

3.6: Classifications of Law

In this section of the chapter, we turn to the various ways that criminal law has been classified. Classification schemes allow us to discuss aspects or characteristics of the criminal law. Some classifications have legal significance, meaning that how a crime is classified may make a difference in how the case is processed or what type of punishment can be imposed. Some classifications historically mattered (had legal significance), but no longer have much consequence. Finally, some classifications have no legal significance, meaning the classification exists only to help us organize our laws.

Classifications Based on the Seriousness of the Offense

Legislatures typically distinguish crimes based on the severity or seriousness of the harm inflicted on the victim. The criminal's intent also impacts the crime's classification. Crimes are classified as **felonies** or **misdemeanors**. Certain, less serious, behavior may be classified as criminal **violations** or **infractions**. The term **offense** is a generic term that is sometimes used to mean any type of violation of the law, or it is sometimes used to mean just misdemeanors or felonies. Although these classification schemes may seem pretty straight forward, sometimes states allow felonies to be treated as misdemeanors and misdemeanors to be treated as either felonies or violations. For example, California has certain crimes, known as **wobblers**, that can be charged as either felonies or misdemeanors at the discretion of the prosecutor upon consideration of the offender's criminal history or the specific facts of the case.

The distinction between felonies and misdemeanors developed at common law and has been incorporated in state criminal codes. At one time, all felonies were punishable by death and forfeiture of goods, while misdemeanors were punishable by fines alone. Laws change over time, and as capital punishment became limited to only certain felonies (like murder and rape), new forms of punishment developed. Now, felonies and misdemeanors alike are punished with fines and/or incarceration. Generally, felonies are treated as serious crimes for which at least a year in prison is a possible punishment. In states allowing capital punishment, some types of murder are punishable by death. Any crime subject to capital punishment is considered a felony. Misdemeanors are regarded as less serious offenses and are generally punishable by less than a year of incarceration in the local jail. Infractions and violations, when those classifications exist, include minor behavior for which the offender can be cited, but not arrested, and fined, but not incarcerated.

The difference between being charged with a felony or misdemeanor may have legal implications beyond the length of the offender's sentence and in what type of facility an offender will be punished. For example, in some jurisdictions, the authority of a police officer to arrest may be linked to whether the crime is considered a felony or a misdemeanor. In many states the classification impacts which court will have the authority to hear the case. In some states, the felony-misdemeanor classification determines the size of the jury.

Classifications Based on the Type of Harm Inflicted

Almost all state codes classify crimes according to the type of harm inflicted. The Model Penal Code uses the following classifications:

- Offenses against persons (homicide, assault, kidnapping, and rape, for example)
- Offenses against property (arson, burglary, and theft, for example)
- Offenses against family (bigamy and adultery, for example)
- Offenses against public administration (e.g., bribery, perjury, escape)
- Offenses against public order and decency (e.g., fighting, breach of peace, disorderly conduct, public intoxication, riots, loitering, prostitution)

Classifications based on the type of harm inflicted may be helpful for the purpose of an organization, but some crimes such as robbery may involve both harms to a person and property. Although generally, whether a crime is a person or property crime may not have any legal implications when a person is convicted, it may matter if and when the person commits a new crime. Most sentencing guidelines treat individuals with prior person-crime convictions more harshly than those individuals with prior property-crime convictions. That said, it is likely that the defense will argue that it is the facts of the prior case that matter not how the crime was officially classified.

Mala in se Mala Prohibita Crimes

Crimes have also been classified as either ***mala in se*** (inherently evil) or ***mala prohibita*** (wrong simply because some law forbids them). *Mala in se* crimes, like murder or theft, are generally recognized by every culture as evil and morally wrong. Most offenses that involve injury to persons or property are *mala in se*. All of the common law felonies (murder, rape, manslaughter, robbery, sodomy, larceny, arson, mayhem and burglary) were considered *mala in se* crimes. *Mala prohibita* crimes, like traffic violations or drug possession, are acts that are crimes not because they are evil, but rather because some law prohibits them. Most of the newer crimes that are prohibited as part of a regulatory scheme are *mala prohibita* crimes.

Substantive and Procedural Law

Another classification scheme views the law as either substantive law or procedural law. Both criminal law and civil law can be either substantive or procedural. Substantive criminal law is generally created by statute or through the initiative process and defines what conduct is criminal. For example, substantive criminal law tells us that Sam commits theft when he takes Joe's backpack if he did so without Joe's permission if he intended to keep it. Substantive criminal law also specifies the punishment Sam could receive for stealing the backpack (for example, a fine up to \$500.00 and incarceration of up to 30 days). The substantive law may also provide Sam a defense and a way to avoid conviction. For example, Sam may claim he reasonably mistook Joe's backpack as his own and therefore can assert a mistake of fact defense. Procedural law gives us the mechanisms to enforce substantive law. Procedural law governs the process for determining the rights of the parties. It sets forth the rules governing searches and seizures, investigations, interrogations, pretrial procedures, and trial procedures. It may establish rules limiting certain types of evidence, establishing timelines, as well as require the sharing of certain types of evidence and giving a certain type of notice. The primary source of procedural law is judicial interpretations of the federal constitution and state constitutions, but state and federal statutes, particularly those adopting rules of evidence, also provide much of our procedural law.

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