

Chapter 1 Notes

Principal Limits on the Government in Criminal Cases

- **Ex Post Facto:** one that makes an act criminal after the defendant has committed it.
 - A defendant cannot be convicted of a law that's ex post facto
 - Even if the act is criminal at the time committed, the defendant cannot be subject to a greater penalty than the one in effect at that time
- **Exclusionary Rule:** any evidence gathered in violation of 4th amendment right cannot be used against defendant in criminal case
 - Developed from court cases
 - Court cases have said this amendment applies to businesses as well
 - 4th amendment doesn't protect companies from:
 - Govt. agencies making unannounced searches in regulated industries
 - Beyond what would be considered their reasonable expectations of privacy and what they've taken steps to protect.
 - Ex. one court case approved of a search through garbage cans, even on company property, because the company didn't take steps to keep people away
- **Collection of rights in 5th Amendment:**
 - The requirement of a grand jury indictment before a defendant can be prosecuted for a serious crime (usually felony/crime punishable up to a year)
 - The prohibition against double jeopardy (being tried twice for the same crime)
 - Does not prevent prosecution for different crimes involved in the same event.
 - Being tried in a criminal case doesn't preclude a civil case, even one based on the same facts
 - A state court acquittal doesn't bar a federal court prosecution, or vice versa, even if there's only one criminal act
 - Ex. Suppose your federal income tax return is being audited by the Internal Revenue Service, and you decide to punch the examining agent in the face. In an instant, you have committed at least two separate crimes. You've committed the state law crime of assault, and you've committed the federal law crime of assaulting a federal employee engaged in official duties. You can be tried twice, in state court and in federal court. Whether or not you get acquitted in one of those courts, you can always be tried again in the other court.
 - The prohibition against compelled self-incrimination
 - A person can't be forced to testify against themselves

- Business entities (corps, partnerships, LLCs) do not have 5th amendment protection against self incrimination
 - If you're working for a company you must produce subpoenaed company records, *even if producing those records would incriminate you personally.*
- The requirement of due process of law before imposing a criminal penalty
 - Person can't be deprived of "life, liberty, or property without due process of law"
 - **Procedural Due Process**: cases which address trial fairness, such as the accused's right to be notified of charges against him or her, the right to cross-examine witnesses, etc.
 - **Substantive Due Process**: cases define certain specific rights which are so fundamental that taking them away is considered a violation of due process rights
- Any law that isn't clear enough to give a reasonable person that kind of notice is determined to be "unconstitutionally vague" or "void for vagueness."

Principal Limits on the Government in Criminal or Civil Cases

- Court cases have broadened the first amendment to cover just about anything the govt. can do, federal or state law regardless of branch
 - Oliver Wendell Holmes said in a 1919 U.S. Supreme Court opinion, "The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic."
 - Sometimes speech itself is a crime (conspiracy, other uses to assist/incite a crime)
 - **Commercial Speech**: speech used to make money
 - Content can't be censored, but there can be restrictions as to time, place, and manner
 - Obscenity has no first amendment protection at all
 - Has no serious literary, artistic, political, or scientific value
 - A work qualifies as obscene if:
 - The average person, applying contemporary community standards to the work as a whole, would find that it appeals to the prurient interest
 - The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by law
 - The work as a whole lacks serious literary, artistic, political, or scientific value
 - Two problems w/ this:
 - Doesn't address issue of minor children
 - Hard to apply the "contemporary community standards" test in an Internet world
 - Indecent speech may be restricted as to time, place, and manner
 - Has some serious literary, artistic, political, or scientific value

- **FCC's definition of Indecent Speech:** "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities."

The Commerce Clause

- **Commerce Clause:** federal govt. has power to regulate interstate commerce
 - Since many acts of a business will have some kind of impact on commerce across state lines, this clause gives the federal government broad powers to enact laws affecting businesses
 - Congress can make laws on interstate commerce as long as it's classified as such (between people in different states)
- Since the federal government is authorized to regulate interstate commerce, then *state governments are prohibited* from enacting laws and regulations that burden interstate commerce
- **Dormant Commerce Clause:** implied limit on state powers concerning interstate commerce
 - The recent U. S. Supreme Court case declaring that state laws could not ban direct shipments from out-of-state wineries if they permitted direct shipments within the state, excerpted below, turned on the Court's determination that these laws violated the dormant commerce clause
- **Chilling Affect:** ppl are afraid to do something because of a vague law

Business Entities and Agency

- **Business Entities:** corporations, partnerships, and limited liability companies which conduct most business activities
 - Legally business entity is a "person" (artificial one)
 - Has legal features of a person:
 - Can own property
 - Enter into contracts
 - Sue/be sued
 - Declare bankruptcy
 - Conduct business
 - Sometimes referred to as a "legal person" or "fictitious person" to distinguish it from a "natural person"
 - Three Major Categories of Business Entities:
 - Corporations
 - Partnerships
 - Limited Liability Companies
 - **Understand liability and tax issues with each entity and management issues**
- **Agency:** one person acting on behalf of another, and this includes an individual who is acting on behalf of a business entity
- **Sole Proprietorship:** business operates without a business entity, has one owner, and no legal distinction between owner and business