

Due Process

-Types of laws-

- ❖ **Common Law** - is law developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action
- **Civil law** – Disputes between 2 or more Individuals or and a gov't.
 - a) Types: Contracts, Property, Family relations and Injured parties
 - b) Court order is need to enforce payments if defendant refuses to pay
- **Criminal law**- Offenses against the public order
 - a) Petty crimes – are minor.... Example: parking, littering
 - b) Misdemeanors – are more seriousExample: Vandalism, prostitution
 - c) Felonies – Serious crimes.....Example: Robbery, Murder, Kidnapping

-Due Process-

- **Due process** - government must act fairly and follow established procedures of law at all times.
- There are two amendments that deal with due process of law (David vs. New Orleans -1878)
 - 1) **The 5th Amendment** provides that “no person ... shall be deprived of life, liberty, or property without due process of law...”
 - 2) **The 14th Amendment** extends that restriction to State and local governments.
- Due process is broken down into two branches:
 - 1) **Substantive due process**—the fairness of the laws themselves
 - ❖ **Pierce vs. Society of Sisters** – 1925, Oregon passed a law that all children must attend Public schools. A group of Roman Catholics sue to send their children to private schools. The Supreme Court Said the law was Unfair and violated the 14th Amen because religious freedom is greatedened.
 - 2) **Procedural due process**—the fairness of the procedures used to enforce the laws
 - ❖ **Rochin vs. California** – 1952, Rochin a drug dealer tried to swallow pills as cops were trying to arrest him. They had Rochin’s stomach pumped and found the drugs. The Supreme Court ruled this violated the 14th amen, getting evidence like that is torture and the officers broke the rules of due process.

-The Police Power-

- The police power is the authority of each State to act to safeguard the well-being of its people.
- a) **To promote health:** States can limit the sale of alcohol and tobacco, make laws to combat pollution, and require vaccination of school children.
- b) **To promote safety:** States can forbid concealed weapons, require the use of seat belts, and punish drunk drivers.
- c) **To promote morals:** States can outlaw gambling, the sale of obscene materials, and prostitution.
- d) **To promote the general welfare:** States can enact compulsory education laws, provide help to the needy, and limit profits of public utilities.

-Security of Home and Person-

- The 3rd and 4th Amendments protect the security of home and person.
- The 4th Amendment protects against **writs of assistance** (blanket search warrants) and “unreasonable searches and seizures.” It is extended to the States through the 14th Amendment
 - 1) **Probable Cause**—to search a premise, in most cases, a warrant must be obtained based on a reasonable suspicion of crime
 - 2) **Arrests**—to arrest a person, a police officer needs only probable cause
 - 3) **Automobiles**—police officers do not always need search warrants to search an automobile
 - 4) **The Exclusionary Rule**—Evidence gained as a result of an illegal search cannot be used in court
 - 5) **Wiretapping**—unless police officers have a warrant, tapping phone calls is not legal
 - 6) **Drug Testing**—drug testing can be conducted without a warrant or probable cause