

## 2.5: End-of-Chapter Material

### 2.5.1 Summary

The United States's system of government is called federalism and consists of one federal government regulating issues of a national concern and separate state governments regulating local issues. The bulk of criminal lawmaking resides with the states because of the police power granted to the states in the [Tenth Amendment](#). Ninety percent of all criminal laws are state laws. Many federal crimes are also state crimes, and a defendant can be prosecuted federally and by a state without triggering double jeopardy protection. If a federal statute exists on an issue, a state statute cannot conflict with it because of the Constitution's Supremacy Clause.

The Constitution sets forth three branches of government. The legislative branch consists of Congress and has the authority to create laws. The executive branch is headed by the president of the United States and has the authority to enforce the laws created by the legislative branch. The judicial branch is headed by the U.S. Supreme Court and has the authority to interpret laws and the Constitution. Each branch checks and balances each other, and the judicial branch ensures that no branch oversteps its authority and violates separation of powers. State governments mimic the federal branches of government at the state level and set forth authorities in each state's constitution.

The federal court system exclusively adjudicates federal matters and consists primarily of the U.S. District Court, the U.S. Court of Appeals or Circuit Court, and the U.S. Supreme Court. Each state has its own court system consisting primarily of a trial court, intermediate court of appeal, and possibly a high court of appeal. Trial courts have original jurisdiction and can accept evidence. Appellate courts have appellate jurisdiction and are limited to reviewing the trial courts' decisions for error.

Each party in a civil or criminal trial must meet a burden of proof, which consists of a burden of producing evidence and a burden of persuading the trier of fact. The burden of proof for a civil plaintiff or defendant is preponderance of evidence, which means that the trier of fact must be convinced it is more likely than not that a party should prevail. The burden of proof for the prosecution in a criminal case is beyond a reasonable doubt, which is a stricter standard than preponderance of evidence and consists of enough compelling evidence to rebut the defendant's presumption of innocence. The burden of proof for a criminal defense varies but is often preponderance of evidence. Inferences, which are conclusions the trier of fact may make, and presumptions, which are conclusions the trier of fact must make, can help meet the burden of proof. The evidence presented to meet the burden of proof can be circumstantial, which indirectly proves a fact, or direct, which directly proves a fact. Circumstantial evidence leaves room for reasonable doubt, but it can be reliable and the basis of a successful criminal prosecution.

### 2.5.2 You Be the Juror

Read the prompt, review the case, and then decide whether enough evidence exists to meet the burden of proof. Check your answers using the answer key at the end of the chapter.

1. The defendant was convicted of possession of a handgun with an altered serial number. The defendant contended that he *did not know* the serial number had been altered. The prosecution offered evidence that the gun was "shiny" in the location of the serial number. The prosecution also proved that the defendant was in possession of the handgun for a week. Is this sufficient evidence to prove beyond a reasonable doubt that the defendant knew the serial number had been altered? Read *Robles v. State*, 758 N.E.2d 581 (2001). The case is available at this link: [http://scholar.google.com/scholar\\_case?case=7369971752262973607&q=Indiana+2001+%22Robles+v.+State%22&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=7369971752262973607&q=Indiana+2001+%22Robles+v.+State%22&hl=en&as_sdt=2,5).
2. The defendant was convicted of attempted first-degree murder of a peace officer when he shot a sheriff. The defendant contended that he *did not know* the victim was a peace officer. The sheriff was in a vehicle with a whip antenna, was armed, and was well known as a sheriff in Angola Prison, where the defendant was incarcerated previous to the shooting incident. However, the sheriff was in an unmarked car with the red light covered, out of uniform, and his badge was obscured. Is this sufficient evidence to prove beyond a reasonable doubt that the defendant knew the victim was a peace officer? Read *Donahue v. Burl Cain*, 231 F.3d 1000 (2000). The case is available at this link: <http://openjurist.org/231/f3d/1000/larry-donahue-v-burl-cain>.
3. The defendant was convicted of third-degree robbery, which requires a threat of immediate use of physical force. The defendant entered a McDonald's restaurant twenty minutes before closing dressed in sunglasses, a leather jacket, and a bandana that covered his hair. The defendant beckoned the clerk and thereafter demanded that she put money from different cash register drawers into his bag. The defendant did not appear armed, nor did he raise his voice or verbally threaten the clerk. Is this

sufficient evidence to prove beyond a reasonable doubt that the defendant threatened immediate use of physical force? Read *State v. Hall*, 966 P.2d 208 (1998). The case is available at this link: [www.publications.ojd.state.or.us/S44712.htm](http://www.publications.ojd.state.or.us/S44712.htm).

4. The defendant was convicted of possession of cocaine with intent to sell. The defendant possessed seven individual packages of white powdery substance, but only one package was tested (and it tested positive for cocaine). Is this sufficient evidence to prove beyond a reasonable doubt that the defendant possessed cocaine with intent to sell? Read *Richards v. Florida*, No. 4008-4216 (2010). The case is available at this link: <http://www.4dca.org/opinions/June%202010/06-09-10/4D08-4216.op.w-dissent.pdf>.

### 2.5.3 Answers to Exercises from Section 2.1

1. Congress gets the authority to criminalize conduct involving the Internet from the commerce clause because the Internet includes economic activity and *crosses state lines*. Both the federal and state government can prosecute the defendant under federal and state criminal statutes for one act without violating double jeopardy.
2. The U.S. Supreme Court relied on the commerce clause and the Fourteenth Amendment. Specifically, the Court ruled that gender-motivated crimes of violence are not *economic activity* and do not have a *national* effect, so the commerce clause does not support federal legislation in this area. Furthermore, the Court held that the Fourteenth Amendment due process clause is targeted at state government action, not *individual* defendants, so it is likewise inapplicable.
3. The U.S. Supreme Court held that the Pennsylvania Sedition Act is *superseded* by the Smith Act, 18 U.S.C. § 2385. Specifically, the Court referenced the supremacy of federal law on the same topic, thereby preempting the state statute.

### 2.5.4 Answers to Exercises from Section 2.2

1. The mayor is violating separation of powers because members of the executive branch cannot invalidate or supersede laws passed by the legislative branch; only the *judicial* branch is entitled to do this via *judicial review*. The judicial branch should check and balance this action, *if* someone attacks the mayor's policy in court.
2. The U.S. Supreme Court did not uphold President Truman's action and ruled that he was violating *separation of powers*. A statute on point already disallowed the president's action (the Taft-Hartley Act). The president cannot supersede Congress's authority by ignoring a constitutional statute that Congress enacted, even during wartime.
3. The U.S. Supreme Court reversed the U.S. Court of Appeals for the Fourth Circuit. The Court held that the judicial branch is not required to allow unconstitutional federal statutes to remain in effect during wartime because of *separation of powers*. The Court determined that the detainee's constitutional right to due process allowed him access to an attorney and a court trial, in spite of the federal statute.

### 2.5.5 Answers to Exercises from Section 2.3

1. Jenna cannot appeal to the U.S. Supreme Court because she does not appear to have a *federal* issue. Parties can appeal from a state's highest level appellate court directly into the U.S. Supreme Court, but the U.S. Supreme Court is a federal court and only has the jurisdiction to hear federal matters. Jenna cannot meet the criteria of diversity jurisdiction or diversity of citizenship because even if she and Max are citizens of different states, the amount in controversy is too low (it needs to be at least \$75,000).
2. The U.S. Court of Appeals for the Tenth Circuit held that there *was jurisdiction*, in spite of the absence of a trial. The court also held that the extraordinary circumstances compelled a reversal of the district court order denying a motion to dismiss the defendants' indictment. The court essentially ruled that the defendants had a right not to be tried.
3. The U.S. Supreme Court held that a corporation is a citizen of its state of incorporation *and* the state in which its *principal place of business* is located. The principal place of business is the "nerve center state," which is the state that houses the corporate headquarters.

### 2.5.6 Answers to Exercises from Section 2.4

1. Bria will not be successful with the insanity defense because she cannot meet the burden of proof, which is **preponderance of evidence**. Preponderance of evidence is a fairly low standard, but Bria must still convince the trier of fact that it is more likely than not she is insane. She cannot do this with her testimony, standing alone. Clearly, Bria has an important *self-interest* in eliminating her criminal responsibility in this case. Thus her *subjective* testimony regarding her own mental state is not compelling enough to meet the 51 percent to 49 percent standard.
2. The U.S. Supreme Court held that it is *constitutional* to put the burden of proving extreme emotional disturbance on the defendant, reducing murder to manslaughter. The Court held that this did not relieve the prosecution of the burden of proving

every element of murder beyond a reasonable doubt and thus was in compliance with the **due process clause** of the Constitution.

3. The U.S. Supreme Court held that a constitutionally deficient jury instruction on the definition of beyond a reasonable doubt was a *prejudicial error* and required a reversal of the defendant's conviction for murder. The Court determined that the improper jury instruction deprived the defendant of his Sixth Amendment right to a jury trial.

### 2.5.7 Answers to You Be the Juror

1. The Indiana Court of Appeals held that there was **sufficient** evidence to prove beyond a reasonable doubt that the defendant knew the serial numbers on the gun had been altered. The appearance of the gun and the defendant's week-long possession were enough for a reasonable juror to infer knowledge.
2. The U.S. Court of Appeals for the Fifth Circuit held that there was **insufficient** evidence to prove beyond a reasonable doubt that the defendant knew the victim was a peace officer. The court held that a reasonable juror could not infer knowledge from the whip antennae and the victim's job at Angola prison.
3. The Supreme Court of Oregon held that there was **sufficient** evidence to prove beyond a reasonable doubt that the defendant threatened immediate use of physical force. The court held that the defendant's appearance, combined with the lateness of the hour and the demands for money, could be an implicit threat under the circumstances.
4. The District Court of Appeal of Florida held that there was **sufficient** evidence to prove beyond a reasonable doubt that the defendant possessed cocaine with the intent to sell. The court pointed out that the criminal statute at issue did not require a specified quantity of cocaine. The court also reasoned that a jury could infer from the packaging and expert testimony that the other packages also contained cocaine.

### 2.5.8 Cases of Interest

- *Clinton v. Jones*, 520 U.S. 681 (1997), discusses separation of powers: [http://scholar.google.com/scholar\\_case?case=1768307810279741111&q=Clinton+v.+Jones&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=1768307810279741111&q=Clinton+v.+Jones&hl=en&as_sdt=2,5).
- *Gonzales v. Raich*, 545 U.S. 1 (2005), discusses the reach of the commerce clause: [http://scholar.google.com/scholar\\_case?case=15669334228411787012&q=%22criminal+burden+of+proof%22&hl=en&as\\_sdt=2,5&as\\_ylo=2000](http://scholar.google.com/scholar_case?case=15669334228411787012&q=%22criminal+burden+of+proof%22&hl=en&as_sdt=2,5&as_ylo=2000).
- *Sabri v. United States*, 541 U.S. 600 (2004), discusses the federal government's ability to criminalize bribery of a local government official: <http://www.law.cornell.edu/supct/html/03-44.ZS.html>.
- *U.S. v. Comstock*, 627 F.3d 513 (2010), discusses criminal and civil burdens of proof: [http://scholar.google.com/scholar\\_case?case=15669334228411787012&q=%22criminal+burden+of+proof%22&hl=en&as\\_sdt=2,5&as\\_ylo=2000](http://scholar.google.com/scholar_case?case=15669334228411787012&q=%22criminal+burden+of+proof%22&hl=en&as_sdt=2,5&as_ylo=2000).

### 2.5.9 Articles of Interest

- Connections between federalism and homeland security: <http://www.hsaj.org/?fullarticle=2.3.4>
- Video court: <http://www.businessweek.com/ap/financialnews/D9N3D24G0.htm>
- Burden of proof: <http://law.jrank.org/pages/18346/Burden-Proof-Criminal-Civil.html>
- Federal and state court systems: [www.uscourts.gov/EducationalResources/FederalCourtBasics/CourtStructure/UnderstandingFederalAndStateCourts.aspx](http://www.uscourts.gov/EducationalResources/FederalCourtBasics/CourtStructure/UnderstandingFederalAndStateCourts.aspx)

### 2.5.10 Websites of Interest

- U.S. Supreme Court: <http://www.supremecourt.gov>
- Federal courts: <http://www.uscourts.gov/Home.aspx>
- Civic participation: <http://www.congress.org>

### 2.5.11 Statistics of Interest

- U.S. Supreme Court: [http://www.allcountries.org/uscensus/356\\_u\\_s\\_supreme\\_court\\_cases\\_files.html](http://www.allcountries.org/uscensus/356_u_s_supreme_court_cases_files.html)

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