

CJ 335 Study Guide 1

Paul Kramer, Professor

NOTE: Study guides (and exams) are drawn from BOTH lectures and the textbook chapters assigned. These terms and issues are sometimes drawn exclusively from the lecture, on rare occasions from just the textbook, but usually are referred to in both formats.

Nature and Purposes of US Criminal Law

Two primary components of substantive criminal law—definitions of offenses and prescribed punishments

Three elements of crime---act, intent, concurrence

US is a constitutional democracy, meaning power of state is limited by the rights granted to individual under the US Constitution

Burden of persuasion---proof of each element of a crime beyond a reasonable doubt

Model Penal Code, British common law, codification, statutory schemes

Felony, gross misdemeanor, petty misdemeanor, violation/infracton

Code state v. common law jurisdiction

Appellant, appellee, holding, precedent, stare decisis, plurality, majority opinion, dissenting opinion, affirmed, reversed, remanded

Dual sovereignty—states and federal government, police power, interstate commerce clause

Defenses: alibi, justification, excuse, “affirmative defense”

Other Issues: What is federalism? What does the term mean in U.S. criminal law? In other words, what are the practical implications? Why, then, is most criminal law a matter of state prerogative and most criminal procedure a matter of federal constitutional law? How are powers separated in the American federal systems?

US Criminal procedure and Constitutional Limitations

Principle of legality

Ex post facto law, bill of attainder, void for vagueness

Equal protection (14th Amendment)—rational basis, heightened scrutiny, strict scrutiny, where do these terms apply?

First amendment—obscenity, fighting words, clear and present danger test

Right to privacy (5th and 14th Amendments)—due process of law, Griswold v.

Connecticut, Roe v. Wade, Bowers v. Hardwick, Lawrence v. Texas

Eighth amendment—cruel and unusual punishment, proportionality, the death penalty as applied to rapists (*Coker v. Georgia*), juveniles, the mentally incompetent

Fourth amendment—definitions of search, seizure

Fifth amendment--- eminent domain, self incrimination, due process of law, double jeopardy prohibition, *Miranda v. Arizona*, custody and interrogation

Sixth amendment---right to a criminal trial w/jury, confrontation, cross examination of witnesses

Other Issues: Identify and briefly describe the major provisions of the 4th, 5th, 6th, and 8th amendments of the U.S. Constitution as they apply to the rights of the criminally accused. What role do the 1st and 14th amendments have in US criminal procedure?

Theories of Punishment and Sentencing

Retribution, Deterrence—general and specific, Incapacitation, Rehabilitation, Restorative Justice (Restoration)

Determinate sentencing, Indeterminate sentencing, Presumptive sentencing guidelines models, mandatory minimum sentences

Concurrent sentencing, consecutive sentencing

Sentencing guidelines issues—heartland cases, criminal history score, offense level, justified departures

Constitutionality of US Sentencing guidelines—*US v. Booker*

Victims' rights and victim compensation---Son of Sam laws, victim impact statements

“three strikes and you’re out” legislation—why not disproportionate?

Racial bias and the death penalty—*McCleskey v Kemp*

Why does the US (and everyone else) continually go back and forth between rehabilitative and retributionist models of sentencing?

Other Issues: Identify the major theories of punishment and corrections--rehabilitation vs. retribution, deterrence vs. incapacitation. Why were the Federal sentencing guidelines introduced? How do they work? Be specific. What effect do these guidelines have on a judge's ability to tailor punishment to the individual? Why are mandatory minimum sentences such an issue in US criminal law?