

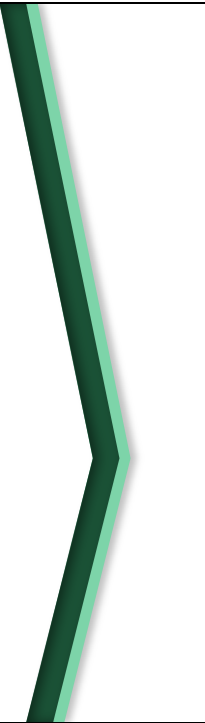


**Effective Legal Office Administration**

**Lesson 8 – Criminal Law and Procedure**

# **WORKBOOK**





# Criminal Law and Procedure

LESSON 08

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## Criminal Law and Procedure – Overview

- Criminal Law Basics
  - Elements of a crime
- Criminal Procedure
  - 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> Amendments
- Misdemeanor and Felony Cases

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## Jurisdiction

- Jurisdiction applies to both civil and criminal cases
- Jurisdiction is normally determined by court rules
  - For example, misdemeanor cases are normally held in lower courts and felony cases are held in a superior court
- To determine which criminal court a case may be in, look to the jurisdiction where the criminal event is alleged to have taken place.
- Each criminal statute will state if the offense is a misdemeanor or felony.

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## The Basics

- Criminal law concerns the prosecution by a government entity of a person for an act that has been classified as a crime
- The government entity, through it's prosecutor, initiates the case
  - Prosecutors also called District Attorneys in some jurisdictions
- Prosecutorial Discretion –
  - Prosecutors decide who is charged
  - and who may receive a plea bargain
- Convicted persons may be incarcerated, fined, or both
- Only those acts that have been designated as a crime by the legislative body are considered crimes
- Crimes vary by state and the federal government

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## Misdemeanors

- Most states and the federal government classify their crimes into different categories based on how serious they are
- The three most common categories are:
  - Infractions or Summaries – generally the least serious type of crime, usually only requiring the payment of a fine
  - Misdemeanor – more serious than an infractions, they may be punishable by up to a year in jail
  - Felony – the most serious types of crime, with a prison sentence greater than a year, up to death in some states

Infraction



Misdemeanor



Felony

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## Misdemeanors

- Generally, the classification of crimes is actually based on the perceived seriousness of the criminal act and the amount of jail or prison time that is associated with the crime
- Misdemeanors in many states are divided into different levels:
  - Lower misdemeanors usually contemplate a jail sentence of less than six months (thus no right to counsel) and a fine of \$500 or less
  - Major misdemeanors usually will have up to one year in jail and a substantial fine as a punishment
- Some states define misdemeanors as any crime not a felony or infraction

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## Felonies

- In many states, felonies, like misdemeanors, are categorized into different classes called degrees (1-4)
- This classification is normally determined by the seriousness of the crime and in some cases, if the defendant is a repeat offender
- In some states, whether a crime is a felony may be defined by whether time is served in jail or prison.
- If the person serves time in a jail, it may be for a lower felony or a misdemeanor and if the person spends time in prison, it is generally for a felony.
- In other states, the potential length of time of incarceration will be the deciding factor

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## The Basics

- A crime is any act or omission in violation of a public law forbidding or commanding it
- Most crimes are contained in criminal statutes
- There are 52 separate criminal codes in the United States
  - one for each of the 50 states,
  - the federal criminal code and
  - the criminal code of the District of Columbia.
- There is no one uniform American criminal code, however, the 'Model Penal Code' created by the American Law Institute is the closest to a uniform criminal code.
- Model Penal Code has provided guidance for states on how to develop their own criminal codes, and several states have adopted portions of the Model Penal Code into their own criminal laws.
- Federal criminal statutes are separate from state criminal statutes. Accordingly, a person may be prosecuted under either or both.

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## Elements of a Crime

- For a person to be guilty of any crime, at least two primary elements must be established:
  - The Actus Reus or Guilty Act – An action that manifests criminal intent. The act must be sufficiently related to the intent to constitute a crime.
  - The Mens Rea or Guilty Mind – An intent to commit a crime (Specific Intent) or the act that results in a crime (General Intent)
- Exception –
  - Strict liability crimes:
    - No Mens Rea required
    - Just committing the act makes one guilty, doesn't matter what the intent was
  - Ex. Statutory Rape

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## Levels of Mens Rea

- The Model Penal Code provides for the following levels of mens rea or mental intent:
  - Purposefully - it is the conscious objective of the person to engage in the restricted behavior
  - Knowingly – a person is aware, or substantially certain, that his conduct will result in a harm
  - Recklessly – conscious disregard for a substantial risk of harm

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## Definitions of some common crimes



- Homicide
  - Murder – the unlawful killing of another human being with malice aforethought
    - Actus reus – Unlawful Killing
    - Mens rea - Malice aforethought
      - Malice aforethought is the state of mind necessary for common law murder, including the intent to kill, the intent to commit serious bodily injury, or the intent to commit a felony and the exhibition of a depraved indifference to human life
  - Felony Murder – a death occurs during the commission of a felony
    - Ex. Convenience store robbery
  - Manslaughter – an unlawful intentional homicide committed without malice in the heat of passion upon sudden and adequate provocation.
    - May be Voluntary or Involuntary

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## Manslaughter

- Elements of Voluntary Manslaughter
  - Sudden and adequate provocation measured in some objective way
    - According to the reasonable person standard
  - Must have in fact been provoked
  - Defendant did not have time to cool off
  - No lapse of time in which a reasonable person would have cooled off.
    - Ex. Spurned Spouse
- Elements of Involuntary Manslaughter
  - An unintentional (and probably accidental) killing committed without malice as a result of the defendant's grossly negligent or reckless behavior.
    - Ex. One Punch homicide

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## Defining some common crimes

- Common examples of crimes against a person :
  - Burglary (Traditional Definition) – the breaking and entering into the dwelling of another at night with the intent to commit a felony therein
    - Burglary is an excellent example of the need to know the local criminal statutes
    - Many states have eliminated the need for the entering the dwelling of another to have occurred at night
  - Modern Burglary – knowingly entering or remaining unlawfully in a building with the intent to commit a crime therein
  - Robbery – The taking and carrying away of the property of another
    - With intent to steal
    - From the person or *presence* of the victim
    - By use of force *or* the *threat* of the use of imminent force
  - Presence means within the area immediately surrounding the person

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## Defining some common crimes

- Assault is:
  - An attempt to commit a battery
    - In which no actual battery occurs
  - OR
    - an intentional frightening through the threat of a battery
- Battery:
  - A successful assault
    - which results in the actual and intentional touching of the victim

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## The Basics

- The government, through the prosecutor, must prove all elements of a crime beyond a reasonable doubt
  - Beyond a reasonable doubt does not mean ALL doubt
- The elements of a crime are those specific conditions that define the crime in the statute
- Modern Burglary example – must prove:

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## The Basics

- Modern Burglary Elements example:
  - Entering (actus reus)
  - Knowingly (mens rea)
  - Together, knowingly entering is concurrence if it happens at the same time
  - A building
  - With the intent to commit a crime therein (harmful conduct)

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## Some of the Defenses a Defendant may use

- There are several defenses that may be raised in a criminal case. The following list is a sample that does not comprise all defenses:
- The aggressor defense:
  - He started it!
    - Acted in self-defense.
    - The force was necessary and the amount of force used was reasonable.
- The mutual combat defense:
  - Mutual fight – both parties enter the fight willingly
- Mistake of *Fact*
  - An honest mistake negates the existence of the mens rea required for the crime
- Duress – is a defense on the grounds that the defendant was forced to commit the crime.
- Necessity – is a defense on the grounds that the harm to be avoided, outweighs the harm committed (it was necessary). Will not defend against a homicide.
- Alibi – I was somewhere else.
- Double Jeopardy – one cannot be tried twice for the same criminal episode

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## Defenses Continued

- Frame-up – a defense that alleges that police or some other individual has planted evidence to create the assumption that the defendant committed a crime
- Insanity – a mental disorder severe enough to relieve a person of responsibility for their actions
- Consent – permission given by one person for another person to take an action that would normally be considered wrongful or illegal
  - Ex. Car theft

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## Criminal Procedure

- Criminal procedure refers to the enforcement of criminal statutes and the procedures law enforcement may legally use.
- It does not refer to administrative criminal court procedures.
- These procedures are determined by both case law and by certain amendments of the constitution.
- They include:
  - Protection from Unreasonable Search and Seizures
  - Police Interrogation
  - Rights at Trial – the Sixth Amendment



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## 4<sup>th</sup> Amendment

- The Bill of Rights offers several protections for Americans accused and charged with a crime:
- Fourth Amendment:
  - Protection from Unreasonable Searches and Seizures
  - Issuance of Warrants must be based on probable cause
  - Fourth Amendment – The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized
    - Probable Cause:

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## The Procedures

- Probable cause – when there is more evidence in favor of something than against or when there are reasonable grounds for believing the truth of the assertion, which is more than mere suspicion
- Probable cause is greater than mere suspicion but less than that required for a criminal conviction
- The facts must demonstrate that a reasonable person would believe that the location which is the subject of the warrant contains evidence of a crime, the instrumentalities of a crime, contraband, or the fruits of a crime

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## 4<sup>th</sup> Amendment

- The Exclusionary Rule – used by the defendant in a criminal case as a remedy for illegal searches that violate the rights contained in the Fourth Amendment to the U.S. Constitution
- Under the Exclusionary Rule, all evidence illegally obtained must be excluded as evidence
- “Fruit of the poisonous tree” doctrine holds that, in addition to the material uncovered during an illegal search being inadmissible, any evidence that is later gathered as a result of the illegal search will also be excluded
- This doctrine has some important exceptions, including:
  - If the police had an independent source of knowledge of the evidence
  - If discovery of the evidence was “inevitable”

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## The Procedures

- It is important to realize that the prohibitions contained in the U.S. Constitution only apply to government conduct
- If the person conducting the search is not associated with the government, the protections do not apply
- If the defense can show the activity was either requested or directed by a government agency, then the protections do exist
- For a defendant to claim that a search was illegal, the location or area searched must be one in which the defendant has an expectation of privacy
  - Ex. Bodies, homes, personal property. Not trash

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## 5<sup>th</sup> Amendment

- Provides for protections related to grand jury indictments, double jeopardy, due process, and protection from self-incrimination.
- The Fifth Amendment states: *No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation*

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## 5<sup>th</sup> Amendment Procedures

- Miranda Warnings – these are rights based on the Fifth Amendment to the U.S. Constitution regarding self-incrimination and the case *Miranda v. Arizona*
  - It applies to both state and federal governments
- As a result of what happened to Ernesto Miranda, The Supreme Court decided to set guidelines outlining rights during custodial interrogation. Chief Justice Warren wrote:

**"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed..."**

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## Miranda Warnings

- Miranda Warnings must state the following:
  - You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney, if you cannot afford an attorney, one will be appointed for you. Do you understand these rights as they have been read to you?
- The privilege against self-incrimination is only available to natural persons, a corporation may not invoke the right
- The privilege only applies to custodial interrogation; thus, if the person is not in custody, the warnings need not be given
- The rights may be voluntarily waived by the defendant, but this waiver should be documented in some way

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## 5<sup>th</sup> Amendment Procedures

- Custody – a determination needs to be made of whether one is in custody or not before the 5<sup>th</sup> Amendment can be applied
- Custody is defined as the detainment of a person by virtue of lawful process or authority
- One can be in custody without being arrested. Simply being lawfully detained (lawfully restrained against one's will) may meet the requirements of custody.
- A basic rule of thumb; if you are not free to leave you are in custody



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## 5<sup>th</sup> Amendment Procedures

- Interrogation is a term of art with a specific legal meaning.
- Any time the police are questioning a suspect, for the purpose of gathering information to be used in a prosecution it is called interrogation.
- Being in custody, by itself, is not interrogation. Some additional form or compulsion or coercion is required to trigger Miranda.
- Actual direct questioning need not take place. Simply placing a “confession form” before a suspect may be considered interrogation.
- The key is whether the government agent has spoken or acted in such a way as to make it likely a suspect would respond and incriminate themselves

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## 6<sup>th</sup> Amendment Procedures

- Sixth Amendment – this amendment provide rights available to the accused at trial
- The 6<sup>th</sup> Amendment includes the right to counsel at all stages of criminal prosecutions
- These stages include:
  - Custodial interrogations and all post-indictment interrogations
  - Preliminary hearings on probable cause and post-charge lineups
  - Arraignments
  - Entering of guilty pleas and sentencing
  - Felony trials and misdemeanor trials which could result in imprisonment
  - All juvenile delinquency hearings
  - Appeals as a matter of right

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## Criminal Law and Procedure – Review

- Criminal Law Basics
  - Elements of a Crime
- Criminal Procedure
  - 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> Amendments
- Misdemeanor and Felony Cases

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Questions

and

Answers



## Review Questions:

1. There are how many separate criminal codes in the U.S.?
  - A. 1
  - B. 12
  - C. 52
  - D. 113
2. The standard of proof in a criminal case is:
  - A. Probable cause
  - B. Beyond a reasonable doubt
  - C. Preponderance of the evidence
  - D. Release on recognizance
3. The 2 main elements of any crime are:
  - A. Guilty act & damage
  - B. Guilty act & guilty heart
  - C. Guilty act & guilty mind
  - D. Guilty act & guilty person
4. There is a type of crime that doesn't require a 'guilty mind'. What is it called:
  - A. Sovereign
  - B. Limited Liability
  - C. Strict Liability
  - D. Nominal Liability
5. True or False: A court has correct jurisdiction when it has the authority or right to hear a particular case.
  - A. True
  - B. False
6. Crimes tend to be classified as one of three types: infraction, felony and:
  - A. Misfeasance
  - B. Mistrial
  - C. Misdeed
  - D. Misdemeanor

7. A person can consider themselves to be 'in custody' of police when:
- A. They are allowed one phone call
  - B. They are asked to come in for questioning
  - C. They are not free to leave
  - D. They are scheduled for trial
8. This lesson discussed which three Constitutional Amendments related to criminal procedure:
- A. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>
  - B. 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>
  - C. 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>
  - D. 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>
9. True or False: The difference between Criminal Law and Criminal Procedure is that Criminal Law refers to the actual acts and behaviors that create a crime, whereas Criminal Procedure refers to the way in which law enforcement is permitted to deal with the people that commit these acts and behaviors.
- A. True
  - B. False
10. As it relates to levels of Mens Rea, which of the following words describes the mental state where a person knows and understands that their behavior is likely to have a harmful impact on someone else, but throws caution to the wind and does it anyway.
- A. Purposeful
  - B. Reckless
  - C. Negligent
  - D. Wanton

## Answer Key:

1. C  
Each of the 50 states has its own criminal code, the District of Columbia has a code, and there is a Federal criminal code as well.
2. B  
The prosecution must always prove each element of its case beyond a reasonable doubt for a person to be convicted.
3. C  
If a defendant has both a guilty mind (intent) and a guilty act (cause of harm) then he or she can be convicted of a crime.
4. C  
Strict Liability crimes don't require the element of a guilty mind for the defendant to be convicted, only the guilty act is required.
5. A  
True. A case must be decided in the right forum, and where that is will be determined by the type of case, and the location where the event took place.
6. D  
Misdemeanor crimes are typically more serious than infractions and less serious than felonies.
7. C  
Even if not technically advised that they are under arrest, if a person is not free to leave, the law considers them to be in police custody.
8. B  
The 4<sup>th</sup> Amendment (search & seizure), 5<sup>th</sup> Amendment (right to remain silent), and 6<sup>th</sup> Amendments (right to counsel and to a trial) are directly related to Criminal Procedure and offer rights and protections to each person accused of a crime.

9. A

True. Criminal Law and Criminal Procedure are interrelated but not the same thing. Criminal Law includes the elements that create a crime and Criminal Procedure is the rules that govern how police and courts and corrections relate to the accused.

10. B

Depending on the actual behavior involved and the level of disregard for the potential harm involved, it's possible that D is also a good answer, but without more detail, reckless is the most appropriate answer to this question.