Substantive criminal law.

Criminal law divides into substantive and procedural.

The role of the substantive criminal law is to state and define a crime, defines what a crime is, including the general principles of intention (úmysel) and causation and defences.

The procedural law deals with procedure and evidence. It´s inseparable from the substantive criminal law.

The main aims of criminal law are:

* protect individuals and their property from harm,
* maintain law and order in society,
* punish those who deserve punishment.

The criminal law forbids certain types of behaviour and makes anyone who carries out that behaviour liable to punishment.

**The crime**

is conduct which injures people or property. It´s a **legal wrong that can be followed by criminal proceedings which deserves punishment.** But it´is not only a **wrongful act;** it can be **also form of failure or omission.** (when the defendant is under a duty to act). Where the defendant is responsible for the creation of a dangerous situation, for example after being involved in a road traffic collision, he fails to report it.

We can say that crime is

* **a public wrong and**
* **a moral wrong.**

A public wrong because crime is against the whole society, against the public.

And moral wrong because crime in history was defined as an immoral act deserving of punishment. Many acts are prohibited on the grounds of social suitability and not because of their immoral nature (e.g. summary offences). And many acts which are generally regarded as immoral – for example adultery – are not crimes. An immoral nature of crime varies from individual to individual.

Crimes are acts which have a harmful effect on the whole public.

There are some differences between the rules of civil and criminal procedure.

**Criminal precedure: Civil procedure:**

Parties:

Defendant (obžalovaný) defendant (odporca)

Prosecutor (prokurátor, žalobca) claimant (navrhovateľ)

aggrieved person, injured

*prosecute = trestne stíhať sue – žalovať*

*Anyone may start proceedings.*

*May not discontinue it at wil (only The claimant can stop*

*Crown or CPS – Crown Prosecution Service proceedings.*

*can stop proceeding)*

There are **victim crimes** and

**victimless crimes** (there is no victim) – if

you have no helmet or if you not fasten seat belt.

**Classification of crimes:**

1. ***By place and method of trial:***
2. Summary offences – those which are less serious, triable only in Magistrates´Court.
3. Indictable offences – triable only in the Crown Court
4. Offences triable either way also called eigher-way offences -(triable either in the Magistrates´or Crown Court).
5. ***By the harm caused by the crime:***
6. Offences against the person (e.g. assault) *napadnutie, útok*
7. Offences against the property (e.g. theft)
8. Offences aginst public order (e.g. being drunk in a public place)
9. ***By source of law:***
10. Common law offences (offences derived from judicial decisions)
11. Statutory offences (ofences defined in an Act of Parliament)
12. Regulatory offences (offences defined in delegated legislation)
13. ***By police powers:***
14. Arrestable offences
15. Non-arrestable offences

This classification is important because anyone (not only police officers) can arrest, without a warrant of arrest in certain situations (it´s called the citizen´s arrest) *(pozn. for more details on police powers refer to chapter Criminal Justice Process!)*

**Elements of a crime.**

**Actus reus** – is external element; the accused has caused a certain act or that responsibility is to be atributed to him for the existence of a certain state of affairs, which is forbidden by the criminal law.

**Mens rea** – is fault element, also called guilty mind or blameworthy mind or intention.

The prosecution have to prove both of them – the actus reus (external element) and the mens rea (fault element) of the crime.

Actus reus means the guilty (harmful) act of the accused; mens rea means the blameworthy (guilty ) state of mind or intention.

**ACTUS REUS:**

**ACT – OMISSION – STATE OF AFFAIRS – CONSEQUENCE**

**Actus reus** includes an act or conduct and result elements of an offence together with any attendant circumstances necessary for criminalisation. Actus reus refers to the external elements of the offence.

E.g. appropriation of property in the act of theft is an conduct as actus reus and specificied circumstances means that the property belongs to another.

Sometimes the actus reus may be an omission to act (failure to act), a state of affairs rather than an act (e.g. being drunk) or a consequences (caused by the defendantś conduct). Crimes where a particular consequence is part of the actus reus are called result crimes. Murder is an example. The actus reus involves not only killing (conduct) but also it is unloawful and of a human being (circumstances) and that death occurs (consequence).

A person is guilty of theft if he appropriates (steals) property belonging to another with the intention of permanently depriving the other of it.

*The actus reus of theft is:*

* an appropriation (conduct) *(privlastnenie)*
* of property belonging to another (circumstances)

and

*Mens rea of theft is:*

* decision or intention to be dishonest
* decision or intention to permanently deprive *(odňať)*

We can say that to recognise an act as a crime of theft, it must contain both elements – the actus reus and the mens rea.

**MENS REA:**

To be guilty of a crime the accused must have the necessary mens rea as the mental element of the crime.

\*R v Mohan 1976

Fault known as mens rea is extremely importatnt in criminal cases. There are **different levels of means rea** for different crimes:

* **specific intention** *úmysel*
* **subjective recklessness**
* **objective recklessness, also called negligence**
* **strict/absolute liability.**

**Specific intention**

* is the highest level of MR.
* means decision of accussed to do something wrong, or cause prohibited consequence.
* This level of intention must be proved for most serious crimes including murder, theft, burglary and robbery.

**Recklesness** (nedbalosť) – involves taking a risk. A person who does not intend to cause a harmful result may take an unjustifieable risk of causing it. If he does so, he may be held reckless.

R could be

* **subjective** – means that a person realizes risk but carry on with his conduct. It is deliberate or conscious risk taking. (úmyselný, zámerný, vedomý)
* **objective** –since 2003 is no longer used in criminal law; It could happen when the defendant failed to think about the possibility of there being any risk (negligence).

**Strict liability offences**

* are those where the defendant will be guilty
* because he did the actus reus.
* There is no need to prove any means rea.
* Strict liability is based on the breach of an absolute duty.
* Strict liability offences are not truly criminal but are treated as offences to prevent potential danger to public health and safety.
* Causing pollution, selling contaminated food are examples of SLO.
* Normally strict liability crimes are not punishable by imprisonment, but only by fines.
* The main aim of this type of offences is to protect society by promoting greater care over matters of public safety.

\*Fault in civil law.

Fault can also be seen in many areas of civil law, in contract and tort. Fault may be less important in contract cases, because the fact that the defendant has breached the contract is sufficient and there is no need to prove fault. However, if there is misrepresentation, then it is neccessary to prove fault.

Fault is particulary important in tort cases. Tort is usually based on proving that the defendant´s act or omission caused damage to the claimant.

**CHAIN OF CAUSATION.** (príčinná súvislosť)

Is the last element of a crime.

It is necessary to show the link between the defendant´s act and the consequens.

It is necessary for a consequence to happen as a result of the defendant´s act in order for the actus reus to be complete.

It means that the consequence of the assault must be an injury. In the crime of murder the consequence must be the death of victim.

E.g. In an assault (prepad) causing actual bodily harm, the act may be a punch to the face of the victim and the injury a broken nose. In this example there is a clear link, or chain of causation, between the two – the accused not only assaulted the victim but that assault aslo caused actual bodily harm (ublíženie na zdraví, ujma na zdraví).

Problems arise where there is an **intervening act** contributing to that consequence. This can occur:

* When the victim contributes to the occurrence or extent of injury (e.g. jumps into a river to escape an attack and drowns)
* When another act (an act of God – superior power – any natural disaster – earthquake..) or a third party contributes to the occurence of injury.

In many cases the jury or magistrates decide whether the chain of causation was broken (and thus whether the defendant should be relieved from responsibility) by applying the **„sine qua non rule,** also called the **„but for“** principle.

This principle states that the defendant´s act cannot be the cause of a consequence if the consequence would have occurred in precisely the same way had the defendant´s act never been done. It must be proved that, but for, the defendant´s act or omission, the consequence would not have occurred.

It means that the defendant´s action must be an indispensible conditon of the result.

Príklady s. 298, 299

**Parties (accessories) to a crime.**

The person who commits a crime is called the **principal**, or the **principal offender.**

The person who is guilty of the crime, who is acting.

In murder, for example, the principal is the man who fires the gun which causes death.

There can be two or more **joint or co-principals**, for example when two burglars enter a house to steal, then they are all principals.

An **accomplice or a secondary party/participant** is a person who knowingly, voluntarily and intentionally unites with the princiipal in committing a crime, is guilty of the main crime and liable to the same punishment as the principal.

The actus reus for secondary participation is that the secondary party **must aid, abet, counsel or procure** the commission of an offence.

**SELECTED CRIMES.**

There are many different types of offences against the person and against property.

**Fatal:** result is a death offences against person

**Non-fatal:** no death offences against person

offences against property

* **Murder and manslaughter**
* **Non-fatal offences against the person:** assaults, offences involving sexual intercourse,
* **Offences against property:** robbery, burglary, aggravated bulglary, going equipped, handling stolen goods, making off without payment, taking a conveyance without consent, aggravated vehicle-taking and criminal damage.

**Murder and manslaughter.**

**Homicide** is a general term meaning the killing of a human being.

**Lawful homicide** – also called excusable homicide occurs when somebody uses reasonable force in preventing crime or arresting and offender, in self-defence or defence of others, and causes death as result.

**Unlawful homicide** – is knowingly or negligently killing a human being and means crimes such as **murder, manslaughter and infanticide.**

Both crimes of murder and manslaughter involve the killing of a human being. The actus reus is the same in both crimes, namely the unlawful killing of a person. The difference between these two crimes is in the intention of the defendant.

**Murder** is a common law crime; its definition dates back to 17th century. According to Coke murder is committed when a person of a sound mind unlawully kills any reasonable person in being and under the King´s peace with malice aforethought either expressed or implied.

**Malice aforethought** means thought of in advance, deliberate, or premeditated to kill or seriously harm another person. It means that murder is a specific intent crime.

**Express malice** is the intention to kill and

**implied malice** is the intention to do grievous bodily harm (this lesser intention is also enough to make the defendant guilty of murder).

There is the highest level of mens rea and it is that distinguishes murder from manslaughter.

Murder – actus rea is killing – mens rea is intention to kill, malice aforethought (specific intention).

Malice – EXPRESS (zrejmý úmysel) – defendant has intention to kill

Malice – IMPLIED (predpokladaný úmysel) – defendant has intention to cause grievous bodily harm (ťažké ublíženie na zdraví)

All persons convicted of murder must be sentenced to **imprisonment for life,** in other words, the crime carries a **mandatory life sentence**.

**Manslaughter** is charched with murder but

MITIGATING CIRCUMSTANCES reduce it to manslaughter.

Mitigating – mitigate

Aggravating – aggravate

Manslaughter is committed where a death is unlawfully caused by the defendant, but the defendant did not have the necessary mens rea for murder. There are two types of manslaughter:

1. Voluntary manslaughter
2. Involuntary manslaughter
3. **Voluntary manslaughter** arises when the accused is charged with murder and had the mens rea for murder, but mitigating circumstances reduce the offence to manslaughter. There are **3 mitigating circumstances** which have the effect of reducing the charge of murder to one of voluntary manslaughter – they are **also called special defences to murder:**

* **Diminished responsibility**
* **Provocation**
* **Suicide pact**

**Diminished responsibility:**

*The important factors are:*

* Defendant is suffering from an **abnormality of mind**   
  (a state of mind so different from ordinary human beings, the reasonable man would term it abnormal).
* Which must **substantially impair the mental responsibility** of the defendant for his acts, it must reduce his powers of control, judgment or reasoning to a condition that would be considered abnormal by the ordinary prudent person,
* Abnormality of mind may be **caused by arrested or retarded development** (low mental age), by an internal disease (e.g. brain tumour, epilepsy), by an external injury, or by some mental inherent causes (such as chronic depression, irresistible impulse, stress).

We talk about the **defence of provocation** when there are things done or said or both together and that it must be enough to provoke a reasonable man. Provocation covers many different situations, including discovering that one´s husband or wife is having an affair with someone esle, physical violence or racist remarks.

The provocation must cause a **sudden and temporary loss of self-control**.

The law expects people to exercise control over their emotions. The jury must think that the circumstances were such that they made the loss of self-control sufficiently excusable **to reduce the gravity of the offence** from murder to manslaughter.

The jury decides what degree of self-control should have been expected from defendant by taking into account the effect the provocation would have on a reasonable man. They can take into a account any relevant matters such as the age and sex of the defendant.

**Suicide pact** is where two people agree to commit suicide and if one survives, if that one has killed other then he will be guilty of manslaughter.

**These 3 defences** are partial defences available only on the charge of murder and they **reduce the charge of murder to manslaughter.**

This is important since a judge must send anyone found guilty of murder to prison for life.

For manslaughter, on the other hand, while the maximum penalty is life imprisonment, the judge can **impose a lesser sentence** or not send to prison at all if he thinks it suitable in the case.

Apart from these special defences to murder there are general defences available for most crimes including murder.

1. **Involuntary manslaughter** is an unlawful killing where the defendant did not have the specific intention for murder. Involuntary manslaughter may be committed in one of two situations:

* **by an act which is unlawful and dangerous**
* **by gross negligence**

Involuntary manslaughter is divided to:

* constructive (unlawful act) manslaughter
* gross negligence manslaughter

The **unlawful act (constructive manslaughter)** is constructed from an act which is both unlawful and dangerous. Often, it is an assault of some kind. As for the dangerous act. The objective test is used – would a reasonable person realise that the act was likely to cause harm, however slight?

*/In R v Mitchell 1983 the defendant tried to push into a queue. A man in the queue objcted and Mitchell punched him. This caused the man to fall against an 89-yrs-old woman. The woman´s leg was broken as a result and shi died from complications caused by breaking of her leg. Mitchell was found guilty of manslaughter. The unlawful act in this cas was the punch to the man in the queue./*

Where a person **owes a duty of care**  and if he performs that duty so negligently that someone dies, he may be guilty of **gross negligence manslaughter.** (zabitie z hrubej nedbalosti)

There are many situations in which a duty of care exists, the most obvios ones are the duty owed by a doctor to his patioent and the duty owed by a driver to other road user. It is for the jury to decide whether the defendant owed a duty of care to the victim. Defendant is convited of gross negligence manslaughter because he breached that duty of care.

**Non-fatal offences against the person.**

1. **Assault and Battery.**

An **assault** is any act which intentionally or recklessly causes the victim to apprehend (fear) immediate and unlawful personal violence. There is no need for contact (e.g. threatening with a fist or a weapon) and an assault does not have to result in an injury. Assault – by words, by gestures – raising a fist (zovrieť päsť, hroziť päsťou), no physical contact! *Napadnutie, útok bez fyzického kontaktu.*

**Battery** is the application, intentionally or reclessly, of unlawful force to another person, such as slapping, pushing, punching. It does not have to result in an injury.

..is already with physical contakt; unlawful force is used – hitting someone, pushing, punching, poking, kicking; at extremly low level.

*Napadnutie, útok so vztiahnutím ruky.*

Both offences are summary offences.

**Aggravated assaults** are more serious assaults which carry stricter penalties. Examples of these are:

assault with intent to resist lawful arrest (refuse to be arrested)

gun, weapon, explosive

aassault occasioning actual bodily harm,

malicious wounding,

assault occasioning grievous bodily harm,

assault with intent to rob and

racially aggravated assault.

1. **Offences involving sexual intercourse**

include: sexual assault, rape, assault by penetration, administering drugs to obtain or facilitate intercourse, intercourse with a defective, sexual activity with a child family member.

**Offences against property.** – non-fatal offences

THEFT (thief, thieve) – someone has stolen something.

ROBBERY is theft with unlawful force. (lúpež)

BURGLARY (os. Burglar)

A person is guilty of burglary with intent if he enters a building, or part of a building, as a trespasser with the intention of doing any of the following things:

* Stealing anything from inside the building
* Inflicting grievous bodily harm on someone inside the building,
* Doing unlawful damage to the building or anything in it,
* Raping a person in the building

– someone is stealing something – entering a building

**Aggrivated burglary** – if someone has weapon/gun or imitation of gun, or explosive, when he is **going equipped with gun or tools**.

With intent – with cause to make a harm

Without intent

HANDLING STOLEN GOODS: buying, selling, storing stolen goods.

Retantion, removal, disposal – dispose of (s niečím nakladať, aj niečoho sa zbaviť)

These offences covers situations where a person dishonestly receives the stolen goods, sells them or dishonestly assists in their retention, removal, disposal or if he arranges to do so.

MAKING OF WITHOUT PAYMENT

* Going away without paying
* Petrol station
* Restaurant

This covers situations such as leaving a restaurant without paying for a meal or driving off without paying for petrol.

TAKING A CONVEYANCE (vehicle) WITHOUT CONSENT (use car, bicycle)

This is an offence concerning joyriding. A person who takes, drives or is carried in any conveyance without the owner´s consent is guilty of this offence.

**Aggravated vehicle taking** is more serious offence when:

* The vehicle is driven dangerously,
* The driver causes an accident which results in injury to another person or to property,
* Damage is caused to the vehicle.

CRIMINAL DAMAGE

* Intentionally or recklessly damaging or destroying property of another,
* Put something on fire = ARSON (podpaľačstvo)

Pozn.

**SUBSTANTIVE CRIMINAL LAW.**

Substantive -to state and define crime

-defines what a crime crime is

procedural -how shoved be proceed

-to state the procedure

-how legal proceeding will look like

The aim of the criminal law:

-to protect individuals

-to maintain law and order

-to punish those who deserve it

CRIME:

-public wrong – because crime is against the whole society, against the public

-moral wrong – because crime in history was defined as an immoral act.

-SOCIAL SUITABILITY rather than morality (driving fast)

CRIME is a LEAGAL WRONG which deserves punishemt and can be followed by the criminal proceedings.

Failure=chyba

Omission=nedbanlivosť

Deserve=zaslúžiť si

Harmful=škodlivý

CRIME=OFFENCE

Criminal(osoba)=offender

CRIMINAL CIVIL

­

Parties:

Defendant (obžalovaný) claimant (navrhovateľ) sues (žaluje)

Prosecutor (žalobca) defendant (odporca)

(prosecute=trestne stíhať)

Anyone may start proceeding. Aggrived person, injured

Only CPS or Crown may stop proceeding. The claimant can stop proceedings.

Victim crimes

Victimless crimes

(there is no victim;

e.c. if you no helmet

if you not fasten seat belt

**CLASSIFIKATION OF THE CRIMES:**

-**by PLACE/METHODE of TRIAL:**

Summary offences: those which are less serious (are triable at Magistrates Court)

Indictible offences: Crown Court

Offences triable either way: they could be tryed at Magistrates and Crown Court

**-by the WARM CAUSED**

Offences against person

Offences against property

Offences against public order

-**by SOURCE of LAW:**

Statutory offences = Acts of Parliament

Common law offencesj = source of law is judge´s dicissions

Regulary offences = sorce of law is delegated legislative bodies

**-by the POLICE POWERS:**

Arrestable offences (police officer, individual)

Non-arrestable offences = are all the rest

**ELEMENTS of CRIME.**

Actus reus: is external element

Is an act (murder, killing) or failure to act = omission (if you don´t to do)

Mens rea: is fault element

Also called „guilty mind“ or „blametory mind“

Intention

Prosecution must prove both of them! (AR and also MR)

AR MR only MISTAKE

Theft AR, no MR

Stealing sth decision, intention

MENS REA has several levels:

Specific intention -highest level of MR

-means my decision to do something what is wrong

-or cause prohibited consequence

-murder, manslaughter, theft/robbery

Recklesness (nedbalosť) -involves taking a risk

Subjective -means that you realize risk, but carry on

Objective -is no longer use in criminal law

-is failed to think (negligence)

Strict liability offences -you will be guilty, punished by fines

-you are poluting

-polution, selling contaminated foods

-protect individual

-no need to prove MR

**CHAIN of CAUSATION (to be proven)**

=may also be causal link

victim

Offendant result

(consequence)

**INTERVENING ACT** – it is between act and consequence

Act consequence

-act of 3rd part

-act of victim (victim contributes)

-act of God (superior power) = any natural disaster (earthquake...)

(instrument, poison)

**„BUT FOR“ test/principle**

**SINEQUANON RULE** (nebyť)

Drinking some poison or illness

Doctor Patient

Act result is death

Poison, illness

ACT result

(doctor) (death)

WHO IS RESPONSIBLE?

**PARTIES TO CRIME:**

**Criminal Principal principal offender**

**Offender**

=party who is guilty of the crime

=who is acting

=who commits a crime

**Joint-principal or co-principal:** who helps, aids, procures, abets (navádzať) – this is and actus reus for secondary participation. He/she is liable to the same punishment as the principal.

SELECTED CRIMES:

-FATAL offences -result is death, offences against person

-offences against person

-NON-FATAL offences -no death

-offences against property

FATAL offences: the victim will die

Murder (vražda)

Manslaughter (zabitie)

HOMICIDE – involves killing of a human being; general term

MURDER -unlawful killing of a human being

-under the King´s peace

(There´s currently peace in the country)

Unlawful homicide -if you kill someone negligently

-unlawful

Lawful homicide -excusable defence

-self-defence

MURDER -common law defence, 17th century

-is a crime

-killing and malice aforth (act was planned and premeditated)

-life sentence/life impirsonment is madatory

-the highest level of MR

MURDER

AR – killing MR – is intention to kill

Malice aforethought (specific intention)

EXPRESS (zrejmý úmysel); you have intention to kill

MALICE

IMPLIED (predpokladaný úmysel); you have intention to cause grievous bodily harm

(ťažké ublíženie na zdraví)

MANSLAUGHTER

-charged with murder but MITIGATING CIRCUMESTANCES reduce it to manslaughter

Mitigating -e

Aggravatin -e

MITIGATING CIRCUMSTANCES:

-diminished responsibility = if you have some abnormality of mind

-provocation = heat of passion in a situation to provoke a „reasonable man“

-suicide pact = 2 people decide to commit suicide, 1 stays alive – manslaughter

MURDER & MANSLAUGHTER -differs in MR:

circumstances

VOLUNTARY (murder manslaughter)

MANSLAUGHTER

Constructive – behavior is unlawful, dangerous

(stone on rail)

INVOLUNTARY

Gross negligence manslaugter (no duty of care)

**NON-FATAL Offences AGAINST PERSON:**

-assault, battery

**Assault** (napadnutie, útok) -by words

-by gestures (raising a fist)

-when you are in fear of violence or threat of violence

-no physical contact!

**Battery** (napadnutie, útok so vztiahnutím ruky)

-is already with physical contact

-unlawful force is used

-hitting someone, pushing, poking, punching, kicking

-at extremely low level.

Aggrawated forms

-bring stricter sentences

-gun/weapon, explosive

-refuse to be arrested

**NON-FATAL Offences AGAINST PROPERTY:**

-theft, robbery, burglary &

-handling stollen goods, making off without payment, taking a vehicle without consent

-criminal damage

**Theft** (thief, thieve) - you have stollen something

**Robbery**  - is theft with unlawful force

**Burglary** (os. Burglar) - we are stealing something – entering a building:

with intent – with cause to make a harm

without intent

**Aggrivated burglary** -if you have weapon/gun

-imitation of gun

-explosive

-going equiped (gun, tools)

**Handling stollen goods** -buying, selling, storing stolen goods

-retantion, removal, disposal

**Making without payment** =going away without paying

-restaurant, petrol station

**Taking a vehicle without consent** –use car, bicycle

=joyriding

-aggrivated forms: damage car, dangerous driving

**DEFENCES:**

-negates MR and AR

MR + AR = CRIME

**General defences** -are available for all crimes:

INFANCY 10-18 yrs of age – MINORS, are tryed at the YOUTH COURT lesser sentences <10 yrs – INFANTS

„DOLI INCAPAX“ – incapable of commiting crime, they are not responsible for crime.

INSANITY =insane, not sane, not of sound mind

-they cannot control what they do, illness of minde

AUTOMATISM = spasm of muscles, out of your controle

-sneezing, sleepwalker

MISTAKE -e.g. change coat

Ignorance of law is no defence.

SELF-DEFENCE -is lawful if you use a reasonable force

Special defences: intoxication

duress

necessity

consent

Intoxication -under the infuence of drogs or alcohol

Voluntary – if you are drunk – not able to form MR – theft

Involuntary

Duress - to be under duress

-if you are forced to do something

-direct threat

Necessity jail on fire

You run away from jail

Decide between two bad situations