

CHAPTER 1

FOUNDATIONS OF CRIMINAL LAW

CHAPTER OBJECTIVES

This chapter introduces students to the study of criminal law and its sources, history, and objectives. Discussion on causes of crime and how societies deal with crime provides the basis for the study ahead. The chapter addresses how the student can make the best use of the features in the text and concludes with several case stories to pique student interest, provide factual settings for examples, and demonstrate the kinds of events that may lead to criminal prosecution.

LECTURE OUTLINE

- I. Introduction
- II. Overview of the Legal System
 - A. Rule of Law
 - B. The Constitution
 - C. Separation of Powers
 - D. Police Power
- III. Criminal Law
 - A. Purpose of Criminal Law
 - *Key terms include criminal law, rule of law, federalism, police power*
 - *Analysis Problem 1–1*
 - B. Sources of Criminal Law
 - C. Model Penal Code
 - D. Administrative Crime
 - E. International Crime
 - F. Change in the Criminal Law
 - G. Divisions of Criminal Law
 - H. Due Process
 - I. Classification of Crimes
 - *Key terms include law, civil law, canon law, common law, legal precedent, stare decisis, Magna Carta, ex post facto laws, Model Penal Code and Commentaries, substantive criminal law, procedural criminal law, due process, substantive due process, procedural due process, notice, mala in se, mala prohibita, felony, capital crime, misdemeanor, petty offense, violation*
- IV. Punishment and Criminal Law
 - A. Introduction
 - B. Retribution
 - C. Deterrence
 - D. Rehabilitation
 - *Key terms include retribution, deterrence, general*

2 ■ Chapter 1

- deterrence, individual (specific) deterrence, recidivism, rehabilitation, restorative justice*
- *Analysis Problem 1–2*
- *The section ends with questions for discussing the objectives of punishment and their validity in a variety of situations.*
- V. Critical Reason and Criminal Law
- VI. The Dilemma of Crime in a Free Society
- *Analysis Problem 1–3*
- VII. Crime in the United States
- A. Current State of Crime
- B. Reasons for Drop in Crime
- C. Special Concerns: Present and Future
- *Analysis Problem 1–4*
 - *Sections V, VI, and VII raise many questions for class discussion.*
- VIII. Practical Considerations for the Study of Criminal Law
- A. The Significance of Studying Criminal Law
- B. About This Text: Applying State Law
- C. The System Folder
- *System Folder Assignments*
- IX. Sample Cases
- A. Case I
- B. Case II
- C. Case III
- D. Case IV
- E. Case V
- F. Case VI
- X. Conclusion

PREPARING FOR CLASS: INSTRUCTIONAL SUPPLEMENTS

1. Using Internet sites listed at the end of the chapter, research current crime statistics and trends, incarceration rates; research the Supreme Court Web site and discuss some of the major issues recently decided by the Court or those that the Court has agreed to hear in the upcoming year, and so forth, to present to the class.
2. Decide how you will use the features and assignments of the text and how you will expect students to use them, especially the system folder.
3. Visit suggested Web sites and add your own suggestions and critiques.

SUGGESTED CLASS ACTIVITY

Invite a sociologist or criminologist to class to discuss causes of crime and possible solutions, effectiveness of punishment, or similar topics.

SYSTEM FOLDER ASSIGNMENTS

- Set up your system folder as follows: Arrange the tabs in a 2-inch binder as needed and as indicated by the system folder assignments located at the end

of each chapter and in Appendix B. Add to the table of contents as needed throughout the course. At the end of each chapter you will find a list of items to add to your folder.

- As you progress through the text, add important Web sites to your system folder. Organize them by chapter or general topic.

APPLICATION ASSIGNMENT

Using the Internet, find one current article on the federalization of crime and prepare a brief summary of the article.

INTERNET EXERCISES

1. Go to the Internet Legal Resource Guide and scroll through the home page to see the array of useful information. Then scroll back to the section on the legal profession and find the most current salary information for paralegals (legal assistants).

Answer: Students should have no trouble finding a current salary. Consider commenting that such figures frequently overlook bonuses that often add 10 percent to the salary figure.

2. Go to the Bureau of Justice Statistics site. Find the section on courts and sentencing, court organization. What are the exceptions to 12-member juries with a unanimous verdict?

Answer: Four states use eight- or six-member juries for noncapital felonies; two states do not require unanimous verdicts in such cases.

ANALYSIS PROBLEMS

1-1. Concern has been voiced over the increased federalization of criminal law (passage of federal laws that parallel state crimes). Considering federalism and states rights issues, under what circumstances should the federal government add—or not add—new crime laws?

1-2. Assume that each of the defendants in the sample cases at the end of this chapter has been convicted. For each case, decide whether retribution, deterrence, or rehabilitation is the most appropriate in sentencing.

1-3. In what ways does the Internet enhance our liberty? Should the government be allowed to limit that liberty? Should state courts or federal courts have jurisdiction over the Internet?

1-4. Of the concerns about crime presented in this section, which deserve the most resources and why?

QUESTIONS FOR STUDY AND REVIEW

1. Define law and explain its general purpose.

Answer: Law is a set of formal rules enacted by government officials to regulate the relationships among citizens, businesses, governments, and nations. The purpose of law is to prevent chaos and to promote societal order, which leads to security, productivity, and the higher expressions of human progress.

2. What is the rule of law and why is it so important?

Answer: The principle that all members of a society must obey the established laws is known as the rule of law. It includes the idea that those who govern are also bound by laws and may not rule by whim or allow personal interest to be served. The rule of law is essential to the formation of the legal system.

3. What is federalism? What are the primary powers granted to the federal government? The states?

Answer: Federalism refers to both the relationship between the national government and each state and the relationship among the states. The primary powers granted to the federal government are the powers to regulate interstate and foreign commerce and to make all laws necessary and proper for it to exercise its powers and functions as specified by the Constitution. The powers reserved to the states, referred to as police powers, are those not specifically vested in the federal government or prohibited to the states.

4. What is meant by the broad term police power?

Answer: Police power is the state government's authority to enact and enforce laws to promote the public health, safety, morals, and general welfare.

5. What is the purpose of criminal law? How is it different from civil law?

Answer: The purpose of criminal law is to prevent individual harm. It identifies conduct subject to prosecution and penalty by the state, and it applies to all persons. Civil law is concerned with the rights of individuals in their relationships with other individuals, and is designed to provide compensation to injured persons.

6. Why is it important for a paralegal to understand our legal heritage?

Answer: An understanding of our legal heritage offers the paralegal both valuable perspective and healthy skepticism when analyzing current legal issues.

7. Discuss some of the significant historical contributions to our criminal law and state why they are important.

Answer: The Hebrews codified a moral law based on the Mosaic Code, including the Ten Commandments. The Greeks developed the concepts of trial by jury and rule of law. The Romans expanded Greek law into a reasonably complete body of criminal law, which was preserved in later years by the Roman Catholic Church through its canon law. The English developed their common law, which passed to the Colonies, and the principle of legal precedent. The Magna Carta and later developments established principles of fair procedure and protections for the accused, including the writ of habeas corpus, the right to trial by jury, the right against unreasonable searches and seizures, the right against conviction by ex post facto laws, the right to representation, the right to face one's accusers, the right against self-incrimination, the presumption of innocence, and the right to proof beyond a reasonable doubt. All of these contributions are cornerstone principles of our modern legal system.

8. Define common law and describe some of its characteristics.

Answer: The common law is law developed by judges deciding and recording cases through decisions of courts. Its chief characteristic is adherence to legal precedent, based on the principle that is it unfair to treat similar facts differently on different occasions.

9. What are the sources of criminal law?

Answer: The sources of criminal law include contributions of ancient societies (Mosaic, Roman); federal and state constitutions; English common law, as adopted by states; statutes, codes, and ordinances; administrative law; treaties; the Model Penal Code; and modern court decisions.

10. What is the Model Penal Code and why is it important? Has it been adopted in your state?

Answer: The Model Penal Code is a concise statement of criminal law created by the American Law Institute to serve as a model, or guide, to legislators and judges in updating and standardizing the penal law of the United States. It is used by legislators as the starting point for replacing older criminal statutes, and judges often refer to it for comparison and analysis.

11. What is the Code of Federal Regulations (CFR)?

Answer: The Code of Federal Regulations is the codification of the rules and regulations published by the federal government's agencies and executive departments. Federal administrative crimes are published here.

12. What processes do we use to change our law?

Answer: Legislatures pass new laws and repeal others. Courts can declare laws unconstitutional and overturn precedents. Agencies update their regulations.

13. Explain the difference between the two main divisions of criminal law.

Answer: Substantive criminal law comprises definitions of crimes and principles governing punishment. Procedural criminal law comprises the rules that the prosecution, the defense, and the courts must follow in administering the law.

14. What is due process? Substantive due process? Why is due process important to you as a citizen?

Answer: Due process is the constitutional right not to be deprived of life, liberty, or property without a process that is fundamentally fair and just. Substantive due process refers to the fairness of the laws themselves; they may not be overbroad, unreasonable, arbitrary, capricious, or too vague. Procedural due process refers to the requirement that criminal proceedings must be fundamentally fair; specific procedural due process guarantees include the right to trial by jury and the right against self-incrimination.

15. How are crimes classified?

Answer: Crimes are classified by the seriousness of the actual or intended harm and their punishment.

16. What is a felony? A misdemeanor? A capital felony?

Answer: Felonies are the most serious crimes and require a minimum of one year in prison. A capital felony carries the possibility of the death penalty. A misdemeanor is a lesser crime than a felony and has a penalty that may include a fine or up to one year in a county jail.

17. What does the Latin maxim *nullum crimen, nulla poena sine lege* mean, and why is it important?

Answer: This Latin maxim means there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time it was committed. "Notice" is a fundamental element of due process.

18. What is the difference between a *mala in se* crime and a *mala prohibita* crime?

Answer: Crimes that are mala in se are inherently evil wrongs, such as murder, rape, robbery, and arson. Crimes that are mala prohibita are sufficiently bad to have been prohibited by law but not rising to the level of mala in se: for example, gambling or speeding.

19. Define retribution, deterrence, and rehabilitation. Briefly explain the benefits and problems of each.

Answer: These are expressed purposes of punishment. Retribution is the most elemental and reflects the concept of just desserts or the biblical concept of "an eye for an eye." Deterrence is the prevention of crime; individuals will be dissuaded from committing crimes if the pain of punishment outweighs the

benefits derived from committing the crime. Rehabilitation is the effort to reform criminals and give them the ability to compete in society.

20. What is the difference between general and specific deterrence?

Answer: General deterrence concerns the prevention of crime in society as a whole, in an effort to bring about conformity with societal norms. Specific deterrence is focused on the persons who have been convicted of crimes and the effort to keep them from repeating as offenders.

21. Why should new criminal laws undergo the strictest scrutiny?

Answer: History shows that legitimately enacted laws can prove to be, in retrospect, unjust. A law that at first appears reasonable may be later seen as a tool to protect wealth or to oppress a class of citizens.

22. What do you believe are the primary reasons for crime in our society? Explain the decline in crime rates. What concerns remain, and how should they be addressed?

Answer: The decline in crime rates has three sources. Demography: The group of people most prone to committing crime, statistically speaking, was at its smallest in decades, bottoming out in 1994. Enforcement: Police strategies and technologies are more effective. Incarceration: More people are in jails and prisons than at any time in our history—in fact more than four times as many people are in prison now than in 1975. Concerns for the future include shifts in the demographics of crime; prison overcrowding and the huge expense of maintaining the penal system; soaring gun violence; increases in crimes against teens; and disaffection with the criminal justice system by minorities.

23. What is the dilemma caused by crime in a free society? Should the police be permitted to stop all cars at a temporary roadblock to find drunk drivers? Or to catch those possessing illegal drugs?

Answer: The dilemma of crime in a free society emerges from the tension between the individual rights to which citizens are entitled and the power we give government to ensure order and protect society. While the U.S. Supreme Court has allowed the use of temporary roadblocks for such purposes, there are criteria which must be met to insure that such stops are not fishing expeditions which violate a person's reasonable expectation of privacy.