

# Preface

Criminal law is an exciting and thought-provoking area of law that each one of us has given some consideration to in the past. Many Americans are either victims of criminal acts themselves or know of a friend or family member who has been victimized. We live in a nation that is obsessed with crime, criminal behavior, and criminal laws. The media offer a vast selection of television programming and film production covering crime-driven stories. As each year transpires, we continue to build more jails, more prisons, and more penitentiaries to house a continuing surge in the felonious population.

This text covers the basic groundwork for the criminal justice system and sets forth the substantive and procedural rights of a criminal defendant. Additionally, we examine the general components of the criminal act, covering the major crimes against people, property, and habitation. Along with the elements of particular crimes, the text discusses the available defenses.

We then turn to the criminal prosecution process and have included three adjacent chapters beginning with pretrial proceedings, moving on to the actual trial against the defendant, and finishing with sentencing and post-trial proceedings. This approach helps the student get a firm grasp on how the criminal procedure works.

Paralegals often play a crucial part in criminal proceedings because they contribute so much to the discovery of evidence that may be favorable to the defendant or prosecution. A paralegal may conduct interviews of witnesses or compile police reports that may be used at the time of trial. Moreover, many paralegals conduct legal research and assist in developing the legal theories that the defendant will rely on as part of his/her defense. These examples are only a partial list of the many roles a paralegal may play.

*McGraw-Hill's Criminal Law for Paralegals* contains 14 chapters along with two appendixes. In providing a hands-on approach to learning, each chapter has a recent, applicable case opinion along with many ancillaries, including charts, tables, figures, and exercises to aid in the student's development.

## TEXT DESIGN

### Pedagogy

This text has numerous features that take advantage of the varying learning styles that students use to gain knowledge. Students who apply their newly acquired knowledge often retain it much better than those who do not. So we have designed the chapters to assure students the opportunity to learn the appropriate legal concepts and the necessary vocabulary, develop their legal reasoning skills, and demonstrate their knowledge of the material. Each chapter contains the following features:

- **A Day in the Life of a Real Paralegal**—A scenario of what a usual day is like for a paralegal at his/her position, often with a practical application designed to help students build a specific skill set.
- **Case Fact Pattern**—A simple fact pattern with story and outcome.
- **Research This**—Hands-on assignment designed to develop his/her research skills.

- **Eye on Ethics**—Student is presented with ethical issue(s) related to the subject of the chapter.
- **Surf's Up**—Hands-on research presenting the student with numerous Web sites by which to *surf* and gather material.
- **Practice Tip**—Alerts the student to a nuance of law or caveat to a rule.
- **Case in Point**—A significant case designed to expand on the topics discussed in the chapter.
- **Portfolio Assignment**—Student is given an assignment by which to begin, create, and add to a portfolio.
- **Vocabulary Builders**—Crossword puzzles for the student to complete using vocabulary words found in each chapter.

The text is written in clearly presented language that engages the student's interest, and presents information in a variety of styles.

## OTHER LEARNING AND TEACHING RESOURCES

### Supplements

The **Online Learning Center (OLC)** is a Web site that follows the text chapter by chapter. OLC content is ancillary and supplementary germane to the textbook—as students read the book, they can go online to review material or link to relevant Web sites. Students and instructors can access the Web sites for each of the McGraw-Hill paralegal texts from the main page of the Paralegal Super Site. Each OLC has a similar organization. An Information Center features an overview of the text, background on the author, and the Preface and Table of Contents from the book. Instructors can access the Instructor's Manual, PowerPoint presentations, and Test Bank. Students see the Key Terms list from the text as flashcards, as well as additional quizzes and exercises.

# Acknowledgments

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# Walkthrough

*McGraw-Hill's Criminal Law for Paralegals* offers students an exciting way to learn about many different crimes and their elements, beginning with the different sources of criminal law and proceeding right through to the last step of a criminal trial, "Sentencing and Post-Trial Procedures." The text has numerous built-in, hands-on assignments with a variety of exercises and cases to help the student learn and enjoy the study of criminal law. The pedagogy of the book applies three main goals:

- Learning outcomes (critical thinking, vocabulary building, skill development, issues analysis, writing practice).
- Relevance of topics without sacrificing theory (ethical challenges, current law practices, technology application).
- Practical application (real-world exercises, practical advice, portfolio creation).

## CHAPTER OBJECTIVES

**Upon completion of this chapter, you will be able to:**

- Understand the origins of criminal law.
- Explain the differences between civil and criminal law.
- Define the term *crime* and the theories of punishment associated with it.
- Identify the classifications of crimes.
- Discuss jurisdiction in criminal law.

Criminal law is the area of law that is perhaps most familiar to the layperson. Television shows that are based in criminal law blanket the television networks. Salacious criminal trials such as those for O.J. Simpson and Michael Jackson are plastered across the news. Ordinary citizens are asked to serve on jury trials that deal with people being tried for committing crimes. With this exposure, people have become familiar with the basic aspects of criminal law. This chapter will seek to supplement the paralegal student's basic knowledge of criminal law and provide an overview of this important area of the law.

## Chapter Objectives

Introduce the concepts students should understand after reading each chapter as well as provide brief summaries describing the material to be covered.

## A Day in the Life of a Real Paralegal

Presents scenarios depicting what a usual day is like for practicing paralegals and provides practical application designed to help students build a skill set to prepare for a career as a paralegal.



### A DAY IN THE LIFE OF A REAL PARALEGAL

Fran loves working as a criminal law paralegal. Recently, she was given an assignment to research and investigate a client's (Pedro) killing of a police officer. Pedro was arrested and is currently being held downtown at the county jail. The supervising attorney gave Fran the following fact pattern based on the client's viewpoint of the killing:

Pedro was walking down the street on his way to the local grocery store to pick up some items for dinner. Pedro lives in a rough area downtown and often carries a small handgun, for which he has a license. He hears a commotion in the alley between two apartment buildings. Pedro walks slowly down the alley and sees a man and a woman struggling over a knife. The man is grabbing the woman when Pedro walks toward them. The man, holding the woman with one hand, turns toward Pedro with the knife and begins to walk toward Pedro. Pedro becomes afraid, takes out the gun, and shoots the man. The man turns out to be an undercover police officer who was apprehending the woman who had just robbed a liquor store and was fleeing the scene with a deadly weapon.

Fran immediately begins to outline the case with facts from Pedro. Fran must determine what issues are present including the charges pending against Pedro, any defenses Pedro may have, and finding any witnesses that haven't come forward as yet.

## Research This

Gives students the opportunity to investigate issues more thoroughly through hands-on assignments designed to develop critical research skills.



### RESEARCH THIS

The California Supreme Court has wrestled with the issue of when life begins in various cases. Two cases that involve this issue are *Keeler v. Superior Court*, 470 P.2d 617 (Cal. 1970), and *People v. Davis*,

872 P.2d 591 (Cal. 1994). Research both cases. How did the courts rule in each of these cases? When is a fetus considered a human being according to both courts?

## Practice Tip

Presents different nuances of the law and caveats to rules to alert the student to the intricacies of the law.



### PRACTICE TIP

Credit card fraud occurs when a defendant, intending to defraud the owner, obtains title to personal property through use of a stolen or an unauthorized credit card. Check fraud occurs when a defendant, intending to defraud the owner, obtains title to personal property through the use of stolen checks or a check drawn on an account without sufficient funds.

### CASE FACT PATTERN



Timothy gets a thrill from starting fires. He loves to watch them burn. He has set numerous fires during his life just to watch them burn. Timothy lives in Southern California, which is an area that has been prone to violent wildfires that spread rapidly because of the Santa Ana winds that blow through the area from time to time. Parts of Southern California have been devastated by wildfires in the past, and these fires have caused significant damage and injuries.

Timothy has set wildfires before just for the thrill. One day, the Santa Ana winds began blowing heavily through the Riverside County area of Southern California. Some of the gusts clocked speeds of 80 mph. Timothy was thrilled with the weather conditions. He knew that if he set a fire today, it would spread rapidly due to the winds. The thought of the fire burning made his heart pound with excitement.

Armed with an incendiary device as well as gasoline, Timothy drove up into the Esperanza Canyon area of the county near the desert. The area was heavily vegetated with dry brush as the area had not received much rainfall the previous year. Timothy drove to a somewhat desolate

area and started the fire. As he watched it burn, he felt the thrill of the destruction.

The winds whipped the fire up rapidly. Fueled by dry brush and high dry winds, the fire spread through thousands of acres. Firefighters made various stands against the fire, only to retreat as it advanced fiercely and rapidly. Five firefighters drove rapidly to a house to try to save it from destruction. On the way, the fire overtook them and they died. The fire charred over 40,200 acres, or 63 square miles, before it was finally contained and extinguished. Arson investigators were brought in to make a determination as to the cause of the fire. It was determined that the fire was caused by arson and Timothy had been seen by witnesses fleeing the scene.

After a thorough investigation by arson investigators as well as the FBI and local police, Timothy was arrested and charged with arson as well as felony murder due to the fact that the firefighters lost their lives as a result of Timothy's actions.

## Case Fact Pattern

Describes simple fact patterns and asks students to apply concepts learned from the chapter to understand the legal issues at hand.



### EYE ON ETHICS

The prosecutor is an officer of the court. As such, he/she is responsible to protect and serve the judicial system. A prosecutor is required to turn over evidence to the defense attorneys so the defense attorneys can properly prepare the defense of their client. Every person is entitled to a proper and adequate defense. If the prosecution fails to turn over evidence to the defense, the entire case against the defendant can be in jeopardy and

may be dismissed. It is very important for prosecutors to act ethically and to be diligent in dealing with the turning over of evidence to the defense. To withhold evidence in a criminal matter is a serious ethical offense. Paralegals who work for prosecutors must be very aware of these requirements as it is the paralegal who is often gathering evidence that is ultimately going to be provided to the defense.

## Eye on Ethics

Recognizes the importance of bringing ethics to the forefront of paralegal education. It raises ethical issues facing paralegals and attorneys in today's legal environment.



### SURF'S UP

In order to learn more about complicity, visit the following Web sites:

- [www.judiciary.state.nj.us/criminal](http://www.judiciary.state.nj.us/criminal)
- [www.law.cornell.edu](http://www.law.cornell.edu)
- [www.kentlaw.edu](http://www.kentlaw.edu)
- [www.lawspirit.com](http://www.lawspirit.com)
- [www.freedictionary.com](http://www.freedictionary.com)
- [www.answers.com](http://www.answers.com)
- [www.quizlaw.com](http://www.quizlaw.com)

## Surf's Up

Presents students with numerous and varied Web sites to “surf” and gather additional information on the important legal concepts and issues discussed in each chapter.

## Chapter Summary

Provides a comprehensive review of the key concepts presented in the chapter.

In order to convict a person of a crime, the prosecutor must prove the elements of the crime beyond a reasonable doubt. Each crime consists of four basic elements: actus reus—a guilty act; mens rea—a guilty mind; concurrence—a guilty act and guilty mind that exist at the same time; and causation—a harmful result.

An act involves physical behavior by the defendant. The mental process of the crime is not part of the act. Only the physical act that gives rise to the crime is considered the actus reus. The actus reus is known as the evil act of the defendant. The actus reus of a crime causes a social harm that constitutes the crime. The actus reus of a crime is important because it enables society to make inferences regarding the defendant's state of mind based on her actions. However, in order for the actions of the defendant to qualify as the actus reus of a crime, the defendant must have committed voluntary actions.

Voluntary acts are necessary in order for the defendant's actions to be considered a criminal act. A voluntary act is an act that is done with a conscious exercise of free will. It includes muscular contractions that are willed by the defendant. The law will not punish an involuntary act such as a reflexive movement or spasm. Likewise, criminal liability will not attach for acts performed while a defendant is unconscious or sleepwalking. Therefore, in order for a defendant to be blameworthy, she must have committed a voluntary act.

### Summary

## Key Terms

Used throughout the chapters are defined in the margin and provided as a list at the end of each chapter. A common set of definitions is used consistently across the McGraw-Hill paralegal titles.

Aggravated robbery  
Asportation  
Carjacking  
Commingleing  
Conversion  
Counterfeiting  
Embezzlement  
Extortion  
False pretenses  
Fiduciary  
Forgery  
Intangible property  
Larceny  
Larceny by trick

Owner  
Personal property  
Possession  
Puffing  
Real property  
Receiving stolen property  
Robbery  
Signatory  
Tangible property  
Theft  
Title  
Trade secret  
Trespassory taking  
Uttering

### Key Terms

## Review Questions and Exercises

Emphasize critical-thinking and problem-solving skills as they relate to criminal law. The Review Questions focus on more specific legal concepts learned in each chapter. The Exercises introduce hypothetical situations and ask students to determine the correct answers using knowledge gained from studying topics in each chapter. Both sets of questions are found at the end of each chapter.

1. What is the definition of a homicide?
2. List the differences between justifiable and excusable homicide.
3. Why is it difficult to determine when life begins for purposes of murder?
4. Identify and define the different types of murder.
5. What is malice aforethought?
6. What is the purpose of the felony murder rule?
7. List the typical felonies that will qualify a killing as first degree murder under the felony murder rule.
8. Describe the difference(s) between first and second degree murder.
9. List the elements of manslaughter.
10. What is the difference between voluntary and involuntary manslaughter?
11. Define the *heat of passion*.
12. What is a cooling-off period and when does it apply?
13. What is premeditation and why is it important?
14. When is someone considered dead under the law?
15. What is a depraved heart killing?

### Review Questions



## PORTFOLIO ASSIGNMENT

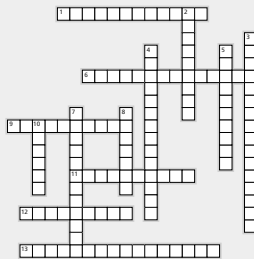
When judging obscenity, the trial court may instruct the jury to apply “community standards” without specifically defining the term. States are allowed to establish statewide standards for judging obscenity. Research the standards for your home state and write a memo discussing them to include in your portfolio.

## Portfolio Assignments

Ask students to use the skills mastered in each chapter to reflect on major legal issues and create documents that become part of the paralegal’s portfolio of legal research. The Portfolio Assignments are useful both as reference tools and as samples of work product.



## Vocabulary Builders



### Instructions

Use the key terms from this chapter to fill in the answers to the crossword puzzle.  
NOTE: When the answer is more than one word, leave a blank space between words.

### ACROSS

- The crime of inducing or encouraging another to commit a crime.
- An incipient crime; an act that generally leads to a crime.
- The act or process of enticing or persuading another person to take a certain course of action.
- By agreement, parties work together to create an illegal result, to achieve an unlawful end.
- Affecting or obligating both parties.
- A single conspiracy in which each person is responsible for a distinct act within the overall plan.

### DOWN

- Identifiable commission or omission, an intentional tort requirement.
- A conspiracy in which a single member or group separately agrees with two or more other members or groups.
- The doctrine that an agreement by two or more persons to commit a particular crime cannot be prosecuted as a conspiracy if the crime could not be committed except by the actual number of participants involved.
- One-sided, relating to only one of two or more persons or things.
- Abandonment of effort to commit a crime.
- To actually try to commit a crime and have the actual ability to do so.
- To cease an activity.

## Vocabulary Builders

Provides crossword puzzle in each chapter that uses the key terms and definitions from that chapter to help students become more proficient with the legal terminology.

## CASE IN POINT



STATE of West Virginia, Plaintiff Below, Appellee  
v.  
Michael DOONAN, Defendant Below, Appellant  
640 S.E.2d 71  
Supreme Court of Appeals of  
West Virginia,  
No. 33052.  
Submitted: Nov. 1, 2006.  
Decided: Dec. 1, 2006.

**Background:** Defendant was convicted in the Magistrate Court of driving under influence of alcohol (DUI). He appealed. The Circuit Court, Wood County, George W. Hill, J., affirmed. Defendant appealed.

**Holdings:** The Supreme Court of Appeals, Davis, C.J., held that:

- magistrate court could not impose a duty of reciprocal discovery on defendant based on statute governing a prosecutor’s duties to disclose certain evidence to a defendant upon request;
- defendant had no duty to provide his expert-witness list to the state, and thus magistrate court could not exclude defense expert from testifying at trial as sanction for defendant’s failure to provide list;
- error in magistrate court’s exclusion of defense expert’s testimony was reversible error;
- copy of printout of defendant’s breath-test results was inadmissible under rule governing admissibility of duplicates; and

requested to perform three different field sobriety tests: walk and turn, horizontal gaze nystagmus, and the one-legged stand. After Mr. Doonan failed all three tests, he was transported to the police station where his blood alcohol content was measured by breathalyzer at .134, which was over the legal limit.

Mr. Doonan was charged with first offense of driving under the influence pursuant to W. Va. Code § 17C-5-2 (2004) [Repl. Vol. 2004]. On November 5, 2004, Mr. Doonan was found guilty by a magistrate court jury of first offense of driving under the influence, and was sentenced to serve forty-eight hours in the North Central Regional Jail. Mr. Doonan appealed his conviction to the circuit court, arguing it was improper to exclude his expert witness and that it was error to admit an illegible copy of his DUI printout. The circuit court recognized that some errors existed in the underlying court, but found that the errors were harmless and that there was sufficient evidence to uphold Mr. Doonan’s conviction. This appeal then followed.  
[Text omitted]

## Case in Point

At the end of each chapter exposes students to real-world examples and issues through cases chosen to expand on key topics discussed in chapter.



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