

Terms 1

Key Criminal Procedure Terms/Concepts

1. **Criminal Law vs. Civil Law.** Our society responds to social harms in two ways -- through legal sanctions and non-legal sanctions. Legal sanctions consist of: (1) **criminal law** -- those laws for redressing public wrongs that injure society in general, and (2) **civil law** -- those laws for redressing private wrongs to individuals.

2. **Criminal law** consists of two main branches -- **substantive criminal law** and **procedural criminal law**. **Substantive criminal law** prohibits certain forms of conduct by defining what acts constitute crimes and establishing the parameters of penalties. **Procedural criminal law** regulates the enforcement of the substantive criminal law, the determination of guilt, and the punishment of those found guilty of crimes.

3. **Criminal Procedure.** The branch of the criminal law that deals with the processes by which crimes are investigated, prosecuted, and punished. Thus, procedural criminal law is the process followed by police and the courts in the apprehension and punishment of criminals from the filing of a complaint by a member of the public or the arrest of a suspect by the police, up to the time the defendant is sent to jail, or, if convicted, to prison.

4. **English Common Law.** The body of decisional law based largely on custom as declared by English judges after the Norman Conquest of 1066. The common law doctrine of following **precedent**, known as **stare decisis** (literally, "To abide by, or adhere to, decided cases" or "Let the decision stand.") remains an important component of both the English and American legal systems today. English common law was based primarily on custom, tradition, and precedent rather than a formal written legal code. Over centuries of experience, the common law became the major influence on the development of American criminal law both before and after the American Revolution. After the Revolution, the common law continued to be the basic law of most states. However, today almost all common law principles and rules have been enacted by legislative bodies into statutes with modern variations.

5. **The Codification Movement.** In the 19th and 20th centuries, reformers called for abolition of the common law as the basis for American criminal law and the enactment by legislatures of **statutory criminal codes**. As a result, most modern American substantive and procedural criminal law is prescribed by statutory law and decisional -- or case -- law. However, the common law still plays a large part in American criminal law.

6. **Three fundamental principles** are at work in the system of criminal law and procedure that exists in this country: (1) **constitutional supremacy**, (2) **federalism**, and (3) **separation of powers**.

7. Under the **U.S. Constitution**, our system of governance is founded on the concept of **federalism** or **dual sovereignty** which means that federal and state governments are each considered sovereign in their own right. In one respect, this federal system of government leads to the creation of a **dual court system**, meaning that there is one court system for federal cases and another for state cases. Yet, these federal and state court systems have much in common and are joined institutionally at the top in the **Supreme Court of the United States**, the highest court in the land.

8. **U.S. Constitution.** The supreme law of the United States, adopted in 1787 and ratified by the states in 1789.

9. **Bill of Rights.** The **first ten amendments** to the U.S. Constitution, proposed by the Congress and ratified by the states in 1791. The Bill of Rights is the major source of constitutional principles, individual rights, and limitations affecting American procedural criminal law. The amendments and other constitutional provisions included in the Constitution constitute the most important procedural safeguards available to a person suspected or accused of a crime in the United States.

10. **14th Amendment, U.S. Constitution.** Important post-Civil War amendment **applicable to the states**, through which the U.S. Supreme Court has applied most of the protections included in the Bill of Rights to state criminal law proceedings.

11. **Due Process of Law.** Constitutional concept that refers to procedural and substantive rights of persons against government actions that threaten the denial of life, liberty, or property. This phrase -- referred to as the **Due Process Clause** -- appears in both the **5th and 14th Amendments to the U.S. Constitution**.

12. **Equal Protection of the Laws.** Constitutional requirement that government must afford the same legal protections to all persons. This phrase -- referred to as the **Equal Protection Clause** -- appears in the **14th Amendment**.

13. **The Incorporation Controversy.** The historic issue over whether individual rights included in the federal Bill of Rights protect against violations of rights by the federal government only, or also limit what state government officials can do. During the 20th century, the U.S. Supreme Court used a **selective incorporation approach** to apply “fundamental rights” contained in the U.S. Constitution that protect criminal defendants in federal proceedings to state criminal proceedings through the **Due Process Clause of the 14th Amendment**. Through this decades-long process, the Court incorporated almost all of the Bill of Rights and other constitutional safeguards for criminal defendants to state criminal law proceedings. These constitutional protections now constitute a **minimal national standard for criminal justice proceedings**. These decisions by the Supreme Court are crucial for our criminal justice system because most criminal prosecutions occur in the states rather than in federal jurisdictions.

14. **Judicial Review.** Power of courts of law to review governmental acts and declare

them null and void if they are found to be unconstitutional.

15. The Legal Limitations of Prosecution in a Criminal Case: (1) jurisdiction, (2) venue (location of a case), (3) extradition (personal jurisdiction), (4) statutes of limitations (time limits), (5) double jeopardy (also known as former jeopardy), and (6) ex post facto limitations.

16. Jurisdiction. Power of a sovereign state to affect the rights of persons, whether by legislation, executive decree, or judgment of a court. Jurisdiction relates to the **authority of a court over the person, subject matter, and geographical area.**

17. Venue. Place or territory in which a criminal case is tried. Venue refers to the place or locality of a trial or hearing.

18. Extradition. Surrender of a person by one jurisdiction to another for the purpose of criminal prosecution.

19. Statute of Limitations. (1) A law providing that a crime must be prosecuted within a certain period of time or else it lapses and can no longer be prosecuted; (2) A law proscribing prosecutions for specific crimes after specified periods of time.

20. Double Jeopardy. Successive prosecutions of a defendant for the same offense by the same jurisdiction, and/or, being punished more than once for the same offense. The **Double Jeopardy Clause, 5th Amendment, U.S. Constitution**, provides that no person be “subject for the same offense to be twice put in jeopardy of life or limb.”

21. Ex Post Facto Laws. A retroactive law that criminalizes actions that were legal at the time they were taken, or increases punishment for a criminal act after it was committed. **Article I, sections 9 and 10, U.S. Constitution**, prohibit Congress and state legislatures from enacting ex post facto laws. The constitutional prohibition in this instance applies only to criminal statutes.

22. Probable Cause. More than bare suspicion. Probable cause exists when the facts and circumstances within police officers’ knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a criminal offense has been or is being committed. In searches and seizures, the issue of probable cause focuses on whether the property to be seized is connected with criminal activity and whether it can be found in the place to be searched. In the context of arrests, probable cause has essentially the same meaning as in the case of searches and seizures, that is, an officer must have sufficient trustworthy information to conclude reasonably that a crime has occurred and that the suspect probably committed it.

23. Reasonable Suspicion. A trained police officer’s belief based on all relevant circumstances that criminal activity is afoot.

24. **Levels of Proof Required in a Criminal Trial or Hearing.** For proof of crimes in a trial setting, the degrees of certainty required by law to establish the truth of an act or happening.

25. **Reasonable Doubt Standard.** Required standard of proof of guilt in a criminal case. **Guilt must be proved beyond a reasonable doubt.** Held by the Supreme Court to be an implicit requirement of constitutional due process.

26. **Clear and Convincing Evidence Standard.** An evidentiary standard that is higher than the standard of “preponderance of the evidence” applied in civil cases but lower than the standard of “beyond a reasonable doubt” applied in criminal cases. For example, under the new federal standard for the affirmative defense of insanity, the defendant must establish the defense of insanity by “clear and convincing evidence.”

27. **Preponderance of the Evidence Standard.** In civil cases, evidence that has greater weight than countervailing evidence.

28. **Direct Evidence.** Evidence that applies directly to proof of a fact or proposition. For example, a witness who testifies to having seen an act done or heard a statement made is giving direct evidence.

29. **Circumstantial Evidence.** Indirect evidence from which the existence of certain facts may be inferred.

30. **Exculpatory Evidence.** Evidence that exonerates, or tends to exonerate, a person from fault or guilt.

31. **Inculpatory Evidence.** Evidence that shows, or tends to show, a person’s involvement in an act or evidence that can establish the fault or guilt of a person.

32. **Real Evidence.** Consists of maps, blood samples, X-rays, photographs, stolen goods, fingerprints, knives, guns, and other tangible items.

33. **Testimonial Evidence.** Consists of sworn statements of witnesses.

34. **Exclusionary Rule of Evidence.** Judicial doctrine forbidding the use of evidence in a criminal trial where the evidence was obtained in violation of the defendant’s constitutional rights. The exclusionary rule is designed to provide a remedy and a disincentive, short of criminal prosecution, for prosecutors and police who illegally gather evidence in violation of the **4th and 5th Amendments, U.S. Constitution**, which provide protection from unreasonable searches and seizures and statements resulting from compelled self-incrimination.

Terms 2

The American Court System

1. Under the **U.S. Constitution**, our system of governance is founded on the concept of **federalism** or **dual sovereignty**, which means that federal and state governments are each considered sovereign in their own right. In one respect, this federal system of government leads to the creation of a **dual court system**, meaning that there is one court system for federal cases and another for state cases. Yet, these federal and state court systems have much in common and are joined institutionally at the top in the **Supreme Court of the United States**, the highest court in the land.

2. **Courts of Law.** Courts of law are the centerpieces of the federal and state criminal justice systems. Courts of law are responsible for determining both the factual basis and the legal sufficiency of criminal charges and for ensuring that criminal defendants are provided with due process of law. Essentially, the federal courts adjudicate criminal cases where defendants are charged with violating federal criminal laws. State adjudicate alleged violations of state laws.

3. **Trial and Appellate Courts.** Basically, there are two kinds of courts of law: trial courts and appellate courts. **Trial courts** conduct criminal trials and various pretrial and post-trial proceedings. **Appellate courts** hear appeals from the decisions of the trial courts. Trial courts are primarily concerned with ascertaining facts, determining guilt or innocence and imposing punishments, whereas appellate courts are primarily concerned with matters of law. Appellate courts correct legal errors made by trial courts and develop law when new legal questions arise. In some instances appellate courts must determine whether there is legally sufficient evidence to uphold a conviction.

Federal Courts

1. **Article III, section 1, U.S. Constitution.** Establishes the judicial branch as a co-equal branch of the US Government, along with the legislative and the executive branches; creates the **US Supreme Court** as the highest court in the land; vests the judicial power of the US in the Supreme Court and in “such inferior courts as the Congress may from time to time ordain and establish.”

2. **Article III, section 2, U.S. Constitution.** Spells out the jurisdiction of the federal courts.

3. **Judiciary Act of 1789.** Congressional statute that first created the lower federal court system.

4. **US District Court.** The principal trial court in the federal court system. Presided over by a **district judge appointed for life** by the President with the consent of the US Senate. **Federal magistrate judges**, appointed by federal district judges, often handle pretrial proceedings in the district courts and trials of misdemeanors.

5. **US Courts of Appeals.** The intermediate appellate courts in the federal system. Also known as **circuit courts**. Circuit courts hear both civil and criminal appeals from the district courts and from quasi-judicial tribunals in the independent regulatory agencies. Federal appeals court judges are **appointed for life** by the President with the consent of the Senate. Appeals court judges generally sit in **panels of three judges** who vote to affirm, reverse, or modify the lower-court decisions under review. Circuit courts also conduct **en banc (as one body) hearings** on rare occasions, where all the judges assigned to the court participate in a decision.

6. **US Supreme Court.** Highest appellate court in the federal court system. Highest court in the land. The Supreme Court has jurisdiction to review, either on appeal or by **writ of certiorari** (discretionary review), all the decisions of the lower federal courts and many decisions of the highest state courts. The Court consists of a **Chief Justice and eight Associate Justices appointed for life** by the President with the consent of the Senate. These nine individuals have the final word in determining what the US Constitution requires, permits, and prohibits in the areas of law enforcement, prosecution, adjudication, and punishment. Through its **supervisory power over the lower federal courts**, the Supreme Court also promulgates rules of procedure for the lower federal courts to follow in both civil and criminal cases. All Supreme Court decisions are reached en banc, not by panels as in the circuit courts of appeal.

State Courts

General Structure. Most states have **courts of general jurisdiction** which conduct trials in felony and major misdemeanor cases. **In Mississippi (MS)**, the courts with general jurisdiction are the **Circuit Courts**. **Courts of limited jurisdiction** are those that handle pretrial matters and conduct trials in minor misdemeanor cases. **In MS**, these include **County Courts, Justice Courts, and Municipal Courts**. Most states have some form of **intermediate appellate court**. **In MS**, the **Court of Appeals** is an intermediate appellate court that hears cases assigned by the Mississippi Supreme Court. Each state also has a **court of last resort** which is the highest appellate court in its court system. **In MS**, the court of last resort is the **Mississippi Supreme Court**, which consists of nine elected justices with appellate jurisdiction over all matters. Finally, many states also have separate **juvenile courts** which operate in ways that differ significantly from the criminal courts for adults. **In MS**, juvenile cases are handled by the **Youth Court Division** of Mississippi's **Chancery Courts**.

Judicial Review

Judicial Review. Power of any court to hold unconstitutional and hence unenforceable any law, any official action based on a law, or any other action by a public official that it deems to be in conflict with the Constitution. Judicial review is **the foremost power exercised by the Supreme Court and other courts**. The doctrine of judicial review is

not found explicitly stated in the Constitution, but was set by the Supreme Court in Marbury v. Madison (1803), considered by most scholars to be the most important case decision ever made by the US Supreme Court. The judicial review doctrine applies to laws passed by Congress and state legislatures, ordinances passed by municipalities, and acts of public officials. The judicial review doctrine has significant implications in law enforcement. Laws passed by legislative bodies can and will be reviewed by the courts in a proper case and will be declared unenforceable if found to be against the Constitution. For individual law enforcement officers, it means that whatever they do can be challenged in court and, if held to have violated individual constitutional rights, can result in the imposition by the courts of civil or criminal sanctions.

Appeals

1. **Appeals of Right.** Defendants convicted after entering a plea of not guilty are entitled under federal and state law to one **appeal as a matter of right**. Appeals of right in federal criminal cases are heard by US Courts of Appeals (Circuit Courts). State criminal appeals are heard by state supreme courts, by state intermediate appellate courts, and -- in AL, OK, TN, and TX -- by specialized appellate courts that hear only criminal appeals (see TX court system handout).

2. **Other Appeals.** Beyond appeals of right, defendants may have their cases reviewed by the US Supreme Court or by the highest state courts by **discretionary review**, usually obtained through **petitions for a writ of certiorari**. For these reviews, a defendant whose conviction has been sustained by an intermediate appellate court may petition the appropriate court of last resort, such as the state supreme court. If the state supreme court has already acted on the case, the defendant may submit a **petition for a writ of habeas corpus** to the appropriate US District Court, or a petition for a writ of certiorari to the US Supreme Court.

3. **Rule of Four.** In determining whether to grant discretionary review, the US Supreme Court follows the **Rule of Four**, meaning that at least four of the nine justices must vote to grant review and place the case on the Court's **docket** (schedule of cases to be heard).

4. **Time Limits for Appeals.** After sentence is imposed, there is a period of **time** during which a defendant may appeal the conviction and sentence to a higher court (except in guilty plea cases where the right of appeal generally is waived). There is **no constitutional right of appeal**, but all states and the federal government grant defendants that right by law or court procedure.