



# ESSENTIAL CRIMINAL LAW

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**MATTHEW LIPPMAN**



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# ESSENTIAL CRIMINAL LAW



# PREFACE

**E**ssential Criminal Law discusses the central elements of common law and statutory crimes. The text provides a book for faculty who find that cases are difficult for students to read and to understand and are an ineffective and inefficient tool for learning. The aim of this book is to combine a brief definition of crimes with illustrative examples and with a discussion of larger public policy concerns. The text is comprehensive in coverage and includes important topics that often are not included in undergraduate criminal law texts. I hope that nonlawyers as well as lawyers will find that the book achieves the goal of enhancing teaching and learning in the classroom.

## CHAPTER ORGANIZATION

Each chapter is introduced by a **vignette** that raises a significant issue discussed in the text. The learning objectives and chapter introductions help students focus on key points in the chapter. In many instances, following the discussion of a particular crime, the text features a **legal equation** that summarizes the law. In many instances, the relevant portion of the **Model Penal Code** is reprinted and analyzed. A number of the topics covered in each chapter are followed by a **You Decide** section that asks students to apply the material to a new and novel factual scenario. The answer is available on the book's **study site** at [www.sagepub.com/lippmaness](http://www.sagepub.com/lippmaness). The book relates the law to current developments by including **Criminal Law in the News** and **Criminal Law and Public Policy** features. Various chapters also offer **charts** listing the frequency that crimes are committed in the fifty states. At the end of each chapter, there is a **Case Analysis** which is an edited version of a case that is relevant to the material discussed in the chapter. The chapters conclude with a **chapter summary** and with **chapter summary questions** that are designed to help students review the material. **Legal terminology** is listed at the end of each chapter, and the book also includes a **glossary**. Videos, podcasts, and various learning tools are included on the **study site** accompanying the book.

## ORGANIZATION OF THE TEXT

Criminal law is one of the most dynamic areas of American law. You only need look at a newspaper to read about controversies regarding the law of self-defense, marijuana legalization, and sexual offenses. I have taught criminal law for more than twenty years and have the same excitement in teaching the topic that I had when I first started teaching the subject.

The textbook provides comprehensive coverage of criminal law. It begins with the nature, purpose, function, and constitutional context of criminal law and then covers the basic elements of criminal responsibility and offenses. The next parts of the textbook discuss crimes against the person and crimes against property and business. The book concludes with discussions of crimes against public order and morality, crimes against the administration of justice, and crimes against the state.

- **Nature, Purpose, Function, and Constitutional Context of Criminal Law.** Chapter 1 discusses the nature, purpose, and function of criminal law. This is followed by Chapter 2 that covers the constitutional limits on criminal law, including due process, equal protection, freedom of speech, and the right to privacy.



- **Principles of Criminal Responsibility.** This section of the book covers the foundation elements of a crime. Chapter 3 discusses criminal acts and criminal intent, concurrence, and causation.
- **Parties, Vicarious Liability, and Inchoate Crimes.** The next part of the text discusses the scope of criminal responsibility. Chapter 4 discusses parties to crime and vicarious liability. Chapter 5 covers the inchoate crimes of attempt, conspiracy, and solicitation.
- **Criminal Defenses.** The next section of the text in Chapter 6 discusses defenses to criminal liability.
- **Crimes Against the Person.** This part of the book focuses on crimes against the person. Chapter 7 covers homicide. Chapter 8 discusses assault and battery, criminal sexual conduct, kidnapping, and false imprisonment.
- **Crimes Against Habitation and Property, and White-Collar Crime.** Chapter 9 covers crimes against property, including larceny, embezzlement, and robbery. Chapter 10 discusses white-collar crime.
- **Crimes Against Public and Social Order and Morality.** Chapter 11 focuses on crimes against public order and morality that threatens the order and stability of the community, including disorderly conduct, riot, vagrancy, and efforts to combat homelessness, gangs, and prostitution. Chapter 12 covers three other crimes against social order and morality: alcoholism, gambling, and narcotics.
- **Crimes Against the Administration of Justice.** Chapter 13 discusses crimes against the administration of justice, including bribery, perjury, obstruction of justice, resisting arrest, compounding a crime, and escape.
- **Crimes Against the State.** The text concludes in Chapter 14 by discussing treason, sedition, espionage, and counterterrorism.

## ANCILLARIES

### Instructor Teaching Site

A password-protected site, available at [www.sagepub.com/lippmaness](http://www.sagepub.com/lippmaness), features resources that have been designed to help instructors plan and teach their courses. These resources include an extensive test bank, chapter-specific PowerPoint presentations, lecture notes, class activities, annotated sample syllabi for semester and quarter courses, teaching tips, links to SAGE journal articles with accompanying review questions, and more.

### Student Study Site

An open-access study site is available at [www.sagepub.com/lippmaness](http://www.sagepub.com/lippmaness). This site includes eFlashcards, Web quizzes, suggested answers to the You Decide questions, Web resources, cases, links to SAGE journal articles, and more!

## ACKNOWLEDGMENTS

I hope that the textbook conveys my passion and enthusiasm for the teaching of criminal law and contributes to the teaching and learning of this fascinating and vital topic. The book has been the product of the efforts and commitment of countless individuals who deserve much of the credit.

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# 1

# THE NATURE, PURPOSE, AND FUNCTION OF CRIMINAL LAW

## Learning Objectives

1. Define a crime and distinguish between civil and criminal law.
2. Appreciate the difference between criminal law and criminal procedure.
3. Know the difference between felonies and misdemeanors and the difference between *mala in se* and *mala prohibita*.
4. Appreciate the various sources of criminal law.
5. Understand the stages of the federal criminal justice process.
6. Know the structure of the federal judicial system.
7. Understand the general structure of state court systems.

## INTRODUCTION

The criminal law is the foundation of the criminal justice system. The law defines the conduct that may lead to an arrest by the police, trial before the courts, and incarceration in prison. When we think about criminal law, we typically focus on offenses such as rape, robbery, and murder. States, however, condemn a range of acts in their criminal codes, some of which may surprise you. In Alabama, it is a criminal offense to promote or engage in a wrestling match with a bear or to train a bear to fight in such a match. A Florida law states that it is unlawful to possess “any ignited tobacco product” in an elevator. Rhode Island declares that an individual shall be imprisoned for seven years who voluntarily engages in a duel with a dangerous weapon or who challenges an individual to a duel. In Wyoming, you can be arrested for skiing while being impaired by alcohol or for opening and failing to close a gate in a fence that “crosses a private road or river.” You can find criminal laws on the books in various states punishing activities such as playing dominos on Sunday, feeding an alcoholic beverage to a moose, cursing on a miniature golf course, making love in a car, or performing a wedding ceremony when either the bride or groom is drunk.

In Louisiana, you risk being sentenced to ten years in prison for stealing an alligator, whether dead or alive, valued at \$1,000.<sup>1</sup>

## THE NATURE OF CRIMINAL LAW

Are there common characteristics of acts that are labeled as crimes? How do we define a crime? The easy answer is that a **crime** is whatever the law declares to be a criminal offense and punishes with a penalty. The difficulty with this approach is that not all criminal convictions result in a fine or imprisonment. Rather than punishing a **defendant**, the judge may merely warn him or her not to repeat the criminal act. Most commentators stress that the important feature of a crime is that it is an act that is officially condemned by the community and carries a sense of shame and humiliation. Professor Henry M. Hart, Jr., defines crime as “conduct which, if . . . shown to have taken place” will result in the “formal and solemn pronouncement of the moral condemnation of the community.”<sup>2</sup>





The central point of Professor Hart's definition is that a crime is subject to formal condemnation by a judge and jury representing the people in a court of law. This distinguishes a crime from acts most people would find objectionable that typically are not subject to state prosecution and official punishment. We might, for instance, criticize someone who cheats on his or her spouse, but we generally leave the solution to the *individuals involved*. Other matters are left to *institutions* to settle; schools generally discipline students who cheat or disrupt classes, but this rarely results in a criminal charge. Professional baseball, basketball, and football leagues have their own private procedures for disciplining players. Most states leave the decision whether to recycle trash to the *individual* and look to *peer pressure* to enforce this obligation.

## CRIMINAL AND CIVIL LAW

How does the criminal law differ from the **civil law**? The civil law is that branch of the law that protects the individual rather than the public interest. A legal action for a civil wrong is brought by an individual rather than by a state prosecutor. You may sue a mechanic who breaches a contract to repair your car or bring an action against a landlord who fails to adequately heat your apartment. The injury is primarily to you as an individual, and there is relatively little harm to society. A mechanic who intentionally misleads and harms a number of innocent consumers, however, may find himself or herself charged with criminal fraud.

Civil and criminal actions are characterized by different legal procedures. For instance, conviction of a crime requires the high standard of proof beyond a reasonable doubt, although responsibility for a civil wrong is established by the much lower standard of proof by a preponderance of the evidence or roughly fifty-one percent certainty. The high standard of proof in criminal cases reflects the fact that a criminal conviction may result in a loss of liberty and significant damage to an individual's reputation and standing in the community.<sup>3</sup>

The famous eighteenth-century English jurist William Blackstone summarizes the distinction between civil and criminal law by observing that civil injuries are "an infringement . . . of the civil rights which belong to individuals . . . public wrongs, or crimes . . . are a breach and violation of the public rights and duties, due to the whole community . . . in its social aggregate capacity." Blackstone illustrates this difference by pointing out that society has little interest in whether he sues a neighbor or emerges victorious in a land dispute. On the other hand, society has a substantial investment in the arrest, prosecution, and conviction of individuals responsible for espionage, murder, and robbery.<sup>4</sup>

The difference between a civil and criminal action is not always clear, particularly with regard to an action for a **tort**, which is an injury to a person or to his or her property. Consider the drunken driver who runs a red light and hits your car. The driver may be sued in tort for negligently damaging you and your property as well as criminally prosecuted for reckless driving. The purpose of the civil action is to compensate you with money for the damage to your car and for the physical and emotional injuries you have suffered. In contrast, the criminal action punishes the driver for endangering society. Civil liability is based on a preponderance of the evidence standard, while a criminal conviction carries a possible loss of liberty and is based on the higher standard of guilt beyond a reasonable doubt. You may recall that former football star O.J. Simpson was acquitted of murdering Nicole Brown Simpson and Ron Goldman but was later found guilty of wrongful death in a civil court and ordered to compensate the victims' families in the amount of \$33.5 million.

The distinction between criminal and civil law proved immensely significant for Kansas inmate Leroy Hendricks. Hendricks was about to be released after serving ten years in prison for molesting two thirteen-year-old boys. This was only the latest episode in Hendricks's almost thirty-year history of indecent exposure and molestation of young children. Hendricks freely conceded that when not confined, the only way to control his sexual urge was to "die."

Upon learning that Hendricks was about to be released, Kansas authorities invoked the Sexually Violent Predator Act of 1994, which authorized the institutional confinement of individuals who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence." Following a hearing, a jury found Hendricks to be a "sexual predator." The U.S. Supreme Court ruled that Hendricks's continued commitment was a civil rather than criminal penalty, and that Hendricks was not being unconstitutionally punished twice for the same criminal act



of molestation. The Court explained that the purpose of the commitment procedure was to detain and to treat Hendricks in order to prevent him from harming others in the future rather than to punish him.<sup>5</sup> Do you think that the decision of the U.S. Supreme Court makes sense?

## THE PURPOSE OF CRIMINAL LAW

We have seen that the criminal law primarily protects the interests of society, and the civil law protects the interests of the individual. The primary purpose or function of the criminal law is to help maintain social order and stability. The Texas criminal code proclaims that the purpose of criminal law is to “establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate.”<sup>6</sup> The New York criminal code sets out the basic purposes of criminal law as follows.<sup>7</sup>

- **Harm.** To prohibit conduct that unjustifiably or inexcusably causes or threatens substantial harm to individuals as well as to society
- **Warning.** To warn people both of conduct that is subject to criminal punishment and of the severity of the punishment
- **Definition.** To define the act and intent that is required for each offense
- **Seriousness.** To distinguish between serious and minor offenses and to assign the appropriate punishments
- **Punishment.** To impose punishments that satisfy the demands for revenge, rehabilitation, and deterrence of future crimes
- **Victims.** To insure that the victim, the victim’s family, and the community interests are represented at trial and in imposing punishments

The next step is to understand the characteristics of a criminal act.

## THE PRINCIPLES OF CRIMINAL LAW

The study of **substantive criminal law** involves an analysis of the definition of specific crimes (specific part) and of the general principles that apply to all crimes (general part), such as the defense of insanity. In our study, we will first review the general part of criminal law and then look at specific offenses. Substantive criminal law is distinguished from **criminal procedure**. Criminal procedure involves a study of the legal standards governing the detection, investigation, and prosecution of crime and includes areas such as interrogations, search and seizure, wiretapping, and the trial process. Criminal procedure is concerned with “how the law is enforced”; criminal law involves “what law is enforced.”

Professors Jerome Hall<sup>8</sup> and Wayne R. LaFare<sup>9</sup> identify the basic principles that compose the general part of the criminal law. Think of the general part of the criminal law as the building blocks that are used to construct specific offenses such as rape, murder, and robbery.

- **Criminal Act.** A crime involves an act or failure to act. You cannot be punished for bad thoughts. A criminal act is called *actus reus*.
- **Criminal Intent.** A crime requires a criminal intent or *mens rea*. Criminal punishment is ordinarily directed at individuals who intentionally, knowingly, recklessly, or negligently harm other individuals or property.
- **Concurrence.** The criminal act and criminal intent must coexist or accompany one another.
- **Causation.** The defendant’s act must cause the harm required for criminal guilt, death in the case of homicide, and the burning of a home or other structure in the case of arson.
- **Responsibility.** Individuals must receive reasonable notice of the acts that are criminal so as to make a decision to obey or to violate the law. In other words, the required criminal act and criminal intent must be clearly stated in a statute. This concept is captured by the Latin phrase *nullum crimen sine lege, nulla poena sin lege* (no crime without law, no punishment without law).

- **Defenses.** Criminal guilt is not imposed on an individual who is able to demonstrate that his or her criminal act is justified (benefits society) or excused (the individual suffered from a disability that prevented him or her from forming a criminal intent).

We now turn to a specific part of the criminal law to understand the various types of acts that are punished as crimes.

## CATEGORIES OF CRIME

### Felonies and Misdemeanors

There are a number of approaches to categorizing crimes. The most significant distinction is between a **felony** and a **misdemeanor**. A crime punishable by death or by imprisonment for more than one year is a felony. Misdemeanors are crimes punishable by less than a year in prison. Note that whether a conviction is for a felony or misdemeanor is determined by the punishment provided in the statute under which an individual is convicted rather than by the actual punishment imposed. Many states subdivide felonies and misdemeanors into several classes or degrees to distinguish between the seriousness of criminal acts. **Capital felonies** are crimes subject either to the death penalty or to life in prison in states that do not have the death penalty. The term **gross misdemeanor** is used in some states to refer to crimes subject to between six and twelve months in prison, whereas other misdemeanors are termed **petty misdemeanors**. Several states designate a third category of crimes that are termed **violations** or **infractions**. These tend to be acts that cause only modest social harm and carry fines. These offenses are considered so minor that imprisonment is prohibited. This includes the violation of traffic regulations.

Florida classifies offenses as felonies, misdemeanors, or noncriminal violations. Noncriminal violations are primarily punishable by a fine or forfeiture of property. The following list shows the categories of felonies and misdemeanors and the maximum punishment generally allowable under Florida law:

- **Capital Felony.** Death or life imprisonment without parole
- **Life Felony.** Life in prison and a \$15,000 fine
- **Felony in the First Degree.** Thirty years in prison and a \$10,000 fine
- **Felony in the Second Degree.** Fifteen years in prison and a \$10,000 fine
- **Felony in the Third Degree.** Five years in prison and a \$5,000 fine
- **Misdemeanor in the First Degree.** One year in prison and a \$1,000 fine
- **Misdemeanor in the Second Degree.** Sixty days in prison and a \$500 fine

The severity of the punishment imposed is based on the seriousness of the particular offense. Florida, for example, punishes as a second-degree felony the recruitment of an individual for prostitution knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution. This same act is punished as a first-degree felony in the event that the person recruited is under fourteen years old or if death results.<sup>10</sup>

### *Mala in Se and Mala Prohibita*

Another approach is to classify crime by “moral turpitude” (evil). **Mala in se** crimes are considered “inherently evil” and would be evil even if not prohibited by law. This includes murder, rape, robbery, burglary, larceny, and arson. **Mala prohibita** offenses are not “inherently evil” and are only considered wrong because they are prohibited by a statute. This includes offenses ranging from tax evasion to carrying a concealed weapon, leaving the scene of an accident, and being drunk and disorderly in public.

Why should we be concerned with classification schemes? A felony conviction can prevent you from being licensed to practice various professions, bar you from being admitted to the armed forces or joining the police, and prevent you from adopting a child or receiving various forms of federal assistance. In some states, a convicted felon is still prohibited from voting, even following