

Introduction to Legal Concepts

Lesson 3 - Law and Crime

WORKBOOK

Law and Crime - Overview

- Basis of American Law
- Legal Citations
- Sources of Law
- The Adversary System
- Rights in Criminal Cases
- Civil Law
- Criminal Law

The Basis of American Law

- Basis of Law = Human Conflict

- **The four key elements defining law:**

- ① Law is a body of rules
- ② Law is enacted by public officials
- ③ Law is enacted in a legitimate manner
- ④ Law is backed by the force of the state

Common Law Heritage

- “The law common to the entire land”
 - **Anglo-Saxon or Anglo-American law used by English speaking people throughout the world**
 - Louisiana is unique among American states and is modeled after the French system of civil law, but still uses the common law for crimes

The Casey Anthony Case

- The Casey Anthony not-guilty verdict illustrates the conflict between legal reality and societal expectations
- The public expected a guilty verdict yet the prosecution, relying solely on circumstantial evidence, was unable to convince the jury to find Anthony guilty as charged beyond a reasonable doubt

Common Law Heritage

- The Three Key Characteristics

- ① **Judge-made law**
- ② **Based on precedent or *stare decisis***
- ③ **Found in multiple sources**

Multiple Sources of Law

- Constitution establishes principles and laws of nations/states
- Statutes
 - Federal
 - State
- Administrative regulations
 - Agencies
 - Boards
 - Bureaus
 - Commissions
 - Departments
- Case law

Judge-Made Law

- Common law
 - Predominately judge-made rather than created by legislatures
- Modern criminal law
 - Defined by legislative bodies through enactment of codes

Based on Precedent

- *Stare Decisis*
 - Translated literally: “let the decision stand”
- Followed previous court decisions with similar facts of a case
 - By following previous court decisions, the system promotes fairness and consistency in judicial decision making
 - A cautious approach to problem solving

Case Reporters

THE NATIONAL REPORTER SYSTEM: FEDERAL CASES

- Federal district (trial) court decisions are published in the *Federal Supplement*®.
- Only a selection of district court cases is reported.
- Citation format:
 - 75 F.Supp. 225
 - 13 F.Supp.2d 881
- These cases are on Westlaw in the DCT and DCT-OLD databases.



Federal Reporter Names

- U.S. Supreme Court Cases
 - U.S. Reports (U.S.)
 - Supreme Court Reporter (S. Ct.)
 - Lawyers Ed. (L. Ed.)
 - Lawyers Ed. 2d (L. Ed. 2d)
 - U.S. Law Week (U.S.L.W.)

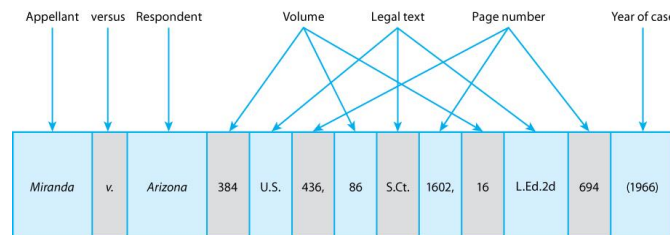
Sample State Reporters

- New York Case Reporters
 - New York Court of Appeals
 - New York Supplement (N.Y.S.)
 - New York Supplement 2d (N.Y.S.2d)

Reporter Map



How to Read Legal Citations



Sample Citation

- Reading & Understanding Case Law

- Legal cases are identified by a “legal citation” (or a “cite”) as the example below:

Doe 1 v. AOL, LLC, 552 F.3d 1077 (9th Cir. 2009).

Title: First Party is Plaintiff, second party is Defendant. The parties are either *italicized* or underlined.

Sample Citation

- Reading & Understanding Case Law

- Legal cases are identified by a “legal citation” (or a “cite”) as the example below:

Doe 1 v. AOL, LLC, 552 F.3d 1077 (9th Cir. 2009).

Case is found in Federal 3rd
Reporter, volume 552, page 1077.

Sample Citation

- Reading & Understanding Case Law

- Legal cases are identified by a “legal citation” (or a “cite”) as the example below:

Doe 1 v. AOL, LLC, 552 F.3d 1077 (9th Cir. 2009).

Case was decided by the Ninth Circuit Court of Appeals, in 2009.

Another Example

This citation stands for a decision in the case of **Frederick v. Morse, 439 F.3d 1114 (9th Cir. 2006).** in the year 2006.

a party named Frederick versus a party named Morse* published in volume 439 of the Federal Reporter, Third Series, beginning at page 1114, decided by the U.S. Court of Appeals for the 9th Circuit

*Depending on the procedural posture of the case, the parties listed in a case name could be plaintiff and defendant, appellant and appellee, or petitioner and respondent.

Actual Case, 9th Circuit, 2006

439 F.3d 1114 (2006)

Joseph FREDERICK, Plaintiff Appellant,

v.

Deborah MORSE; Juneau School Board, Defendants-Appellees.

No. 03-35701.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted July 8, 2004.

Filed March 10, 2006.

Sources of American Law

- Primary Sources:
 - U.S. Constitution and state constitutions
 - Statutes, or laws, passed by Congress
 - Regulations by administrative agencies
 - Case law (court decisions)
- Secondary Sources:
 - Legal encyclopedias
 - Compilations (Restatements of Law)
 - Comments to treaties, statutes, law reviews and legal journals

Constitutions

- The fundamental rules which dictate that people will be governed
 - Create guidelines or rules for establishing the government
 - First document establishing principles and general laws of a nation or state
 - Define the powers each branch of government may exercise
 - In U.S. – this is 'the' law of the Land
 - Supreme Court final arbiter of it's content

Codes or Statutes

- These are rules enacted by state or federal legislatures and are the product of the legislative process
 - Local government rules are often called “municipal ordinances”

Administrative Rules and Regulations

- Administrative agencies are created by, and get their power to act, from the legislature
 - Regulations have the “force of law” the same way a legislative statute does, and they are often interpreted by the courts
 - IRS
 - State boards
 - Zoning boards

Judge-Made Law

- Appellate courts are still a very important source of American law
 - They are not “making” law, rather they are “finding” it
- Constitutional law
 - Still an area that is primarily judge-made

The Adversary System

- Substantive Law:
 - Rules that create legal obligations
 - Substantive civil law
 - Tort, contract, domestic relations
 - Substantive criminal law
 - Robbery, burglary
- Procedural Law:
 - Establishes the methods of enforcing these obligations

The Adversary System

- Burden of proof is on the prosecutor for the state to prove guilt beyond a reasonable doubt
 - Safeguards
 - Cross-examination—6th amendment
 - Diffusion of power
 - Presumptions and inferences—sanity & innocence
 - Burdens of proof—production/persuasion

Adversary System Safeguards

- The adversary system allows for several parties to uncover and determine the truth through:
 - Cross-examination
 - Jury
 - Defense attorneys searching for violations of their clients' rights
- By putting power in the hands of several parties, the adversary system limits the power of each actor, thus creating checks and balances aimed at curing political misuse of the criminal courts

Levels of “Proof”

- Mere suspicion
 - A hunch
- Reasonable articulable suspicion
 - One can articulate reasons for suspicion
- *Terry v. Ohio* (1968)
 - Creation of a stop and frisk for law enforcement
 - Based on RAS
 - Brief, limited, investigative detentions
 - Legal to law enforcement personnel if they can articulate the reason for the detention
 - Landmark case, 4th amendment

Levels of “Proof”

- Probable cause
 - A probability that a crime occurred or that a particular person was involved in a crime
- Preponderance of evidence (civil case)
 - Proof more likely than not, 51%
- Clear and convincing evidence
- Beyond a reasonable doubt

Presumptions and Inferences

- Presumptions are conclusions made in the absence of evidence to the contrary
 - Presumption of sanity
 - Presumption of innocence
- Inferences are conclusions established by the evidence

Burden of Proof

- Burden of production is producing evidence
- Burden of persuasion is the burden of proof
 - When the defendant bears the burden of persuasion to prove a defense it is called affirmative defense
- Reasonable articulable suspicion articulates a suspicion (*Terry v Ohio*)
- Probable cause is a fair probability a crime has occurred
- Preponderance of evidence (civil cases)
- Clear and convincing (civil cases and affirmative defense cases)
- Findings: presumption of innocence or guilt beyond a reasonable doubt (*In re Winship 1970*)

Rights of the Accused

- Crime prevention must take place without the violation of individual rights and liberties
- Due process of law
- Key examples include:
 - The right to remain silent
 - The right to have a trial by jury
 - The right to counsel in criminal proceedings

Due Process

- The principal legal doctrine for limiting the arbitrariness of officials
- Two sources in the constitution:
 - “No person shall . . . be deprived of life, liberty or property without due process of law.” (Fifth Amendment)
 - “No state shall deprive any person of life, liberty or property without due process of law.” (Fourteenth Amendment)

Criminal Procedure Amendments

- 4th Amendment
 - **Search and Seizure**
- 5th Amendment
 - **Double jeopardy, self-incrimination**
- 6th Amendment
 - **Speedy, public, fair trial**
 - **Counsel**
- 8th Amendment
 - **Excessive bail, fine, cruel and unusual punishment**

Bill of Rights

- The first 10 amendments to the U.S. Constitution – Fourth, Fifth, Sixth, and Eighth Amendments deal specifically with criminal procedure initially at the Federal level.
- The U.S. Supreme Court has made the major protections accorded by these Amendments to the states through the Due Process Clause of the 14th Amendment.

Types of Civil Disputes

- Tort law
 - Civil wrong to another
- Contracts
- Property
- Domestic relations
- Inheritance

Civil Remedy

- A remedy
 - The result a plaintiff seeking in a civil law suit
 - Remedies might be in the form of money damages, a declaratory judgment, or an injunction

Civil Remedies for Fighting Crime

- Lawsuits against criminal defendants in order to recover lost property
- Awarding compensation for injuries to person or property
- Asset Forfeiture
- Injunction

Types of Injunctions

TABLE 2.1 • TYPES OF INJUNCTIONS	
Temporary restraining order ("TRO")	A temporary injunction lasting only a few days that orders a party to refrain from taking certain action until a hearing can be held, such as not taking a child out of the jurisdiction until a custody hearing can be held.
Preliminary injunction	An injunction issued during the pendency of a civil or criminal case that orders the parties from taking certain actions in order to maintain the status quo until there is a final judgment in the case, such as ordering a city not to enforce a local ordinance until its constitutionality can be determined.
Permanent injunction	An injunction entered as part a final judgment ordering a party to refrain from or to perform certain actions, such as ordering a company to permanently stop dumping industrial waste into a river.

Criminal Law Overview

- Misdemeanor
 - Less serious crime, punishable by a fine and less than a year in jail
- Felony
 - Depending upon the state, it is typically defined by the term or location of imprisonment
 - Over 1 year
 - State prison vs. county jail

Differences Between Civil and Criminal Law

TABLE 2.5 ■ DIFFERENCES BETWEEN CIVIL AND CRIMINAL LAW		
	Civil	Criminal
Moving party	Plaintiff	State
Defending party	Defendant	Defendant
Burden of persuasion	Preponderance of the evidence	Beyond a reasonable doubt
Jury verdict rules	Less than unanimous (many states)	Unanimous (most states)
Remedy	Monetary damages	Fine and correctional supervision (in institutions, on probation, or with intermediate sanctions)
Defendant's testimony	May be forced to testify	Constitutional right to silence
Right to counsel	No constitutional right to counsel	Constitutional right to counsel
Prosecution	Must hire own lawyer	The government through the district attorney
Examples	Tort, contract, property, probate	Assault, theft, burglary, murder

The Five Elements of a Crime

- *Corpus Delicti:*

- ① **Actus reus**

- Guilty act

- ② **Mens rea**

- Guilty intent

- ③ **The guilty act and guilty intent are related**

- ④ **“Attendant circumstances”**

- ⑤ **Specific result**

Elements Stated in Lay Terms

- Elements of a Crime (*corpus delicti*)
 1. *Actus reus* is the guilty act
 2. *Mens rea* is the guilty mind
 3. Fusion of the guilty act and guilty intent
 4. Attendant circumstances (accompanying)
 5. Result of the act – Harm done

Criminal Defenses

- ✓ Legal defenses
- ✓ Alibi defenses
- ✓ Mistake of fact
- ✓ Necessity
- ✓ Justifications
- ✓ Procedural defenses
- ✓ Defense of excuse
- ✓ Insanity or mental illness
- ✓ Juvenile status

Delinquency

- In most states, a child under the age of 7 is not criminally liable for a criminal offense – the “infancy” principle
- After the age of 7 but before becoming an adult, the law views a child’s criminal violations as acts of “juvenile delinquency” – a principle that holds him/her less responsible for such acts
- The increasing criminal acts committed by young people have caused many states to lower the age for prosecuting a minor as an adult

Characteristics of the Most Common Serious Crimes

	LAW ON THE BOOKS	LAW IN ACTION
Murder and nonnegligent homicide	The killing of one human being by another.	Homicide is the least frequent violent crime. Most often murderers are relatives or acquaintances of the victim.
Rape	Sexual intercourse that occurs without the effective consent of the victim.	Contrary to portrayals of sexual assaults by strangers in many movies and television shows, the overwhelming number of such crimes are "acquaintance rapes," in which the victim knows the assailant.
Robbery	The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.	Half of all robberies involve one offender. Half of all robberies involve the use of a weapon.
Assault	<i>Aggravated assault</i> is an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or other means likely to produce death or great bodily harm.	Simple assault occurs more frequently than aggravated assault. Simple assault is the most common type of violent crime.
	Simple assault is an unlawful attack by one person upon another for the purpose of inflicting less than severe bodily injury. This type of assault does not involve the use of a weapon or other means likely to produce death or great bodily harm.	

Characteristics of the Most Serious Crimes

	LAW ON THE BOOKS	LAW IN ACTION
Burglary	The unlawful entry into a structure to commit a felony or a theft.	Residential property is targeted in two out of three burglaries.
Larceny (theft)	The unlawful taking, carrying, lending, or riding away of property from possession or constructive possession of another.	Pocket picking and purse snatching occur most frequently inside businesses or on street locations.
Motor vehicle theft	The theft or attempted theft of a motor vehicle. A motor vehicle is self-propelled and runs on the ground or on water, not on rails.	Motor vehicle theft is relatively well reported to the police, but the crime has a low rate of being solved.
Arson	Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle, aircraft, or personal property of another.	Single-family residences are the most frequent targets of arson.

Law and Crime - Review

- Basis of American Law
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- Rights in Criminal Cases
- Civil Law
- Criminal Law



Questions

and

Answers

Review Questions:

1. The concept of precedent, or relying on prior court decisions to determine the outcomes of pending cases is referred to by which Latin term that means 'Let the Decision Stand'?
 - A. Mens Rea
 - B. Stare Decisis
 - C. Pro Se
 - D. Inter Alia
2. Which Amendments to the U.S. Constitution relate directly to the rights of the accused in a criminal case?
 - A. 1st, 2nd, and 3rd
 - B. 8th, 7th, and 6th
 - C. 4th, 5th, and 6th
 - D. 11th, 10th, and 9th
3. True or False: Tort laws are prosecuted only in criminal courts.
 - A. True
 - B. False
4. True or False: Crimes that are likely to be punishable by one year of jail time or less tend to be classified as Misdemeanors.
 - A. True
 - B. False
5. Which of the following is not one of the elements of a crime:
 - A. Guilty Act
 - B. Guilty Mind
 - C. Harm to the Victim
 - D. Motive
6. Probable cause is a term that can be defined as:
 - A. The probability that a crime occurred or that a particular person was involved in that crime.
 - B. The probability that an accused person is a natural criminal.
 - C. The probability that the prosecution can make a case and force the accused to plead guilty.
 - D. The probability that a police officer will be able to gather enough information to create a case.

7. True or False: The 'Presumption of Innocence' means that any citizen accused of or charged with a crime is presumed to be innocent until proven guilty.

A. True

B. False

Answer Key:

1. B

Stare Decisis translates to 'let the decision stand' which explains the concept of courts relying on the opinions of cases previously decided to guide decisions on pending cases.

2. C

The 4th, 5th, and 6th Amendments all contain provisions that directly relate to the rights of citizens accused of a crime. The 8th Amendment also discusses elements of criminal procedure as it relates to bail, and the 5th and 14th Amendments both apply rights to an accused through the exercise of due process.

3. B

False. Torts are civil wrongs committed against another person. Certain types of behavior may be addressed by both civil law and criminal law, but torts are matters between private individuals handled in a civil forum.

4. A

True. Misdemeanor crimes are often considered less serious than Felony crimes and, accordingly, are usually punishable by one year in county jail or less.

5. D

A motive is not a required element of a crime. There is no need for a prosecutor to prove why someone committed a crime. If the prosecution is able to demonstrate that the accused met the other elements of a crime, a conviction can occur.

6. A

Probable cause relates to the idea that an officer has enough evidence or information to suggest the likelihood that a crime has been committed and that it is more likely than not that the defendant has been involved in the commission of that crime.

7. A

True. Criminal defendants walk into the courtroom with the presumption of innocence, which means they are presumed by the courts, and the law in general, to be innocent of the crimes charged until they are proven guilty. Accordingly, it is the prosecutions burden to prove that the defendant is guilty, and not the defendant's burden to prove he is innocent.