

## 1.7: End-of-Chapter Material

### Summary

A crime is action or inaction in violation of a criminal law. Criminal laws vary from state to state and from state to federal.

The study of criminal law defines crimes and defenses to crimes. The study of criminal procedure focuses on the enforcement of rights by individuals while submitting to government investigation, arrest, interrogation, trial, and appeal.

A civil lawsuit or civil litigation matter resolves a dispute between individuals, called a plaintiff (the injured party) and a defendant (the alleged wrongdoer). Every civil litigation matter includes a victim (the plaintiff), which has suffered harm. The goal of the civil litigation matter is to compensate the plaintiff for an injury. The court can compensate the plaintiff by awarding money, which is called damages. Both parties in a civil litigation matter must either represent themselves or hire private attorneys.

A criminal prosecution takes place when the government, represented by a prosecutor, takes legal action against the defendant (the alleged wrongdoer) for committing a crime. Some criminal prosecutions do not include a victim, or harm, because the goal of the criminal prosecution is punishment, not compensation. Every criminal prosecution involves the government, so the US and state constitutions provide the criminal defendant with extra protections not present in a civil lawsuit, such as free counsel when the defendant is indigent and facing incarceration.

Crimes can be classified according to the severity of punishment. The most serious crimes with the entire range of sentencing options available are felonies. Misdemeanors are less serious than felonies and have less severe sentencing options. Felony-misdemeanors can be prosecuted and punished as a felony or a misdemeanor, depending on the circumstances. Infractions, also called violations, are the least serious crimes and generally do not involve incarceration. The purposes of punishing a criminal defendant are both specific and general deterrence, incapacitation, rehabilitation, retribution, and restitution.

Law comes from three sources: the Constitution, a statute, or a case. The Constitution is the highest source of law but is only applicable when there is government action. Statutory law applies to individuals but is inferior to constitutional law. Case law is law made by judges when they rule on the facts of a case. Although case law is technically inferior to statutory law, judges must interpret statutes and the Constitution, so case law can be the most powerful source of law. When a case invalidates a statute as unconstitutional, this action is called judicial review. Case law stays consistent because judges follow previous court decisions, called precedent. This policy, called *stare decisis*, lends predictability to case law but is not absolute, and courts can deviate from it to update the law.

### You Be the Lawyer

Perform the exercises below. Read each prompt, review the fact pattern, and then decide whether you would accept or reject the case if you were the lawyer.

#### ? Exercise 1.7.1

You are an expert in *criminal law* and do not accept cases involving *civil litigation*. Read the following fact pattern and decide whether (and why) you would accept or reject this case:

John and David have been business partners for many years, running a successful bakery together. Recently, their relationship has become strained as sales have declined. One morning, John arrives at the bakery and discovers that the cash register is empty and \$500 is missing. The security camera footage shows David entering the bakery late the previous night after it had closed and accessing the cash register.

John is furious about the missing money and confronts David. David admits he took the money because he needed it to pay his rent and promises to pay it back. John does not believe him and wants to get the police involved.

After thinking it over, John decides not to contact the police but instead files a lawsuit against David to recover the \$500. John's lawsuit alleges that David stole the money and seeks repayment plus additional monetary damages.

#### Answer

You should **reject** the case. David's unauthorized taking of the \$500 potentially may be charged as larceny/theft, a criminal charge. However, John opted not to involve the police and instead filed a civil lawsuit. Thus, while David's actions could give rise to criminal charges, the actual legal case described is a civil matter based on how John wants to handle it.

### ? Exercise 1.7.2

You are an expert in *criminal law* but are not prepared to argue *criminal procedure* issues in court. However, another lawyer in your office, Jenna, is adept at handling criminal procedure issues. Read the following fact pattern and decide whether (and why) you or Jenna should handle the client's motion:

David (the client) is suspected of committing a burglary at a local jewelry store. Police obtained a search warrant for David's apartment based on an eyewitness who claims to have seen someone matching David's description leaving the jewelry store around the time of the burglary. While executing the search, police seized a bag full of jewelry and a crowbar from under David's bed.

David was arrested and charged with burglary. Before trial, David wants his attorney to file a [motion to suppress](#) the physical evidence (the jewelry and crowbar) found in the apartment to exclude it from trial.

#### Answer

**Jenna** should handle the client's motion. This fact pattern touches on both substantive criminal law (the burglary charge) and criminal procedure issues (the Fourth Amendment search and seizure questions). Although David's arrest and burglary charge is a substantive criminal case, the pretrial motion to suppress implicates criminal procedure rules regarding search warrants and evidence collection.

### ? Exercise 1.7.3

You are an expert in *criminal law* but do not accept cases involving *constitutional law*. Read the following fact pattern and decide whether (and why) you would accept or reject this case:

Police obtained an arrest warrant for Mr. Dominic Pérignon, who was suspected of involvement in drug distribution. Police developed a plan with a news reporter and photographer to enter Pérignon's home and execute the arrest warrant. The media would accompany the police to document the arrest.

The next day, police and media entered the Pérignon's home to execute the warrant, and the photographer took photos of Pérignon being brought into the living room, handcuffed and in his underwear. Pérignon's parents and siblings were also present.

Pérignon was arrested and charged with drug crimes based on evidence found in the home during the arrest. He was later acquitted at trial.

Pérignon wants you to represent him in suing the police for damages under [42 U.S.C. §1983](#), alleging the presence of media during the arrest violated the Fourth Amendment.

#### Answer

This scenario is based on [Wilson v. Layne](#), 526 U.S. 603 (1999). The US Supreme Court held that it is unconstitutional under the Fourth Amendment when law enforcement brings media along while executing a search inside the home, particularly given that including media was outside the scope of the search warrant. Thus this is a constitutional issue and you should **reject** the case.

### ? Exercise 1.7.4

Reread the question in Exercise 3 and now assume you have expertise in constitutional law as it applies to *criminal prosecutions*. Would you **accept** or **reject** Pérignon's case (and why)?

#### Answer

Although this case involves the Fourth Amendment (thus, constitutional law), it is a *civil litigation* matter because your client wants to sue for damages. Thus, you should **reject** the case.

## Cases of Interest

- *Padilla v. Gonzales*, 397 F.3d 1016 (2005), discusses *malum in se* and *malum prohibitum* crimes.
- *Rogers v. Tennessee*, 532 U.S. 451 (2001), discusses a state's ability to create a common-law crime.

## Articles of Interest

- Paul H. Robinson and Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, Faculty Scholarship at Penn Carey Law, 131 (2007).
- Congressional Research Service and Legal Information Institute, U.S. Constitution, Annotation, *Historical Background on Stare Decisis Doctrine* (last visited Aug. 15, 2023).

## Websites of Interest

- [Federal criminal statutes](#)
- [State criminal statutes](#)
- [United States Constitution](#) (with annotations/explanations)
- [State constitutions](#)

## Statistics of Interest

- [National Archive of Criminal Justice Data](#)
- [U.S. Bureau of Justice Statistics](#)

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