

Chapter 2

Law and Crime

LEARNING OBJECTIVES

1. List the four key elements defining law.
2. Identify the three key characteristics of common law.
3. Explain the importance of the adversary system.
4. Name the four amendments of the Bill of Rights that deal specifically with criminal procedure.
5. List the five major areas of civil law.
6. Identify the major elements of a crime.
7. Identify some of the most important legal defenses in American law.
8. Discuss the effects of the criminal law on courts.

KEY TERMS

administrative regulations: Rules and regulations adopted by administrative agencies that have the force of law. (32)

adversary system: The burden is on the prosecutor to prove the defendant guilty beyond a reasonable doubt, and the defense attorney is responsible for arguing for the client's innocence and asserting legal protections. (33)

Affirmative defense: The defendant bears the burden of persuasion to prove the defense. (34)

Alibi defense: a defense which argues that the defendant could not have committed the crime. For example, a defendant argues that witnesses can show he was somewhere else at the time the crime was committed. (46)

Anglo-American law: The American legal system. (30)

Attempt: An act done with the intent to commit a crime, an overt act toward its commission, the failure to complete the crime, and the apparent possibility of committing it. (45)

attendant (accompanying) circumstances: Conditions surrounding a criminal act—for example, the amount of money stolen in a theft. (46)

beyond a reasonable doubt: Burden of proof required by law to convict a defendant in a criminal case. (35)

Bill of Rights: The first ten amendments to the U.S. Constitution, guaranteeing certain rights and liberties to the people. (38)

Burden of persuasion: the obligation of a party to prove a fact to a certain level. (34)

Burden of production: requirement that one must produce evidence to put facts in issues. (34)

civil law: Law governing private parties; other than criminal law. (30)

Clear and convincing evidence: a higher level of proof than the preponderance of the evidence standard, yet it falls short of proof beyond a reasonable doubt. (35)

common law: Law developed in England by judges who made legal decisions in the absence of written law. Such decisions served as precedents and became “common” to all of England. Common law is judge made, it uses precedent, and it is found in multiple sources. (30)

constitution: the first document that establishes the underlying principles and general laws of a nation or state. (32)

contract: agreements between two or more persons involving a promise supported by mutual obligations. (39)

corpus delicti: The body or substance of a crime, composed of two elements—the act and the criminal agency producing it. (44)

criminal defense: attempts to cast doubt on the defendant’s guilt. (46)

criminal law: Laws passed by government that define and prohibit antisocial behavior. (43)

declaratory judgment: a judicial determination of the rights of the parties. (40)

defendant: The person or party against whom a lawsuit or prosecution is brought. (40)

domestic relations: Relating to the home; the law of divorce, custody, support, adoption, and so on. (40)

due process of law: A right guaranteed in the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution and generally understood to mean the due course of legal proceedings according to the rules and forms established for the protection of private rights. (38)

elements of a crime: Five principles of a crime that are critical to the statutory definition of crimes: guilty act, guilty intent, relationship between guilty act and guilty intent, attendant circumstances, and results. (44)

felony: The more serious of the two basic types of criminal behavior, usually bearing a possible penalty of one year or more in prison. (43)

guilty act (actus reus): Requirement that, for an act to be considered criminal, the individual must have committed a voluntary act that resulted in criminal harm. (45)

guilty intent (mens rea): Mental state required for a crime. (45)

infancy: a criminal defense where children under the age of 7 are considered legally incapable of forming criminal intent and therefore cannot be held criminally responsible for their actions. (50)

inference: conclusions or deductions the trier-of-fact may reasonably make based on the facts that have been established by the evidence. (34)

inheritance: Property received from a dead person, either by effect of intestacy or through a will. (40)

injunction: A court order that requires a person to take an action or to refrain from taking an action. (40)

in rem: a lawsuit brought against a thing rather than against a person. (42)

insanity defense: an excuse defense which seeks to excuse acts committed by defendants because their mental state prevented them from understanding the consequences of their actions. (48)

judge-made law: The common law as developed in form and content by judges or judicial decisions. (30)

judgment: A court's official decision about the rights and claims of each side in a lawsuit. (40)

juvenile delinquency: An act committed by a juvenile for which an adult could be prosecuted in a criminal court. (50)

law: Body of rules enacted by public officials in a legitimate manner and backed by the force of the state. (29)

misdemeanor: Lesser of the two basic types of crime, usually punishable by no more than one year in jail. (43)

mistake of fact: Defense in which a mistake regarding a factual matter would have justified the act or omission that is the subject of a criminal prosecution. (48)

monetary damage: Sums of money that a court orders to be paid to a person who has suffered a legal injury. (40)

municipal ordinance: A statutory law enacted by a local unit of government. (32)

necessity: Defense that allows a defendant to argue that his or her conduct should either be excused entirely or mitigated to a less serious charge because *mens rea* was formed under extraordinary circumstances that render it unfair to hold the defendants responsible for the unlawful conduct. (48)

plaintiff: The person or party who initiates a lawsuit. (40)

precedent (*stare decisis*): A case previously decided that serves as a legal guide for the resolution of subsequent cases. (30)

preponderance of the evidence: In civil law, the standard of proof required to prevail at trial. Commonly understood as proof that something is more likely than not. (35)

presumption: A conclusion or deduction that the law requires the trier-of-fact to make in the absence of evidence to the contrary. (34)

presumption of innocence: Requires the trier-of-fact to accept that the defendant is innocent unless the prosecution meets its burden to prove that the defendant is guilty beyond a reasonable doubt. (34)

presumption of sanity: Requires that all defendants be presumed sane unless sufficient evidence of their insanity is proven, usually by clear and convincing evidence. (34)

probable cause: The existence of facts – independently verifiable factual information that supports the conclusion that there is a “fair probability” that a crime occurred or that a particular person was involved in a crime. (34)

procedural defenses: Defenses that focus on compliance with the rules and processes of the criminal justice system, such as the right to a speedy trial. (48)

procedural law: Law that establishes the methods to be followed in starting, conducting, and finishing a lawsuit. (33)

property: Legal right to use or dispose of particular things or subjects. (40)

reasonable, articulable suspicion: The next level up from mere suspicion. Instead of just having a hunch or intuitive feeling, a person can articulate the reasons why he or she is suspicious. (34)

remedy: The relief granted by a court. (40)

result: A consequence; an outcome. (46)

selective incorporation: The legal doctrine whereby the Supreme Court ruled that the due process clause of the Fourteenth Amendment made some provisions of the Bill of Rights applicable to the states. (38)

self-defense: The commission of an act under circumstances the criminal law does not seek to punish such as using force in defense of oneself, other persons or property. (48)

stare decisis: Latin phrase meaning “let the decision stand.” The doctrine that principles of law established in earlier judicial decisions should be accepted as authoritative in similar subsequent cases. (30)

statute: A written law enacted by a legislature. (32)

substantive law: Law that deals with the content or substance of the law—for example, the legal grounds for divorce. (33)

tort: Legal wrong done to another person. (40)

union of *actus reus* and *mens rea*: Criminal law requirement that the guilty act and the guilty intent occur together. (46)

CHAPTER OUTLINE

I. The Basis of Law

II. **LO 1:** List the four key elements defining law.

- A. Law is defined as:
 - 1. body of rules
 - 2. enacted by public officials
 - 3. in a legitimate manner
 - 4. backed by the force of the state
- B. Common law heritage characteristics: it is judge-made law, based on precedent and found in multiple sources including:
 - 1. constitutions
 - 2. statutes
 - 3. administrative regulations
 - 4. judicial decisions
- C. Precedent is often referred to as “*stare decisis*,” translated literally as “let the decision stand”; it is characterized by a case-by-case analysis of legal problems where courts apply prior decisions to promote fairness and consistency.

III. The Common Law Heritage.

LO 2: Identify the three key characteristics of the common law.

- A. Judge-Made Law
- B. Precedent
- C. Multiple Sources of Law
 - 1. Constitutions
 - 2. Statutes
 - 3. Administrative Regulations
 - 4. Judge-Made law

IV. The Adversary System.

LO 3: Explain the importance of the adversary system.

- A. Safeguards.
- B. Presumptions and Inferences.
- C. Burdens of Proof.
- D. Courts, Law & media
 - 1. *Chicago (2002)*

V. The Rights of the Accused.

LO 4: Name the four amendments of the Bill of Rights that deal specifically with criminal procedure.

- A. Due Process
- B. Bill of Rights

VI. Civil Law Overview.

LO 5: List five major areas of civil law.

- A. Types of Civil Disputes
- B. Civil Remedies
- C. Using Civil Remedies to Fight Crime

VII. Courts, Controversy, & Reducing Crime

- A. Should asset forfeiture be limited?
- B. Law in controversy: The incivility of civil justice
- C. Civil liability of criminal justice officials

VII. Criminal Law Overview.

LO 6: Identify the major elements of a crime.

LO 7: Identify some of the most important legal defenses in American law.

- A. Elements of a crime.
 - 1. *Actus reus*: The guilty act
 - 2. *Mens rea*: Criminal intent
 - 3. Union of act and intent
 - 4. Attendant circumstances
 - 5. Results
- B. Defining crimes.
- C. Criminal defenses.
 - 1. Defenses that negate *mens rea*

- 2. Defenses of justification
 - 3. Procedural defenses
- D. Case close-up: *United States v. Loughner*.
 - 1. Insanity
- E. Delinquency.

VIII. Effects of Criminal Law on the Courts.

LO 8: Discuss the effects of the criminal law on the courts.

- A. Criminal law and inconsistencies.
- B. Criminal law and plea bargaining.
- C. Criminal law and sentencing.

CHAPTER SUMMARY

The basis of law can be summarized in two words: human conflict. Business and everyday activities depend on mechanisms for mediating inevitable human conflicts. Law is an everyday word, but as Professor Lawrence Friedman (1984, p. 2) suggests, “It is a word of many meanings, as slippery as glass, as elusive as a soap bubble.” Most scholars define law as a body of rules enacted by public officials in a legitimate manner and backed by the force of the state (Neubauer & Meinhold, 2012). The first element is self-evident. The second element is of critical importance. All organizations of any size or complexity have rules and regulations that govern their members. The third element means that it must be agreed upon ahead of time how the rules will be changed. The final element says that these rules and regulations would be largely meaningless without sanctions.

The legal system of the United States, and other English-speaking nations which were once British colonies, trace their origins back to England and its so-called common law. The common law first appeared in medieval England after the Norman conquest in 1066. A distinct body of national law began to develop during the reign of Henry II (1154–1189), who successfully expanded the jurisdiction of the royal courts. Thus, the term common law meant general law as opposed to special law; it was the law common to the entire land. Common law is used in many English-speaking nations, including England, Australia, New Zealand, Canada, and the United States. During the development of the common law legal system, a distinctive way of interpreting the law gradually emerged. Three key characteristics of this common law heritage stand out: The law was judge-made, based on precedent, and found in multiple sources.

Within the hierarchy of law, constitutions occupy the top rung. A constitution is the first document that establishes the underlying principles and general laws of a nation or state. The U.S. Constitution is the fundamental law of the land. All other laws—federal, state, or local—are secondary. Similarly, each state has a constitution that is the “supreme law of the state.” Constitutions define the powers that each branch of government may exercise. Constitutions also specify how government officials will be selected. The

second rung of law consists of statutes. Laws enacted by federal and state legislatures are usually referred to as “statutory law.” Until the latter part of the 19th century, American legislatures played a secondary role in the formulation of law. It was not until the 20th century that state legislatures became the principal source of law (Friedman, 1984).

Law is both substantive and procedural. Substantive law creates legal obligations. Procedural law establishes the methods of enforcing these legal obligations. The guiding assumption of the adversary system is that two parties, approaching the facts from entirely different perspectives, will uncover more of the truth than would a single investigator, no matter how industrious and objective. By putting power in the hands of several different parties, the adversary system creates another type of safeguard. In diffusing power, the adversary system provides a third safeguard. All trials are governed by both rules of procedure and rules of evidence. Criminal trials start with two presumptions: the presumption of sanity and the presumption of innocence.

The concept of “burden of proof” actually encompasses two separate burdens: the burden of production and the burden of persuasion. The prosecution always bears the burden in persuading the trier-of-fact that the defendant committed each and every element of all crimes charged. In some circumstances, however, the defendant in a criminal trial bears the burden of persuasion to prove a certain defense, such as insanity. When the defendant bears the burden of persuasion to prove a defense, it is called an affirmative defense.

At the low end of the scale, there is no proof. Just above that, there is what the law calls “mere suspicion”—a hunch or an intuition. The next level up from mere suspicion is reasonable, articulable suspicion. In most civil cases, the standard of proof is a preponderance of the evidence. It is commonly understood as proof that something is more likely than not. Clear and convincing evidence is a higher level of proof than the preponderance of the evidence standard, yet it falls short of proof beyond a reasonable doubt. One of the most fundamental protections recognized in the American criminal justice process is the presumption of innocence. The state has the burden of proving all the elements of the crime(s) charged beyond a reasonable doubt; defendants are not required to prove themselves innocent. It is sufficient to say that proof beyond a reasonable doubt requires that the guilt of the defendant be established to a reasonable, but not absolute certainty.

Procedural law in the United States places a heavy emphasis on protecting the individual rights of each citizen. A key feature of a democracy is the insistence that the prevention and control of crime be accomplished within the framework of law. Because the powers of the criminal courts are so great, there is concern that those powers might be abused or misapplied. Restrictions on the use and application of government power takes the form of rights granted to the accused. The primary justification for providing constitutional safeguards for those caught in the net of the criminal process is to ensure that innocent persons are not harassed or wrongly convicted. Another reason that democracies respect

the rights of those accused or suspected of violating the criminal law is the need to maintain the respect and support of the community.

Most disputes that come to court involve private parties. These suits are brought because the courts possess powers that private parties do not. Tort law involves a legal wrong done to another person. Another type of private law involves contracts—agreements between two or more persons involving a promise supported by mutual obligations. Property, which centers on the ownership of things, is another division of private law. Domestic relations constitutes a major area of law. These matters of family law mainly involve divorce and related issues such as child custody, child support, and alimony. Property received from a person who has died is governed by laws on inheritance. Individuals, groups, or governments sue because they want something from another party. What they want is termed a remedy. A court's official decision about the rights and claims of each side in a lawsuit is known as a judgment. Thus, if the plaintiff wins, the judgment also contains a remedy, which is the relief granted by the court. Monetary damages are sums of money that a court orders paid to a person who has suffered a legal injury. Although there are several types of damages that courts may order, the two pleading types of civil damage awards involve compensatory and punitive damages. Another type of remedy occasionally requested is a declaratory judgment, which is a judicial determination of the legal rights of the parties. A third type of remedy is called an injunction. An injunction is a court order that requires a person to take an action or to refrain from taking an action.

Civil law is having a growing impact on the criminal justice system. Victims of crime are increasingly resorting to civil litigation, in addition to victim compensation and restitution, as a means of recovering from the ill effects of crime. Moreover, victims' rights advocates are advocating civil remedies as one way for victims to reassert control. Increasingly, rape victims are pursuing justice in the civil courts, seeking damages from almost anyone they can find who may have shared liability for the rape.

In recent years, civil justice has become almost as controversial as criminal justice. Critics view product liability and personal injury lawsuits as having corrupted the civil justice system into a type of lottery. Proponents of the current civil justice system argue against tort reform. They point out that curtailing civil lawsuits would prevent deserving tort victims from collecting all of the damages to which they are entitled, and would interfere with the ability of juries to properly punish wrongdoers (Neubauer & Meinhold, 2013). Victims of crime often use the civil justice system in an attempt to recover monetary damages from criminal defendants. Their motivation is often a quest for vindication of their beliefs with little likelihood of collecting any money.

Some disputes require special treatment because civil law remedies are not enough. Criminal law relates to actions that are considered so dangerous, or potentially so, that they threaten the welfare of society as a whole. In civil law, the injured party receives compensation. Violators of the criminal law, however, are punished. The stress on punishment derives from the goal of criminal law to prevent and control crime. It is important to recognize that the criminal law is intended to supplement, not supplant, the

civil law. Thus, as discussed earlier, a person may be prosecuted criminally, and the victim may also seek to recover civil damages for the same act.

In every criminal case, the prosecution must prove the *corpus delicti* beyond a reasonable doubt. In defining the elements of a particular offense, criminal laws are based on five general principles. Most behavior cannot be considered criminal unless: a guilty act, called an *actus reus* is committed, with a particular level of criminal intent, called *mens rea*, and the guilty act and the criminal intent are related. In addition, a number of crimes also require the prosecution to prove additional elements, such as the presence of certain attendant circumstances and/or that the guilty act caused a particular result. Using the principles of *actus reus*, *mens rea*, attendant circumstances, and result, legislatures define the elements of crimes in penal codes.

Individuals may have performed illegal acts, but may nonetheless be not guilty of a crime due to the applicability of legally-recognized defenses. Legal defenses derive from the way crime is defined. In most criminal cases the defense attempts to cast doubt on the defendant's guilt. In other cases, however, the defense may assert specific legal doctrines in an attempt to secure an acquittal. An alibi defense permits defendants to argue that they were somewhere else at the time the crime was committed. Sometimes people engage in an act that, at first blush might appear to be criminal, but they do so under circumstances demonstrating that they lacked true criminal intent. These defenses are said to negate *mens rea*. The two most common of these defenses include the mistake of fact defense and the defense of necessity. Defenses of justification are based on the commission of an act under circumstances the criminal law does not seek to punish, such as using force in self-defense, defense of other persons, or defense of property. There are a number of procedural defenses that the law recognizes for public policy reasons. These defenses are generally unconcerned with factual guilt. Rather, they focus on compliance with the rules and processes of the criminal justice system. Defenses of excuse seek to excuse acts committed by defendants who should not be held criminally responsible for their actions because they were too young (see section on delinquency, below) or because their mental state prevented them from understanding the consequences of their actions.

As mentioned above, the law recognizes youthful age as a criminal defense. In most states children under the age of 7 are considered legally incapable of forming criminal intent, and therefore cannot be held criminally responsible for their actions. This is a criminal defense referred to as **infancy**. The premise of juvenile delinquency is that people under a certain age are less responsible for their actions than adults.

Because the criminal code constitutes the basic source of authority for law enforcement agencies, the way crimes are defined has an important bearing on the entire administration of criminal justice. Because legislatures change criminal codes piecemeal, the end product is a set of criminal laws with obsolete prohibitions and inconsistent penalties. In practice judges and prosecutors attempt to rectify these inconsistencies by informally developing a consistent set of penalties. The courts must apply the law as they find it, but they also have a responsibility to rectify inconsistencies in that law. Variations in the definitions of crimes and differences in degrees of seriousness provide

fertile ground for plea bargaining. The most obvious way criminal law affects the operations of the criminal courts is in sentencing. Because of the public's concern about crime, pressure is strong to increase penalties. As a result, legislatures often increase the harshness of sentencing, and the courts mitigate that harshness.

DISCUSSION QUESTIONS

1. What are the sources of American law? What benefits are there in having multiple sources of law? Are there also disadvantages?

Possible discussion points: constitutions, codes, cases, and administrative rules and regulations. Pros: checks and balances on power. Cons: fragmented codes and inconsistency in the rules among the various states.

LO 1

2. Does the presumption of innocence have any real effect in criminal cases? If not, is it still important?

Possible discussion points: maybe not, in light of the extremely high number of negotiated pleas.

LO 4

3. The law recognizes certain defenses to crime. In those cases, even when an individual has committed the guilty act (*actus reus*) of an offense, they are not guilty of the crime charged. Why shouldn't those who commit the guilty act always be held accountable for their actions?

Possible discussion points: duress, juvenile delinquency, and insanity. Fairness of punishment for involuntary acts, for those acts committed when an individual is too young, or those mentally incapable of understanding the criminal nature of their actions.

LO 7

4. Explain the importance of the adversary system. What safeguards are provided by the adversary system?

Possible discussion points: substantive law, procedural law, different perspectives, cross-examination, and diffusion of power.

LO 3

5. Describe the elements of crime. Why is it important to have the union of *actus reus* and *mens rea*?

Possible discussion points: corpus delicti, actus reus, mens rea, union of act and intent, attendant circumstances, and results.

LO 6

ASSIGNMENTS

1. Write a paper naming the four amendments of the Bill of Rights that deal specifically with criminal procedure. Explain their importance in criminal law.

LO 4

2. Describe the five major areas of civil law. Read the following article:

http://www.cnn.com/2012/08/25/justice/pennsylvania-abuse-lawsuit/index.html?hpt=ju_c2

Explain the difference between the criminal and civil lawsuits for Victim One. What type of civil suit is this?

LO 5

3. Describe the effects of the criminal law on the courts.

LO 8

INTERNET ASSIGNMENTS

1. “Exploring U.S. Courts”

<http://www.uscourts.gov/Home.aspx>

- The official website for courts in the United States
- Assignment: Assign students to visit the U.S. Courts website and your state courts. Have students describe your court system.

LO2

2. “International Courts”

<http://www.bjs.gov/content/pub/html/wfcj.cfm>

- The World Factbook of Criminal Justice Systems
- Assignment: Assign students to choose another country on the website. Have students describe the similarities and differences between the criminal justice system of the chosen country from the website and the U.S. criminal justice system.

LO2

3. “Steps in a Felony Prosecution”

https://ovr.legis.state.ak.us/ovrdocuments/typical_prosecution.pdf

- Online description of the steps in a felony prosecution in the State of Alaska.

- Assignment: Have students read the article and describe the steps in a felony prosecution in Alaska.

LO4

4. “Reading a Legal Citation”

<http://www.oyez.org/cases/2012>

- Online information regarding U.S. Supreme Court Cases.
- Assignment: Have students find a recent U.S. Supreme Court criminal justice case and break down the legal citation as shown in Exhibit 2.1 in the chapter. Additionally, have students brief the case.

LO2