

Neal R. Bevens

CRIMINAL LAW

An Introduction for Criminal Justice Professionals

SECOND EDITION

Neal R. Bevens

Criminal Law: An Introduction for Criminal Justice Professionals is a student-friendly, practical, and timely overview of the essential topics in the field. Designed with the student in mind, Neal R. Bevens brings his wealth of experience as a prosecutor, defense attorney, and author to this accessible textbook. With broad coverage that balances theoretical discussions with practical examples of how criminal law works in the real world, students will gain a solid foundation in the fundamentals of the law, as well as an understanding of how to apply what they have learned. Each area of crime is presented and explored, with special emphasis placed on how the offenses are proven in a criminal trial.

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- Excerpts from seminal or otherwise noteworthy appellate cases
- Web sites for further research and discussion
- Updated end-of-chapter questions, activities, and assignments to enrich learning

Bevens

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Criminal Law

An Introduction for Criminal Justice Professionals ■ Second Edition

NEAL R. BEVANS, J.D.



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Summary of Contents

<i>Contents</i>		xi
<i>Preface</i>		xxv
<i>Acknowledgements</i>		xxvii
Chapter 1	Introduction to Criminal Law	1
Chapter 2	Theories of Criminal Behavior	19
Chapter 3	Attempt to Commit a Crime; Conspiracy	37
Chapter 4	Parties to Crime, Accessories, and Accomplices	53
Chapter 5	Evidence	65
Chapter 6	Homicide	81
Chapter 7	Crimes Against Persons	107
Chapter 8	Rape	135
Chapter 9	Other Sex Offenses	159
Chapter 10	Burglary and Arson	181
Chapter 11	Theft Crimes	205
Chapter 12	Crimes Against Public Morality, Order, and Administration	225
Chapter 13	White-Collar Crime, Cybercrime, and Online Crime	245
Chapter 14	Organized and Gang-Related Crime	261
Chapter 15	Drug Crimes	273
Chapter 16	Crimes Against Government	293
Appendix A	Answers to Review Questions and Practice Questions for Test Review	309
Appendix B	The Constitution of the United States	351
<i>Glossary</i>		371
<i>Index</i>		377

Contents

<i>Preface</i>	xxv
<i>Acknowledgments</i>	xxvii

1	INTRODUCTION TO CRIMINAL LAW	1
<i>Chapter Objectives</i> ■ <i>Chapter Outline</i>		1
I. INTRODUCTION TO CRIMINAL LAW		2
A. The Basic Differences Between Civil and Criminal Cases		2
B. Overview of Key Differences Between Civil and Criminal Cases		3
How the Case Originates		3
Suspects Versus Defendants		4
Names and Identities of the Parties Who Bring and Maintain the Action		4
II. TERMINOLOGY USED IN CRIMINAL CASES		5
A. Arrest Versus Conviction		5
B. The “Real World”		6
III. PARTICIPANTS IN THE CRIMINAL JUSTICE SYSTEM		6
A. Judges		6
B. Police		7
C. Prosecutors		7
D. Defense Attorneys		8
E. Defendants		8
F. Clerk of Court and Courthouse Personnel		8
G. Probation Officers		9
H. Other Personnel		9
Case Excerpt: <i>People v. Mohamed</i>		9
<i>Chapter Summary</i>		14
<i>Key Terms and Concepts</i>		15
<i>End-of-Chapter Exercises</i>		15
<i>Practice Questions for Test Review</i>		16

2

THEORIES OF CRIMINAL BEHAVIOR 19*Chapter Objectives ■ Chapter Outline* 19**I. WHY DO PEOPLE COMMIT CRIMES?** 19

- A. Psychological Theories of Crime 20
- B. Sociological Theories of Crime 22

II. ELEMENTS OF CRIMINAL OFFENSES 23**III. MENS REA AND ACTUS REUS** 25**IV. GENERAL INTENT VERSUS SPECIFIC INTENT CRIMES** 27

- A. Specific Intent 27
- B. When *Mens Rea* Is Not Required 29

V. PUNISHING THE ACT 30**Case Excerpt: *State v. McRae*** 31*Chapter Summary* 33*Key Terms and Concepts* 34*End-of-Chapter Exercises* 34*Practice Questions for Test Review* 35

3

**ATTEMPT TO COMMIT A CRIME;
CONSPIRACY** 37*Chapter Objectives ■ Chapter Outline* 37**I. INTRODUCTION TO THE CRIME OF ATTEMPT** 37

- A. Inchoate Crimes 38
- B. Defining Attempt 38
 - Substantial Step 39
- C. Prosecuting a Charge of Attempt 40
- D. Defending a Charge of Attempt 41

II. CONSPIRACY 41

- A. The Elements of a Conspiracy 42
 - Agreement 42
 - To Carry Out an Illegal Act 43
 - The Overt Act 44

B. Prosecuting Conspiracies	44
Legal Impediment: Wharton's Rule	45
III. SOLICITATION	45
Case Excerpt: <i>Pennsylvania v. Tirado</i>	46
<i>Chapter Summary</i>	49
<i>Key Terms and Concepts</i>	49
<i>End-of-Chapter Exercises</i>	50
<i>Practice Questions for Test Review</i>	51
<hr/>	
4 PARTIES TO CRIME, ACCESSORIES, AND ACCOMPLICES	53
<i>Chapter Objectives ■ Chapter Outline</i>	53
I. PRINCIPALS AND ACCESSORIES	54
II. WHY IS IT IMPORTANT TO DETERMINE IF SOMEONE IS A PRINCIPAL OR AN ACCESSORY?	54
A. Legal Definition of "Principal"	54
Present When the Crime Occurs	55
Actively Participating in the Crime	55
B. Legal Definition of "Accessory"	55
Accessory Before the Fact	55
Accessory After the Fact	56
C. Complexities in the Law of Principals Versus Accessories	56
When the Principal Is Found Not Guilty	57
Abolishing the Definition of "Accessory"	57
Codefendants	57
III. COMPARING AND CONTRASTING PRINCIPALS/ ACCESSORIES TO CONSPIRATORS	58
Case Excerpt: <i>Commonwealth v. Holloway</i>	58
<i>Chapter Summary</i>	62
<i>Key Terms and Concepts</i>	62
<i>End-of-Chapter Exercises</i>	62
<i>Practice Questions for Test Review</i>	63

5

EVIDENCE 65

Chapter Objectives ■ Chapter Outline 65

I. INTRODUCTION TO EVIDENCE 65**II. ADMISSIBILITY AND RELEVANCY 66**

- A. Foundation Questions 67
- B. Chain of Custody Requirements 67
- C. Evidence Rooms 68

III. CLASSIFYING EVIDENCE: DIRECT AND CIRCUMSTANTIAL 68

- A. Circumstantial Evidence 69
- B. Classifications of Direct Evidence 70
 - Physical Evidence 70
 - Documentary Evidence 70
 - Testimonial Evidence 71
 - Demonstrative Evidence 71
 - Expert Evidence 71

Case Excerpt: *Howell v. State* 72

Chapter Summary 76

Key Terms and Concepts 77

End-of-Chapter Exercises 77

Practice Questions for Test Review 78

6

HOMICIDE 81

Chapter Objectives ■ Chapter Outline 81

I. INTRODUCTION TO HOMICIDE 81**II. PREMEDITATED MURDER 82**

- A. “Degrees” of Murder 84
 - First-Degree Murder 84
- B. Expanding the Definition of First-Degree Murder 88
- C. Motive 88
- D. *Corpus Delicti* 91
- E. Felony-Murder Doctrine 91

III. SECOND-DEGREE MURDER OR “MALICE MURDER”	92
IV. MANSLAUGHTER	93
A. Voluntary Manslaughter	93
B. Provocation	94
Provocation and the Cooling-Off Period	94
V. INVOLUNTARY MANSLAUGHTER	95
VI. SUICIDE AND ATTEMPTED SUICIDE	96
A. Is Suicide a Crime?	96
B. Assisted Suicide	97
Case Excerpt: <i>Kline v. State</i>	98
<i>Chapter Summary</i>	102
<i>Key Terms and Phrases</i>	102
<i>End-of-Chapter Exercises</i>	102
<i>Practice Questions for Test Review</i>	104


CRIMES AGAINST PERSONS 107

<i>Chapter Objectives</i> ■ <i>Chapter Outline</i>	107
I. ASSAULT AND RELATED OFFENSES	108
A. Assault	108
Fear or Apprehension	108
Harmful or Offensive Contact	109
B. Simple Battery	110
Unlawful Versus Lawful Touching	111
Harmful or Offensive Touching	111
II. AGGRAVATED ASSAULT OR AGGRAVATED BATTERY	114
A. Confusion of Terms: Aggravated Assault and Aggravated Battery	116
B. Enhancement Statutes	116
C. Deadly Weapons	117
D. “Special” Victims	118
E. Lesser-Included Offenses	119
III. DOMESTIC VIOLENCE	119

IV. CHILD ABUSE	120
V. ELDER ABUSE	121
VI. KIDNAPPING AND FALSE IMPRISONMENT	121
A. Unlawful Taking and Confinement	121
Lawful Versus Unlawful Restraint	122
B. Asportation of the Victim	123
C. By Use of Force, Threat, Fraud, or Deception	123
D. Aggravating Circumstances in Kidnapping	124
VII. FALSE IMPRISONMENT	124
VIII. STALKING	125
A. The Elements of Stalking	125
Cyberstalking	127
B. Bullying	127
Case Excerpt: <i>Commonwealth v. Mello</i>	128
<i>Chapter Summary</i>	129
<i>Key Terms and Concepts</i>	130
<i>End-of-Chapter Exercises</i>	130
<i>Practice Questions for Test Review</i>	132



RAPE	135
<i>Chapter Objectives ■ Chapter Outline</i>	135
I. INTRODUCTION	135
II. RAPE	136
A. The Elements of Rape	137
Vaginal Sexual Intercourse with Any Degree of Penetration	138
Without the Consent of the Victim	140
B. Technological Advances in Rape Cases	144
DNA Databases	144
III. RAPE AND THE COMMON LAW	145
A. Spousal Immunity Under Common Law	146
B. Corroboration Required Under the Common Law	146
IV. RAPE SHIELD STATUTES	147
A. Characteristics of Rape Shield Statutes	147
B. Cross-Examining Rape Victims	147

V. AGGRAVATED SEXUAL ASSAULT	149
VI. DATE RAPE	149
VII. STATUTORY RAPE	149
Case Excerpt: <i>People v. Smith</i>	150
<i>Chapter Summary</i>	154
<i>Key Terms and Concepts</i>	154
<i>End-of-Chapter Exercises</i>	155
<i>Practice Questions for Test Review</i>	156
<hr/>	
 OTHER SEX OFFENSES	159
<i>Chapter Objectives ■ Chapter Outline</i>	159
I. INTRODUCTION	160
A. Fornication	160
B. Adultery	160
C. Cohabitation	160
D. Sex Acts That Are Prosecuted	160
Public Indecency and Indecent Exposure	161
Voyeurism	162
Sodomy	163
Incest	164
Child Molestation	164
II. OBSCENITY	168
A. The <i>Miller</i> Test	168
“Prurient Interest”	169
Taken as a Whole Lacks Serious Literary, Artistic, Political, or Scientific Value	169
B. Pornography and Obscenity	171
C. Possession of Obscene Material	171
D. Obscenity and Nude Dancing	172
E. Can Words Be Obscene?	172
F. Child Pornography	172
Selling Children for Child Pornography	173
Case Excerpt: <i>Boggs v. State</i>	175
<i>Chapter Summary</i>	176
<i>Key Terms and Concepts</i>	176
<i>End-of-Chapter Exercises</i>	176
<i>Practice Questions for Test Review</i>	178



BURGLARY AND ARSON 181

Chapter Objectives ■ Chapter Outline 181

I. INTRODUCTION 182

II. BURGLARY 182

- A. Breaking 182
 - Constructive Breaking 183
 - Consent 184
- B. Entering 184
- C. Of a Dwelling House of Another 184
 - Curtilage of a Dwelling 186
- D. With Intent to Commit a Theft or Felony 186
 - Specific Intent and Burglary 187
- E. Degrees of Burglary 187

III. COMMON LAW BURGLARY 188

IV. ARSON 189

- A. Malice Element of Arson 189
 - Proving Intent in Arson Cases 189
- B. Defining “Burning” 190
- C. Dwelling House or Structure 191
- D. Arson Under Common Law 191
- E. New Statutory Approaches to Arson 192
 - Arson in the First Degree 192
- F. Using Arson to Defraud Insurance Companies 193
- G. Technological Advances in Arson Investigations 193

Case Excerpt: *People v. Lewis* 193

Chapter Summary 198

Key Terms and Concepts 199

End-of-Chapter Exercises 199

Practice Questions for Test Review 201



THEFT CRIMES 205

Chapter Objectives ■ Chapter Outline 205

I. THEFT 206

- A. Larceny 206
 - A Person Takes the Property of Another 206

Without Permission	207
Asportation	208
With Intent to Permanently Deprive the Owner	208
B. Specific Theft Offenses	210
Theft by Shoplifting	210
Theft by Receiving Stolen Property	210
Theft of Services	211
Embezzlement	211
Grand Larceny/Grand Theft	212
II. ROBBERY	212
A. From the Person of the Victim	212
B. Without the Victim's Consent	213
C. Asportation	213
D. Through Force, Threat, or Intimidation	213
E. Armed Robbery	214
III. FRAUD AND FALSE PRETENSES	214
IV. FORGERY	215
A. Degrees of Forgery	216
B. Elements of Forgery	216
Forges a Writing	217
Intent to Defraud	217
Utters a Document	217
Case Excerpt: <i>Caretto v. Superior Court of State</i>	218
<i>Chapter Summary</i>	221
<i>Key Terms and Concepts</i>	222
<i>End-of-Chapter Exercises</i>	222
<i>Practice Questions for Test Review</i>	223

12	CRIMES AGAINST PUBLIC MORALITY, ORDER, AND ADMINISTRATION	225
<i>Chapter Objectives</i> ■ <i>Chapter Outline</i>		225
I. INTRODUCTION TO CRIMES AGAINST PUBLIC MORALITY AND HEALTH		226
II. CRIMES AGAINST PUBLIC MORALITY		226
A. Gambling		226
B. Prostitution		227

“Status” Offense	227
Prosecuting “Johns”	228
Federal Legislation	228
III. CRIMES AGAINST PUBLIC ORDER	228
A. Riot	228
B. Terrorism	229
C. Carrying Concealed Weapons	230
Handgun Permits	230
“Stand Your Ground” Laws	231
D. Disturbing the Peace	232
E. Public Fighting	233
F. Harassment	233
G. Threats	233
H. Public Drunkenness	234
I. Cruelty to Animals	234
J. Tax Crimes	234
Case Excerpt: <i>United States v. Miselis</i>	235
<i>Chapter Summary</i>	240
<i>Key Terms and Concepts</i>	241
<i>End-of-Chapter Exercises</i>	241
<i>Practice Questions for Test Review</i>	242

13

WHITE-COLLAR CRIME, CYBERCRIME, AND ONLINE CRIME 245

<i>Chapter Objectives</i> ■ <i>Chapter Outline</i>	245
--	-----

I. INTRODUCTION 246

II. WHITE-COLLAR CRIME 246

A. Unfair and Deceptive Trade Practices	246
Federal Regulation of Unfair and Deceptive Trade Practices	247
B. Predatory Lending	247
Encouraging Borrowers to Lie About Their Income and Debts	248
Charging High Interest Rates	248
Prepayment Penalties	249
Stripping Equity	249
Consequences of Predatory Lending	249
C. Computer Hacking	250
Denial of Service Attacks	251

Ransomware	251
Internet Scams	251
D. Identity Theft	252
E. Credit Card Theft and Fraud	253
Skimming	253
F. Ponzi Schemes	254
Case Excerpt: <i>People v. Tarbutton</i>	254
<i>Chapter Summary</i>	258
<i>Key Terms and Concepts</i>	258
<i>End-of-Chapter Exercises</i>	258
<i>Practice Questions for Test Review</i>	259

14 ORGANIZED AND GANG-RELATED CRIME 261

<i>Chapter Objectives</i> ■ <i>Chapter Outline</i>	261
--	-----

I. HISTORY OF ORGANIZED CRIME 261

A. Criminal Organizations	262
Criminal Activities	263
B. Examining Specific Organized Crime Syndicates	264
The Italian Mafia, or La Cosa Nostra	264
The Medellin Cartel	265
Tongs	265

II. GANGS 266

A. Prevalence of Gangs	266
B. Outlaw Motorcycle Gangs	266
Hells Angels Motorcycle Club	267

III. LAW ENFORCEMENT TECHNIQUES WITH ORGANIZED CRIME AND GANGS 267

Case Excerpt: <i>Godinez v. State</i>	268
<i>Chapter Summary</i>	270
<i>Key Terms and Concepts</i>	270
<i>End-of-Chapter Exercises</i>	270
<i>Practice Questions for Test Review</i>	271

15

DRUG CRIMES 273*Chapter Objectives ■ Chapter Outline* 273**I. REGULATING ILLICIT DRUGS 273****II. DRUG CRIMES 274**

A. Controlled Substances 276

Proving the Drug Is a Controlled Substance 276

Possession of Controlled Substances 277

B. Possession of Drug Paraphernalia 279

C. Sale of Controlled Substances 280

Sale on or Near School Grounds 282

Possession with Intent to Sell 283

III. DRIVING UNDER THE INFLUENCE 283

A. Bringing a DUI/DWI Case 284

Less Safe Driver 284

B. Proving DUI/DWI 284

Roadside Sobriety Tests 284

Implied Consent 285

Blood and Breath Tests 285

Case Excerpt: *Jones v. State* 285*Chapter Summary* 288*Key Terms and Concepts* 289*End-of-Chapter Exercises* 289*Practice Questions for Test Review* 291

16

CRIMES AGAINST GOVERNMENT 293*Chapter Objectives ■ Chapter Outline* 293**I. INTRODUCTION TO CRIMES AGAINST THE GOVERNMENT 293****II. CRIMES AGAINST ADMINISTRATION OF JUSTICE 294**

A. Bribery 294

Item of “Value” 294

B. Perjury 295

C. Obstruction of Justice 296

Giving False Information to Police 296

Tampering with Evidence	297
Obstructing or Resisting Arrest	297
D. Wire Tapping and Eavesdropping	299
E. Jury Tampering	299
F. Witness Tampering	299
III. COUNTERFEITING	299
IV. TREASON AND SEDITION	300
Case Excerpt: <i>Gordon v. Commonwealth</i>	301
<i>Chapter Summary</i>	305
<i>Key Terms and Concepts</i>	306
<i>End-of-Chapter Exercises</i>	306
<i>Practice Questions for Test Review</i>	307
Appendix A: Answers to Review Questions and Practice Questions for Test Review	309
Appendix B: The Constitution of the United States	351
Glossary	371
Index	377

Preface

Criminal law and criminal procedure are the core of all criminal justice programs. Unlike other texts on this topic, this book is written with the student, the instructor, and the criminal justice professional in mind. The author has extensive experience not only in teaching the topic, but also in living it. As an assistant district attorney in a major city, the author handled all types of cases from misdemeanors to murder trials. He brings his extensive knowledge of the topic to bear on each issue in this text. *Criminal Law: An Introduction for Criminal Justice Professionals*, 2nd ed., is the first part of a two-part project. *Criminal Procedure: An Introduction for Criminal Justice Professionals*, 2nd ed., focuses on arrest, constitutional issues in criminal cases, trial, and sentencing.

The book provides a balance between theoretical discussions and practical, down-to-earth examples of law in action at every phase of a criminal proceeding. It emphasizes the practical aspects of criminal law while providing examples via scenarios and real-life cases. Each area of crime is presented and explored, with special emphasis placed on how the offenses are proved in a criminal trial.

FEATURES OF THE TEXTBOOK

This revised second edition, which now focuses solely on criminal law, includes the following topics:

- New chapters on the social and psychological bases of crime, as well as organized crime and an expanded exploration of white-collar crime
- Chapter objectives that are stated clearly and succinctly
- Terms and legal vocabulary set out in bold in the body of the text and defined immediately in the margin for ease of student comprehension
- Figures and tables to illustrate crucial points, designed to capitalize on different learning styles among students
- Scenarios to help students develop their understanding of the material
- Excerpts from seminal or otherwise noteworthy appellate cases

- End-of-chapter questions, activities, and assignments to hone students' understanding
- Websites for further research and/or discussion

Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and Microsoft PowerPoint slides. All these materials are available for download at wklegaledu.com.

Acknowledgments

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Finally, I would like to thank my many, many students over the years. Teaching and writing have been the two greatest occupations that I have ever had, and I can't imagine life without them.

Criminal Law

Introduction to Criminal Law

Chapter Objectives

- Define the basic differences between civil and criminal cases
- Explain the difference between a suspect and a defendant
- Describe the role of police officers in making a criminal case
- Describe the difference between prosecutors and defense attorneys
- Explain the role of judges in a criminal case

Chapter Outline

I. Introduction to Criminal Law

- A. The Basic Differences Between Civil and Criminal Cases
- B. Overview of Key Differences Between Civil and Criminal Cases
 - How the Case Originates*
 - Suspects Versus Defendants*
 - Names and Identities of the Parties Who Bring and Maintain the Action*

II. Terminology Used in Criminal Cases

- A. Arrest Versus Conviction
- B. The “Real World”

III. Participants in the Criminal Justice System

- A. Judges
- B. Police
- C. Prosecutors
- D. Defense Attorneys
- E. Defendants
- F. Clerk of Court and Courthouse Personnel
- G. Probation Officers
- H. Other Personnel



INTRODUCTION TO CRIMINAL LAW

This text is about the fascinating world of criminal law and procedure. As we go through future chapters, we will examine not only various types of crime, but also the procedural steps that must be followed by police, prosecutors, and judges once a defendant has been placed under arrest. We will begin the first part of the text with an examination of criminal law, and then spend the second half of the text exploring criminal procedure. At every step of the process, during the collection of evidence, arresting the defendant, obtaining a statement from the defendant, arraigning the defendant, trying the case, and eventually sentencing the guilty defendant, there are critical steps that must be followed and situations where the defendant is protected by rights guaranteed by the U.S. Constitution and individual state constitutions and laws.

However, before we can illustrate the various important points about both criminal law and criminal procedure, we must take a broad view of law in general and discover where the field of criminal law lies with regard to many other types of law.

Broadly, there are two branches of law: civil law and criminal law. We will examine these two categories to illustrate what makes them so different from one another, and also to show that criminal law is a world in itself, with its own rules, its own procedures, and its own personnel, and it is as unique an area of practice as divorce law, wills, trusts, real estate, personal injury, and the many other categories of civil law.

A. THE BASIC DIFFERENCES BETWEEN CIVIL AND CRIMINAL CASES

At a basic level, we all have some understanding of criminal law. There are many television shows, movies, books, and other forms of entertainment that focus on the narrow issue of crime and its consequences. However, criminal law is not always accurately portrayed in the various media; in this book, we will get specific about the actual, day-to-day workings of criminal law by examining not only the various features of the law, but also the people who work in the field.

We all know that people commit crimes and are arrested for those crimes. We also know that if these individuals are convicted or plead guilty to the crime with which they are charged, then they may go to prison. However, many other types of law touch on our lives every day, which may not receive as much attention but are just as important for a working society.

In this chapter, we will address two basic fields of law: criminal law and civil law. One of the best ways to examine the important aspects of civil and criminal law is to look at the many differences between the two. The most obvious example is that the state, not an individual, brings criminal cases. A victim may report a crime to the police, but it is the state, not the individual,

who charges the defendant, prosecutes him or her, and if necessary, brings him or her to trial. In criminal law, the state takes action against an individual and imprisons that person for breaking the law. This is the most important distinction between criminal and civil law, but there are other key distinctions, such as:

- How the case originates
- Names and identities of the parties who bring and maintain the action

B. OVERVIEW OF KEY DIFFERENCES BETWEEN CIVIL AND CRIMINAL CASES

HOW THE CASE ORIGINATES

As we have already discussed, a victim can initially begin a criminal case by calling the police and reporting criminal behavior. Throughout this section, we will use the basic fact scenario given in Scenario 1-1 to help illustrate the differences between civil and criminal cases.

THEO GETS PUNCHED

SCENARIO 1-1

Theo is at a party, having a good time. He sees a young woman that he finds very attractive and begins talking and flirting with her. The young woman's boyfriend, Randall, sees Theo flirting with his girlfriend and takes offense. He confronts Theo and punches him in the nose.

How will this case be handled in a criminal as opposed to a civil case?

Assuming that Theo calls the police after being punched, the police will arrive on the scene and may arrest Randall for striking Theo. As we will see in future chapters, police officers and prosecutors have a great deal of latitude in deciding which cases they will prosecute and which ones they will not, but this case is very straightforward, so the police will almost certainly arrest Randall for punching Theo. The charge will probably be called "battery."

Although Theo is the victim in the case, it becomes the province of the state from the moment that the police become involved. Victims in criminal cases are often surprised to learn that they do not control how the case proceeds from that moment on. Suppose that Theo, after initially insisting on bringing charges against Randall, later changes his mind and decides that he does not want to pursue the case any longer. Because this is a criminal matter, Theo does not have the power to make that decision. As already stated, criminal cases are brought by the government, not individuals. Police and prosecutors may take Theo's desires into account, but then again, they may not. This brings us to the first important terminology that anyone who intends to study criminal law must master: the difference between a suspect and a defendant.

In a criminal case, the state controls how the case proceeds, not the victim.

Suspect/Perpetrator

A person of interest to law enforcement, and one who they may believe has committed a criminal action but is not under arrest.

Defendant (Criminal case)

A person accused by the state of the commission of a crime.

SUSPECTS VERSUS DEFENDANTS

When the police have reason to believe that a person has committed a crime, but he or she has not yet been arrested, the person is referred to as the **suspect** (or sometimes the “perpetrator”). A suspect is not under arrest and is free to go about his or her business. If the police ask a suspect to come to police headquarters to answer questions, he or she is free to decline. Once a suspect is being questioned by the police, he or she is free to leave at any time prior to being arrested. Once a suspect is arrested, his or her status changes: the person now becomes a **defendant**.

Why is the distinction between suspect and defendant so important? For one thing, several critical legal rights are triggered when a person becomes a defendant. A defendant has the right to a trial by jury, the right to be represented by counsel, and the right to refuse to answer any questions—and not have that refusal used against him or her at a later time. One of the most important amendments of the U.S. Constitution comes into play when a person is placed under arrest. See Figure 1-1.

NAMES AND IDENTITIES OF THE PARTIES WHO BRING AND MAINTAIN THE ACTION

As we have already seen, another important difference between criminal and civil actions is the names of the parties who bring the actions. In a civil case, an individual, corporation, company, or other entity may bring a civil claim against another individual, corporation, company, or other entity. The party who brings the suit is the **plaintiff**, and the person sued is the defendant, the same term as that used in criminal cases. But the terminology goes much deeper than that. Although it is sometimes possible to bring a criminal charge against a corporation, it is unusual. Criminal law focuses on individuals. If persons work for a company, corporation or other entity, they will still be charged as individuals. Consider our previous example of Theo being punched in the nose.

Plaintiff

The name of the party who brings a civil suit.

FIGURE 1-1

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a 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 offence 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.

HOW WILL THEO PROCEED IN HIS CIVIL SUIT?

SCENARIO 1-2

We have already discussed what will happen when Theo contacts the police about being punched by Randall. Once the government becomes involved, it is the government's case, and the prosecutor assigned to the case will make the ultimate decision about what to do. However, Theo decides that he wants to sue Randall for damages. How will this case proceed?

Theo can hire a private attorney to bring a civil suit against Randall for punching him in the nose. This civil suit proceeds separately from the criminal case, and the two operate independent of one another. Theo can sue Randall before, during, or after the criminal case; however, in most circumstances, an attorney would advise Theo to wait until the criminal case has been completed, for a very simple reason: if Randall goes to prison, there may not be very much that a civil case could get out of him that is worse than what he is already facing.

A criminal prosecution is brought by federal or state governments in the name of their citizens. A private individual brings a civil lawsuit. A *crime* is a violation of law, usually set out as a statute, and is viewed as an infraction against society as a whole. While there may be a specific victim, the prosecutor represents the government and brings charges in the name of the government. In the final analysis, a crime is a wrong committed against all of society. A *civil action*, on the other hand, is generally personal to the parties involved in the lawsuit. It is a private wrong, and therefore a private lawsuit. These differences carry over into the pleadings or court documents filed in the different types of cases, which we will discuss in Chapter 2.



TERMINOLOGY USED IN CRIMINAL CASES

Criminal law has its own set of terms and phrases, and anyone who intends to study criminal law must be familiar with them. Throughout this book, we will examine criminal law in great detail, but in this first chapter, we must examine the broader implications of criminal law, and perhaps the most important distinction to make is that between arrest and conviction.

A. ARREST VERSUS CONVICTION

To *arrest* a person is to take him or her into custody. An arrested person is not free to leave and will be taken to a local jail to be processed, assuming that the person does not immediately make bail. However, simply because a person has been arrested does not mean that he or she has lost any constitutional rights. In fact, one could argue that the arrested person is protected by more constitutional provisions than a person who is not under arrest. What is important about

arrest is the consideration of what it is *not*: an arrest is not a finding of guilt. An arrested person is not convicted of committing a crime, merely suspected of doing so. A *conviction* is what comes at the end of the entire legal process. A person who has been convicted has been found guilty by a jury or has voluntarily pled guilty to a crime. Such a person loses important constitutional protections. A convicted person can be sentenced to a term of confinement in prison and may be compelled to pay a fine. An arrested person has not been found guilty, and even though the arrested person may be held in a detention facility to await a hearing or trial, the arrested person has not been convicted.

B. THE “REAL WORLD”

Because this text has been written by an attorney who has worked as both a prosecutor and a defense attorney, there is great emphasis on the actual, day-to-day practices of criminal law. We give you the real world of criminal law, not the fictionalized account seen in television shows, movies, and other media. There is a great wealth of misinformation about criminal law, and this text seeks to clear up some of those discrepancies.



PARTICIPANTS IN THE CRIMINAL JUSTICE SYSTEM

As we go through the remaining chapters of this text, we will encounter many criminal justice professionals. Although this section introduces them, we will discuss the parts that each plays throughout this book. The person who undoubtedly has the most authority — at least in the courtroom — is the judge.

A. JUDGES

Judge

A member of the judicial branch who is responsible for maintaining order in the courtroom, ruling on motions, making orders and, in many circumstances, sentencing the defendant.

Contempt

A judge's power to enforce his or her orders, authority, or dignity by temporarily depriving the offending party of his or her liberty.

Judges are in charge of the courtroom, and during the trial, they control all aspects of the case. They are responsible for keeping order in the courtroom and have the power of **contempt** to enforce this power. If a judge orders someone to be held in contempt, the person may be removed from the courtroom and taken to the local jail for a few hours to several days. The judge rules on evidentiary issues and objections during a trial, and in many states, it is the judge who passes sentence on a defendant who has been found guilty.

A judge is required to be neutral during all proceedings. Unlike other countries, where judges can suggest important points to the jury for them to consider during their deliberations, American judges are not allowed to comment on the quality of the evidence or the credibility of witnesses. Judges enjoy a great deal of power in and out of the courtroom, and the position traditionally receives a great deal of respect from all other participants in the criminal justice system. The respect and the high salary make the position of judge very attractive for

many attorneys. However, the temperament of a judge is critical. A judge who cannot remain neutral during proceedings, cannot control his or her temper or makes consistently bad rulings will find the job challenging and may decide to resign from the position or lose in the next election.

B. POLICE

Police investigate crimes, make arrests, and generally keep the peace. They also gather evidence in criminal cases and must testify about their actions when a case goes to a preliminary hearing, motion, or trial. We will be addressing the conduct and requirements of police officers throughout this text, but a quick word about police officers is also warranted here. Despite what is portrayed on television and in movies, being a police officer is not a glamorous job. Officers work long hours and do not make much money. In the recent pandemic-related recession, many police officers have been laid off as a cost-cutting measure. Those that remain on the job often work odd hours and have to supplement their income with part-time jobs. It is a difficult profession, with long periods of boredom punctuated by a few moments of heart-pounding action. Some officers may spend their entire careers and never become involved in a firefight with a suspect, while others may be killed within a few months of joining the force. The job takes a toll on them, both physically and mentally.

Police

Law enforcement officers who are empowered to investigate criminal cases and to make arrests.

C. PROSECUTORS

The **prosecutor** is the representative of the government in the courtroom. In most jurisdictions, prosecutors are members of the state bar, just like any other attorney. All attorneys are graduates of three years of intensive training in law school, following four years in a bachelor's degree program. Like police officers, they are routinely portrayed incorrectly in television shows and movies. Prosecutors do not make high salaries. In fact, they enter the job knowing that they will never earn the same kind of money that their law school contemporaries will earn working for large firms or corporations. Why do they do the job, then? Although the work is not quite as it is portrayed on television, it can be exciting, and many prosecutors have high job satisfaction. Prosecutors often feel a strong sense of community, and the trial experience that they gain in even a few short years is more than most other attorneys will attain in a lifetime.

Prosecutor

An attorney who works for the state or federal government and is responsible for making decisions on cases and presenting cases to a judge and/or jury.

A quick review of the responsibilities of a prosecutor includes the following:

- Representing the government in court
- Charging defendants with crimes through indictments
- Recommending sentences
- Calling witnesses to testify
- Introducing evidence to prove that a defendant committed the crime
- Acting as legal advisors to the police

Prosecutors usually draft the indictments relied upon by the grand jury in their deliberations and present the evidence at trial to prove that a defendant is guilty.

Most people are not aware of the fact that prosecutors advise police officers on legal issues. If a police officer has a legal question concerning an arrest or search warrant, the officer seeks legal advice from the prosecutor. However, prosecutors in most jurisdictions are barred from representing clients in civil matters or giving legal advice to anyone other than police officers, and then only when it involves a pending criminal case.

So far, we have used the term “prosecutor” to refer to the attorney who represents the government in a prosecution, but this position is known by many different names. They may be called *district attorneys*, *state’s attorneys*, *people’s attorneys*, and *solicitors*, among others. By whatever title, though, this person works to seek justice in criminal cases and further the work completed by the police and evidence technicians.

D. DEFENSE ATTORNEYS

Defense attorney

An attorney who primarily or exclusively represents individuals who have been charged with criminal offenses.

A criminal **defense attorney** represents a person who is charged with a criminal violation. These attorneys are often seen as the enemies of the prosecution and the police, but the reality is more nuanced. Many prosecutors become defense attorneys, and some defense attorneys become prosecutors. As a result, the depiction of prosecutors and defense attorneys as inimitable foes is often fiction. Most defense attorneys are ethical, honest, and trustworthy people. They see their job as making sure that the state does not skimp on the evidence or procedures and to ensure that the state proves that the defendant is guilty beyond a reasonable doubt. They fulfill a crucial role in our legal system: safeguarding the rights of the accused. Without them, there would be no one to monitor the actions of the prosecution and police, who might be tempted to cut corners in certain cases to ensure a conviction. As we will see later in this text, some defense attorneys fall into the category of public defenders.

E. DEFENDANTS

Defendant

An individual who has been charged with a crime.

No discussion of the criminal justice system would be complete without reference to the people who are actually charged with crimes: **defendants**. Without a defendant, there would be no need for police, prosecutors, judges, or probation officers. We will address the specific constitutional and statutory protections that are afforded all defendants in nearly every chapter of this text.

F. CLERK OF COURT AND COURTHOUSE PERSONNEL

Clerks are government employees who work in the courthouse and are responsible for storing and maintaining all records of court proceedings. Clerk’s offices are open to the public. Clerks and deputy clerks keep track of each case and store all documents relating to criminal and civil cases. They are the gatekeepers to the

records of the criminal justice system, and without them, there would be no way to track repeat offenders or even to know who in the community is a convicted felon or sex offender. To do their jobs effectively, deputy clerks are often found in courtrooms during calendar calls and sentencing hearings so they can keep track of the dispositions in each and every case.

G. PROBATION OFFICERS

As we will see in Chapter 15 of *Criminal Procedure: An Introduction for Criminal Justice Professionals*, 2nd ed. where sentencing is addressed, one possible punishment for a defendant is to serve his or her sentence on probation. When the defendant is sentenced to probation (or parole), a **probation officer** is assigned to the defendant's case and is responsible for monitoring all activities of the defendant. It falls to the probation officer to ensure that the defendant obtains employment, stays away from other convicted felons, does not use illegal drugs, and pays his or her fine as ordered by the court. If a defendant is sentenced to community service, for instance, it is the probation officer who coordinates the defendant's service and keeps a record of his or her compliance. If a defendant violates any of the conditions of probation, then the probation officer will file a notice seeking to revoke the defendant's probation and request that the defendant be returned to prison. This notice will result in a probation revocation hearing, where evidence will be presented. We will discuss these hearings in much greater detail later in this text.

Probation officer

An individual employed by the government who monitors convicted defendants while they serve the balance of their sentences outside of prison or incarceration.

H. OTHER PERSONNEL

This list is by no means exhaustive. Throughout this text, we will also encounter federal agents, prison counselors, federal and state correction agencies, federal and state law enforcement agencies, and many others, especially the victims of criminal activity and the important legislation that allows them to give a statement during the defendant's sentencing.

In each chapter of this text, you will find an example of a criminal case that has gone up on appeal. These cases are printed and made available in case reporters, as well as legal research sites and other online venues. The importance of appellate cases is that they explain the law and how it applies in particular cases. If a person is found guilty at the conclusion of a trial, he or she is permitted to appeal that conviction. When the appellate court reaches a decision in the case, it writes out the reasons for its decision. As we will see in Chapter 16 of *Criminal Procedure: An Introduction for Criminal Justice Professionals*, 2nd ed., an appellate court has several possible alternatives in deciding an appeal. In many situations, the appellate court will write out the reasons for its decision and publish them in a document that lawyers and others refer to as an *opinion*, or in common parlance, a *case*.

CASE EXCERPT

Reading these appellate opinions is a great help in understanding how all the various aspects of criminal law and procedure come together in a specific trial. In each of the cases that you will read in this book, the names are real, and so are the crimes. These cases are not fiction. By reading them, you will gain a much better appreciation for how criminal law functions day to day. The cases you will read have been edited, but only for length. None of the important details about the case or the real people involved have been altered. In fact, after you read this case in this text, you can find the same case in other sources.

We will begin our examination of appellate cases with a fairly straightforward appeal involving a charge of armed robbery and the accuracy of eyewitness identification. At the conclusion of the case, there are several questions that you should answer. In this first case, you will find several specific areas of the case outlined to help you better understand how an appellate case is written and why specific portions are important.

PEOPLE v. MOHAMED

201 Cal. App. 4th 515, 525, 133 Cal. Rptr. 3d 823, 830) (Cal. App. 4 Dist., 2011)

McCONNELL, P.J.

The judge who wrote the opinion.

This is the style or caption of the case, where the parties are identified.

INTRODUCTION

This is a summary of what happened in the case.

A jury convicted Abdi Mohamed of robbery (Pen.Code, § 211). The trial court sentenced him to five years in state prison. Mohamed appeals, contending there is insufficient evidence to support the jury's verdict.

BACKGROUND

PROSECUTION EVIDENCE

In this section, the court presents a thorough overview of the facts of the case. Notice how detailed the court is in the presentation and how it emphasizes particular facts, especially eyewitness testimony.

Around 12:45 a.m., Breanna Gomez was leaving a café when someone pushed her friend against her. Gomez fell against a wall. She heard someone refer to her and her friend as “b — s.” She turned and saw three men wearing sheer, form-fitting masks. She felt an object she thought was a gun in her back and was pushed back against the wall. One man's mask ended up between his nose and lower lip. Gomez could see the man's jaw line and facial structure, including the shape of his chin, cheek, and nose. He was Black, approximately six feet tall, and thin. He had a moderate beard defining his jaw line. He wore a black hooded sweatshirt, light colored pants, and a black beanie. He took her cell phone, car keys, and a \$20 bill. One of the men also took her purse. Gomez then ran back into the café.

The owner of the café was standing with some customers outside the café when a man walked up. The man asked if the people outside were gang banging, and when he learned they were not, he pulled a mask over his entire face and drew what appeared to be a gun. The man walked over to another group of people that included Gomez and her friend. Meanwhile, the owner went into the café and called 911. During the

911 call, the owner described the man he saw as a six-foot tall Black man around 25 years old. The man had a medium build and wore black pants, a black shirt, and a black and white striped jacket.

Another unidentified person told the 911 operator one of the robbers was black and wore a black shirt, a black hooded sweatshirt, and gray sweats. The man also wore a black beanie as a mask. The unidentified person said one of the other robbers was wearing a Spiderman backpack.

Froilan Medina was inside the café when the incident occurred. He saw a black man walk up to the restaurant and pull a black beanie mask down to his mouth area. The man was between five feet ten inches and six feet tall. He had a thin patch of hair on his chin and was wearing dark pants and a red hooded sweater with designs.

Medina went out of the restaurant and saw the man run away with two other black men following him. One of the followers was around six feet tall and wore a mask, a black and gray hooded sweatshirt, and black baggie sweatpants. The other man wore a black hooded sweatshirt and gray sweatpants. He dropped what appeared to be a gun and went back to pick it up. Police officers found a magazine for a toy pistol in the same area. DNA testing of the magazine was inconclusive because there was not enough DNA for a comparison.

One of the police officers who responded to the incident drove around the neighborhood looking for suspects. Shortly after the robbery, the officer saw Mohamed walking along a street approximately four blocks from the café and holding an umbrella in a manner that partially blocked his face. Mohamed wore gray sweatpants, black hooded sweatshirt, a beanie, and a neck scarf. The officer detained Mohamed, confirmed he fit the description of one of the robbers, and conducted curbside lineups with Gomez and two other witnesses.

Gomez told the officer who brought her to the lineup that she was 80-percent sure Mohamed was one of the men who robbed her because he was wearing the same clothing and had the same facial hair, facial features, and build. She could not be 100-percent sure because the men were wearing masks. Gomez later identified Mohamed as one of the robbers at both the preliminary hearing and the trial.

Medina also identified Mohamed as one of the robbers at the curbside lineup. At the time, he said he was “completely sure” about his identification because Mohamed was wearing the same clothes as one of the robbers. At trial, he said he had “a little bit” of doubt about his identification, but remained confident in it. The owner of the café said Mohamed was not the person he saw.

After Gomez and Medina identified Mohamed as one of the robbers, the officer arrested Mohamed and advised him of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694. The officer searched Mohamed and found a nylon do-rag tucked between his body and his pants.

Mohamed told the officer he was coming from a friend’s house where he had been playing video games since 5:00 p.m. The officer went to the friend’s house, and the friend’s mother told the officer she had not seen her son since about 1:00 p.m. and Mohamed had not been at her house after 5:00 p.m. playing video games. The following day the friend spoke with the officer and confirmed he had not seen Mohamed after 5:00 p.m. the prior evening. At trial, the friend testified he had been with Mohamed until dark, then they split up. He was not with Mohamed after then, and Mohamed was not at his house playing video games until 1:00 a.m.

DEFENSE EVIDENCE

Dr. Scott Fraser, an eyewitness identification expert, testified there are several variables affecting the accuracy of eyewitness identifications. These variables include lighting, distance, and duration of exposure. Generally, the better the lighting, the shorter the distance, and the longer the duration of exposure, the more likely an eyewitness identification is to be accurate. In addition, very small obstructions in a witness's view of the perpetrator, such as a partial face mask, can greatly reduce the accuracy of the witness's identification. Likewise, when there is more than one person involved in an incident, the rates of correctly recognizing any single person are significantly reduced. Stress can also affect the accuracy of eyewitness identifications. In very high stress situations, the accuracy of eyewitness identifications drops off rapidly.

Although this evidence was presented for the defense, the court relies on it in other ways as well.

Conversely, the existence of distinctive cues, such as tattoos or scars, increases the accuracy of eyewitness identifications. If an eyewitness describes a perpetrator as having a scar in a particular place, the perpetrator will almost certainly have a mark or aberration in that place. If an eyewitness gives a description that omits a distinctive cue, such as the existence of facial hair on the chin, then the perpetrator's chin almost certainly did not have facial hair.

Errors in cross-racial identifications are two to two-and-a-half times higher than same-race identifications. Moreover, the errors in cross-racial identifications are almost exclusively false positives, such as saying a person is the perpetrator when the person is not the perpetrator.

Of the three recognition tests most commonly used by law enforcement officers — curbside lineups, photo lineups, and live lineups — curbside lineups have the highest error rate and are the least reliable. Like the errors in cross-racial identifications, the errors in curbside lineups are almost exclusively false positives. The error rates are especially high if the person displayed is the same race, size, and gender and is wearing clothing similar to what the perpetrator was seen wearing.

Moreover, once a witness makes an identification, whether through a curbside lineup or other method, the witness is predisposed to identify the same person again. Consequently, any subsequent identification of the same person, such as at a preliminary hearing or a trial, is not an independent assessment. Furthermore, if a witness does not specifically state the person is or is not the perpetrator, but instead makes feature-similarity declarations, such as the person has the same kind of clothes or jaw line as the perpetrator, the witness's remarks would more accurately be treated as a rejection than a selection.

DISCUSSION

I

SUFFICIENCY OF THE EVIDENCE CLAIM

Mohamed contends we must reverse his conviction because there was insufficient evidence to show he was one of the robbers. “In reviewing a claim for sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine

Here, the court sets out the law that is applicable to the charge and the facts of the case.

whether it discloses sufficient evidence — that is, evidence that is reasonable, credible, and of solid value — supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. We neither reweigh the evidence nor reevaluate the credibility of witnesses. We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. Apropos the question of identity, to entitle a reviewing court to set aside a jury's finding of guilt the evidence of identity must be so weak as to constitute practically no evidence at all."

In this case, the evidence showed that a short time after the robbery, a police officer spotted Mohamed walking along the street four blocks from the crime scene. Mohamed fit the description of one of the robbers. During a curbside lineup, Gomez stated she was 80 percent sure Mohamed was one of the robbers because he was wearing the same clothing, had the same build, and had the same jaw line and chin hair. She also identified Mohamed as one of the robbers at the preliminary hearing and at trial. During a separate curbside lineup, Medina stated he was "completely sure" Mohamed was one of the robbers because Mohamed was wearing the same clothing. After Mohamed's arrest, a police officer found a thin, nylon do-rag on him, which Gomez testified matched the fabric the robbers used to mask their faces. In addition, Mohamed provided the officer with a false alibi, suggesting consciousness of guilt. We conclude this evidence amply supports the jury's verdict in this case.

Gomez's inability to be 100 percent certain of her curbside identification and Medina's expression of "a little bit" of doubt about his curbside identification at trial do not preclude the existence of sufficient support for the jury's verdict. "It is not essential that a witness be free from doubt as to one's identity. He may testify that in his belief, opinion, or judgment the accused is the person who perpetrated the crime, and the want of positiveness goes only to the weight of the testimony."

The fact that neither Gomez nor Medina saw the robbers' entire faces also does not preclude the existence of sufficient support for the jury's verdict. "It is not necessary that any of the witnesses called to identify the accused should have seen his face. Identification based on other peculiarities may be reasonably sure. Consequently, the identity of a defendant may be established by proof of any peculiarities of size, appearance, similarity of voice, features or clothing."

Similarly, the discrepancies between Gomez's and Medina's observations and their omission of certain information from their initial descriptions of the robber they identified as Mohamed, including his possession of an umbrella or the presence of a black stripe on the side of his pants, did not necessitate the jury's rejection of their identifications. "The strength or weakness of the identification, the incompatibility of and discrepancies in the testimony, if there were any, the uncertainty of recollection, and the qualification of identity and lack of positiveness in testimony are matters which go to the weight of the evidence and the credibility of the witnesses, and are for the observation and consideration, and directed solely to the attention of the jury in the first instance. . . ."

Moreover, although Dr. Fraser provided the jury with information explaining how certain discrepancies and omissions might indicate an eyewitness identification is inaccurate, the jury was not obliged to accept Dr. Fraser's opinions or find them

Here, the court quotes from another case. The citation to that case has been omitted because it was very lengthy.

The original finding of the trial court – that the defendant is guilty – is also the conclusion of the appellate court. The defendant has lost his appeal.

applicable in this particular case. The jury is not bound to accept the opinion of any expert as conclusive, but should give to it the weight to which they shall find it to be entitled. The jury may, however, disregard any such opinion if it shall be found by them to be unreasonable. Furthermore, given the closeness of Gomez's and Medina's descriptions to Mohamed's physical appearance the night of the robbery, his proximity to the crime scene, his possession of a do-rag with similar characteristics to the masks worn by the robbers, and his false alibi, we are unable to conclude, as Mohamed asserts, that Gomez's and Medina's identifications of him were inherently improbable.

DISPOSITION

The judgment is affirmed.

WE CONCUR: HALLER and IRION, Justices.

CASE QUESTIONS

- 1 In this case, the defendant, Mohamed, requests that his conviction for armed robbery be reversed. What reasons does he give for this request?
- 2 What standard does the appellate court use in determining the sufficiency of eyewitness testimony?
- 3 Were both witnesses 100 percent sure of their identifications?
- 4 Are the witnesses' doubts enough to overturn the conviction?
- 5 Does the fact that the witnesses never saw the defendant's entire face preclude a finding of guilt?

CHAPTER SUMMARY

At the conclusion of each chapter, you will see a section called the "chapter summary." This highlights many of the important concepts that have been explored in the chapter. The chapter summary also serves as an excellent way to review the material from the chapter.

In this chapter, we have seen that criminal law is a specialized field, with its own terminology, procedures, and rules. Most important, we have also seen that there are two broad categories of law: criminal and civil law. *Civil law* deals with actions as diverse as child custody cases, contract suits, divorce, personal injury, and many others. In civil cases, one party sues another party and usually requests a monetary award. In a *criminal case*, however, the government brings an action against an individual and charges that individual with violating a statute. The loser in a civil case may be forced to pay compensation to the other side, but in a criminal case, if the accused is found guilty, he or she may face prison, fines, or both.

There is some important terminology that anyone who studies criminal law should know. For instance, there is the difference between a suspect and a defendant. A *suspect* is a person who is suspected of committing a crime but has not been charged with an offense. A *defendant* is someone who has been charged with a crime.

There are many participants in the criminal justice field, including judges, prosecutors, police officers, defense attorneys, and defendants. Each of these participants plays a critical role in the process, and the defendant is protected by a wide variety of constitutional guarantees to ensure that the prosecution is fair.

For prosecutors and defense attorneys, the elements of an offense are extremely important. The elements refer to the basic allegations against the defendant and the evidence and testimony that the prosecutor must present in order to satisfy the jury beyond a reasonable doubt that the defendant is guilty. A defense attorney will often focus on attacking individual elements of an offense in order to show that the government’s case is not strong and to introduce reasonable doubt.

KEY TERMS AND CONCEPTS

Suspect/Perpetrator	Contempt	Defense attorney
Defendant (Criminal case)	Police	Defendant
Plaintiff	Prosecutor	Probation officer
Judge		

END-OF-CHAPTER EXERCISES

Review Questions

See Appendix A for answers.

- 1 Provide some general differences between civil law and criminal law.
- 2 Explain the differences between the way that a civil case originates versus a criminal case.
- 3 What is a prosecutor?
- 4 Explain case law and its significance.
- 5 What is the function of the judge?
- 6 What is the role of a defense attorney?
- 7 What is the difference between a suspect and a defendant?
- 8 What is a plaintiff?
- 9 Prosecutors and defense attorneys are both attorneys. What is the difference between them?
- 10 Explain what a probation officer does.

Web Surfing

NYC Public Defender Offices

<https://nysacdl.site-ym.com/>

Los Angeles County District Attorney's Office

<https://da.lacounty.gov/>

Miami–Dade County Police Department

<https://www.miamidade.gov/global/police/home.page>

Illinois State Court System

<http://www.illinoiscourts.gov/>

Question for Analysis

Why is the distinction between suspect and defendant so important?

Hypothetical

Don has stolen Theo's wallet and used the money inside it to pay for alcohol and drugs. Has Don committed a crime? Is it something else? Is he liable in civil court?

PRACTICE QUESTIONS FOR TEST REVIEW

See Appendix A for answers.

Essay Question

List and explain at least three differences between civil and criminal law.

True–False

- 1 **T F** Judges have the power to enforce their orders by temporarily depriving a person of his or her liberty.
- 2 **T F** Police and prosecutors are the same thing.
- 3 **T F** A suspect is a person who has been charged with a crime.

Fill in the Blank

- 1 An attorney who works for the state or federal government and is responsible for making decisions on cases and presenting cases to a judge and/or a jury: _____.
- 2 An attorney who primarily or exclusively represents individuals who have been charged with criminal offenses: _____.
- 3 An individual who has been charged with a crime: _____

Multiple-Choice

- 1 The name of the party who brings a civil suit
 - A Appellant
 - B Defender
 - C Plaintiff
 - D Scribe

- 2 A member of the judicial branch who is responsible for maintaining order in the courtroom, ruling on motions, making orders, and, in many circumstances, sentencing the defendant
 - A Judge
 - B Juror
 - C Clerk
 - D Probation officer

- 3 A judge's power to enforce his or her orders, authority, or dignity by temporarily depriving the offending party of his or her liberty
 - A Complaint
 - B Correspondence
 - C Countermand
 - D Contempt

Theories of Criminal Behavior

Chapter Objectives

- Explain the psychological and sociological theories behind criminal behavior
- Describe what the “elements” of a criminal offense are
- Define the difference between *actus reus* and *mens rea*
- Explain the significance of specific intent versus general intent crimes
- Describe the theories of criminal punishment

Chapter Outline

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| <p>I. Why Do People Commit Crimes?</p> <ul style="list-style-type: none"> A. Psychological Theories of Crime B. Sociological Theories of Crime <p>II. Elements of Criminal Offenses</p> <p>III. <i>Mens Rea</i> and <i>Actus Reus</i></p> | <p>IV. General Intent Versus Specific Intent Crimes</p> <ul style="list-style-type: none"> A. Specific Intent B. When <i>Mens Rea</i> Is Not Required <p>V. Punishing the Act</p> |
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WHY DO PEOPLE COMMIT CRIMES?

Society is fascinated with crime. Criminal behavior is depicted on nightly television shows, movies, theater, websites, and every other type of entertainment medium. Criminal trials are often dramatic affairs that draw the attention of thousands, especially when the crime in question is particularly heinous. In this chapter, we will examine first the definition of crime, and then various theories that attempt to explain why some people commit crimes and others do not.

Crime

An action (or occasionally the failure to act) that opens a person up to prosecution and punishment by the government.

The simplest definition of **crime** is any behavior that allows the government to prosecute and punish an individual. Crimes focus on behavior. In most situations, crimes involve actions carried out by an individual, and only occasionally by the failure to act of a person who was obligated to do so.

Beyond the simple definition, it is much harder to explain why people commit crimes. Criminal behavior is often seen from simplistic viewpoints, ranging from an inner moral failing to familial abuse to societal factors.¹ If we can understand crime, then can we find ways to make it occur less frequently — or perhaps even do away with it entirely?

One of the biggest problems lies in creating a basic definition of what crime is. We can focus on behavior — X has committed a crime when X's behavior demonstrably fits acts specifically prohibited in a statute. But does that do anything other than match an individual's actions with proscribed behaviors? The question of *why* X committed a crime has fascinated politicians, behaviorists, police officers, and many others for centuries.

Today, we have more data on crime than we have ever had available to us. The Internet is awash in both good and bad information about crime. The problem now is not a dearth of information. The real problem is separating fact from fiction. Over the past few centuries, there have been widespread (and occasionally bizarre) theories that attempt to explain why people commit crimes. We will examine a few of the most prominent of these in this section. However, before we do, it is important to understand why people try to explain criminal behavior in the first place.

As long as there have been societies, there have been those who have broken societal rules. For many centuries, philosophical beliefs dominated any discussion of criminal activity. People were inherently bad, and therefore they did inherently bad things. From original sin to “just desserts,” people who engaged in criminal activity were variously seen as hapless victims of their lack of morality, free will, or biological imperatives. However, a serious examination of crime and the development of theories to explain it began in earnest in the 1700s.

The premise behind any theory is that once some action can be explained, it can be predicted. In science, a *theory* is a testable hypothesis. A scientific theory can always be proved incorrect, but never correct. A workable theory is one that can produce predictable results. “A body at rest tends to stay at rest” is a scientific theory of inertia first put into widespread use by Sir Isaac Newton. Everyone tends to favor scientific theories because they not only help explain things, but can also provide predictions for future behavior.

The various theories of crime have been broken into three major components: biological, psychological, and societal. However, the biological component has been almost completely abandoned, as we will see later in this chapter in the discussion of the darker developments associated with positivist theory.

A. PSYCHOLOGICAL THEORIES OF CRIME

Cesare Beccaria is often credited with creating the first systemized theory of criminal behavior. His theory is that criminal behavior is motivated by choice.

A person considers committing a criminal act, and then weighs the possible punishment against the gain, either in pleasure or worldly goods. Under Beccaria's theory, a person goes through an abbreviated cost-benefit analysis before deciding to engage in criminal conduct. Because of this, he advocated for making the punishment associated with criminal behavior so severe that in almost any case, the cost-benefit analysis would sway toward not committing the crime. Crime would be punished at such a level as to make it unattractive. Beccaria's approach was later to be enshrined in the classical theory. Under that theory, individuals have free will; they are masters of their fate and therefore are responsible for the crimes that they commit. A criminal has a choice and chose to commit a crime. Therefore, the criminal must also accept the punishment that he or she knew was associated with the action.

Although Beccaria died in 1794,² his theories still resonate. Folded neatly into deterrence theory, many of society's rules, laws, and punishments are based on the idea that if criminal actions are made unappealing, primarily because of the punishment associated with committing them, people would choose not to engage in them. We will discuss punishment theory at the conclusion of this chapter.

There are those who challenge Beccaria's predominance in the field of criminology in general, and prison reform in particular. Whether or not this person was actually responsible for vast changes in the criminal justice system, though, his name remains linked to them, perhaps for all time.³

In contrast to classical or deterrence theory is positivism. At its roots, positivism attempts to explain why some people commit crime as being based on their prior experiences, social influences, or even biological traits.⁴

Early positivist theories revolved around biological facts: a person's race, sex, or other factors contributed a great deal to his or her later behavior. Positivist theory had a direct connection to the unfortunate, so-called science of phrenology, in which a person's skull was measured not only for capacity (with larger skulls indicating greater intelligence), but also for bumps and contours that supposedly showed moral and intellectual failings. Developed and expanded by Franz Joseph Gall, phrenology gave credence to biological factors serving as the basis for unwanted behavior, especially criminal activity. Although it did lay the groundwork for the biological study of criminal behavior, the practice of phrenology, always based on questionable theories, eventually fell into disrepute when it helped support claims that certain minorities in Western society were predisposed to crime. Interestingly enough, the theory that biology created a system of behavior beyond a person's control did not result in a finding that the person was somehow less culpable. Phrenologists could comfortably straddle both worlds: Biological markers inside and outside the skull were predictors for criminal behavior, but the people showing these characteristics were not absolved from the guilt of their crimes.

A popular offshoot of positivist theory places emphasis on the major biographical incidents in a person's life to explain later criminal actions. Although originally focused on biological antecedents, including sex, race, and the size of one's brain, theory was eventually modified to encompass psychological factors. Critics of this theory state that it is oversimplistic, in that it essentially states that

There are many theories of criminal behavior, and some have come into and out of fashion over the centuries, with a few finally consigned to the trash can of history and others stubbornly holding on.

Despite widespread lectures, learned journals, and treatises promoting the field of phrenology throughout the 1840s, especially in France, it fell into disuse and was eventually attributed solely to quacks and racists.⁵

criminals are born and not made. One of the most famous proponents of the positivist theory was Cesare Lombroso. In his thinking, society could be divided into criminals and noncriminals. Lombroso was the founder of the Italian school of positivist criminology. Setting out his theory in 1878, Lombroso promoted the view that criminals are distinguishable from noncriminals by physical characteristics. He even went so far as to compare criminals to lower primates or early subhumans.

Lombroso's views eventually faded and were largely abandoned by the middle of the twentieth century. Even though his views on the supposed physical abnormalities of criminals have long been refuted, the idea that psychological factors occurring in a criminal's youth might lead to later antisocial behavior has been the basis of programs that attempt to provide support services for at-risk youth.

In the middle of the 1960s, deterrence theory saw a resurgence. Perhaps a reflection of the political climate, more and more people were willing to entertain the notion that increasing the penalties for crimes would result in fewer people committing them.⁶ These various beliefs ebb and flow in our society. The early 1990s again saw a return to deterrence theory, with a sharp increase in minimum penalties for narcotics offenses in the so-called war on drugs.

If one were called upon to differentiate between the classical view of crime and the positivist view of crime, the deciding factor would be free will. In many ways, adherents of the positivist theory would hold that because of biological or psychological factors, a person may be more or less predetermined to engage in criminal activity. Under classical doctrine, a person chooses criminal behavior either as a result of cost-benefit analysis or simply by pleasure-seeking.

Studies do support some basic tenets of deterrence theory, but only to a small degree. One study found that nonlegal factors "are more effective in securing compliance than legal threats."⁷

B. SOCIOLOGICAL THEORIES OF CRIME

The theory of criminology devised by the English philosopher Jeremy Bentham (1748–1832) focuses less on cost-benefit ratios and more about pleasure versus pain. According to Bentham, human beings are motivated by two primary urges: seeking pleasure and avoiding pain. Actions that promote happiness are deemed to be good and actions that cause pain are bad. That philosophy also underscores Bentham's view of criminology: It is easier to steal than to build. Often referred to as the "classical school of criminology," Bentham's theories lay behind the idea of utilitarianism, the basic principle of which is that the morally right action is the one that produces the most good for the most individuals. Actions are considered only in terms of their consequences, not their underlying motivations. Bentham was primarily interested in legal and societal reform. His principles avoided a view of the morality of actions and instead focused on the results. Societies that adopt laws to provide for happiness for the greatest number of their citizens will find that most people obey the law. On the other hand, regulatory schemes that impose pain on society will be viewed as bad and thus will not be obeyed.

Applying this idea to criminology, Bentham held that when individuals seek pleasure, they are not only helping themselves but can contribute to the

overall happiness of society. Bentham's theories dovetailed nicely with various authorities who argued that public executions and punishments would lead to a decrease in violence. If people saw that murderers were punished with execution, their fear of incurring such a penalty would lead them to avoid committing the act.



ELEMENTS OF CRIMINAL OFFENSES

Throughout this book, we will often use the term “elements” when referring to crime. This word has a specific connotation in criminal law. The **elements** of a crime consist of the various points that the prosecutor must prove to the jury, beyond a reasonable doubt. Let's consider one of the worst crimes: murder in the first degree. As we will see later in this book when we discuss homicide (Chapter 6, *Criminal Procedure: An Introduction for Criminal Justice Professionals*, 2nd ed.), the statute that makes murder a crime sets out the specifics or the definition of what constitutes this crime. In order for a person to be guilty of first-degree murder, he or she must

- Intentionally
- Kill a human being
- With malice aforethought
- Deliberately, with premeditation

The elements come from the statute that criminalizes murder, and when a prosecutor prepares a case for trial, he or she reviews every one of these elements to ensure that there is sufficient evidence to support every element. Consider Scenario 2-1 and then ask yourself: How would the prosecutor prove each element?

Elements

The factual points and statutory requirements of a criminal case that must be proved against the defendant beyond a reasonable doubt.

MURDER IN THE FIRST DEGREE?

SCENARIO 2-1

Andy knows a man named Carl. They haven't liked each other for a long time. One day, while Andy is in his front yard, Carl drives by, yells an obscenity at Andy, and then drives off. Andy goes inside his home and thinks about what just happened. He doesn't like Carl, but now his dislike has become hatred. He knows enough about Carl to know that he sleeps during the day and works at night. Andy gets his shotgun, but then spends an hour trying to find the shotgun shells. During that time, he gets a call from his girlfriend. Andy tells his girlfriend about what happened with Carl, and she tells him to forget it. “Carl is always shooting his mouth off,” the girlfriend says.

“Maybe it's time somebody shot his mouth off,” Andy says and hangs up. He doesn't answer when the phone rings again.

Andy loads the shotgun, extra shells, and some rope into his car. It takes fifteen minutes to drive to Carl's house, and during that time, Andy sees that his girlfriend

continued

SCENARIO 2-1*(continued)*

has tried to contact him several more times. When Andy arrives at Carl's house, he finds that the front and back doors have been locked. He tries to pry open a basement window, and when that doesn't work, he goes back to his car to consider his options. He knows that Carl will get up around 5 p.m., and that gives Andy three hours to wait. He thinks that he looks suspicious sitting in front of Carl's house, so he drives down the street to a playground and waits. At ten minutes before 5 p.m., Andy drives back to Carl's house. When Carl comes out of his house, Andy gets out of his car and points the gun at Carl. He orders him back into the house, where Andy ties his hands and then leads him down into the basement. Once there, he shoots Carl in the face. On the way out, he wipes down any surfaces he may have touched to clear away any fingerprints and then returns home. He cleans the shotgun and puts it away.

When police respond to the calls of Carl's neighbors, they find him dead in his basement. Several neighbors describe a man who had been lurking in the neighborhood earlier that day, and one of them even wrote down the car's license number. Police check the tag, and it turns out to be Andy's car. They visit Andy, who says he doesn't know anything about what happened. Unprompted, he denies even owning a shotgun. Later, five witnesses pick Andy out of a photographic lineup as the man that they saw at Carl's house. Police recover the shotgun, and although they cannot run a ballistics test on a shotgun, the spent shells that were left at the scene are the same make and caliber as the ones that Andy owns. When they confront Andy with this evidence, Andy confesses to killing Carl, but he says that it was an accident and that he never meant to hurt him.

We already know that the prosecutor assigned to Andy's case must prove that Andy:

- 1 Intentionally
- 2 Killed Carl
- 3 With malice aforethought
- 4 Deliberately, with premeditation

The prosecutor must assemble evidence and witness testimony to substantiate every one of these elements. That is the important aspect of any discussion about the elements of a crime: each must be proved beyond a reasonable doubt. Prosecutors are not allowed to skip any of the elements or simply assume that everyone on the jury will agree that one element is established on the prosecutor's word alone. Instead, the prosecutor must present evidence on each and every element. If he or she fails to do so, then the judge must enter a verdict in the defendant's favor, and the case is dismissed.

The prosecutor assigned to Andy's case begins with the first element: that Andy acted intentionally. Proving this element is quite easy. The law assumes that each person acts intentionally unless there is some evidence that he or she was unconscious, drugged, or insane. The prosecution can show that Andy was apparently acting intentionally because he carried out a series of actions that showed he was not unconscious or not in his right mind. He spoke on the phone with his girlfriend. He planned to kill Carl and took actions to carry that plan out. He even took precautions by loading in his car some extra ammunition and something to restrain Carl when