

A stylized logo of a plant with three leaves and a central stem, positioned above the chapter title. The background features a stylized classical building with columns and a sunburst pattern at the top.

Chapter 1

Sources of Criminal Law

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PUNISHMENT OF WRONGDOERS

- A core function of Criminal Law.
- Done by the government, for the betterment of society as a whole.
- Why we as a society punish wrongdoers:
 - Rehabilitation: *To make the wrongdoer a contributing member of society.*
 - Incapacitation: *To remove the wrongdoer from society.*
 - Retribution: *To take revenge against the wrongdoer.*
 - Deterrence: *To prevent future wrongdoing.*

MORALS vs. CRIMINAL LAWS

- **Morals:**

- Are social and personal ideas of right and wrong.
- Seek to establish perfect personal character.
- Establish higher standards of behavior than those set by criminal laws.

- **Criminal Laws:**

- Seek to establish minimal levels of social conduct and behavior.
- Are considered unjustifiable and inexcusable.

CLASSIFICATION OF CRIMES

- *Mala in se:*

- Are considered both morally wrong and criminally wrong.
- Examples ? Murder, rape, robbery, and theft.

- *Mala prohibita:*

- Are crimes, but are not necessarily considered morally wrong.
- Examples ? Fishing without a license, speeding, and not coming to a complete stop.

TYPES OF CRIMES

- **Treason:**

- Highest crime.
- Only crime specifically listed in the U. S. Constitution.

- **Felony:**

- Are crimes punished by incarceration in a prison.
- Some jurisdictions (and the Model Penal Code) define as any crime with a term of incarceration of one year or more (or death).

- **Misdemeanor:**

- Are crimes punished by incarceration in a local jail.
- Some crimes are known as “wobblers”; the trial court determines whether the act constitutes a felony or a misdemeanor.

SUBSTANTIVE LAWS vs. PROCEDURAL LAWS

- Substantive Laws:

- Laws that create and define socially acceptable conduct.
- Creates and defines crimes and punishment.
- Look to state and federal penal codes.

- Procedural Laws:

- Laws that govern the investigation, arrest, and trial of the wrongdoer.
- Protect the constitutional rights of the wrongdoer.

CRIMES vs. TORTS

- **Crimes:**

- A wrong committed against the interest of all the people of the state.
- Falls under the classification of “public laws.”
- Government has a direct and strong interest.
- Legal standard of proof is “beyond reasonable doubt.”

- **Torts:**

- A wrong committed against a private interest.
- Falls under the classification of “private laws.”
- Government has only an indirect interest.
- Legal standard of proof is “preponderance of the evidence.”

THE COMMON LAW

- Developed from the customs of the people.
 - For good or bad, corresponds with society's actual feelings and demands.
 - Based not upon legal codes, but on local customs.
 - People are expected to know what is expected of them.
- Common Law and Criminal Law:
 - Common law crimes are frowned upon because the absence of a specific statute, ordinance, or regulation prohibiting the conduct fails to give wrongdoers "notice" of what is expected of them.
 - The federal government and most states have abolished common law crimes because of problems with "notice."
 - Courts still use common law principles and definitions in interpreting criminal statutes.

CASE LAW, PRECEDENT, & *STARE DECISIS*

- Case Law

- Court opinions that interpret the meaning and application of statutory laws.
- Most often deals with legislative intent, meaning of the words within the statute, and constitutionality.

- Precedent

- Court opinions that establish case law may act as precedent and guide other courts considering the same legal issue.
- Precedent may be either mandatory or persuasive.

- *Stare Decisis*

- The common law practice of courts following precedent set by other courts and not unsettling things that have already been established.
- Keeps the law settled and consistent among judges and courts of different personalities and ideologies.

STATUTORY LAW

- Written law (codes) enacted by the representative bodies of the government (legislatures).
 - The will of the people as expressed through elected representatives.
 - 99% of all crimes are prosecuted under state penal codes.
- Treatment of Statutory Law:
 - The legislative branch enacts statutory law.
 - The executive branch enforces the statutory law.
 - The judicial branch interprets the statutory law.
- Factors Influencing Criminal Laws:
 - FOR: *Protecting the public, maintaining order, and promoting public morality.*
 - AGAINST: *Lack of public interest, economically infeasible, and constitutionally protected.*

THE MODEL PENAL CODE

The model penal code is an attempt to formulate and specify principles of criminal responsibility that are politically neutral and that reflect a consensus in society about what kinds of conduct are dangerous and blameworthy. The model penal code reformed the common law and transformed it into America's substantive law.

CRIMINAL LAW REFORM

- **Guiding Principals**

- Virtues of codification.
- Social and moral issues being raised by changing values of our society.

- **Creating or reforming laws are a function of:**

- Describing prevailing values or norms in society.
- Looking at at the historical context in which laws are created.
- Arbitrary decision of those in power.
- Reflection of changing needs in society.
- Desires of those in power to get inside the heads of lawmakers.



Chapter 2

Limitations of Criminal Liability

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BILL OF RIGHTS

- First ten amendments to the U.S. Constitution.
- Protects the people from their government.
- Key Criminal Law Amendments:
 - 4th - *Prohibits unlawful searches and seizures.*
 - 5th - *Protects against self-incrimination.*
 - 6th - *Guarantees legal counsel for the accused.*
 - 8th - *Prohibits cruel and unusual punishment.*

DUE PROCESS OF LAW

- Establishes the fundamental rules of statutory construction.
 - Statutes must have sufficient *specificity* to provide reasonable and fair notice of what is prohibited.
 - Statutes must not be so all encompassing as to be *overbroad* and restrict more conduct than necessary to meet the law's goal.
- Applies to both federal and state governments.
 - 5th Amendment - *Protects individuals from the federal government.*
 - 14th Amendment - *Protects individuals from state governments.*

JURISDICTION

- The power of the court system to exercise its authority over either a specific legal subject matter, or a specific person.
- Without proper jurisdiction, the court system is powerless to act over a criminal defendant.
- Under the concept of legal jurisdiction, as long as one essential element of the crime occurred in the court's jurisdiction, that court system has the power to exercise its power over the defendant.

JURISDICTIONAL ISSUES

- State Jurisdiction:

- Based upon the right of individual states to make laws to promote the safety and welfare of its residents.
- The vast majority of criminal prosecutions (over 95%) occur under state court systems.

- Federal Jurisdiction:

- Based upon the U.S. Constitution and the interstate commerce clause.
- The same criminal act may be prosecuted by both the state *and* federal court systems, if the act violates both state and federal laws.

VENUE

Often associated with jurisdiction. Refers to the geographic location of where the defendant will be tried for the alleged criminal act.

- The Sixth Amendment provides for trial in the location where the alleged criminal act is said to have occurred.
- Most often, venue is changed from one location to another if the court determines the defendant cannot receive a fair and impartial trial due to pretrial publicity.

SOCIAL HARM

- Social harm is the idea that an act cannot be deemed illegal unless there is a social, *and not personal*, harm associated with it.
- There are no states that require social harm as an necessary element of the criminal act.

RIGHT TO PRIVACY

- Not explicitly guaranteed by the U.S. Constitution.
- Held by the U.S. Supreme Court to be a substantive right guaranteed under the due process of the law.
- The right to privacy has been held to prevent the government from encroaching upon some, *but not all*, personally harmful conduct.
 - Personal possession of otherwise illegal obscene material is protected (*Stanley v. Georgia*).
 - Personal possession of illegal drugs is not protected.
 - School drug testing is not a violation of the right to be free from unreasonable searches (*Board of Education v. Earls*).

LEGALITY

- *Nallum crimin sine lege* (no crime without law):
 - Just because an act is immoral or harmful, that does not necessarily mean the conduct constitutes a crime.
 - The principle of legality developed to move the operation of law further away from the historical barbarism toward the rule of law.
- *Principle of Legality Protections:*
 - There is no crime unless the legislature makes the specific conduct a crime.
 - Prevents the government from punishing people for conduct that was legal at the time the conduct was carried out (*ex post facto* laws).
 - Prevents the government from declaring a specific person guilty of a crime without the opportunity of trial by jury (a bill of attainder).

EQUAL PROTECTION OF THE LAW

- All Persons Are Equally Protected Under The Law (14th Amendment):
 - All persons must be treated with substantial equality.
 - Criminal Laws cannot discriminate based upon the person's sex, race, religion, ethnicity, national origin, and sometimes age.
- But, All Persons Do Not Have To Be Treated Exactly The Same:
 - Criminal laws may not discriminate, but they may distinguish protected individuals and classes.
 - Laws that distinguish treatment of individuals based upon their sex, race, religion, ethnicity, national origin, and sometimes age must be based upon an important government objective and bear a substantial relationship between the law and that objective.

DOUBLE JEOPARDY

The 5th Amendment of the U.S. Constitution guarantees protection against being prosecuted twice for the same criminal conduct in the same jurisdiction.

- A person cannot re-prosecuted after being acquitted. This prevents the harassment of multiple trials by preventing the government from prosecuting someone after they have already been found not guilty of a crime.
- A person cannot be re-prosecuted after being convicted. This prevents the government from stacking convictions and punishments
- *BUT*, a person may be tried twice for the same criminal conduct if the conduct constitutes two different (i.e., state and federal) crimes.