

1.2: Criminal Law and Criminal Procedure

Learning Objective

Compare criminal law and criminal procedure.

The Distinctions Between Criminal Law and Criminal Procedure

This book focuses on **criminal law** (sometimes referred to as substantive criminal law), but it occasionally touches on issues of **criminal procedure** (sometimes referred to as procedural criminal law), so it is important to differentiate between the two.

Criminal law generally defines the *rights* and *obligations* of individuals in society. Some common issues in criminal law are the elements of specific crimes and the elements of various criminal defenses. **Criminal procedure** generally concerns the *enforcement* of individuals' rights during the criminal process. Examples of procedural issues are individuals' rights during law enforcement investigations, arrests, charge filings, trials, and appeals.

✓ Example 1.2.1

Clara and Linda go on a shopping spree. Linda insists that they browse an expensive department store. Moments after they enter the lingerie department, Linda surreptitiously places a bra in her purse. Clara watches, horrified, but does not say anything, even though a security guard is standing nearby.

This example illustrates two issues of criminal law: (1) Which crime did Linda commit when she shoplifted the bra? (2) Did Clara commit a crime when she failed to alert the security guard to Linda's shoplifting? You learn the answer to issue (1) in [Chapter 11](#) and issue (2) in [Chapter 4](#) and [Chapter 7](#).

✓ Example 1.2.2

Review the previous example. Assume that Linda and Clara attempt to leave the store and an alarm is activated. Linda begins sprinting down the street. Colin, a police officer, just happens to be driving by with the window of his patrol car open. He hears the store alarm, sees Linda running, and begins shooting at Linda from the car. Linda is shot in the leg and collapses. Linda is treated at the hospital for her injury, and when she is released, Colin arrests her and transports her to the police station. He brings her to an isolated room and leaves her there alone. Twelve hours later, he reenters the room and begins questioning Linda. Linda immediately requests an attorney. Colin ignores this request and continues to question Linda about the reason the department store alarm went off.

Whether Colin properly arrested and interrogated Linda are **criminal procedure** issues beyond the scope of this text; however, this example does illustrate one criminal law issue: Did Colin *commit a crime* when he shot Linda in the leg? You learn the answer to this question in [Chapter 5](#).



Figure 1.2 Criminal Law and Criminal Procedure

Key Takeaway

- Criminal law generally defines the rights and obligations of individuals in society. Criminal procedure generally concerns the enforcement of individuals' rights during the criminal process.

Exercises

? Exercise 1.2.1

Paul, a law enforcement officer, arrests Barney for creating a disturbance at a subway station. While Barney is handcuffed and facedown on the ground, Paul shoots and kills him. Paul claims that he accidentally grabbed his gun instead of his Taser. Do these facts raise a legal issue of criminal law, criminal procedure, or both? Why?

Answer

These facts potentially raise issues of *both criminal law* and *criminal procedure*. In relation to criminal law, despite Paul being a law enforcement officer, he may have committed a crime when he shot Barney while facedown in handcuffs. The question in this case is not whether the arrest was carried out properly, but whether a *crime was committed* after the arrest.

? Exercise 1.2.2

Read [Payton v. New York](#), 445 U.S. 573 (1980). In *Payton*, the US Supreme Court held a New York statute unconstitutional under the Fourth Amendment. Does the *Payton* ruling focus on criminal law or criminal procedure? Why?

Answer

Payton reviews a New York statute allowing law enforcement to arrest a defendant in the home without a warrant. This case focuses on law enforcement arrests, so it examines an issue of criminal procedure.

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