

Contents



<i>List of Illustrations</i>	xxv
<i>Preface</i>	xxix
<i>Acknowledgments</i>	xxxiii
<i>About the Authors</i>	xxxv
<i>Introduction to Hypothetical Cases</i>	xxxvii

PART 1: CRIMINAL LAW

CHAPTER 1 ■ THE CRIMINAL JUSTICE SYSTEM	3
Chapter Objectives	3
Introduction	3
A. Purpose of Law	3
B. Criminal Versus Civil Law	5
<i>Discussion Questions 1-3</i>	7
C. Conflicting Models of the Criminal Justice System	7
D. Participants in the Criminal Justice System	9
1. The Lawmakers	9
2. Law Breakers	9
3. Victims of Law Breakers	9
4. Law Enforcement Officials	10
5. Attorneys and Paralegals	10
<i>CASE: In re Opinion No. 24 of the Committee on the Unauthorized Practice of Law, Supreme Court of New Jersey</i>	12
CASE DISCUSSION QUESTIONS	16
6. Judges	17
7. Other Court Personnel	17
8. Jurors	18
9. Corrections Personnel	18
E. Juvenile and Other Specialized Criminal Courts	18
Summary	19
Internet Resources	19
Review Questions	20

CHAPTER 2 ■ BASIC PRINCIPLES OF CRIMINAL LAW	21
Chapter Objectives	21
Introduction	21
A. Rule of Law	21
B. Sources of Law	22
C. Classifications of Crimes	24
D. Elements of a Crime	28
<i>Application Exercises 1-4</i>	28
<i>Application Exercises 5-12</i>	32
E. Double Jeopardy	32
CASE: <i>Ashe v. Swenson</i>	33
CASE DISCUSSION QUESTIONS	35
F. Parties to the Crime	35
G. Punishments for Crimes	36
Summary	37
Internet Resources	38
Review Questions	39
CHAPTER 3 ■ TYPES OF OFFENSES	41
Chapter Objectives	41
Introduction	41
A. Use of the Model Penal Code	41
B. Offenses Involving Danger to the Person	42
1. Homicide	42
<i>Application Exercises 1-4</i>	45
2. Assault and Battery	45
3. Intimidation, Stalking, and Endangerment	47
4. Kidnapping and False Imprisonment	49
5. Sex Offenses	50
<i>Application Exercises 5-6</i>	52
6. Violation of Civil Rights and Hate Crimes	53
<i>Discussion Questions 1-10</i>	54
C. Crimes Against Property	55
1. Arson and Other Types of Destruction of Property	55
2. Trespass and Burglary	56
3. Theft, Larceny, Robbery, and Fraud	56
<i>Application Exercises 7-8</i>	60
<i>Discussion Questions 11-16</i>	60
D. Crimes Against Public Order	61
1. Motor Vehicle Codes	61
<i>Discussion Question 17</i>	61
2. Dispersal of People	62
<i>Discussion Question 18</i>	63
E. Crimes Against the Family	63
F. Crimes Against Government	63
1. Treason	64

2. Espionage	65
3. Perjury and Obstruction of Justice	65
<i>Application Exercises 9-11</i>	68
<i>Discussion Questions 19-23</i>	68
G. Crimes Involving Firearms	69
<i>Application Exercise 12</i>	70
H. Crimes Involving Alcohol and Drugs	70
<i>Application Exercise 13</i>	74
I. “Victimless Crimes” that Challenge Community Standards	74
1. Gambling	74
2. Consensual Sexual Practices and Pornography	75
<i>Discussion Questions 24-30</i>	76
J. Interpreting Criminal Statutes	77
CASE: <i>Smith v. United States</i>	77
CASE DISCUSSION QUESTIONS	81
<i>Application Exercises 14-15</i>	82
Summary	83
Internet Resources	83
Review Questions	83

PART 2 CRIMINAL PROCEDURE: FROM COMMISSION OF THE OFFENSE TO PLEA BARGAINING

CHAPTER 4 ■ INVESTIGATION OF CRIMINAL BEHAVIOR 87

Chapter Objectives	87
Introduction	87
A. Constitutional Principles of Procedural Due Process	88
1. Fifth and Fourteenth Amendments: Due Process of Law	88
2. Fourth Amendment: “Unreasonable” Searches and Seizures	90
3. Fifth Amendment: Protection Against Self-Incrimination	91
4. Sixth Amendment: Right to Counsel	91
<i>Discussion Question 1</i>	91
B. Investigating Crimes	92
1. Locating and Questioning Victims and Witnesses	92
2. Identification of Suspects	92
3. Interrogations	92
a. The Right to Question	92
b. The Rights to Have Attorney Present and to Refuse to Answer	93
CASE: <i>Miranda v. Arizona</i>	94
CASE DISCUSSION QUESTIONS	96
c. Consequences of Questioning Suspects Without Having Given the <i>Miranda</i> Warnings	97
d. Effectiveness of Interrogations	98
<i>Discussion Questions 2-6</i>	98

4. Use of Grand Juries to Investigate Crimes	99
C. Gathering of Physical and Documentary Evidence	100
1. Searches That Do Not Require a Warrant	101
a. Consent Searches	101
b. Exigent Circumstances	102
c. Plain View Doctrine	102
d. “Stop and Frisk” and Searches Incident to Arrest	103
e. Special Rules Governing Border Searches, Airline Flights, and Public Venues	104
2. Application Requirements and Procedures for Obtaining a Search Warrant	104
3. Executing Search Warrants	106
4. Special Rules for Electronic Surveillance	108
<i>CASE: Kylo v. United States</i>	110
CASE DISCUSSION QUESTIONS	112
<i>Discussion Questions 7-10</i>	115
5. Preservation of Evidence	115
6. Arresting Suspects and Defendants	115
a. Example of Arrest Based on Officer’s Observations	117
<i>Discussion Questions 11-13</i>	117
b. Use of Force in Making Arrests	117
<i>Discussion Questions 14-15</i>	123
<i>Application Exercises 1-6</i>	123
Summary	124
Internet Resources	125
Review Questions	125

CHAPTER 5 ■ THE PROSECUTOR’S ROLE IN INITIATING CASES 127

Chapter Objectives	127
Introduction	127
A. Who They Are and Where They Work	127
1. Federal Prosecutors	128
2. State and Local Prosecutors	128
<i>Application Exercises 1-2</i>	129
B. Ethical Restrictions Applicable to Prosecuting Attorneys	129
BOX: Ethical Obligations Specific to Prosecuting Attorneys	130
C. The Role of Prosecuting Attorneys in Investigations	130
1. General Investigative Responsibilities	130
2. Applications for Search Warrants	131
3. Coordination of Grand Jury Activities	131
D. The Role of the Prosecutors in Charging Defendants	132
1. The Decision to Charge	132
<i>Discussion Question 1</i>	135
2. Initial Appearance and Bond Hearing	135
<i>CASE: County of Riverside v. McLaughlin</i>	135
CASE DISCUSSION QUESTIONS	138
<i>Discussion Questions 2-3</i>	140

3. Grand Jury Indictments	140
4. Informations	140
<i>Discussion Questions 4-5</i>	141
5. Arraignments and Preliminary Hearings	141
6. Preparation of Charging Documents	142
a. Format	143
b. Criminal Complaints, Indictments, and Informations	145
c. Document Drafting Considerations	147
<i>Application Exercises 3-8</i>	155
7. Role of Prosecuting Attorneys in Issuing Arrest Warrants and Summonses	156
<i>Application Exercise 9</i>	158
E. Extradition of Fugitives	158
Summary	160
Internet Resources	160
Review Questions	160
CHAPTER 6 ■ LEGAL REPRESENTATION FOR THE ACCUSED	163
Chapter Objectives	163
Introduction	163
A. Adversarial v. Inquisitorial Legal Systems	163
<i>Discussion Question 1</i>	164
B. The Right to Counsel	164
1. Source of the Right	164
2. Scope of the Right	164
3. Implementation of the Right	165
a. Public Defenders' Office	165
b. Assigned Counsel System	165
<i>Discussion Question 2</i>	166
<i>Application Exercises 1-2</i>	166
4. Attorney's Decision to Decline to Represent a Client	166
a. Conflict of Interest	166
BOX: Ethical Considerations Related to Conflicts of Interest	167
b. Belief That Defendant Is Guilty	168
BOX: Ethical Considerations Related to the Attorney-Client Relationship	168
<i>Application Exercise 3</i>	169
<i>Discussion Question 3</i>	169
5. Right of the Accused to Reject Counsel and Act as Own Attorney	169
<i>Discussion Question 4</i>	170
C. Attorney-Client Relationship	170
1. Protecting the Client from Self-Incrimination	171
2. Ethical Duties to Clients	171
a. Due Diligence	171

b. Confidentiality	172
BOX: Ethical Duties of Paralegals Related to Confidentiality	173
<i>Discussion Question 5</i>	173
<i>Application Exercises 4-5</i>	174
c. Attorney-Client Privilege	174
CASE: <i>Montana v. Ingraham</i>	175
CASE: <i>Mayberry v. Indiana</i>	177
CASE DISCUSSION QUESTIONS	178
3. Fee-Related Issues	179
BOX: Ethical Duties of Attorneys Related to Client Trust Accounts	179
D. Paralegal Involvement in the Defense of the Accused	180
1. Interviewing Clients	180
<i>Application Exercises 6-7</i>	181
2. Interviewing Witnesses	182
a. Identifying Potential Witnesses	182
b. Types of Witnesses	182
<i>Application Exercises 8-9</i>	185
c. Taking Witness Statements	186
d. Witness Interview Summary	187
3. Defense Preparation for Initial Court Appearances	190
a. Bail and Detention Hearings	190
<i>Application Exercise 10</i>	190
b. Preparation for Arraignment	190
<i>Application Exercises 11-12</i>	192
<i>Application Exercise 13</i>	193
Summary	194
Internet Resources	194
Review Questions	194

CHAPTER 7 ■ LEGAL DEFENSES 197

Chapter Objectives	197
Introduction	197
A. Denial of the Facts	198
BOX: Interviewing Alibi Witnesses	199
B. Ignorance or Mistake	200
<i>Application Exercises 1-3</i>	201
C. Status of Defendant	201
1. Infancy	201
2. Insanity	202
3. Intoxication	206
4. Competency and Mitigating Factors	207
D. Reactive Defenses	207
1. Duress and Necessity	207
2. Self-Defense	208
a. Use of Deadly Force	209
CASE: <i>New York v. Goetz</i>	209
CASE DISCUSSION QUESTIONS	212

b. Retreat Exception	212
c. Battered Spouse Syndrome	213
d. Law Enforcement	214
BOX: Investigative Tips for Paralegals	214
<i>Discussion Questions 1-3</i>	215
<i>Discussion Questions 4-7</i>	217
E. Entrapment	218
F. Constitutional Defenses	218
1. Challenging the Constitutionality of the Law	218
a. Ex Post Facto and Bill of Attainder Restrictions	218
Application Exercises 1-2	219
b. Vagueness and Overbreadth	219
c. Challenges Based on Violations of Civil Liberties	221
2. Challenging the Constitutionality of Procedures Used	222
a. The Exclusionary Rule	222
CASE: <i>Mapp v. Ohio</i>	223
CASE DISCUSSION QUESTIONS	225
Application Exercise 3	226
b. Double Jeopardy	226
G. Statutes of Limitations and Speedy Trial Acts	227
Application Exercise 4	227
H. Proof Beyond a Reasonable Doubt	228
Application Exercises 5-7	229
Summary	229
Review Questions	230
CHAPTER 8 ■ DISCOVERY AND DISCLOSURE	233
Chapter Objectives	233
Introduction	233
A. Justifications for Discovery	234
B. Constitutional Issues Involved in Discovery	234
CASE: <i>United States ex rel. Thompson v. Dye</i>	235
CASE DISCUSSION QUESTIONS	236
CASE: <i>United States v. Hubbell</i>	237
CASE DISCUSSION QUESTIONS	239
C. Procedural Rules Governing Discovery	240
Application Exercises 1-5	245
D. Discovery Requests and Responses	245
1. Pattern Discovery Requests	246
2. Electronic Discovery	250
Application Exercises 6-7	250
3. Responses to Discovery Requests	252
Application Exercise 8	255
4. Information on Expert Witnesses	255
Application Exercise 9	256
5. Supplemental Discovery	256
6. Written Discovery Agreements	256
Application Exercise 10	257

E. Depositions	258
1. Functions of Depositions	258
2. Role of Paralegals Related to Depositions	258
<i>Application Exercise 11</i>	259
3. Drafting the Motion for a Deposition	260
4. Noticing the Deposition	261
<i>Application Exercises 12-13</i>	265
5. Preparing for the Deposition	266
6. Drafting Summaries and Abstracts	266
F. Subpoenas Directed to Third Parties	271
<i>Discussion Questions 1-3</i>	274
<i>Application Exercise 14</i>	275
G. Disclosure of the Person	275
<i>Application Exercise 15</i>	275
H. Other Discovery Tools for the Defense	276
I. Discovery Variations	277
1. Discovery in Misdemeanor Cases	277
<i>Application Exercise 16</i>	278
2. Discovery in Complex Criminal Cases	278
<i>Application Exercise 17</i>	279
J. The Court’s Role in Discovery Disputes	279
1. Protective Orders	279
2. Discovery Enforcement	280
Summary	281
Review Questions	281

CHAPTER 9 ■ PRETRIAL MOTIONS AND PLEA BARGAINING 283

Chapter Objectives	283
Introduction	283
A. Pre-Trial Motions	284
1. Motions Relating to Discovery	284
2. Motions Relating to the Forum	284
3. Motions Related to the Participants	286
a. Motions for Substitution of Judges	286
<i>Discussion Questions 1-2</i>	288
b. Joinder and Severance	288
BOX: Canon 3 C (1) of the Ethical Code for United States Judges	289
<i>Application Exercises 1-2</i>	290
<i>Discussion Questions 3-4</i>	290
c. Motion for a Competency Hearing	290
4. Motions Involving the Evidence	291
a. Motion to Suppress Evidence	291
<i>Application Exercise 3</i>	295
b. Motion <i>in Limine</i>	296
5. Motion to Dismiss	296
6. Motion for a Continuance	298

B. Plea Bargaining	301
1. The Benefits of Plea Bargaining	301
2. The Criticisms of Plea Bargaining	302
3. The Plea-Bargaining Process	305
a. Timing	305
b. Participants	305
4. Types of Deals	306
5. Formalizing the Plea	307
<i>Application Exercise 4</i>	310
6. Enforcement of Plea Bargains	312
<i>CASE: Santobello v. New York</i>	312
CASE DISCUSSION QUESTIONS	315
C. Pre-Trial Diversion Programs	315
<i>Application Exercise 5</i>	317
Summary	320
Internet Resources	320
Review Questions	320

PART 3 CRIMINAL PROCEDURE: TRIALS AND THEIR AFTERMATH

CHAPTER 10 ■ THE NATURE OF CRIMINAL TRIALS 325

Chapter Objectives	325
Introduction	325
A. Functions of the Courts in Criminal Cases	326
B. Constitutional Rights Related to the Conduct of Trials	326
1. Right to Counsel	326
2. Right to a Public Trial	327
3. Right to a Jury Trial	327
a. Functions of Juries	327
b. Justifications for the Use of Juries	328
c. A Jury of One's Peers	328
d. An Impartial Jury	329
<i>Discussion Question 1</i>	329
e. Types of Trials Covered	330
f. The Number of Jurors Required	331
g. Requirement for a Unanimous Verdict	331
h. Jury Nullification	332
<i>Discussion Questions 2-8</i>	332
<i>Application Exercises 1-4</i>	333
4. Presumption of Innocence	333
5. Privilege Against Self-Incrimination	333
6. Right to Confront and Cross-Examine Witnesses	334
<i>CASE: Davis v. Washington</i>	335
CASE DISCUSSION QUESTIONS	339
<i>Application Exercise 5</i>	340
7. Right to Compel Witnesses to Testify	341
<i>Discussion Questions 9-11</i>	341

C. The Use of Evidence	341
1. Types of Evidence	342
a. Based on Format	342
b. Based on How It Is Used	342
<i>Discussion Question 12</i>	343
2. Admissibility of Evidence	344
a. Relevance and Materiality	344
b. Testimonial Evidence	345
<i>Application Exercises 6-7</i>	347
c. Hearsay Evidence	347
3. Authenticating Evidence	350
4. Stipulations and Judicial Notice	351
Summary	351
Internet Resources	351
Review Questions	352

CHAPTER 11 ■ PREPARATION FOR THE TRIAL 353

Chapter Objectives	353
Introduction	353
A. Preparation for Jury Trials	354
1. The Decision to Use a Jury	354
2. Preparation for <i>Voir Dire</i>	354
<i>Discussion Questions 1-2</i>	356
<i>Application Exercises 1-6</i>	356
B. Preparation of Exhibits	356
C. Preparation for Evidentiary Disputes	357
1. Motions to Suppress Evidence and Motions <i>in Limine</i>	361
<i>CASE: United States v. Harper</i>	368
<i>CASE DISCUSSION QUESTIONS</i>	372
<i>Application Exercises 7-9</i>	372
2. Pocket Briefs	373
<i>Application Exercise 10</i>	374
D. Witness Preparation	374
1. Preparing Your Lay Witnesses	374
2. Preparing the Defendant	376
3. Preparing Your Expert Witnesses	377
4. Preparing Trial Subpoenas	377
5. Preparing for Opposing Witnesses	379
<i>Application Exercises 11-14</i>	382
E. Organizing File Materials for the Trial	382
F. Preparation of Computer-Based Presentation	383
<i>Application Exercise 15</i>	385
Summary	388
Internet Resources	388
Review Questions	389

CHAPTER 12 ■ THE CONDUCT OF THE TRIAL	391
Chapter Objectives	391
Introduction	391
A. The Order of Events	391
B. Rules of Criminal Procedure	393
<i>Application Exercise 1</i>	393
C. Calling the Case for Trial	393
<i>Application Exercises 2-3</i>	397
D. Jury Selection	397
1. Selection of Jury Pool	397
2. The <i>Voir Dire</i> Process	398
3. Exercising Challenges	399
<i>CASE: Batson v. Kentucky</i>	401
CASE DISCUSSION QUESTIONS	406
4. Selection of Alternate Jurors	406
5. Instructions to Jurors and Sequestering Juries	407
<i>Application Exercises 4-5</i>	407
E. Opening Statements	408
F. Presentation of the Evidence	408
1. Prosecution's Case-in-Chief	409
a. Direct Examinations	410
b. Introduction of Exhibits	411
<i>Application Exercise 6</i>	411
c. Objections	412
d. Preserving the Record	412
e. Cross-Examinations	412
<i>Application Exercise 7</i>	413
f. Re-direct and Re-cross	414
g. Resting the Case-in-Chief	414
2. Defendant's Motion for Judgment of Acquittal/Motion for Directed Verdict	414
3. Defendant's Case-in-Chief	414
4. Rebuttal and Surrebuttal	415
5. Renewed Motion for Directed Verdict	416
<i>Application Exercise 8</i>	416
G. Jury Instructions	416
1. Pattern Jury Instructions	416
2. Non-Pattern Jury Instructions	419
3. Jury Instructions Conference	420
<i>Application Exercises 9-13</i>	422
H. Closing Arguments	422
I. Charging the Jury	423
J. Jury Deliberations	423
K. Announcement of the Verdict	425
L. Mistrials	425
M. Post-Verdict/Post-Trial Motions	427
Summary	428
Review Questions	428

CHAPTER 13 ■ SENTENCING 431

Chapter Objectives	431
Introduction	431
A. Types of Punishment	432
1. Fines, Restitution, Assessments, Surcharges, and Costs	432
2. Supervision, Probation, and Parole	433
a. Court Supervision	433
b. Probation	434
c. Parole	434
3. Incarceration	434
4. The Death Penalty	436
a. Views on Capital Punishment	436
<i>Discussion Questions 1-3</i>	436
b. Constitutionality of Death Penalty	438
c. Modern Use of the Death Penalty	438
d. Methods Used in Executions	440
<i>Discussion Questions 4-5</i>	440
B. Discretion in Sentencing	440
1. Determinate and Indeterminate Sentencing	440
2. Extended Term Sentences	441
3. Concurrent Versus Consecutive Sentences	442
4. Mandatory Versus Discretionary Sentencing	442
5. Sentencing Guidelines	443
a. Federal Sentencing Guidelines	443
<i>Application Exercises 1-8</i>	448
<i>Application Exercises 9-16</i>	450
C. Sentencing Procedures	451
1. Pre-Sentence Investigation and Report	451
2. Objections and Memoranda	453
3. The Hearing	453
<i>Discussion Questions 6-17</i>	454
D. Modification of Sentences	459
1. Post-Sentence Motions to Correct Errors	459
2. Reduction of a Sentence by a Judge	459
3. Reduction of a Sentence by Corrections Officials	459
4. Reduction of a Sentence by Legislation	460
Summary	460
Internet Resources	461
Review Questions	461

CHAPTER 14 ■ APPEALS 463

Chapter Objectives	463
Introduction	463
A. The Right to Appeal Criminal Convictions	464
B. Matters That Can Be Appealed	465
C. Standards Used in Appellate Review	465

D. Filing the Appeal	466
<i>Application Exercise 1</i>	469
1. Notice of Appeal	470
<i>Application Exercises 2-3</i>	472
<i>CASE: Strange v. Texas</i>	475
CASE DISCUSSION QUESTIONS	478
2. Ordering the Record	479
<i>Application Exercises 4-5</i>	479
Summary	482
Internet Resources	482
Review Questions	483
CHAPTER 15 ■ RELATED PROCEEDINGS	485
Chapter Objectives	485
Introduction	485
A. Collateral Remedies	486
1. Post-Conviction Relief	486
2. <i>Habeas Corpus</i> Actions	486
<i>Discussion Questions 1-4</i>	487
B. Clemency	487
<i>Discussion Questions 5-6</i>	488
C. Removing or Limiting Access to Criminal Records	489
1. Consequences of Having a Criminal Record	491
2. Types and Content of Criminal Records	492
<i>Application Exercises 1-2</i>	493
3. Clearing Criminal Records	494
<i>Discussion Question 7</i>	494
a. Researching Criminal Records	494
b. Requesting Court to Clear Criminal Record	495
<i>Application Exercises 3-4</i>	497
c. Removal from Sex Offender Registries	498
D. Recovery of Seized Assets	498
<i>Application Exercises 5-6</i>	500
E. Challenging Summary Suspensions of Driver's Licenses	501
Summary	503
Internet Resources	503
Review Questions	503
<i>Table of Cases</i>	505
<i>Glossary</i>	509
<i>Index</i>	523