

CRIMINAL LAW TODAY



sixth edition

FRANK SCHMALLEGER
DANIEL E. HALL

Criminal Law Today

SIXTH EDITION

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For Michelle Lallo, who could have
written this book—Frank Schmalleger

To Eva Joan Hall, the smallest Hall of all—Daddy

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Brief Contents

CHAPTER 1	The Nature and History of Criminal Law	1
CHAPTER 2	Criminal Liability and the Essence of Crime	39
CHAPTER 3	Expanding the Concept of Crime	66
CHAPTER 4	Extending Criminal Liability: Inchoate Offenses and Parties to Crime	92
CHAPTER 5	Justifications as Defenses	128
CHAPTER 6	Defenses: Excuses and Insanity	153
CHAPTER 7	Crimes Against Persons: Homicide	212
CHAPTER 8	Crimes Against Persons: Assault, Sex Offenses, and Other Crimes	244
CHAPTER 9	Property and Computer Crimes	274
CHAPTER 10	Offenses against Public Order and the Administration of Justice	323
CHAPTER 11	Offenses against Public Morality	366
CHAPTER 12	Terrorism and Human Trafficking	404
CHAPTER 13	Victims and the Law	429
CHAPTER 14	Punishment and Sentencing	465
APENDIX A	How to Brief a Case	A-1
APENDIX B	Model Penal Code Excerpts	A-4
Glossary		G-1
Table of Cases		I-1
Index		I-5

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Contents

Preface xvii

Acknowledgments xxiii

About the Authors xxv



CHAPTER 1 The Nature and History of Criminal Law 1

Introduction 2

What Is Criminal Law? 2

Historical and Philosophical Perspectives 3

Natural and Positive Law 3

Criminal Law in the News: Politicians Who Violate the “Rule of Law”
Get Tough Prison Sentences 4

History of Western Law 5

Common Law Tradition 7

Common Law Today 8

Civil Law Distinguished 10

Criminal Procedure Distinguished 12

Types of Crimes 12

The Purposes of Criminal Law 14

Sources of Criminal Law 15

Constitutions 15

Statutes, Ordinances, and Regulations 17

Common Law 17

Capstone Case: Does the Eighth Amendment Bar the Admission of Victim
Impact Evidence during the Penalty Phase of a Capital Trial? 18

The Model Penal Code 24

The Modern U.S. Legal System 25

Federalism 25

Separation of Powers 27

An Adversarial, Accusatorial Due-Process System 29

The Rule of Law 31

Summary 33

Key Terms 34

Questions for Discussion 34

Critical Thinking and Application Problems 35

Legal Resources on the Web 35

Suggested Readings and Classic Works 36

Notes 37



CHAPTER 2 Criminal Liability and the Essence of Crime 39

Introduction 40

The Legal Essence of Criminal Conduct 40

The Criminal Act 41

Thinking Is Not Doing 42

Being Is Not Doing 42

Voluntary Acts	42
Possession	43
Failure to Act	44
Speech as an Act	45
State of Mind	46
Specific, General, and Transferred Intent	46
Criminal Law in the News: Supreme Court Rules in Favor of Church Picketers at Marine's Funeral	47
The Model Penal Code's <i>Mens Rea</i> Scheme	48
Criminal Law in the News: Man Shooting Gun into Air Accidentally Kills Girl	51
Strict Liability and <i>Mens Rea</i>	52
Capstone Case: Can a Person Be Criminally Punished for Ordinary Negligence?	53
When Statutes Are Silent on <i>Mens Rea</i>	57
Insanity and <i>Mens Rea</i>	57
Concurrence	57
Capstone Case: How Shall a Court Interpret a Criminal Statute That Is Silent on <i>Mens Rea</i> ?	58
Element Analysis	61
Summary	61
Key Terms	62
Questions for Discussion	62
Critical Thinking and Application Problems	62
Legal Resources on the Web	63
Suggested Readings and Classic Works	63
Notes	64



CHAPTER 3 Expanding the Concept of Crime 66

Introduction	67
<i>Corpus Delicti</i>	67
Additional Principles of Criminality	69
Causation	70
Capstone Case: Does a Defendant's Confession of a Sex Crime Have to Be Supported by Other Evidence for Conviction?	71
Resulting Harm	74
The Principle of Legality	76
Capstone Case: May a defendant be convicted of sexual assault when the only evidence is a confession and where the trial court has decided to abandon the common law <i>corpus delicti</i> rule?	79
Criminal Law in the News: Was Honeymooner Tried Twice for the Death of His Wife?	84
Necessary Attendant Circumstances	85
Summary	87
Key Terms	88
Questions for Discussion	88
Critical Thinking and Application Problems	88
Legal Resources on the Web	89
Suggested Readings and Classic Works	90
Notes	90



CHAPTER 4 Extending Criminal Liability: Inchoate Offenses and Parties to Crime 92

- Introduction 93
- Criminal Attempt 94
 - The Act Requirement 95
 - Preparation 96
- Capstone Case:** Is it Attempted Murder for Students to Bring Poison to School with the Intent of Killing a Teacher? 98
 - Defenses to Charges of Criminal Attempts 103
 - Completed Offense 105
 - Punishment for Criminal Attempts 105
- Criminal Conspiracy 106
 - Doctrine of Complicity 106
- Criminal Law in the News:** Can Hearsay Be the Primary Evidence in a Murder Case? 107
 - Elements of the Crime 108
 - Plurality Requirement 108
 - Required Intent 109
 - Parties to a Conspiracy 110
 - Acts in Furtherance of the Conspiracy 111
- Criminal Solicitation 112
- Parties to Crime 114
 - Relationship of Complicity 115
 - Accomplice Liability 115
 - Accessory 116
 - The Criminal Liability of Corporations 117
- Criminal Law in the News:** Can Corporations Be Convicted of Crimes? 118
 - Vicarious Liability 120
- Summary 121
- Key Terms 122
- Questions for Discussion 122
- Critical Thinking and Applications Problems 123
- Legal Resources on the Web 124
- Suggested Readings and Classic Works 124
- Notes 125



CHAPTER 5 Justifications as Defenses 128

- Introduction 129
- Types of Defenses 131
- The Process of Affirmative Defenses 132
- Justification as a Defense 132
 - Necessity 133
 - Self-Defense 135
- Capstone Case:** May an Aggressor Assert Self-Defense? 138
 - Defense of Others 141
- Criminal Law in the News:** Some States and Courts Strengthen Gun Rights 142
 - Defense of Home and Property 145
 - Resisting Unlawful Arrest 146
 - Consent 147

Summary 149
Key Terms 150
Questions for Discussion 150
Critical Thinking and Application Problems 151
Legal Resources on the Web 151
Suggested Readings and Classic Works 151
Notes 152



CHAPTER 6 Defenses: Excuses and Insanity 153

Introduction 154
The Nature of Excuses 154
Forms of Excuses 155
 Duress 155
 Intoxication 156
Capstone Case: Is a Soldier's Murder of Civilians Justified Because He Was Ordered to Do It? 157
 Mistake 159
Capstone Case: Does a Defendant Have a Constitutional Right to Defend against a Murder Charge by Claiming Intoxication? 160
 Age 164
Capstone Case: Is It Kidnapping to Move a Person Who Is Mistakenly Believed to Be Dead? 165
 Entrapment 168
Capstone Case: Is It Entrapment for a Female Agent of the Police to Offer Romance and Sex to Entice a Man with No Criminal History into Drug Dealing? 171
 Syndrome-Based Defenses 173
Mental Incompetency 180
 Competency to Stand Trial 180
Criminal Law in the News: Is Some Shoplifting an Addiction? 181
 Insanity at the Time of the Crime 184
The Insanity Defense: A Common Misunderstanding 185
What Is Insanity? 186
History of the Insanity Defense 187
 The M'Naughten Rule: Knowing Right from Wrong 188
 The Irresistible Impulse Test: Control Rules 189
 The Durham Rule: Crime as a Product of Mental Disease 190
 The American Law Institute Test: Substantial Capacity 191
 Guilty but Mentally Ill 191
Capstone Case: How Long Does a Person Have to Be Insane to Qualify for the Defense of Insanity? 192
 The Doctrine of Settled Insanity 195
Diminished Capacity 196
How Widely Used Is the Insanity Defense? 197
Consequences of an Insanity Finding 198
Abolishing the Insanity Defense 199
Civil Commitment 199
Capstone Case: May a State Confine Someone Because He or She Is Likely to Harm Someone Else in the Future? 200
Summary 203
Key Terms 205

Questions for Discussion	206
Critical Thinking and Application Problems	206
Legal Resources on the Web	207
Suggested Readings and Classic Works	207
Notes	208



CHAPTER 7 Crimes Against Persons: Homicide 212

Introduction	213
Criminal Homicide	213
<i>Corpus Delicti</i>	214
The Taking of a Life	214
Defining Death	216
The Time of Death	217
Capstone Case: Can a Drug Dealer be Guilty of Homicide When the Dealer Sold a User A Drug, That Combined with Others to Cause the User's Death?	219
Proximate Cause and Homicide	221
Murder	222
Malice Aforethought	223
Capital Murder	224
Felony Murder	226
Manslaughter	228
Voluntary Manslaughter	228
Capstone Case: Is Learning about Marital Infidelity from One's Spouse in Heated, Hurtful Language as Provocative as Catching a Spouse Engaged in a Sex Act with a Lover?	229
Involuntary Manslaughter	232
Criminal Law in the News: Abortion Doctors Charged with Murder in Maryland	233
Negligent Homicide	235
Vehicular Homicide	236
Suicide	236
Criminal Law in the News: Faith-Healing Parents Convicted in Son's Death	237
Summary	239
Key Terms	240
Questions for Discussion	240
Critical Thinking and Application Problems	240
Legal Resources on the Web	241
Suggested Readings and Classic Works	241
Notes	241



CHAPTER 8 Crimes Against Persons: Assault, Sex Offenses, and Other Crimes 244

Introduction	245
Assault, Battery, and Mayhem	245
Assault	246
Placing Another in Fear	248
Conditional Assault	248
Aggravated Assault	248
Attempted Assault	249

- Battery 250
- Aggravated Battery 251
- Mayhem 252
- Stalking 253
- Sex Offenses 254
- Capstone Case:** Does Applying Stalking Laws between Spouses Unconstitutionally Interfere with the Marriage Relationship? 255
 - Rape 258
 - Affirmative Consent Laws 261
 - Sexual Assault 262
- Kidnapping and False Imprisonment 262
 - Kidnapping 263
 - Capstone Case:** Does Moving a Person Four to Nine Feet during the Commission of a Felony Constitute Kidnapping? 265
 - False Imprisonment 267
- Threat 268
- Summary 269
- Key Terms 270
- Questions for Discussion 270
- Critical Thinking and Application Problems 271
- Legal Resources on the Web 271
- Suggested Readings and Classic Works 272
- Notes 272



CHAPTER 9 Property and Computer Crimes 274

- Introduction 275
- Theft Crimes 275
 - Larceny 276
 - Capstone Case:** Is It Theft to Sell Someone Else's Copyrighted Songs without Permission? 279
 - Embezzlement 285
 - False Pretenses 287
 - Forgery 289
 - Receiving Stolen Property 290
 - Robbery 291
 - Extortion 292
 - Identity Theft: A Twenty-First-Century Version of Theft 293
 - Consolidation of Theft Crimes 295
 - Grading of Theft Crimes 295
 - Burglary 296
 - Capstone Case:** Can Someone Commit Burglary of His or Her Home? 299
- Arson 302
- Computer and High-Technology Crimes 303
 - Computer Crime Laws 304
 - Criminal Law in the News:** Kim Dotcom of Megaupload Arrested for Online Piracy 306
 - Capstone Case:** Is It a Computer Crime for an Individual to Enter Untrue Answers into an Automated, Computerized Telephone System for the Purpose of Defrauding Another? 308

Types of Computer Crimes	314
Federal Cybercrime Enforcement Agencies	316
Internet-Based Crime	316
Summary	317
Key Terms	318
Questions for Discussion	319
Critical Thinking and Application Problems	319
Legal Resources on the Web	320
Suggested Readings and Classic Works	320
Notes	321



CHAPTER 10 Offenses against Public Order and the Administration of Justice 323

Introduction	324
Crimes against Public Order	325
Breach of Peace and Disorderly Conduct	325
Capstone Case: Are Words That Are So Insulting That They May Lead a Reasonable Person to Violence Protected Speech under the First Amendment?	327
Fighting and Affray	330
Alcohol and Drug Crimes	330
Riot and Unlawful Assembly	333
Vagrancy and Loitering	335
Teenage Curfew	337
Weapons Possession	338
Second Amendment	338
Capstone Case: Is the Right to Bear Arms as Found in <i>District of Columbia v. Heller</i> a Fundamental Right That Applies to the States?	340
Immigration Crimes	344
Crimes against the Administration of Government	347
Treason	347
Perjury and Contempt	348
Witness and Juror Tampering	349
Obstruction of Justice	350
Honor and Integrity	350
Capstone Case: Is It a Crime to Lie about Being a Decorated War Veteran?	351
Misconduct in Office and Bribery	354
Escape	354
Environmental Crimes	355
The Clean Water Act	356
The Clean Air Act	357
The Comprehensive Environmental Response, Compensation, and Liability Act	357
The Toxic Substances Control Act	357
The Endangered Species Act	357
The Resource Conservation and Recovery Act	358
The Marine Mammal Protection Act	358
Other Environmental Laws	359
Summary	359
Key Terms	360
Questions for Discussion	361

Critical Thinking and Application Problems 361
Legal Resources on the Web 361
Suggested Readings and Classic Works 362
Notes 363



CHAPTER 11 Offenses against Public Morality 366

Introduction 367
Crimes against Public Decency and Morality 367
Prostitution 369
Pornography, Obscenity, and Lewdness 370
Capstone Case: Is the Act of Offering to Sell or Give Child Pornography Protected Speech under the First Amendment? 374
Capstone Case: Is Fully Nude Dancing in a Strip Club Protected Speech under the First Amendment? 378
Other Consensual Sex Offenses 380
Capstone Case: May a State Make Private, Consensual Sex between Adults of the Same Sex a Crime? 383
Gambling and Gaming 387
Controlled Substances 388
 Anti-Drug Abuse Legislation 389
 The Controlled Substances Act of 1970 389
 The Anti-Drug Abuse Act of 1988 393
 Other Federal Antidrug Legislation 393
 State-Level Antidrug Laws 394
 Asset Forfeiture 395
 Medical Marijuana 397
A Critique of Laws Regulating Public Morality 398
Summary 399
Key Terms 399
Questions for Discussion 400
Critical Thinking and Application Problems 400
Legal Resources on the Web 400
Suggested Readings and Classic Works 401
Notes 402



CHAPTER 12 Terrorism and Human Trafficking 404

Introduction 405
Terrorism, Treason, and Sediton 405
Terrorism Laws 407
Criminal Law in the News: American Woman Embraces Islam on the Internet, Becomes “Jihad Jane” 408
Constitutional Issues 411
Capstone Case: Does It Violate the First Amendment’s Free Speech Clause to Make It a Crime to Provide Support in Humanitarian, Nonviolent Activities to a Terrorist Organization? 415
Human Smuggling and Trafficking in Persons 417
Federal Immigration and Trafficking Legislation 420

Capstone Case: Is a Person Who Purchases Sex on the Internet a “Trafficker” under the Federal TVPA? 421

Summary 423

Key Terms 424

Questions for Discussion 424

Critical Thinking and Application Problems 424

Legal Resources on the Web 425

Suggested Readings and Classic Works 426

Notes 427



CHAPTER 13 Victims and the Law 429

Introduction 430

Who Is a Victim? 431

A Short History of the Victim 432

The Philosophy of Victims' Compensation 433

Victims' Assistance Programs Today 434

Victims' Rights Legislation 435

The Growth of Victims' Rights 437

Son of Sam Laws 438

Capstone Case: May a State Redirect the Profits from a Criminal's Commercial Writings to the Victims of the Criminal? 440

Victim Impact Statements 445

Confrontation 447

Capstone Case: May a Defendant Be Convicted of Sexual Assault When the Only Evidence Is a Confession? 448

Victim Statistics 451

The National Crime Victimization Survey 452

Violence against Women 452

The Uniform Crime Reporting Program 453

Restitution 456

The Restoration Movement 458

Summary 459

Key Terms 460

Questions for Discussion 460

Critical Thinking and Application Problems 460

Legal Resources on the Web 461

Suggested Readings and Classic Works 462

Notes 462



CHAPTER 14 Punishment and Sentencing 465

Introduction 466

Punishment Rationales 468

Retribution 468

Deterrence 470

Rehabilitation 470

Restoration 471

Incapacitation 471

Constitutional Limitations 474

	Imposing Criminal Sanctions	475
	Federal Sentencing Practices	477
	The Role of the Jury in Sentencing	479
	Truth in Sentencing	480
	Plea Bargaining	481
	Traditional Sentencing Options	483
	Less Traditional Sentencing Options	484
	Capstone Case: Is It Cruel and Unusual Punishment under the Eighth Amendment to Incarcerate a Juvenile Murderer for Life with No Possibility of Parole?	485
	Sentence Enhancements	488
	Capital Punishment	489
	The Eighth Amendment and Capital Punishment	491
	Criminal Law in the News: DNA Testing Topples Old Convictions, Raising New Concerns	492
	Limits on Death-Row Appeals	494
	Capstone Case: Is It Cruel under the Eighth Amendment to Execute Convicted Child Rapists?	495
	Death as Cruel and Unusual	499
	Capstone Case: Is a Capital Convictee Responsible for His Attorney's Failure to File His Appeal?	500
	Intermediate Sanctions	503
	Summary	505
	Key Terms	506
	Questions for Discussion	506
	Critical Thinking and Application Problems	507
	Legal Resources on the Web	507
	Suggested Readings and Classic Works	508
	Notes	508
APPENDIX A	How to Brief a Case	A-1
APPENDIX B	Model Penal Code Excerpts	A-4
	Glossary	G-1
	Table of Cases	I-1
	Subject Index	I-5

Preface

Our purpose in writing this textbook has been to provide students with an appreciation for the fundamental nature of law, an overview of general legal principles, and a special understanding of the historical development of criminal law and its contemporary form and function in American society today. Stories from real life, engaging graphics, up-to-date examples and issues, and interactive media bring the law to life in this comprehensive, timely, and user-friendly introduction to criminal law. Key features include the following.

Capstone Cases in each chapter provide excerpts from actual court opinions illustrating important themes in the law. The cases offer significant insights into the everyday workings of American jurisprudence and demonstrate the logic behind appellate decisions. Court opinions, statutes, and other quoted materials have occasionally been redacted and edited slightly for clarity. Many case citations and references have been removed without the use of ellipses or other omission signifiers in order to keep the flow of reading uninterrupted.

Graphics such as full-color diagrams, illustrations, and other figures throughout the text reinforce key points and illustrate important, complex, and challenging concepts for easier understanding.

Criminal Law in the News boxes in each chapter highlight recent news stories/issues that illustrate the variety of legal perspectives found at federal, state, and local levels and make students aware of jurisdictional differences in the law.

Our approach has been strongly influenced by our belief that the law has always been, and remains, a vital policymaking tool. As a topic for study and discussion, the nature and life of the law is more important today than ever before. The law faces challenges as it continues to adapt to the needs of a complex and rapidly changing society. These challenges are highlighted in this text and serve to emphasize for readers the contemporary relevance of our ever-evolving American criminal law.

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New to the Sixth Edition

Chapter-Specific Changes

- In Chapter 1, stories and data were updated, recent federalism developments were added, and the discussion of common law was edited to be clearer. Throughout the text, Capstone Cases were moved closer to their textual references.
- In Chapter 2, as suggested by reviewers, the discussion of elements was refined to be clearer, as was the distinction between civil and criminal negligence.
- In Chapter 3, a new Capstone Case on *corpus delicti*, decided in 2013, was added, replacing *Smith v. Doe*, and the discussions of double jeopardy, *ex post facto*, and other constitutional matters were enlarged.
- In Chapter 4, the story of the Cannibal Cop in New York City was added to illustrate the line between thought and action for conspiracy and several edits were made including reductions in text length.
- In Chapter 5, discussion related to the shooting of a black teenager by a white police officer in Ferguson, Missouri, was added; the section on affirmative defenses was rewritten; and the discussion on the use of deadly force in self-defense was expanded.
- In Chapter 6, a new opening story featuring the horrific case of an insane mother who killed her children was added. Expanded discussions include recent cases to illustrate entrapment and insanity at the time of trial.
- In Chapter 7, a new opening story involving felony murder was added; a reduction in the size of the chapter (including the elimination of one Capstone Case) was made; discussion related to the causation and the death of James Brady was added; and a new Capstone Case, *Burrage v. United States* (2014), has been added.
- In Chapter 8, the Ariel Castro confinement and rape story from Ohio was added to open the chapter; a discussion of threat as a crime was added; a reordering of a couple of subjects was made as recommended by reviewers; the U.S. Supreme Court's 2015 *Whitfield* decision replaced a former Capstone Case; and a discussion of the recent movement at universities to require affirmative consent for sexual relations has been added.
- In Chapter 9, dated content was removed, recent large-scale computer crimes, such as the Target breach, are discussed; data was updated; and a new opening story to the section on arson was added.
- In Chapter 10, the discussion of witness and juror tampering was expanded. A new section on crimes against the honor and integrity of the United States—featuring the Supreme Court's 2012 decision in *Alvarez* as a new Capstone Case—was added.
- In Chapter 11, a new opening story featuring San Francisco's recently upheld nudity ordinance replaced the former opening story; and reviewer recommended reductions in content were made.
- In Chapter 12, the U.S. Supreme Court's decision in *Jungers* was added as a Capstone Case; data on terrorism and trafficking were updated; and references to recent legislative developments, some pending, in terrorism and trafficking were added.
- In Chapter 13, the story that gave rise to *Payne v. Tennessee* now opens the chapter; an expanded discussion of victims at law and factual victims, including public v. private prosecution, was added; crime data were updated, and a new chart comparing UCR and NCVS data was added.
- In Chapter 14, capital punishment data were updated to 2014, and recent Eighth Amendment decisions of the U.S. Supreme Court were added to the discussion of the death penalty.

Highlighted Features

Additional Case Applications

Additional Applications follow all of the Capstone Cases. Provided by Dr. John Forren of Miami University in Hamilton, Ohio, each Additional Application consists of a brief summary and holding of a case that relates to—and builds on—the issues addressed in the Capstone Case. Additional Applications appear where an important distinction in the application of the law will enhance students' understanding of the concept. The Additional Applications (1) delve deeply into the subject matter represented by Capstone Case opinions through the use of lower court cases and (2) attempt to grapple with issues and questions left unanswered by previous court decisions.

Additional Applications

Can courts retroactively apply a common law rule that defines a crime?

Rogers v. Tennessee, 532 U.S. 451 (2001)

The Case: During an altercation on May 6, 1994, Wilbert K. Rogers stabbed James Bowdery in the chest with a butcher knife, necessitating an emergency surgical procedure to repair Bowdery's heart. The stabbing victim survived the heart surgery; as a direct result of these events, though, Bowdery developed a condition known as cerebral hypoxia—which results from a loss of oxygen to the brain—and fell into a coma where he remained until his death 15 months later from a related kidney infection. Following Bowdery's death, Rogers was convicted by a Shelby County, Tennessee, trial court on second-degree murder charges. Rogers contested the charges on appeal, arguing that Tennessee's courts had long recognized a judicially created common law “year-and-a-day rule,” which provided that no defendant could be convicted of murder unless the victim had died by the defendant's act within 366 days of that act.

the law which had been expressed prior to the conduct at issue.” In this context, O'Connor reasoned, Rogers should have reasonably anticipated that the courts would rule Tennessee's one-year-and-a-day rule to be “an outdated relic” inappropriate for adherence in modern times.

In a spirited dissent, Justice Antonin Scalia (joined by three other members of the Court) voiced strong disagreement with the majority's conclusion that Rogers had “fair warning” that the common law rule in Tennessee was subject to retroactive rescission in his case. More fundamentally, Scalia attacked O'Connor's weighing of the relative fairness concerns in drawing a basic distinction between legislative and judicial changes in applicable criminal law principles. “Today's opinion,” Scalia wrote, “produces... a curious constitution that only a judge could love. One in which [by virtue of the *ex post facto* clause] the elected representatives of all the people cannot retroactively make murder what was not murder when the act was committed; but in which unelected judges can do precisely that. One in which the predictability of parliamentary lawmaking cannot validate the retroactive creation of crimes, but the predictability of judicial lawmaking can do so.”

Critical Thinking and Application Problems

At the end of each chapter, these problems based on real-life scenarios challenge students to think critically and apply their knowledge of the chapter material to real-life, contemporary legal problems.

CRITICAL THINKING AND APPLICATION PROBLEMS

The value of metals has been on the rise. Consequently, theft of metals, particularly copper and brass, has increased significantly. Thieves, who steal metals from homes, businesses, and automobiles, commonly sell their contraband to scrap metal dealers. Concerned about the growing metal theft business, the state legislature, with the governor's endorsement, enacts the following:

Section 1: Receiving Stolen Metals: Any person (or persons) who owns, operates, or is employed by a metal recycling business shall (1) make an inquiry into the source of all metals received, (2) photograph prospective sellers and the metals they offer for sale, (3) demand a copy of a photograph identification from the prospective seller, and (4) check the state stolen metals report to determine if the specific metals sold are registered as stolen and to determine if the prospective seller is a registered metals thief. If the metals appear on the report or the seller appears as a registered metals thief, the owner, operator, or employee shall not purchase the metals and shall report the offer of sale, and provide the photographs and other information collected under this section, to the appropriate local law enforcement agency within one hour. Violation of this section is a misdemeanor of the first degree. This section shall apply retroactively, to one year prior to its enactment.

Section 2: Registration as Metal Thief: To reduce theft and to prevent the sale of stolen metals, a state registry of metal thieves and stolen metals shall be established. Any person who is convicted in the state of stealing or receiving stolen metals or who is convicted of violating the Receiving Stolen Metals section above shall register with the Secretary of State. The Secretary of State shall establish and maintain a report of metal thieves, as well as a report of missing metals, which shall be made available to the

APPLYING THE CONCEPT

CAPSTONE CASE

Does the Eighth Amendment Bar the Admission of Victim Impact Evidence During the Penalty Phase of a Capital Trial?

Payne v. Tennessee, 501 U.S. 808 (1991)

CHIEF JUSTICE REHNQUIST delivered the opinion of the court.

In this case we reconsider our holdings in *Booth v. Maryland*, 482 U.S. 496 (1987), and *South Carolina v. Gathers*, 490 U.S. 805 (1989), that the Eighth Amendment bars the admission of victim impact evidence during the penalty phase of a capital trial.

THE CASE The petitioner, Pervis Tyrone Payne, was convicted by a jury on two counts of first-degree murder and one count of assault with intent to commit murder in the first degree. He was sentenced to death for each of the murders, and to 30 years in prison for the assault.

The victims of Payne's offenses were 28-year-old Charisse Christopher, her 2-year-old daughter Lacie, and her 3-year-old son Nicholas. The three lived together in an apartment in Millington, Tennessee, across the hall from Payne's girlfriend, Bobbie Thomas. On Saturday, June 27, 1987, Payne visited Thomas' apartment several times in expectation of her return from her mother's house in Arkansas, but found no one at home. On one visit, he left his overnight bag, containing clothes and other items for his weekend stay, in the hallway outside Thomas'

When the first police officer arrived at the scene, he immediately encountered Payne, who was leaving the apartment building, so covered with blood that he appeared to be "sweating blood." The officer confronted Payne, who responded, "I'm the complainant." When the officer asked, "What's going on up there?" Payne struck the officer with the overnight bag, dropped his tennis shoes, and fled.

Inside the apartment, the police encountered a horrifying scene. Blood covered the walls and floor throughout the unit. Charisse and her children were lying on the floor in the kitchen. Nicholas, despite several wounds inflicted by a butcher knife that completely penetrated through his body from front to back, was still breathing. Miraculously, he survived, but not until after undergoing seven hours of surgery and a transfusion of 1,700 cc's of blood—400 to 500 cc's more than his estimated normal blood volume. Charisse and Lacie were dead.

Charisse's body was found on the kitchen floor on her back, her legs fully extended. She had sustained 42 direct knife wounds and 42 defensive wounds on her arms and hands. The wounds were caused by 41 separate thrusts of a butcher knife. None of the 84 wounds inflicted by Payne were individually fatal; rather, the cause of death was most likely bleeding from all of the wounds.

Capstone Cases

The cases throughout the chapters have been updated and shortened. New cases include *Illinois v. Lara* and *People v. LaRosa* in Chapter 3, *Burrage v. United States* in Chapter 8, *United States v. Alvarez* in Chapter 10. Complete versions of the Capstone Cases, links to Web Extras and Legal Resources, a Guide to Reading Legal Citations, and topical learning modules can be accessed at www.pearsonhighered.com/careers.

Learning Objectives

The Learning Objectives at the beginning of each chapter have been shortened and rewritten in plain language to provide readers with a concise overview of what they can expect to learn from each chapter.

Criminal Law in the News

All Criminal Law in the News boxes have been replaced with entirely new stories drawn from today's media. New story topics include the following:

- The corporate criminal liability of British Petroleum for the 2010 Gulf oil spill
- The activities of Westboro Baptist Church members who protest at military funerals
- A honeymooner who may have been tried twice for the death of his new wife
- Gun rights in the wake of infamous mass shootings
- The use of the defense of addiction in cases of shoplifting
- Abortion doctors who were charged with murder under Maryland law
- Faith-healing parents who were convicted in the death of their son after refusing medical treatment
- Online piracy charges against New Zealand multimillionaire Kim Dotcom (aka Megaupload)
- A federal appellate court's action in overturning California's Proposition 8, which banned same-sex marriages
- The story of Colleen LaRose ("Jihad Jane")
- The role of DNA testing in identifying wrongful convictions
- The political scandal involving former Illinois Democratic Governor Rod Blagojevich

OBJECTIVES

After reading this chapter, you should be able to

- Describe the legal essence of criminal conduct.
- Explain *actus reus* and what constitutes a criminal act.
- Explain *mens rea* and the different types of intent.
- Describe strict liability offenses, and explain why some crimes are punished solely on the basis of strict liability.
- Summarize concurrence, and describe how concurrence relates to *mens rea* and *actus reus*.

CRIMINAL LAW IN THE NEWS

Politicians Who Violate the "Rule of Law" Get Tough Prison Sentences

The United States has always embraced the principle that no one, not even a powerful politician, can violate the law. George Washington, speaking about political power, advised, "never for a moment should it be left to irresponsible action." President Theodore Roosevelt added, "No man is above the law and no man is below it."

Today, enforcement of the "rule of law" appears to be stricter than ever, producing some eye-popping prison terms for convicted politicians. Former Illinois Democratic Gov. Rod Blagojevich was sentenced to 14 years in prison in 2011, more than twice the 6 1/2-year term given to his predecessor, former Republican Gov. George Ryan, who was convicted on federal fraud and racketeering charges in 2006.

Blagojevich was all over the news for his most notable crime, trying to sell President Obama's former Senate seat, and he was unrepentant until almost the end. But was he twice as guilty as Ryan, whose administration quashed a probe into bribes paid to state officials for issuing illegal truck drivers' licenses that led to highway deaths? And was Ryan twice as guilty as former Democratic Gov. Otto Kerner of Illinois, who got three years in prison in 1973 for



Former Illinois Democratic Gov. Rod Blagojevich, who was sentenced to 14 years in prison in 2011, for trying to sell President Obama's former Senate seat. What is the rule of law, and why is it important?
Tanner Maury/EPA/Newscom

Instructor Supplements

The following supplementary materials are available to support instructors' use of the main text:

- ***Instructor's Manual with Test Bank.*** Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank. TestGen. This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.
- ***PowerPoint Presentations.*** Our presentations offer clear, straightforward outlines and notes to use for class lectures or study materials. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable. To access supplementary materials online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming email, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.
- ***Alternate Versions eBooks.*** This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypearsonstore.com.
- ***Also available via REVEL™.*** REVEL™ is Pearson's newest way of delivering our respected content. Fully digital and highly engaging, REVEL replaces the textbook and gives students everything they need for the course. Seamlessly blending text narrative, media, and assessment, REVEL enables students to read, practice, and study in one continuous experience—for less than the cost of a traditional textbook. Learn more at pearsonhighered.com/revel.

STUDENT RESOURCES ONLINE

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Frank Schmalleger is the author of numerous articles and many books, including the widely used *Criminal Justice Today* (Pearson, 2015), *Criminology Today* (Pearson, 2017), and *Criminal Justice: A Brief Introduction* (Pearson, 2016). See his website at www.schmalleger.com.



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*Let reverence for the laws,
be breathed by every American mother,
to the lisping babe, that prattles on her lap;
let it be taught in schools, in seminaries, and in colleges;
let it be written in Primers, spelling books, and in Almanacs;
let it be preached from the pulpit, proclaimed in legislative halls,
and enforced in courts of justice.
And, in short, let it become the political religion of the nation;
and let the old and the young, the rich and the poor, the grave and
the gay,
of all sexes and tongues, and colors and conditions,
sacrifice unceasingly upon its altars.*

—ABRAHAM LINCOLN (1838)



The Nature and History of Criminal Law

Heide Benser/Corbis

CHAPTER OUTLINE

- Introduction
- What Is Criminal Law?
- Historical and Philosophical Perspectives
- Common Law Tradition
- Types of Crimes
- The Purposes of Criminal Law
- Sources of Criminal Law
- The Modern U.S. Legal System
- An Adversarial, Accusatorial Due-Process System
- The Rule of Law

OBJECTIVES

- After reading this chapter, you should be able to
- Define crime and criminal law.
 - Summarize the origins and development of criminal law.
 - Describe the role of common law in modern criminal law, and explain the differences between procedural and substantive criminal law.
 - Describe the various ways in which crimes can be classified, and list the four traditional types of crimes.
 - Identify the purposes served by criminal law.
 - Identify the various sources of criminal law, including the principle of *stare decisis*.
 - Describe the structure of the U.S. legal system, including jurisdiction.
 - Describe the adversarial and accusatorial qualities of the U.S. system of criminal justice.
 - Expound upon the “rule of law” and explain why due process is an integral part of the rule of law.

Law is the art of the good and the fair.

—Ulpian, Roman judge
(circa AD 200)

[D]ue process . . . embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due process is that which comports with the deepest notions of what is fair and right and just.

—Justice Hugo Black
(1886–1971)¹

The law is that which protects everybody who can afford a good lawyer.

—Anonymous

INTRODUCTION

In June 2000, Larico Garrett, 22, of Manchester, Connecticut, was arrested for car theft after he pulled the stolen vehicle he was driving into a convenience store parking lot to ask a police officer for directions to a nearby street.² Although he answered the man's questions, Officer Robert Johnson found the 2 AM encounter suspicious and ran a radio check of the license plate on the Cadillac that Garrett was driving. When dispatchers reported the vehicle stolen, Johnson summoned help and drove to the street where Garrett was headed. Garrett was arrested and charged under Connecticut law with taking a vehicle without the owner's permission, a misdemeanor punishable by less than a year in jail.

WHAT IS CRIMINAL LAW?

law

"That which is laid down, ordained, or established... a body of rules of action or conduct prescribed by controlling authority, and having binding legal force."¹

norms

Unwritten rules that underlie and are inherent in the fabric of society.

mores

Unwritten, but generally known, rules that govern serious violations of the social code.

morals

Ethical principles, or principles meant to guide human conduct and behavior; principles or standards of right and wrong.

crime

Any act or omission in violation of penal law, committed without defense or justification, and made punishable by the state in a judicial proceeding.

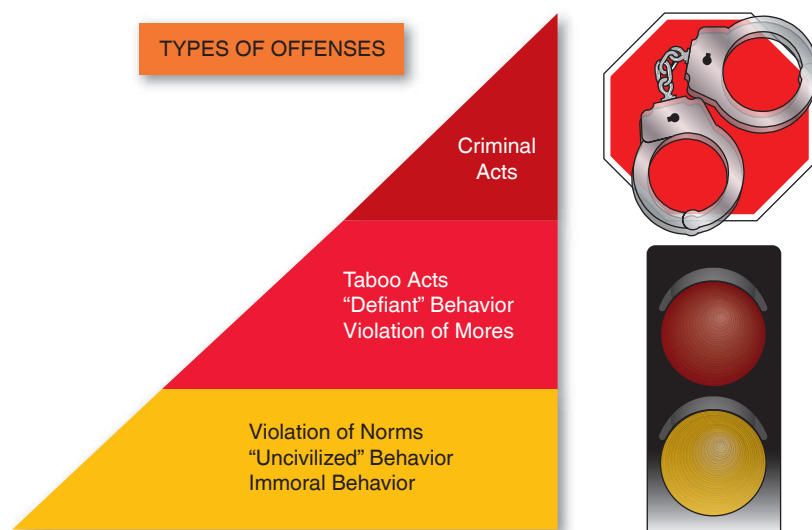
Although most people would agree that it is not very smart for a car thief to ask directions from a police officer, it is not a crime to be stupid. Car theft, of course, is another matter, and most forms of theft (which are discussed in greater detail in Chapter 9) violate the law. *Black's Law Dictionary*, an authoritative source on legal terminology, defines the word **law** as follows: "that which is laid down, ordained, or established... a body of rules of action or conduct prescribed by controlling authority, and having binding legal force."³

However, not all rules are laws, fewer still are criminal laws, and not all have "binding legal force." Sociologists, for example, distinguish between **norms** and **mores**, while philosophers and ethicists talk of **morals** and morality. Morals are ethical principles, and moral behavior is behavior that conforms to some ethical principle or moral code. Norms are rules that underlie and are inherent in the fabric of society. For example, it is regarded as inappropriate to belch in public. Anyone who intentionally violates a social norm may be seen as inadequately socialized (others might say "uncivilized"), offensive, and even dangerous (if the violation is a serious one) to an accepted way of life. When social norms are *unintentionally* violated (as may be the case with a belch at the dinner table), a mere request to be excused generally allows social interaction to proceed with little or no interruption. Mores, on the other hand, are rules that govern serious violations of the social code, including what social scientists call "taboos." Violations of both mores and norms are forms of deviance and can properly be called "deviant behavior." Even so, few violations of social norms are illegal, and fewer still are **crimes** (Figure 1-1). Because laws have not

FIGURE 1-1

Crime, Deviance, and Norm Violation.

Note: Although there are many ways rules can be violated, only a select few offenses are actually "criminal" acts.



been enacted against quite a large number of generally recognized taboos, it is possible for behavior to be contrary to accepted principles of social interaction and perhaps even immoral—but still legal. As you read through this book, it is important to remember that only human conduct that violates the criminal law can properly be called “criminal.” Although other forms of nonconformist behavior may be undesirable or even reprehensible, they are not crimes.⁴ Accordingly, the distinguishing characteristic between a crime and other deviance is the presence of a public prohibition and the authority of the government to enforce the prohibition.

Criminal law can be understood, then, as the body of rules and regulations that defines and specifies punishments for offenses of a public nature or for wrongs committed against the state or society. Criminal law is also called *penal law* and is usually embodied in the penal codes of various jurisdictions. In short, criminal law defines what conduct is criminal, and violations of the criminal law are referred to as *crimes*. As an academic field, criminal law also includes the study of defenses to criminal accusations.

“Law” is a solemn expression of the will of the supreme power of the state.

—Montana Code Annotated, Section 1–1–101

criminal law

The body of rules and regulations that defines and specifies punishments for offenses of a public nature or for wrongs committed against the state or society. Also called *penal law*.

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES

Laws in the United States have been shaped by a number of historical developments and philosophical perspectives. Criminal law, in particular, has been greatly influenced by natural law theories.

Natural and Positive Law

Natural law dates back to the Greek philosopher Aristotle. Adherents believe that some laws are fundamental to human nature and discoverable by human reason, intuition, or inspiration, without the need to refer to man-made laws. Such people believe that an intuitive and rational basis for many of our criminal laws can be found in immutable moral principles or some identifiable aspects of the natural order.

One authoritative source has this to say about natural law:

This expression, “natural law,” or *jus naturale*, was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his *nature*, meaning by that word his whole mental, moral, and physical constitution.⁵

Ideally, say natural law advocates, man-made laws should conform to principles inherent in natural law. The great theologian Thomas Aquinas (1225–1274), for example, wrote in his *Summa Theologica* that any man-made law that contradicts natural law is corrupt in the eyes of God.⁶ A philosophical outgrowth of natural law is natural rights theory. This theory holds that individuals naturally possess certain freedoms that may not be encroached upon by other individuals or governments.

A contrasting construct is **positive law**, which is simply the law that is enforced by the government. Natural law and natural rights philosophers don’t deny the authority of governments to establish positive law, but instead they believe such authority is bounded by the natural rights of individuals. Some positivists also contend that for law to be legitimate, it must be created and implemented in ways that are acceptable to most people (democratic or contractualist positivism).

Natural law principles continue to be influential in many spheres. The modern debate over abortion, for example, relies on the use of natural law

natural law

The rules of conduct inherent in human nature and in the natural order, which are thought to be knowable through intuition, inspiration, and the exercise of reason without the need to refer to man-made laws.

positive law

Law that is legitimately created and enforced by governments.

Law is born from despair of human nature.

—José Ortega y Gasset, Spanish philosopher
(1883–1955)
