**CHAPTER 36 - Legal Aspects of Security**

**OBJECTIVES**

* To provide an overview of the development of our current legal system
* To reduce the liability of the security officer and the employer
* To explain how to avoid the costs of litigation and damages for false arrest, illegal search, or failure to provide an appropriate level of security
* To describe to the security officer what opportunities are available to minimize risk of exposure to various actions by acting within the law

**INTRODUCTION**

From the earliest times we have created laws to ensure that others will keep their promises, not cause us harm, and act in the best interests of society. Laws may be written, verbal, or implied (e.g., when a customer walks into a restaurant and orders a meal the establishment can assume that the customer intends to pay for that meal). Laws may be based on religious requirements such as the Ten Commandments, the Code of Hammurabi, Buddhist Dharma teachings, the Koran, or other religious codes, and they may also be based on other societal concerns such as business and economics. For our purposes we will define laws as the rules governing society. These rules not only set down our obligations to each other but establish penalties in the form of fines, judgments, or incarceration to punish the perpetrator who breached the obligation or to compensate the victim for the breach. These rules would be ineffective if there were not also established procedures for enforcing the obligations, whether a ruling by a tribal chieftain or more modern procedures that provide for search warrants, arrest, incarceration, probation, and so on.

Protection officers often provide a role similar to law enforcement, wear a uniform, and are viewed by the public as authority figures who are there to look after their safety and the protection of their property. The protection officer is also involved in activities that are inherently dangerous, which may include protection from criminal activity and life-safety programs such as bomb threats, fire, and evacuation procedures. Trespassers and criminals will view the protection officer as someone who is there to intervene if they commit a criminal act. Protective duties may require the officer to make decisions that raise questions of liability against the officer, the property owner, or the employer.

In conducting enforcement duties, the protection officer may be required to arrest, detain, use force, seize property, and testify in court when charges are laid. For all of these reasons, it is important that the protection officer understand his or her duties and responsibilities and the potential liabilities which could arise from them. Their role is complicated by the fact that in some cases protection officers do not have the same authority that law enforcement has, while in other cases they have more.

Protection officers may also be required, in the course of their duties, to ensure that a person's rights are protected under the U.S. Bill of Rights or the Canadian Charter of Rights and Freedoms. For further information on authority in these areas refer to the chapters on Arrest and Detention and Use of Force.

**THE DEVELOPMENT OF OUR LAWS**

We tend to think of laws as being words written in books and passed by a government authority, but that is only one source of our laws. There are actually three:

1. Common law and the civil code of France
2. Case law
3. Statutes

**Common Law**

The Common Law was developed in feudal England. At that time most people could not read or write and, therefore, written statutes would not be of much benefit. In order to resolve issues between citizens they would go to the feudal lord with their disputes. There was an expectation that the feudal lord would be consistent (or common) in resolving these disputes from one issue to another. Citizens therefore believed that "laws" were common throughout the land, even though they were not written down as statutes and even though there was no written record of the decision. In fact, the decisions were far from consistent and the feudal lords would often have difficulty resolving an issue and would order that the dispute be settled by combat between the parties (trial by combat). In other cases the feudal lord would order that there be a trial by ordeal such as drowning, under the assumption that the decision would be made by a "higher power."

**Case Law**

After the establishment of the royal courts in England, judges would travel out to rural districts to sit at trials and would return to meet at the Inns of Court in London. They would discuss their recent decisions, which led to a greater degree of consistency among them. Law students would sit with the judges and would write reports of the judges' decisions and these became the first instances of case law that are still used today. Once cases were reported in books, it became much easier to refer to those decisions and follow universal principles. This "case law" is also referred to as "precedent" or "the doctrine of stare decisis." The principle of case law is fairly simply stated: A court must stand by previous decisions.

This case law provides influence in our present day courts and helps judges to interpret statutes and arrive at decisions which are fair, equitable, and consistent with previous court decisions. Case law also provides defenses at criminal trials (e.g., self-defense) and procedures that govern the police handling of search and seizure processes.

The principle may sound fairly straightforward but the common law is still evolving to adapt to changes within our society and, in application, the doctrine can become extremely complex. The weight given to any previous decision of another court will depend on a number of factors including whether the court was within the same legal jurisdiction, the level of the court where the decision was made, or the similarity in the facts of the case.

**Statutes**

Statutes are the law in black and white. As education became more commonplace in feudal England, the government authorities began to pass statutes that would guide everyday life. Today statutes may be passed by any one of several levels of government from municipal right up to federal. Statutes are also continually being amended, new statutes are passed, and old ones are repealed. Our society is constantly changing, and so it is necessary that statutes change as well to meet new requirements or to fill a need in our society. Sometimes the need is economic (e.g., an amendment to income tax laws, to "plug a loophole") and sometimes the need arises as a result of changes in society (e.g., new computer crime legislation).

Regulations on the private security industry have been passed in most jurisdictions. The regulations may address areas of the industry including uniformed staff, private investigators, locksmiths, security guard dog handlers, or armored car services. The regulations may cover training requirements, age restrictions, education, licensing, or criminal background checks. The authority of the protection officer may come from these regulations and from other statutory authority such as extended rights of arrest when acting on behalf of a property owner.

**The Effect of the European Civil Code on Our Legal System**

Prior to feudal times, laws developed differently in continental Europe. The Roman Empire's early dominance in this part of the world brought a higher degree of literacy, and written Roman law was codified by the Emperor Justinian in A.D. 533. After the fall of the Roman Empire, the legal system was entrenched in European society. This Roman codified law differed from the English Common Law because it had been reduced to written statutes whereas the English law comprised the verbal decisions and the particular customs of the landowners and nobles who adjudicated cases. The Justinian Code was similar to our present legal system and included differentiation between public law, which is related to the relationship between the individual and the state (e.g., constitutional law or criminal law) and private law, which is concerned with the relationship between individuals (e.g., commercial law, family law, and torts). The dominance of Roman law declined in continental Europe but by the 11th century, with the development of international trade and more complex business arrangements, the Justinian Code returned as a standard. This system of laws is referred to as civil law.

When William the Conqueror occupied England in 1066, he was astute enough to realize that the English Common law system should not be replaced entirely by the civil code. He established royal courts which allowed the system of precedent to continue, but developed consistency in the application of laws and introduced written statutes based on the Roman law or civil code principles which could clarify the common law. Our legal system today is a marriage of those two traditions.

In 1804 the Napoleonic Code was created in France; it addressed issues of equality of the classes and was the predecessor of modern human rights legislation. The civil law system and the Napoleonic Code still have an effect today on many of the states that were originally settled by the Spanish and on the Canadian Province of Quebec. Today, the term "civil law" not only refers to the system of laws found in Europe and other non-common law jurisdictions, but also to our system of private law that allows one citizen to recover damages from another.

**TYPES OF LAWS— CRIMINAL AND CIVIL**

Protection officers may be involved in the enforcement of laws or as a witness in both civil and criminal proceedings and should understand the fundamental difference between the two.

**Criminal Law**

Criminal laws appear to be established to protect people, but they are actually passed to ensure peace and good order in society. For example, it is an offense to assault someone but criminal law treats assault as an offense against society and it is the state which will initiate prosecution against the offender and will impose the punishment. If a fine is imposed it will be paid to the state or the offender may be imprisoned in a state institution. The prosecutor will act on behalf of the state, not on behalf of the victim (although in some cases, there are provisions for private prosecutions or compensation for victims of crime).

Types of criminal offenses vary from jurisdiction to jurisdiction but they are generally divided into those that are more serious (felonies in the United States and indictable offenses in Canada) and those that are less serious (misdemeanors in the United States and summary conviction offenses in Canada). Table 1 details examples of criminal offenses.

**TABLE 1: Examples of Some Types of Criminal Offenses**

|  |  |
| --- | --- |
| **Crime** | **Description** |
| **Murder** | Intentional and unlawful taking of the life of another and may include a death resulting from the commission of another crime (felony murder) |
| **Manslaughter** | Causing the death of another as a result of negligence or a reduced level of intent  |
| **Assault** | Deliberately causing menace or bodily harm to another  |
| **Kidnapping** | Unlawful confinement of another and may include false imprisonment  |
| **Sexual Offenses** | Sexual interference with another without their consent |
| **Arson** | Unlawful and deliberate destruction of property by fire  |
| **Burglary** | Breaking into a premises with the intent to commit a criminal offense  |
| **Robbery** | Unlawfully obtaining the property of another through threats or infliction of bodily harm |
| **Theft** | Unlawful taking of the property of another. There are also offenses for possession of property obtained by crime  |
| **Forgery** | Creating a false document for the purposes of depriving another  |
| **Disorderly Conduct** | Causing a public disturbance  |
| **Willful Damage** | Unlawfully causing damage to the property of another  |
| **Computer Crime** | There are a number of computer crimes related to the unlawful altering or deletion of data or the unauthorized use or misuse of a computer |
| **Bribery** | Providing or receiving an unlawful benefit in return for doing or forbearing to do something in relation to employment or office  |

 **Note**: Some criminal offenses may be called by different names; e.g., burglary may be called breaking and entry.

Police, security, and prosecutors have different powers under the criminal code. Table 2 details some of those powers.

**TABLE 2: Criminal Law Powers**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Private Security** | **Police** | **Prosecutors** |
| **Investigate** | Investigate on behalf of private party  | Investigate on behalf of public  | May have investigative authority  |
| **Seize** | Some seizure authority on behalf of private party  | Criminal powers to seize or obtain search warrants  | May have some power to obtain search warrants  |
| **Arrest** | Citizen's power of arrest  | Criminal law powers  | May have some powers of arrest  |
| **Indict** | Only when by private prosecution  | May lay charges  | May authorize or lay charges  |
| **Prosecute** | Only when by private prosecution  | Usually turned over to prosecutor  | Yes |

**Civil Law**

Unlike criminal laws, the purpose of civil law is to protect private rights and not public rights. In civil cases, it is the individual who has been wronged who will undertake the civil action. The public prosecutor will not be involved and the individual must pay for his own attorney and hire an investigator if one is required. Any award that the court orders the defendant to pay will go to the victim (plaintiff) and not to the state, as it would in the case of a fine.

Any particular cause of action may be both civil and criminal. If someone is assaulted, the police may investigate the matter as a criminal assault and the person responsible may be charged with that criminal offense. At the same time, however, the person assaulted may decide to sue civilly for damages for the assault and battery. Both cases may proceed at the same time, although through a different court system (see Table 3). The person responsible may be fined or sentenced to jail in the criminal court but also ordered to pay damages in a civil court. Some areas of the civil law include:

**Contracts** -The law covering binding agreements between two or more parties. For example, a contract to provide security personnel to protect a property.

**Warranties** -A special type of promise or statement. For example, a guarantee that a fire extinguisher is effective on a certain type of fire.

**Agency** - An important concept in the security industry. Agency raises a question of whether one person is acting on behalf of another. For example, a protection officer uses excessive force in subduing a suspected shoplifter. Is the protection officer an agent of the retail establishment and is the establishment therefore responsible for damages (vicarious liability) that may have been inflicted in the course of the arrest?

The authority of the protection officer comes from the agency relationship with the property owner, occupier, or employer that they are assigned to assist. That authority may be addressed in the contracts issued or by internal policies set up by the customer or employer. There may also be a number of written procedures, manuals, or post orders that provide instructions on the completion of duties whether the protection officer is contracted or in-house. These written instructions give the officer authority as directed by the property owner or employer but can also make them vicariously liable for the actions of the protection officer.

**Torts** - A tort is a civil action that may be an intentional wrong (e.g., assault, battery, wrongful imprisonment, or defamation) or it may be negligence (e.g., the failure to provide an appropriate level of security in an employee parking lot).

Many intentional torts are closely aligned to criminal offenses but Table 4 shows some others.

Civil liability has caused increasing concern for the business community and damages in court actions have increased insurance premiums; hence, some types of liability insurance have become prohibitive to organizations. Executives and property owners have found it necessary to defend against these crippling costs by increasing security measures and through stringent screening and training. The protection officer has a strong role to play in protecting businesses against civil liabilities.

**TABLE 3: Crime and Civil Law Comparisons**

|  |  |
| --- | --- |
| **Crime** | **Civil Wrong**  |
| Theft | Conversion |
| Assault | Assault or battery  |
| Trespass | Nuisance |

Negligence may result in liability during the performance of or failure to provide security duties. Negligence is an actionable cause under common law so that someone who suffers damages as a result of the negligence of another may sue to recover their losses. Negligence may be due to failure to provide an appropriate level of security, failure to have a contingency or evacuation plans in place, or failure to warn someone who is at risk as a result of a security exposure. Negligence can also be established through statutes such as occupiers' liability or occupational health and safety legislation. Those statutes require that the occupiers of premises provide a safe work environment not only for employees, but also visitors to the property and sometimes even trespassers.

It is the security officer's duty to assist the property owner in reducing risks on the property and to recommend appropriate methods of handling those risks. It is also the security officer's duty to ensure that emergency procedures are properly followed, that training takes place to ensure those procedures work, and that everyone is familiar with them.

**TABLE 4: Examples of Some Types of Torts**

|  |  |
| --- | --- |
| **Tort** | **Description** |
| Intentional infliction of mental suffering  | Often initiated in conjunction with torts of assault, battery, or false imprisonment. Causing fear, shame, embarrassment, or other emotional distress  |
| Malicious prosecution | Knowingly initiating a legal proceeding that does not have cause  |
| Defamation | Making or publishing a statement that is untrue and causes damage to another  |
| Invasion of privacy  | Unreasonable and offensive intrusion on the private affairs of another. Note that this may also be regulated by privacy statutes  |

**Administrative Law and Other Standards**

The security industry is also regulated by a number of other rules and these, together with quasi-governmental standards, may create liability if not properly followed. In the United

States, these regulations include those passed by the Offices of Homeland Security and the Inspector General or any one of a number of federal, state, or local authorities. Both Canada and the United States have federal regulatory requirements such as defense, air and commercial transport, port security, and government operational security regulations. There are also a number of other standards that are not regulated, such as those from the International Organization of Standardization or Canada Standards Association, which have recommended standards for the security industry. Many trade associations such as ASIS International have published security standards, as have industry groups (e.g., the chemical industry's security code). Despite these standards not being regulated by law, organizations should be aware of them as they may be used in a civil or criminal action to suggest that the organization did not meet a generally accepted industry norm. Insurers may also publish standards (e.g., terrorism security requirements) that affect premium rates or the insurer may assess whether the organization is meeting some of the standards indicated above to assess premiums, risk, and liability.

**Labor Laws**

Labor laws are established to set parameters for employers and employees or their counsel, associations, and unions to develop and enforce employment contracts. Table 5 delineates differences among criminal, civil, and labor laws.

**Interaction of Criminal, Civil, and Labor Laws**

It is a common misconception that initiation of procedures in one sphere of the law will preclude or forestall action in another. For example, if one employee assaults another at the work site the police may be called in to initiate a criminal investigation, but this does not preclude the assaulted employee from initiating a civil action for recovery of damages or the employer from terminating the offending employee for the workplace infraction. In fact, there may be other parallel regulatory actions such as an occupational health inquiry or an arbitration hearing to assess the grounds for termination.

**TABLE 5: Criminal, Civil, and Labor Law**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Criminal Laws** | **Civil Laws** | **Labor Laws** |
| **Purpose** | Protect the public good | Compensate for damages | Imposition and enforcement of employment contracts |
| **Applies to** | Whole community | Private parties | Employers and employees |
| **Responsible for Handling** | Public prosecutor | Attorneys for the parties | Management and union |
| **Potential Outcome** | Fine or incarceration | Damages or court order | Court or arbitration award |

**Young Offenders**

Legislation exists requiring the special treatment of juveniles (they may also be referred to in legislation as minors or young offenders) in the course of interviews, detention, or arrest and the protection officer should be familiar with legislation for their local jurisdiction. Legislation will vary in terms of the age prerequisite, may require the presence or notification of a parent or guardian, or may include liability for failure to properly protect the confidentiality of the young offender's personal information.

**Search and Seizure**

What are the rights of the protection officer to conduct searches and seize property at the work site? Many employers have policies that establish procedures for searches of vehicles, lockers, or personal effects in order to deter theft, misuse of company property, or the possession of illicit drugs or alcohol on site. When these policies are challenged by labor unions or through the courts, the company may be required to establish that the search was reasonable, that there was some evidence to believe an employment offense had taken place, and that the search would result in the discovery of further evidence. The company may also be required to show that the policy is applied consistently within the workforce or facility and that it does not target specific individuals or groups. Courts and arbitrators will try to strike a balance between the rights of the employer or visitor and the right to privacy of the individual. They may also look at whether the company considered all other reasonable investigative means before embarking on search procedures. This is especially true in cases where searches are conducted on employees or their personal effects, as the company will be required to show that they established procedures to protect the privacy of its employees.

The following are instances where there may be legitimate grounds for a search:

1. Where there is consent by the person being searched
2. Where there is implied consent as a condition of employment
3. Where it is incidental to a valid arrest (although some jurisdictions require probable grounds for the conduct of the personal search)
4. Where it is incidental to valid conditions (e.g., as a condition of boarding a commercial aircraft)

Many companies also have policies requiring people to submit their vehicles or personal effects to search on leaving the property. These are usually in conjunction with a notice at the entrance indicating that these items may be subject to search. Even though an employee or visitor may imply that they will allow their vehicle or personal effects to be searched by entering the property, they have the right to change their mind while on the property and may refuse to comply with the search when leaving. The protection officer should not force the issue and should simply report the matter. Management then has the opportunity to treat it as a disciplinary infraction if it is an employee, or has the right to refuse further entry if it is a contractor or visitor.

During the course of a consented search, the protection officer has the right to seize items found, such as the following:

1. Property of the employer or property owner that the officer is required to protect and for which the subject has no obvious permission to possess
2. Evidence of the commission of a crime (i.e., company property, burglar tools, controlled substances, etc.)
3. Weapons that could be used to injure the officer, an innocent third party, or the subject
4. Items that could help the subject escape detention

If no consent exists, the protection officer has no right to conduct a search. Any items found as the result of an illegal search cannot be seized and may not be accepted in judicial proceedings. However, any of the previously listed items that are in plain view may be seized because the seizure is not the result of a search. All authorized searches and seizures must strictly comply with established procedures developed by the employer or property owner. Additionally, protection officers should be familiar with statutes for their jurisdiction concerning search and seizure by private persons. This will minimize the possibility of criminal or civil actions against the officer and the employer or property owner. Familiarity with the local laws will also help assure that the employer's or property owner's policies and procedures concerning search and seizure are in compliance with the statutes. Searches are very personal and can cause great embarrassment, especially if the subject has committed no crime. Searches should be conducted discreetly to minimize public embarrassment for the subject and adverse public /employee reaction to the officer conducting the search.

**Evidence**

Evidence is the proof that is required to establish the guilt or innocence of the accused.

Evidence may be one of the following:

1. Real — a physical object, a gun, a piece of stolen property
2. Documentary — a contract, a photograph
3. Testimony — the oral statement of a witness while under oath

Evidence must meet certain requirements in order to be admissible in court. For example, a protection officer seizes a stolen computer from an accused, but fails to secure the evidence before it is turned over to the police. Several months later, the officer is called to testify in court. He is presented with the computer and asked if it is the same one that was taken from the accused. He is forced to admit that he cannot be certain. The judge refuses to admit the evidence and the accused goes free. Chain of custody requires that real evidence remain basically unchanged since time of acquisition and this is best achieved with chronological tracking of custody and transfer of anything that may be required for court purposes.

Any real or documentary evidence must be protected from the time that it is obtained. If possible, an identifying mark (e.g., initials and the date) should be put on it so that the officer can later identify it in court. Extensive notes should also be taken during the inquiry, or immediately after, while it is still fresh in the mind of the investigator. The judge will place a great deal more weight on testimony where a witness's memory can be refreshed from notes made at the time of the inquiry. The time that passes from the event to the trial can be several months or even years and the importance of notes cannot be overemphasized. The protection officer should also ensure that reports are accurate and detailed. The report itself may be entered into evidence and the officer may be required to explain discrepancies. Likewise, statements taken from witnesses should be accurate and detailed. The officer should properly prepare for any trial or discovery hearing and questions should be answered as clearly and directly as possible. Many witnesses lose credibility because they are afraid to answer a question by saying "I don't know" or by trying to answer a question that has not been properly clarified.

Any one of the forms of evidence indicated above may be direct or circumstantial. Direct evidence proves the facts in issue directly. Circumstantial evidence proves the facts in issue indirectly. A smoking gun does not prove that the person holding it pulled the trigger, but the inference may be drawn and it is therefore circumstantial evidence that may be admissible in court. It is a common misconception that a person cannot be convicted on circumstantial evidence alone. If the evidence is admissible and the case is strong enough, then it does not matter whether it is circumstantial or direct.

The common law developed a rule making hearsay evidence (assertions of someone other than the witness who is testifying) inadmissible in court, but exceptions to the hearsay rule are as important as the rule itself. The rule was developed so that the court would hear from the person who uttered the words rather than having those words repeated by someone else. One important exception to the hearsay rule is testimony from expert witnesses. Normally a witness is only allowed to testify about matters that they saw or heard but, where a court accepts a witness as an expert on a certain matter, that witness can testify based on their education and professional experience. Another exception is business and banking documents that, depending on evidentiary statutes for the jurisdiction, may be accepted as proof of their content.

Another important exception to the hearsay rule is the admissibility of confessions in court. A protection officer would not normally be allowed to repeat (in court) a statement made by a suspect, but if the statement is accepted as a confession, it may be admitted as long as it was voluntary. A confession cannot be admitted in court as evidence if there were threats, intimidation, or promises that induced the accused to make the statement. A threat does not necessarily have to be a threat of violence. A threat to terminate someone's employment if they don't tell the employer what happened may be enough to question whether the accused confessed because he really did it or whether he confessed because he wanted to keep his job. Similarly, a simple promise that "things will go better for you if you tell us what happened" may be sufficient to question the reliability and admissibility of a confession.

Usually the police will be involved in interviewing an accused to receive a confession, but there may be occasions where a statement made to a protection officer will amount to a confession and may later be used as evidence in court. A confession is simply a written or oral statement made by an accused. Even a denial by the accused may amount to a confession if the prosecutor is able to prove that the accused lied in making the denial (e.g., an attempt to set up an alibi). The protection officer should keep detailed notes of anything that an accused says because it may later contradict a statement made to the police. For example, an accused may tell the protection officer that he wasn't in the area when the offense was committed and he may later tell the police that he was in the area but he didn't do it. The two statements constitute a lie and may be admissible in court as proof of guilt.

Interviewing witnesses and suspects requires techniques that not everyone can master to the same degree. Generally, the protection officer will interview witnesses, victims, and/or suspects during a preliminary investigation. More thorough interviews may be done later by investigators or law enforcement personnel during the follow-up investigation. A bad interview during the preliminary investigation can cause information obtained during later interviews to be unusable. The protection officer should know what he or she legally can and cannot do during interviews.

Under the Miranda rule in the United States and Charter of Rights requirements in Canada, the police are required to advise an accused of their right to counsel, that they are not required to make a statement, and that the statement may be used at trial. There is no duty to "Mirandize" or Charter Caution the private individual who gives a confession. There have been some attempts to argue that private security may be in a "position of authority" in conducting investigations and interviews and therefore the U.S. Fifth

Amendment or Canadian Charter rights apply.

These challenges have been largely unsuccessful, although in Canada it has been held that an employer in a governmental function (e.g., federal, provincial, or municipal government bodies) must follow Charter provisions in conducting investigations. Generally, the protection officer need only ensure that the confession was willingly given. A confession need not be a lengthy written statement; it may be a simple oral statement such as "I shouldn't have taken it." The officer should accurately note any statements by the accused so that there will be no confusion later in court as to exactly what was said.

If the officer has occasion to interview a suspect, the following steps will help ensure the admissibility of a confession:

* The suspect must be offered a chance to contact counsel and should be given the opportunity to carry on a private conversation with counsel.
* The object of the interview is to learn the truth, not to induce a pattern of deceit or obtain answers that the questioner wants to hear.
* There should be no actual or implied threats or promises.
* The accused should be given the opportunity to give a full explanation.
* The accused should be questioned in a language and phraseology that they understand - "legalese" or technical terms not known to the accused should be avoided.
* The interviewer should not ask ambiguous questions.
* The interviewer should not be aggressive or abusive to the person being interviewed.
* Where possible, a signed statement should be obtained and a second witness should be present.

**The Burden of Proof**

The burden of proof is different in a civil action than it is in a criminal matter. In a civil action the plaintiff need only prove their case on a balance of probabilities, while in a criminal trial the prosecutor is required to prove guilt beyond a reasonable doubt. This is why a plaintiff may be successful in a civil matter while the same defendant may be found not guilty in criminal court for the same set of circumstances. As an example, O.J. Simpson was found not guilty in criminal court, but the families of his victims were successful in a civil action for wrongful death. Some jurisdictions apply a burden of proof somewhere between the two in labor arbitration cases involving moral turpitude (e.g., workplace theft). They may use terms such as "clear and convincing evidence" or "a preponderance of evidence."

In a criminal trial in common law jurisdictions, the burden is always on the prosecutor to prove that the accused is guilty beyond a reasonable doubt. The onus is not on the accused to show that he is innocent. This has been referred to as the "golden thread" that runs through our judicial system. Because of this rule, the security officer must take steps to protect the admissibility of any evidence that is collected.

**Trespass**

Both the common law and statutes recognize the property owner's right to control access to, use of, activity on, and protection of their property. The employer or property owner designates the protection officer as their agent to protect the property and enforce their guidelines concerning it. Many protection officers are responsible for property with public access for business or recreation purposes and, as a result, it may seem difficult to determine when a trespass occurs. Generally, one or more of the following must be present for a trespass to occur:

1. The subject does not own or have other legal rights to access the property.
2. The subject must know this.
3. The subject does not have the permission of the property owner or agent (i.e., the protection officer, tenant, etc.) to enter upon or remain on the property.
4. The property is posted in accordance with local ordinances with signs prohibiting trespass or fences and /or other barriers present that would cause a reasonable person to believe they are not to enter the property.
5. The property owner or agent has lawfully requested the subject to leave the property.
6. The subject enters the property, or refuses to leave, after seeing posted notices or physical barriers, or after receiving a lawful request to leave.

The protection officer should be familiar with the statutes and local regulations concerning trespass to assure that he or she is acting within the law when dealing with a possible trespass. Generally, the protection officer will not have to arrest a trespasser unless the subject is suspected of or known to have committed, other crimes on the property or unless the suspect had been previously evicted from the property and has returned when instructed not to do so. In most cases, the subject will leave when advised that they are trespassing. In others, the subject may not leave unless the protection officer tells them the local police will be contacted to arrest the individual for trespass. However, if the protection officer must make an arrest, he or she must know the statutes and regulations for that jurisdiction concerning arrests by private citizens, property owners, or agents.

**CONCLUSION**

A review of the development and current status of our legal system reveals two important trends. The first is the ever-increasing number of laws, regulations, and standards being imposed on industry. These include legal requirements directly related to protective services or requiring adaptations to the way we undertake business because of legislation such as human rights, privacy requirements, or occupational health and safety regulations. This increased complexity has necessitated protection officers to undergo constant training, updating, and research to stay abreast of the legal requirements to undertake protection work.

The second trend is the shrinking world and increased globalization of business. One of the consequences of this trend is the accessibility of terrorists to businesses in North America and abroad and the resulting increase in the number of regulatory requirements to properly protect organizations and people. The second consequence is the requirement that organizations and the security industry be cognizant of the requirements of foreign governments in order to do business abroad and to engage in international trade. These sometimes result in a conflict of laws or cultures that ultimately produce more regulations, such as foreign corrupt practices laws.

**SECURITY QUIZ**

1. A protection officer may force a search of an employee where there is a company policy.
2. True
3. False
4. A store can be liable for the actions of its protection officer if it can be proven that the officer was:
5. Their contractor
6. Their agent
7. Licensed
8. Acting in the best interests of the store
9. Did not use excessive force
10. A person can be convicted on circumstantial evidence alone.
11. True
12. False
13. If a law is not written down and passed by government it is not law.
14. True
15. False
16. The purpose of our legal system is to:
17. Set down our obligations to each other
18. Set penalties for breaching those obligations
19. Establish procedures to enforce those obligations
20. All of the above
21. The common law is not used in North America today.
22. True
23. False
24. You cannot sue someone and press criminal charges. It is double jeopardy.
25. True
26. False
27. At criminal trials, the prosecutor must prove the accused guilty:
28. On a balance of probabilities
29. Beyond a reasonable doubt
30. By a preponderance of evidence
31. Without a shadow of doubt
32. The police will investigate:
33. Civil matters
34. Criminal matters
35. Whatever the prosecutor asks them to investigate
36. All of the above
37. A confession may not be admissible in court unless it can be shown that (check all that apply)
38. There was no threat
39. It was made to the police
40. There was no promise
41. There was a witness present
42. A signed statement was provided