulations, it is preferable to see it as a living tradition of dispute resolution... a messy, episodic and experimental effort to respond and adapt to the contingent demands that society brings forward.' - p. 7&11 (Good essay question)

September 15th 2015

Lecture 2

Outline

- History of common law
- Definition of "precedence" + "stare desis"
- Role of judicial reasoning
- Overturning vs. applying vs. distinguishing on the facts.
- Liberal principles - define the difference between the citizen and the state.
- Crime control vs. due process
- 2 course themes
 - o Criminal law is exercise in discursive problem solving. (how do we deal with those kinds of things - we need to discuss with others to figure out what to do)
 - o Criminal law legitimizes state power (translates state's use of violence into 'authority')

Norman Conquest (1066)

- England was made of many kingdoms and principalities and they were independent from one another. Sometimes they would cooperate, and sometimes they would fight. When the French (Normans) came in, William the Conqueror, conquered the land. This is an example of establishing a government with violence (social control). The problem with that is that it usually ends up failing.
- William sent itinerant judges around the land. Their role was to resolve disputes and enforce the king's 'justice'. He wanted to centralize his rules so the use of violence was taken away from everyone. Only the king was allowed to use violence. Political project to legitimize the king's authority and his laws. As the problems came up, these itinerant judges had to come up with solutions (common law). They realized that they were coming up with similar cases so they wanted to set laws which would represent certainty and fairness. They don't want the king to look arbitrary. They developed two basic principles: precedence and stare decisis.

- **Precedence:** decide disputes by referring to decisions in past cases containing similar facts. And use all the past cases to develop rules to apply to cases in the future which contain similar facts. Precedent = a case - just one. Precedence = the act of using past cases.
- The problem now was that different areas of the land had different consequences. To fix this, they came up with...
- **Stare decisis:** lower courts are bound by the decisions of higher courts.
- Common law = collection of decisions we've made in the past. Shifts considering the social situation.
- Comparing the government with parents - if a parent uses violence with their child, eventually, once the child is grown up, they will completely defy their authority.
- Assert control over territory & legitimize the king's authority.
- Civil matters/private matters - common law everywhere except Quebec. Britain took over the rest of Canada. This is because back in the day, their system worked, so no one wanted to touch it. Criminal law matters are processed through common law.

BNA act - 1867 (constitutional act)

- Established a rule that the federal government had control over criminal law and criminal procedure. They can make laws regarding criminals. It gave the provinces the authority to set up courts of criminal and civil matters in their own jurisdictions.

Just after Confederation - 1879

- The British took the body of cases (common law) and wrote them down in a criminal code. In 1892, Canada adopts the same, and produce the Canadian Criminal Code. The British never publicized one. Trial judges listening to disputes could create new offences and can create new criminal defences.

In 1955

- We revised the Criminal Code to make it easier to work with.

After 1955

- There's now another body of criminal law in federal statutes. Trial judges now couldn't create new offences, but could keep making criminal defences.
- To truly understand the law, we need to remember that what truly matters, is the interpretation of the judge. Judicial interpretation is the praxis that defines the common law. The rule isn't important; what's important is the reasoning the judge makes when applying the rule in the context of particular set of facts of case.

In the 1940's

- When we won the Stanley cup - the guys go celebrate at a bar - the barman refuses to serve one of them because they're black - the supreme court says it's a private company, we can't tell them how to run it. In 1970, that changed. Social values change over time.
- Criminal law is also about morality.
- Because of stare decisis, a judge can decide to overturn a decision if their court on the same level as them, or lower.
- When the Charter came in - provincial courts start hearing the argument that we now have a freedom of speech. All of a sudden, provincial courts half decided that the verbal agreement for prostitution was legal because of it.
- When looking at a case with new facts, a judge can decide to apply the law because the precedent cases were very similar, or they can distinguish the new case from the precedent one, so we need to deal with it completely differently. Result = oriented judicial making.
- Common law that we have has been shaped by the political culture of the 1700s. Grounded in the philosophy of liberalism.
- Rational individuals - talking about specific kind of thinking. They only act when the gain weighs out the cost. Deterrence is "proof" that people are rational.
- In a criminal trial, those who are accused usually are asked to not talk in case of cross examination. Witnesses, judges, jury, experts, and lawyers are usually the only ones who will talk.

September 17th 2015

Lecture 3

Class breakdown

- Criminal law: Define relationship between the citizens and the state:

- Liberal principles (p.3 of course outline)
- Due process model vs. crime control model
- Canadian Charter of Rights and Freedoms
 - S1, S2, S7, S8, S9, S11, S15

Liberal principles

- We agree to follow the law because it's in our own self-interest.
 - So we give up our personal force and a bit of freedom by following the criminal code, so we can be safe. The government has monopoly
- The way the law punishes these transgressors is by using the criminal law to take away the perpetrators liberty (prison) or property (fines).
 - So we only punish those who've made a rational decision to break the law. But it can put the wrong guy away.
 - We need a state, but the state is also our biggest enemy regarding our liberty.
- The criminal code helps to limit or constrain, how, when, and why, they punish. This is important because the state has all of the power and can abuse it.
- The person the most vulnerable to the system is the person being accused of the crime. This said, we take special interest into protecting the defendant/accused.
 - If the state takes away an accused's liberty, we should all be afraid that it will do the same thing to us.
- The role of the criminal law is to stop our government from abusing its power.

Due Process Model VS. Crime Control Model

- Crime control model (police, general public)
 - Says the criminal justice system is there to repress crime. We don't just want to punish it, we also want to prevent it.
 - If the goal is to repress, then that means you take a managerial approach to it. It's ok to watch everybody to see if they're doing something wrong because you're trying to manage people's behaviours. Liberal point of view = huge loss of liberty.
 - Assuming who you think is bad so you keep an eye on them. Very different than the criminal justice system.
 - You assume police screen out innocent people. We assume that everyone in the system is guilty. So if you assume all of these, then when they do enter the system, you should encourage them to plead guilty.
 - If I want to manage crime, then I want it to be quick and efficient.
 - Use evidence even if it's illegally obtained evidence because 'he's guilty anyway'.
 - Appeals are a waste of time and money because all you want to do is sentence and punish those who've committed a crime.
 - All adds up to legal rights and criminal procedures get in the way of justice.
- Due Process Model (liberal principle built)
 - Embodies the liberal principles. The criminal justice becomes worried about protecting citizens (vulnerable) from the overwhelming power of the state.
 - Those who act for the state whom we should fear are the police because they wield the monopoly over use of force and prosecutors because they have the vast resources of the state behind them.
 - A way to protect these individuals is with procedural rules. It's essential to protect the individual who's accused of a crime from the possible abuse of state power.
 - The trial should be long and careful. If the state did something wrong, they shouldn't benefit from it. Proving guilt is not enough - you also have to prove that everyone is following the rules. (police, crown attorney, and the judge)

September 22nd 2015

Lecture 4

2. The Criminal Law – Negotiating the Relationship between Citizen and State

(2) Policing Political Protest

A. Policing, Power, & Politics

B. What happens when the state coopts monopoly over use of force for political purposes?

(3) Accountability

- A. Conflict in cultures of the Criminal Justice System and police
- B. Methods of accountability

Policing Political Protest

- “The police are in effect, the first, and main keepers of *the integrity and fairness of the Criminal Justice System* (CJS). The police have a profound and taxing responsibility to balance individual rights with society’s need for security.” – Saunders & McMunagle (p.192)
- Example 1:
 - A police officer makes a typical road stop. The driver of the vehicle is of visible minority, and refuses to put the window down lower than a crack because he claims of being nervous/scared. After repeatedly asking him to lower his window, the officer smashes the car window.
 - Is this ok?
 - Police’s argument: it was a safety concern.
 - Driver’s argument: he’s of visible minority, so it makes sense for him to be nervous.
 - ❖ Note: our view of police is affected by our view of U.S. police.
- Example 2:
 - Toronto → police have been stopping people on the street and asking to see in people’s bags. There is an apparent gun problem in one of the city’s areas that is densely populated by African immigrants.

Policing, Power, & Politics

- Direct interface between the state (that has monopoly on force) and citizen (that has rights).
- Police have duties that are constrained by law.
- When police say they have the right to safety at work, that’s not a ‘police right’, but their right as a citizen.
- Systematic relationships.
- Officers represent the state (whom has the power), so we’re scared that, consequently, they’ll use force on us.
- View of police’s duties:

Due Process Model	In the Middle	Crime Control Model
Autonomy	Protect citizen through proportionate means	Crime control
Deterrence	Keeping the peace	Crime prevention
We all have the right to make good and bad decisions		Deterring dangerous people from the state/society
Maximize liberty – doesn’t prevent anyone from doing anything		Community intervention – fixing people

- Maximize liberty → we all have the right to make individual choices.
- Deterrence → works by us making our own decisions. We weigh the pros and cons every time.

Role of the Criminal Justice System

- Whenever someone is accused of a crime, the CJS is there to protect the accused from having their liberty overtaken.
- The CJS is against prison, because it takes a person’s liberty away/putt’s them away against their will
- The CJS is about liberty and democracy.
- We worry that the state will use power for its own political purposes.

What happens when the state coops monopoly over use of force for political purposes?

- APEC 1997 (Asia Pacific Economic Coop)
 - Jean Chretien was prime minister.
 - He decided that Canada should make trades with South-East Asia.

- o Foreign Affairs opposed it because of Asia's unethical politics (violated human rights, torture, killed without reason, etc.).
- o The government's *political agenda* was to do these trades.
- o Social context: there was a concern for human right as well as globalization – there will be big consequences.
- o Flash point: President Suharto (Indonesian president – key member of APEC)
- o Decide to have a meeting at the University of British Columbia (this specific place has only one entrance/exit).
- o RCMP tried to explain to the party that it was a terrible idea in terms of safety. They sat with Suharto's brother-in-law (which was responsible for his security details) to explain that they couldn't bring any kind of weapons to which his brother-in-law replied, was out of the question. Our government ended up caving in and permitting it.
- o As soon as news broke out of the meeting and where it was taking place, thousands of people showed up to protest.
- o It was peaceful protest, but even then, the authorities arrested one of the organizers named Jaggi Singh the day before the protest. The police abused their power and took away his liberty without proper cause.
- o The RCMP gets a call from the President's people that if there are protestors on the day of the meeting, they will use weapons on them because it's insulting to the President.
- o Released Singh.
- o Once it was time for everyone to leave the meeting, everyone came around to protest. The RCMP let them know that they were surrounded by protestors and would need time to get rid of them. They responded that they were leaving in 10 minutes and that's when the RCMP scrambled to try and get as many protestors out of the way to avoid the President's security using lethal force.
- o They arrested a total of 73 people and used pepper spray as well as tear gas.
- o It cleared the street and allowed them to leave.
- o No one testified as to if it was the PMO or the RCMP that ok'd chemical weapon use.
- This is proof that the government abused its power for their own political agenda. (CJS point of view)

Assignment #1

- How do liberal principals come together to create a justice system?
- Look at principles, and think what's wrong from the CJS point of view?
- * When non-violent citizens are arrested.
- * Peaceful protesters. The police are friendly at first then goes to chemical weapons.
- Comes from understanding the due process model.
- * Both use of force.
- One of the easiest ways to think about the assignment is to contrast the comments made by the police chief/mayor/TV journalists as an example of a crime control perspective, with the comments made by the protectors (about rights, legitimacy) as an example of a due process perspective. That's a good start, but that only gets to half the answer. The other element you need to think about is how the police chief/mayor/TV journalists on the one hand and the protestors on the other are contesting the meaning of violence precisely because a claim that one or the other has been violent delegitimizes the other side's position. The liberal principles only allow state violence when the state follows due process rules because the whole point of the system is to maximize individual liberty and using violence against someone automatically reduces their liberty. So even if the protestors are using violence to destroy property and threaten the safety of other citizens, the use of force by the state can only be legitimate if the state follows due process rules. So what are the due processes rules that the state is supposed to follow here? (To answer that, look at the sections of the Charter we discussed in class.) Did the state follow them? If not, what happens to the state's legitimacy (i.e. what is the problem when the monopoly over the use of force is co-opted by the state for its own political purposes as it was in the APEC protest)? On the other hand, the protestors are clearly linking their position to due process rules - think of all the times they talk about free speech, freedom of association, peaceful assembly. Again, go back to the Charter and identify which sections they're relying on. Since the cis is set up to maximize individual liberty in general and to protect due process rights in particular, what happens to the state's legitimacy when it (through the police) uses force against peaceful protestors and arrests people without cause (again, think of our discussion of the APEC protest)?

- Interaction with people and police - pepper spray.
- Peaceful protest - lawyer and megaphone.
- Monopoly on use of force. All interactions governed by criminal code and justice system.

September 24th 2015

Lecture 6

Documentary: Is this what Democracy looks like?

Seattle

- World Trade Organization
- 30,000 people to protest U.S. imperialism.
- All kinds of people gathered because it 'hurts everyone's jobs'.
- At first, the police promised there would be no violence because the protestors promised the same.
- OC spray, CS gas and violence was eventually used when the meeting of the WTO was being compromised.
- AFL-CIO
- Grew to 50,000 people, demonstration of working class people. Working class struggle.
- 'Everyone should profit from the fruits of their labour.' - Leroy Trotman
- 'Close the global wage gap.'
- Nike: Chinese workers in China make 0.16\$ an hour, work 77-84h weeks, get fined for talking at work, women get fired if they're over 25 or pregnant.

Tuesday

- Mayor declares state emergency, 25 block perimeter was set up where you couldn't protest or express any kind of hate towards the WTO. Got pretty rebellious with the police expressing violence - so the next morning they re-emphasized that they were there in peace.
- What was being portrayed in the media was completely the opposite of what was actually going on.
- Corporate power.

Wednesday

- Everyone showed up again the next day despite what the police had done the night before.
- Steelworkers: sanctioned rally. Direct Action came to support them.
- Some unions wanted to be out in the process/other unions thought it was ridiculous to be out protestors.
- Police chased out protesters from Westlake park. They arrested all of those who were sitting in. Stopping buses to search them to get protestors out. Arrested for freedom of speech. Those arrested were put on a bus and brought to Sandpoint Naval Station.
- 'Were not going to agree on everything, what's important is to not get in the way of the bigger goal. We need to reinstate democracy.'
- WTO negotiations were on shaky grounds. With the world's focus on Seattle, other countries started criticizing the WTO's anti-democratic ways.
- Mayor made it illegal to purchase a gas mask.
- 8 corporations own 50% of media companies.
- Media were still making the protestors seem violent and disrespectful.
- 630 people were arrested.
- Those who were on the buses (the arrested) decided that they would stay on the bus until their charges were dropped and they had talked to their lawyers. They all refused to give their names and information until their demands were met. They couldn't be detained for no reason. Their constitutional rights had been taken away.
- Pepper sprayed those on the bus so they were forced to get out
- They started organizing protests from the inside - goal was to see their lawyers.

Friday

- There were protests going on around the world in solidarity with Seattle. (Boston, Israel, Milan, Greece, etc.)

Info About Documentary

- Norm Stamper - Seattle Chief of Police. The things he would say would be to try and expose the other side as violent.
- Media focussed on the protesters as being violent. Referred to any of the black protesters as gang members.
- At first, trade members said they weren't with the protestors.
- Chant – “Who's streets our streets who's cops our cops.”
- Chant – “Power to the people.”
- Chant – “I will remain silent. I want to speak to a lawyer.”

Assignment #1

- A. Continuum of citizen dissent (entitled to not agree with the government). Voting lobbying (legal) - protest - civil, disobedience - violence (illegal). Voting Lobbying: we can speak against the government.
- Protest: if bylaws are respected and such, it's a legal protest.
 - Civil disobedience: when you intentionally refuse to obey a law that you believe to be unjust or in support of some other dissent around injustice. Non-violent. Accept that the state can arrest you. To expose the state's monopoly over the use of force as illegitimate, they do nothing so when the state uses violence, they get exposed.
 - Violence: breaking windows, etc.
- B. Construction of meaning of violence
- Media/Police chief/Delegates - Trade/Unions - Individual protestors
 - Make sure to state your thesis, but not in essay form.
 - Build a conclusion, and then explain.
 - You can use subheadings.
 - No citing.

- "The police are, in effect, the first main keepers of the integrity and fairness of the Criminal Justice System... the police have a profound and taxing responsibility to balance individual rights (due process) with society's need for security (max liberty)."
- There's a standard which the due process model expects from police officers - which is to remain calm and not use force while in conflict.
- The only reason the government has monopoly over the use of force, is because the citizens have consented to it.
- Each individual citizen is the source of the state's legitimacy - they give a piece of their freedom, so the state can protect them and maximize their liberty. We give you power, but you have to maximize our liberty (it's a deal). (Due process)
- Liberal criminal justice system: not talking about safety. Growing up and taking care of yourself and the freedom to grow up and make their own mistakes. Have to deal with consequences.

S2. The Criminal Law – Negotiating the Relationship Between Citizen and State

4. Police Accountability

- a) Exclusion of evidence
- b) Criminal prosecution
- c) **Disciplinary hearings**
 - i. **Internal**
 - ii. **Public complaints commission**
- d) Civil actions

Police Accountability

- Abuse of power. If a citizen uses violence illegitimately, they go to prison. If the state does it, no one takes care of it.
- We stop looking at state's lack of legitimacy and focus at individual representative's responsibility.
- The government usually just blames the police as bad cops if ever they're under fire for abusing their power. State treat cops as individuals and make them look at individual transgressors.

- All of the cops have a right to due process protection.
- Try to keep the police accountable by using:
 - Exclusion of evidence
 - Whenever they break the rules, the courts throw out the evidence acquired.
 - Administration of justice into disrepute.
- Problems with this:
 - Does not affect the cop whatsoever but the victim.
 - The U.S.'s research shows that it is not a valid deterrent.
 - Feeds into the crime control model.

Criminal Prosecution of Officer

- Least effective.
- Hard to get a conviction.
- Victim is open to retaliation. Whenever a cop will be accused by someone that they abused their force, next time when they interact with the cop again, it's difficult to prevent a cop from retaliating.
- Crown attorney needs the police's cooperation - not just on this charge, but every other charge.
- Burden of proof: has to be beyond reasonable doubt.
- Even if you do, it doesn't change the police culture. It feeds into the crime control model. The
- CJS doesn't work - why are we attacking the cop? There are criminals out there. We need to break rules to actually end up arresting those who are criminals.

OCTOBER 1st

(Police Accountability)

Internal Investigations:

* Open to critique that they aren't hard enough on themselves

* investigator is immersed in culture of policing

* public complaints commissions:

* Crime control perspective: complaint = victimizing officer

- * if complaint is successful the remedy could include loss of employment which leads to loss of liberty (limited form of due process applies)

Civil Litigation (not criminal)

- * remedy not fine or jail, it is money damages
- * burden of proof not beyond reasonable doubt
 - * balance of probabilities
- * high success rate
- * Takes years and lots of money to sue
- * police force pays any reward not the individual officer

DOR v. METRO TORONTO BOARD OF COMMISSIONERS OF POLICE (1986)

- * a series of rapes
- * a girl leaves a window open and a guy comes into her apartment and rapes her
- * cops knew about the rapist already (called him the Balcony Rapist)
- * she sued for negligent performance of duty
 - * is an abuse of power and police put women in harms way
- * goes to trial, police explained that they were protecting women because women are hysterical and couldn't handle it if they knew a rapist was around the area
- * she won damages

CRIMINAL TRIAL PROCESS

- * Due process gives police one role - initializing the courts process
- * judicial officer can enforce "King's Peace"
- * as soon as police intervene then there is a potential loss of liberty
- * conflict is actually between the accused and the state

Investigation:

- * investigatory powers: still have lots of restraints
- * any search without a warrant is "prima facie" which means "at first blush" and is a violation of citizens privacy
- * to get warrant must go to judicial officers
- * an officer can detain someone for 20 minutes if they have articulable cause (halfway between suspicion and beyond reasonable doubt)

Arrest:

Three types of criminal offences

1. Indictable offence
 - * more serious (murder, treason)
 - * more potential loss of liberty
 - * more procedural protection
2. Summary offence
 - * less serious (theft under \$5000)
 - * max. penalty of 6 months or \$5000 fine or both
 - * less procedural protection
3. Hybrid offence/Dual offence
 - * crown elects to proceed by way of indictment or summarily

* until crown elects it is treated as an indictable offence

NO LOSS OF LIBERTY	LOSS OF LIBERTY
Summons	Arrest: taking physical control of someone in order to detain them which includes touching, or words of arrest and the individual submitting to arrest *always subject to reasonable force not excessive
Promise to Appear	

October 6th 2015

S3. Criminal Trial

1. **The Role of the Police - Initiating the Trial Process**
2. Social Ritual and Legitimization of the State's Authority
3. The Role of the Defendant and the Victim
4. The Role of the Trial Judge, the Crown Attorney, and Defence Counsel

Criminal Checklist

- Political project = centralized authority
- Example: Shop owner sees an individual steal flowers. Two hours later, the individual walks by again and the shop owner arrests him and puts him in a van.
- Section 1: Any one may arrest without a warrant = Shop owner.
- Section 1a: Has committed a criminal offence = Stole flowers.
- Section 1b: Reasonable grounds = There's enough evidence. Beyond reasonable belief.
 - Is escaping from = X. Happened two hours earlier.

- Freshly pursued by persons who have lawful authority to arrest that person: CAN arrest, but it's not a fresh offence.
- Conclusion: The shop owner couldn't arrest the individual because it happened earlier.
 - This is a dual/hybrid offence.
- Section 2: The owner or a person in lawful possession of property: He is the owner.
 - Find committing a criminal offence: Yes he saw him.
- Section 2a: They make the arrest at the time: X. No it was 2 hours later.
- OR
- Section 2b: Arrest within a reasonable amount of time: Can argue that yes.
 - AND they believe that is not feasible for a peace officer to make the arrest: Could've called 911.
- Section 3: The person who arrests a person must forthwith deliver the person to a police officer: No. Has to be right away.
- If you take someone's liberty away and can't check off the sections in the criminal code, due process falls onto you.

IMPORTANT: REFER TO PAGE RECEIVED IN CLASS.

October 8th 2015

S3. Criminal Trial

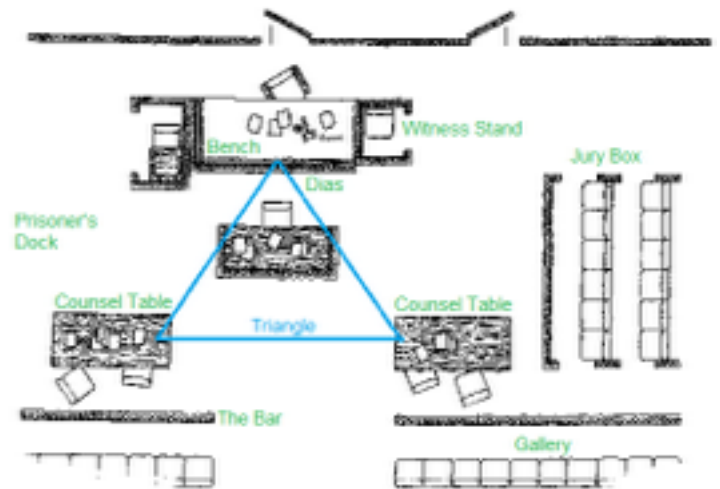
1. The Role of the Police - Initiating the Trial Process
2. **Social Ritual and Legitimization of the State`s Authority**
 - a) **The Courtroom**
 - b) **The Trial Ritual and Legitimization**
3. The Role of the Defendant and the Victim
4. The Role of the Trial Judge, the Crown Attorney, and Defence Counsel

The Courtroom

- Courtroom is a "symbolically organized public space that is designed to reproduce through repeated visible rituals, a collective obedience to political authority."
 1. Reproduction of political authority.
 2. Public space.
 3. Repeated visible rituals.
- Criminal trial is also a morality play where we act out the relationship between the citizen and the state. Gives us an opportunity to make sure that the state has done it in a legitimate way (legitimize the state's monopoly over the use of force as authority).
- Public space encourages a relationship between state and citizens. There are different relationships within this space.

Courtroom Set-up

- **Dias:** Higher than the rest of the court, this consequently, makes it the center of the room. Where the judge sits. Usually surrounded with symbols of the state (flags, pictures of the queen, etc).
- **Judge:** He's representative of the state. He looks down on everyone and overlooks the proceedings. He's separate from everyone else in the court. Represents the power.
- **Bench:** In front of the Dias. Signifies impenetrability and permanence. You never see the judge's legs and the chair isn't just to sit on, it's big and impressive. Portrays the judge as more important and powerful than the individual.
- **Prisoner's dock:** Typically on the side. Off of your central point of focus. Usually there's a railing, Plexiglas, bars, or cage. All of these are symbols of the isolation, unworthiness of the accused, and the stigma he carries. But at the same time, he HAS to be there. He witnesses the proceedings that are against him, which represents the "largeness" and the "fairness" of the court.
- The accused can disrupt the ritual but not get thrown out.



- **Counsel tables:** Where the lawyers sit. The two (opposing counsel) tables are separated by a ritual distance. Form a triangle with the judge which symbols where the ritual will take place.
- The position of the furniture gives you a sense of where the 'important stuff' will happen. The accused isn't part of the triangle, he usually just watches.
- **The bar:** Usually a railing, but separates the public from the 'triangle' which also focuses attention on the 'triangle'. But there's also the central aisle which leads up the bar, which is an invitation for the public to participate. Another ritual distance.
- **Gallery:** Where the public get to sit. The public presence is anticipated and expected. It's important because everyone in the gallery can see the triangle. Just benches which means that members of the public are undifferentiated. No table for note taking, just watch and listen. You are supposed to observe.
- **Witness stand:** Typically right beside the judge. Higher than everything, but lower than the judge. There's a vulnerability factor because everyone can see you, but the judge is also looking down on you, examining. They have to be called up, but it's the judge that permits them to leave. You can be charged if you don't cooperate with the judge. For example, if the judge asks for sources and they don't answer, they can be put in jail until they divulge the information. The victim may or may not be asked to come up. Witness participation is required by law and is seen
 - as a duty of citizenship. If you don't show up, you can be put in jail. The witnesses have information that the triangle needs.
- **Jury box:** Usually on the side, but have a good view of the triangle. They decide facts, but not law. Making a new relationship with the citizens and the state. Do that with visible rituals – morality play. There are actions required. The people sitting in the gallery/members of the public, enact the ritual. Actions are prescribed as part of the ritual.
- There are a lot of players, but the participants of the triangle are the celebrants.

The Triangle and the Ritual

- Ritualized dress. In higher courts, judges are required to robe. Required to wear black shoes or you'll get kicked out. Women are required to wear grey or black pantyhose.
- Ritualized speech. When someone is sworn in, arraigned, asked to plea, etc. Signifies that it's solemn, socially important, and should be treated with respect. Creates a feeling of law.

- Not allowed to contradict the judge or insult the other counsel. Counsel has to call each other "my friend" or the ultimate insult "my learned friend", which signifies to the judge that something is going on. Or with the judge, it's "with respect" or if that didn't work, "with greatest respect".
- The ritual needs to be public so that the relationship can be legitimized.

Courtroom players

- Victim: Has no role in the ritual.
- Why is that? Comes from an INCIDENT (1984):
 - A man name Bernie Goetz gets on a subway in New York. The city had a lot of crime disruption at the time. New York had a 70% crime rate higher than the second highest crime rated city. In 1981 he got on the subway and got jumped by kids who wanted his electronics and he fell through a plate glass which caused permanent injuries. Court wouldn't let him get a gun so he buys one in Florida and put dum dum bullets. In 1984, kids sit beside him on the subway and ask him for 5\$, so he stands up and starts shooting. Shoots 3 people and this kid named Cabey falls into one of the seats and gets shot up front by a dum dum bullet. Suffers lifelong injuries. The next day, the city paints him as a hero - 'taking back our streets'. Gets charged with weapon charges, attempted murder, and aggravated assault. The victims are the 4 kids and Bernie, who's the accused, gets painted as the opposite. He ends getting acquitted. Cabey's family sues him for 43mil, but he files for bankruptcy so never has to pay a penny.

October 13th 2015

3. The Criminal Trial

- a) The Role of the Police – Initiating the Trial Process
- b) Social Ritual and the Legitimization of the State's Authority
- c) **The Role of the Defendant and the Victim**
- d) **The Role of the Trial Judge, the Crown Attorney, and Defence Counsel**

- Victim → Cartier article.
- S21-23
- Crown attorney + defense counsel + trial judge = adversarial system.
- Trials = conflict between state and accused. The victim has no role.

1. Arraignment

- Charges are confirmed in front of public. Accused has the right to know.

2. Plea

- The accused pleads either guilty/not guilty.
- The accused is presumed innocent until the state proves that they're guilty.

3. Crown attorney's opening statement

- They summarize the case they'll try to prove.

4. Crown attorney's examination-in-chief

- Defense can interview the witness as well.
- Call the witness(es). The defendant can claim that nothing has been proven, so they can be acquitted if the judge agrees.

If it's a direct verdict, we directly acquit/dismiss the accused. If not...

5. Defendant's opening statement

6. Defendant's examination-in-chief

- Crown attorney can cross examine the witness(es).

7. Crown attorney's closing statement

8. Defendant's closing statement

9. Crown attorney's rebuttal

- If they have any.

10. (If it's a jury trial) The judge's instructions on law

- Where there are the most appeals.

11. (If it's a jury trial) The jury deliberates

- The jury can determine the facts of what happened the jury determines the law.

If it's not a jury trial, we go directly to #12.

12. Final verdict

13. (If guilty) Sentencing

- If there's no jury, the judge determines facts and law.

Bilateral individualism/liberal principles

- According to bilateral individualism, why does the victim have no role in the trial process?
 - The victim is then an individual who loses property or physical security because of actions of another individual. (Predation)
 - Conflict is then STATE vs. TRANSGRESSOR.
 - The state is supposed to protect, and the transgressor is considered a rational being.
 - The state is then expected to punish the transgressor.
 - If the criminal justice fails, then it becomes rational for everyone to want to take back their right to violence and force to protect their property and physical security.
 - It only works however, if you already know who the victim and who the transgressors are.
- There's another way to understand victims:
 - If we do a sweep of historic actions in a racially charged present are rooted in a racially-charged past.
 - The state should alleviate the suffering that is caused by this racially-charged past.
 - It's important to retain liberal thinking because it enforces individual responsibility.

Aiding & Abetting

- S21. A person can be a party of an offence if:

1. They commit the offence.
2. Aids + abets the individual to commit the offence.

Dunlop & Sylvester

- To help understand aiding & abetting, we look at the case of Dunlop & Sylvester.
- The incident:
 - Dunlop and Sylvester are drinking at a bar. They hear two 16 year old girls get invited to an old dump site where there's supposed to be a party. They eventually get invited to the party, as well. Once they arrive one of the girls leaves and the other ends up getting gang-raped by 18 different bikers. Dunlop and Sylvester bring beer, then stand around the circle and watch the rape go on for a few minutes, then eventually leave.
- If we were to sentence everyone involved, the bikers who were involved in the rape, would fall under number 1, of section 21.
- To sentence the two others, we need to look at the definition of *aiding and abetting*:
 - More than mere presence. The individual must of added encouragement OR facilitated the act of committing the crime. For example: keeping lookout is *facilitating*. Enticing the victim to the dump site is *facilitating*. Preventing the victim from escaping is *facilitating*.
- The judge decides they weren't aiding nor abiding, so they have no choice but to be acquitted. To prevent this from happening again, they add to the definition.
 - If there's presence and/or they had prior knowledge of the crime, it may be considered encouraging.

R. v. Curran (1977)

- INCIDENT:
 - Two men named Defoe and Curran are wandering around a mall. Defoe sees a man whom he decides he wants to rob and lets Curran know. He tracks the man in question, named Armond, to a stairwell where he pushes him down the stairs. Curran points out that Armond will be able to identify them for the authorities, so Defoe decides to gauge out his eyes. Curran then points out that Armond can still verbally identify them, which is when Defoe kills Armond.
- The judge finds no lawful reason to convict Curran, so the S21 is revised one more time.

- They add: intend to a crime. (*Facilitates*)

Party of an Offence

- Another way to be a party to an offence:

- S22. Counsel

- Recommending OR procuring OR enticing.



Ex. Hire a hit man.

Ex. Soliciting/urging

An action = A crime
+
Another person does it.
+
Offence that the counsellor knew/ought to have known.

- Once you're considered part of the offending party, you get the same sentence as the offender.

Accessory

- You can also be an accessory to a crime.

- S23. Accessory

- Knows that the person was part of an offending party.

- Receives, comforts, or assists that person for the purpose of helping the defendant escape.

- Sentencing for an individual accused of being an accessory usually adds up to half of the defendant's sentence.

- If the defendant is sentenced to life, then the accessory gets 14 years.

Inquisitorial Criminal Justice System

Inquisitorial CJS	Adversarial CJS (Common Law)
<ul style="list-style-type: none"> ◆ Find the facts and establish the truth = role of the criminal justice system. ◆ The judge is the investigator and works with police and prosecutor. ◆ Documentary evidence. ◆ Because the judge is involved, all evidence is admitted. Even if it's bias. ◆ Trust the state. ◆ Guilty unless proved innocent. ◆ They prefer to send 9 innocent men to jail to get the 1 that's guilty. 	<ul style="list-style-type: none"> ◆ They try to balance all of the individuals rights vs. protection of public = role of the CJS. ◆ Because everyone is rational, leave it to parties to investigate because their high level of motivation gives you the best chance to find the truth. ◆ Let the crown attorney and the defence to do the investigation. ◆ Each side is self-interested which gives 2 different stories that compete in a market place of ideas. ◆ The judge hears it all and acts as the neutral decision maker. ◆ Viva voce evidence (witness testimony). ◆ Due process, so evidence that is irrelevant or tainted, must be thrown out. ◆ Innocent until proven guilty. ◆ Burden of proof is on the crown to establish guilt. ◆ All about liberty – so we'll let 9 guilty people go to avoid having 1 innocent sent to jail.

- Back when England first introduced the common law, Europe was still underneath the inquisitorial criminal justice system.

October 15th 2015

4. The Criminal Act

1. Defining the Actus Reus

- Need both actus reus and mens rea (R. v. Droste – 1984)**
- Actus Reus 1 - Actions (Chase, KB, Bernier)
- Actus Reus 2 - States of being/status offences (Ford, Toews, Pilon)
- Actus Reus 3 - Omissions

Criminal Trial

- Why do adversaries make plea bargains? And why are they cooperating?
 - Skipping trial saves money and time.
 - The crown attorney and the defendant *cooperate*.
 - Both sides have their own goals which signifies their success.

Crown Attorney

- He goes through the daily list of cases. He wants to get it done as fast as possible because they don't get paid while they wait.
- With as many convictions as possible and less emphasis on what the conviction is for.
 - Because the crown attorney works for the court/government.

Defendant

- They lose most of their cases because most of their clients are guilty.
- Their goal is to reduce the punishment of the accused.

Pleas

- Their goal is to:
 - Diminish the charge OR

- Diminish the length of sentences.
- Example:
 - A defendant is charged with sexual assault.
 - There are many set dates before finally arriving to the conviction.
 - It's a lot of work and not all of it is paid for, so the defendant's lawyer will try to bargain.
- Plea Bargains
 - The defendant pleads guilty to:
 1. A lesser included offence.
 2. A smaller number of multiple counts.
 3. An agreed sentence.
 - In a plea bargain, the crown attorney and the defendant work together.
 - Both counsels submit a submission. If it's a joint submission, it means both counsels agree on a punishment.
 - The judge has the authority to completely deny their submission.

Criminal Liability Requirements

- For an action to be considered a crime, we need proof of:
 - The action contains some sort of crime. AND
 - The action was committed in a viable mental state.
- "Actus non fact reum misi mens sit rea" = The act is only guilty if the mind is guilty also.
- Before you can convict someone, the act has to be defined as a crime in the criminal code.

Checklists for Criminal Liability

- I. Actus Reus (IF NO, ACQUIT)
- II. (IF YES) Did he have the mens rea? (IF NOT, ACQUIT)
- III. (IF YES) We can say the individual committed the crime.

These steps are to make sure the liberal principles are followed.
 Liberal principle → Shape legal concepts.
 ❖ Can't convict unless you have actus reus AND mens rea.

- IV. Do they have defence/excuse? (IF YES, ACQUIT)
- V. (IF NO) They have criminal liability.
- VI. Sentencing.

Actus Reus

- 1. Intro
- 2. 3 types of actus reus'
 - a) **Action (Chase, KB, Bernier)**

October 20th 2015

Conviction

- To convict, you start with:
 - 1) Criminal liability check list
 - 2) THEN actus reus
 - 3) THEN mens rea
 - 4) Defence or excuse
 - 5) Conviction
 - 6) Penalty

Actus Reus

- We don't punish bad thinking because we have the liberty to think what we want.
- Did a crime occur? You first ask, what's the actus reus?

Action

- Though shalt not do. What is the prohibition/the illegal act? So you first look at the criminal code.
- Theft: How do we create this checklist?
 - S322. A) The verbs in this section: Takes, Deprive, Converts
- Check if they did something they weren't supposed to do, THEN were they in the proper mental state?

Example for Theft

- INCIDENT:
 - Non-unionized job and they want to unionize it. Employees are treated badly. One of the union members walks into the boss's office and on his desk, there's a list of employee names and contact information. The member takes the paper walks off. Has a theft occurred?

Actus Reus Checklist for Theft – Incident 1:

- A. Deprive OR: You mentally wanted to deprive the owner of the object. So NO.
- B. Takes, anything, animate/inanimate OR: YES you take, but NO to anything. Can't touch it.

If it's not worth much, we don't check off the "takes".

- C. But the defendant says the information was very valuable.
- D. Converts, anything: NO.

Example for Conversion

- INCIDENT:
 - A guy owns 2 helicopter. He's owned the first helicopter for a while. The second, he took out a loan at the bank for it. Technically you transfer the ownership to the bank. Right of reversion: once you've paid it off, it goes back in your possession. Then there's a helicopter that crashes (second one). So he puts the serial number of the second one, on the first so the bank's helicopter is the one that crashed.

Actus Reus Checklist for Theft – Incident 2:

- A. Deprive OR: NO.

- B. Takes, anything, animate/inanimate OR: NO, he already had it.
- C. Converts, anything: YES.

Actus Reus Checklist for Assault:

S265. A) The first part refers to mens rea.

- a. Actus Reus: Someone applies force, directly, without consent.
- b. Actus Reus: Someone applies force, indirectly, without consent.
- What is the actus reus of sexual assault?
 - o Back when the Criminal Code was introduced, the definition of rape was: defined as having sexual intercourse with a woman, without consent, that's not your wife. And for it to be rape there needed to be penetration. So if a woman was penetrated with an object, it was no considered rape.
 - o What's wrong: It's gendered, and you can force your wife to have intercourse.

R. v. Chase (1987) N.B.

- INCIDENT:
 - o Dirty old man, at someone's house, 15 year old girl, grabs her arms and breasts, then reaches for her genitals but she pushes his arm away. Says "common dear, don't hit me, I know you want it". Tells parents, they call police and he's arrested under sexual assault.
- At the appeal, they acquit him because he didn't "touch her genitals".
- Supreme court (common law, so they can add to the law as cases surface) decides to revise and ADD: "Circumstance of sexual nature where the sexual integrity of the victim is violated".

Actus Reus Checklist for Sexual Assault - Chase:

S271. Everyone who commits a sexual assault is guilty of:

- A. Touching, (in)directly, without consent: YES.
- B. What does sexual mean?: Sexual integrity of the victim is violated: YES.
- ◆ ADD: Does not require the touching of genitals: YES.
 - o You can't make rules unless a case comes along.

R. v. KB (1993)

- INCIDENT:
 - Father, has a 3 year old son, he just "just discovered he has a penis" so as soon as a man comes up he'll grab the other man's genitals because he realizes other people have one too. Father loses patience, and tries to discipline his child by doing the same to him, but does it violently.
 - The police charge him with sexual assault. Goes all the way up to the Supreme Court, and they convict him by adding to the law.

Actus Reus Checklist for Sexual Assault – KB:

- A. Touching, (in)directly, without consent: YES.
- B. Sexual integrity of the victim is violated: YES.
- C. Doesn't require touching of genitals.
- ◆ ADD: Includes aggressive acts of domination that violates the victim's sexual integrity.
- ◆ ADD: Does not require the defendant's sexual gratification.

R. v. Bernier (1998)

- This case evolves a lot away from the old belief of what sexual assault is.
- INCIDENT:
 - Works in a facility of development of mentally disabled people, and in that facility you often need to lift people and assist them with remedial tasks. He would joke by grabbing women's breasts and men's genitals.
- The police is called and he's charged with sexual assault.
- Goes all the way up to the supreme court, and they convict him by adding to the law.

Actus Reus Checklist for Sexual Assault - Bernier:

- A. Touching, (in)directly, without consent: YES. Not in the mental state to consent.
- B. Sexual integrity of the victim is violated:
- C. Doesn't require touching of genitals. YES.

- D. Includes aggressive acts of domination that violates the victim's sexual integrity. NO, not aggressive.
- E. Does not require the defendant's sexual gratification. YES.
- ◆ ADD: Does not require any hostility on the defendant's part: YES.

Midterm 1

- Dunlop & Sylvester, Curran, Chase, Droste, KB, and Bernier.
- Are the facts in the fact situation similar too or different from the cases in class. If similar, you say the court will apply the rules, if different, you say the court will distinguish the new case from old cases on its facts.
- 80 Minutes to write midterm. Can bring criminal code. Can highlight and tab, but no notes. Can say the section on tabs, though.
- 2 parts to the exam: part 1 is fill in the blank, and short answers. 10 questions, each worth 1 mark. Part 2 is a fact situation, story, and there are 3 questions asked about this story, but the question asks the legal question. 3 questions, 5 marks each. Need a good explanation of the law, and how it applies to the situation.

On Midterm 2 & Final

- Give a fact situation, and there'll be a question. So you'll walk through the case and make a checklist.

Maryse

October 6th 2015**Arrest and Pretrial Custody**

Three types of offences:

→ only the crown can decide it's indictable.

- (1) Indictable offences – serious offences with more potential loss of liberty and therefore more procedural protections
- (2) summary conviction offences – less serious offences with maximum penalty of 6 months or \$5,000 fine and therefore less procedural protections
- (3) Dual or hybrid offences – Crown can elect to proceed by indictment or summarily – until the Crown elects, treated as indictable

→ Arrest: Taking physical control of someone to detain them, by touching unless words of arrest are used and the person submits to the arrest

ss. 25-27: Can only use as much force as is reasonably necessary to arrest, and actions must be reasonable and proportional. Person making the arrest is criminally liable for any excessive force used

s. 494 Anyone can arrest someone

* Pay attention to "and" ≠ "OR".

- (1) he finds committing an indictable offence **OR**
- (2) he reasonably believes has committed a criminal offence **and** is freshly pursued by someone with lawful authority to arrest him **OR**
- (3) if he is the owner of property, or his agent, and he finds him committing a criminal offence on that property

Person making the arrest must deliver the person forthwith to a police officer.

s. 495 A police officer can arrest someone

→ They give the police more power, but then instantly limit it.

- (1) he believes, on reasonable grounds, has or is about to commit an indictable offence **OR**
- (2) he finds committing a criminal offence **OR**
- (3) he believes, on reasonable grounds, is subject to a warrant

* Police are the only ones that can start a court process.

Generally speaking, release the person unless:

- (1) can't establish the person's identity → To be able to bring them into court.
- (2) to preserve evidence → so the court can do its job.
- (3) to prevent further offences
- (4) reasonable belief that the person will fail to appear at court

* They need to be able to give summons.

Arresting Officer release with summons or appearance notice

Officer in charge of police station release with summons, promise to appear or recognizance (max \$500) without sureties or conditions

Bail Court

- (1) Primary Ground – appear in court
- (2) Secondary Ground – reoffend or interfere with administration of justice
- (3) Tertiary Ground – confidence in administration of justice → usually for serious charges.

To release with promise to appear, recognizance without sureties or conditions, or recognizance with sureties and conditions or detention order

→ Piece of paper saying appear in court then —

Don't arrest unless → summons.

Arresting officer → summons or appear

officer in charge → summons or promise to appear or recognizance (PBI) \$500 Max

Codes to mark

322 → Theft.

334 → Consequences of theft.

Recognizance

- a) You need to prove that you have the money your bail has been set at.
- b) Sign the recognizance means you can leave → but if you don't appear in court on the date set, you need to pay the bail + you get a criminal offence for failing to appear in court.

* If the officer in charge decides to keep the person in jail, then you have 24 hours to get in front of a bail court. Judicial oversight.

- The bail court decides if the person can in fact, get bail, or must stay in jail.

↳ See on sheet what the bail court must refer to.

- If the bail court denies you bail, you get a detention order (jail)

- If you get a detention order, you can go to a higher court for a bail review.

- If the bail court wants to release the person, they have options:

① Can give a "promise to appear"

② Set bail with no limit.

③ Sureties & conditions.
(bail)

surety → Someone signs the accused's bail. They have proved that they have property worth the amount set. That person takes responsibility for the accused - will get them to court.

conditions → can be broad.
ex. you will be re if you promise to take your meds.
Surety will make sure.

↓
If the person fails to follow the condition, they can be charged with Failure to Comply.
Criminal consequence.

December 8th 2015

FINAL REVIEW

1. **Mental Disorder (m/r)**
 2. **Drunkenness/intoxication (m/r)**
 3. **Automatism (A/R)**
 - a. Normal states
 - b. External trauma
 - c. (In)voluntarily induced by drugs/alcohol
- King & Daviault**

4. Defences**Final Exam**

Specific intent & general intent mens reas are from previous classes.

R. v. King (1962)

Goes to the dentist. Needs a tooth pulled so the dentist gives him sodium pentathol (laughing gas). Pull the tooth out and he says that went great, walks out, pays the receptionist and gets into the car and drives right into the car in front of him. Police charge him with impaired driving.

A/R		m/r	
Driving	Yes	Intent	Yes
A motor vehicle	Yes		
When your ability to drive is impaired by drugs/alcohol	Yes initially Then said no -		

He couldn't form the subjective foresight that this would happen BUT...

It's a general intent offence so drunkenness doesn't apply which means he has intent.

Court: But it wasn't voluntary. He didn't get drunk on purpose. So they look at the A/R and say we need to add the criteria of "voluntary". He is like the sleepwalker - he couldn't exercise his free will. So they place him under the "automaton" category.

R. v. Daviault (1994)

Chronic, long-term, serious, alcoholic. Has a high tolerance for alcohol. Gets up one day and goes to the pub, and drinks 7-8 beers over the afternoon. He picks up a bottle of brandy, and arrives to his friends house around 6PM. His friend is a 65 year old and partly paralyzed woman. She pours 2 glasses of brandy and they start chatting. She falls asleep in her chair. Between 6PM and 3AM he finishes the bottle of brandy. She wakes up at 3AM because he's wheeling her to her room, he rapes her, and he's charged with sexual assault (rape).

A/R		m/r	
Touching	Yes	Intent/knowledge	Court says no.
Without consent	Yes	Recklessness	No
Violates the victim's sexual integrity	Yes		

He argues that he's so drunk that the act was involuntary and he's acting as an automaton therefore there is no A/R therefore you need to acquit him.

He has no mens rea because it's a general offence. So there's no A/R which means he gets acquitted, even though they would like to arrest him. Has was too drunk to form the thought of A/R which would make the act voluntary. This means there's no A/R.

Section on drunkenness: Limited to offences where the physique of the victim is violated. It's also limited to if you defer from the standard level of care (when you're in exceptionally high state of induced intoxication).

S7 - highlight it.

R. v. Daley (2007)

Lives with his common law wife and they spend a night drinking. They go out drinking with friends, come home and keep drinking. In the wee hours of the morning, she's dancing in the kitchen while him and his friend get on their motorcycle and go find another party. When he comes back at 5am, the door is locked. He gets really mad and he starts banging the door and breaks in. Neighbours are witnesses to the disturbance. His wife is found dead the next morning and he's sleeping it off in their bedroom.

He says he's like Daviault. He doesn't remember what happened. He's charged with 2nd degree murder.

A/R		m/r	
Doing anything	Yes	Intent	No
That causes death	Yes	W/B	No
To another human being	Yes	Recklessness	Yes

Looking at A/R: "I didn't know what I was doing. I don't remember."

* Not remembering is not automatism.

On the evidence, he wasn't that drunk. He stabbed her. He was being reckless because he knew she would die as a result of that action.

Court: Obiterdicta. Talk about the law regarding drunkenness. They decide there are 3 levels of drunk:

- Mild drunkenness: relaxes inhibitions. It's irrelevant to m/r & A/R.
- Advanced intoxication: so intoxicated you lack specific intent because it impairs your foresight of the consequences. (Raises reasonable doubt about whether or not you knew the consequences of your actions.)
- Extreme intoxication/automatism: intoxication negates voluntariness. So no A/R. BUT, this VERY rare. By S33.1 Limited to non-violent offences.

Specific Intent: Drunkenness can bring reasonable doubt to your m/r.

Final Exam

5 parts.

1 - Fill in the blanks (25 - 1 mark each) 25 of final mark.

2 - Give a list of 13 cases and you pick 2. Say what the facts are, what's the legal issue, and what definition the court came up with. (10 - 5 points each) 10 of final mark.

3 - Mens Rea Chart. Know the definitions, arrows, tests. (20 & 5 marks on explaining the arrows (where we directly talk of LB)) 20 of final mark.

4 - Fact situation. Talk about the cases - the facts of them and the definition that comes out of them. The legal issue is provided. Need to show we understand the law. 20 of final mark.

5 - Short essay. Pick 1 of 4. 25 of final mark.