



# Class 1

## Criminal Law

# Why Punish?

- 1. Incapacitation** - preventing that person from committing another crime
  - ▶ A person is much less likely to commit a crime if he's sitting in prison
  - ▶ Most relevant for violent criminals
- 2. Rehabilitation** - preparing the criminal to re-enter society as a productive citizen
  - ▶ Today, in the U.S., this is somewhat out of favor
- 3. Deterrence** - (the main factor as far as economists are concerned)
  - ▶ General deterrence - prevents other people from committing crimes because of the fear of punishment
  - ▶ Special Deterrence - prevents the offender from committing the same crime again

# Why Punish (cont.)

4. **Retribution** - “Vindicate” society’s need to exact vengeance on the person who breached society’s rules.
- This is more of a factor that you might think;
  - Punishment is often based on the results of the criminal act, rather than the intent of the criminal when committing the act
  - *Food for thought: Which of these does the death penalty address?*

# General Notes about Types of Crimes

- ▶ Criminal law is designed to enforce the general societal notion that all people should behave in a civilized manner toward each other. There are two general categories of crime:
- ▶ *Malum in se*:
  - ▶ These acts (crimes) are inherently evil (e.g., murder, robbery, rape);
  - ▶ Thus ignorance of the law for these crimes is never a defense!
- ▶ *Malum Prohibitum*:
  - ▶ These acts are crimes only because the state or other governing body has criminalized the act illegal through statutes (i.e., tax law, securities regulation, traffic regulation)
  - ▶ Ignorance of the law is sometimes an excuse in these cases
- ▶ Is a crime ever justified (not defended against- justified!)?
- ▶ ***Regina v. Dudley and Stephens, (1884) 14 QBD 273 DC***
  - ▶ This is an old English case which established a precedent in common law.

# Sources of Criminal Law

- Generally left to state criminal codes
- Under our federalist system, the administration and enforcement of criminal laws were left to the states; but
- There is a large (and ever widening) body of federal criminal law; mostly having to do with crimes that affect interstate commerce or the civil rights of American citizens.
- Unlike civil cases, criminal cases involving federal crimes are tried in federal court; while those involving state crimes are tried in state court.

# Sources of Criminal Law (cont.)

## ► Model Penal Code

- Written by a groups of criminal law experts in the hope of standardizing criminal law around the country

Results:

- Many states have ignored it
- Some states have allowed it to influence their criminal codes
- Some states have adopted parts of the MPC
- No state has adopted the MPC in full

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# QUIZ TIME!



# Criminal Law – Safeguards to Protect the Innocent

- ▶ Standard of proof: Every element of a crime must be proven “**beyond a reasonable doubt**”
- ▶ The accused is presumed innocent until proven guilty
- ▶ Trial by Jury
  - ▶ Jurors are triers of facts, not triers of law; but jurors can “nullify” a criminal law, by finding a defendant “not guilty” even if they believe he is guilty
  - ▶ Jury verdicts for criminal cases must consist of at least 6 members and must be unanimous in order to convict a defendant



# Criminal Law – Safeguards to Protect the Innocent (cont.)

- ▶ Impartial judge and jury
- ▶ No “double jeopardy” and no appealing acquittals by the government
- ▶ Right to be represented by counsel (appointed for indigent defendants)
- ▶ Right to appeal a conviction at least one level (and the right to an attorney for that appeal)
- ▶ No Ex Post Facto Criminal Laws
- ▶ No Bills of Attainder



# Criminal Law – Safeguards to Protect Everybody, Even the Guilty

- ▶ No unreasonable searches and seizures
- ▶ No excessive bail:
  - ▶ Bail is only supposed to assure the defendant's presence at trial; not designed to punish or to protect society; remember, the defendant is still presumed innocent
  - ▶ Bail amounts can be based on:
    - ▶ flight risk
    - ▶ seriousness of the charge
    - ▶ ties to the community
- ▶ No cruel and unusual punishment; this includes:
  - ▶ excessive sentences
  - ▶ cruel punishments
  - ▶ punishments for actions a person could not control
  - ▶ punishing a protected group (gender, age, race, disabilities, etc.)

# Statutory Interpretation

- ▶ Criminal statutes are often broadly worded and require the courts to interpret them
- ▶ Factors that can be involved in statutory interpretation:
  - ▶ General usage of the words involved
  - ▶ Changing public perceptions of morality and wrongfulness (?)
- ▶ *McBoyle v. United States*, 283 U.S. 25 (1931)
- ▶ *Smith v. United States*, 508 U.S. 223 (1993)
- ▶ The doctrine of **lenity**:
  - ▶ If a criminal law statute is ambiguous, it must then be interpreted in favor of the defendant
- ▶ “**Void for vagueness**” doctrine: If a criminal statute is unclear as to which acts constitute the crime proscribed by the statute, the law is void (often applicable to freedom of speech cases).