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CHAPTER 2: CRIMINAL LIABILITY

To understand criminal law concepts, it is necessary to have a basic understanding of the limitations on criminal liability. Accordingly, our purpose in this chapter is to provide the student with a brief overview of those limitations that are critical to an understanding of criminal law concepts.

The first ten amendments to the U.S. Constitution constitute our federal "Bill of Rights." The Bill of Rights and the Fourteenth Amendment to the Constitution limit the actions of the government. In general, the amendments place restrictions on the procedures that the government may use against a person accused of a crime. Most of the restrictions apply to criminal procedural matters. Few directly affect substantive criminal law. The two major restrictions against substantive criminal law are the due process clause, which is also important in the criminal procedural context, and the Eighth Amendment prohibition against cruel and unusual punishment.

The Bill of Rights was drafted as a protection against the powers of a federal government. The Supreme Court has used the due process clause of the Fourteenth Amendment to apply to the states most of the Bill of Rights limitations on governmental actions.

The Supreme Court has held that the prohibition in the Eighth Amendment against cruel and unusual punishment not only limits the amount and types of punishment that may be inflicted, but also limits the legislative authority to make some conduct criminal. For example, while the state may make it a crime to possess or use drugs, the state may not make it a crime to be addicted to drugs or afflicted with a disease.

There are two due process clauses in the U.S. Constitution. The one in the Fifth Amendment protects an individual from actions by the federal government and the one in the Fourteenth protects an individual from actions by state governments.

One aspect of due process requires that crimes be described such that an individual is reasonably aware of what conduct is prohibited by the statute. Accordingly, if the statute establishing certain conduct as criminal is vague or overbroad, the statute violates due process.

Jurisdiction is the power of a court to exercise its authority over the subject matter or person. If the court has no jurisdiction over either the defendant or the subject matter of the proceeding, the court is without power to act in the matter. Jurisdiction over the subject matter refers to the power of the court to decide matters pertaining to that subject matter. For example, a family law court with no jurisdiction over criminal matters cannot issue a ruling or make a decision in a criminal case.

An essential element of any criminal charge is that the court has subject matter jurisdiction over the offense. There are limits, however, on the ability of a state court to control the actions of citizens in other states. For example, suppose a judge in Arizona does not

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like Nevada's gambling laws. Accordingly, the judge convinces the city counsel to pass an ordinance to punish persons who travel from the local area to Nevada for the purpose of gambling. While part of the statutory violation occurs within the jurisdiction of the local city, an appellate court would probably hold that the city does not have jurisdiction to control the conduct of its citizens while they are in another state performing actions legal in that state. In addition, there is a constitutional right for citizens to travel between the states. It would appear under the same rationale that a state could not make it illegal for its citizens to travel to a second state to obtain an otherwise legal abortion.

As a general rule, to have jurisdiction over the person the court must have the defendant before the court. There are exceptions. For example, if the defendant is present at the start of a trial, his voluntary absence later in the trial does not cause the court to lose its jurisdiction over him.

The "right to privacy" is not explicitly guaranteed by the U.S. Constitution. The Supreme Court, however, has held that the right to privacy is a substantive right protected by the Constitution under the due process and freedom of association clauses. The Court has held that the framers of the Constitution intended that an independent right of privacy exist and that it protect citizens from undue government encroachment. In Board of Education v. Earls, 536 U.S. 822 (2001), it was held that drug testing in school extracurricular activities is constitutional, “considering the nature and immediacy of the government’s concerns.”

The fact that certain conduct is considered immoral or harmful does not necessarily mean that the conduct constitutes criminal behavior. According to the principle of legality, there is no crime unless the legislature makes the conduct a crime.

One purpose of the principle is to prevent the government from punishing a person for conduct that was lawful when performed.

The second aspect of this principle is that government must give prior notice of what conduct it considers a crime. The Constitution prohibits ex post facto laws, meaning those that would retroactively criminalize actions that were innocent when they were done. The ex post facto limitation also prohibits any law that aggravates a crime (that is makes it more serious than it was when committed) or inflicts a greater punishment than the law allowed when the crime was committed.

The third aspect of the legality principle is the prohibition against bills of attainder. A bill of attainder is a special law that declares a specific person to be guilty of a crime and thus subject to punishment without a trial or conviction.

The Fourteenth Amendment to the U.S. Constitution prohibits states from denying individuals the equal protection of their laws. Suspect classifications (those that appear to be illegal) are usually based on race or religion or gender. For example, a statute that treats males and females differently violates the equal protection clause unless the classification is substantially related to achieving an important government objective. If the classification is based on one of the suspect classifications, the state has the burden to show both the existence of an important objective and the substantial relationship between the discrimination in the statute and that objective. If the

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classification is not based on sex, national origin, or race generally there is a presumption that the statute is valid and the person attacking the statute has the burden of proving that the criteria are impermissible.

The U.S. Constitution, Amendment V states: ...[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb... .

The above-quoted constitutional guarantee against double jeopardy involves three separate restrictions on governmental conduct.

First, the accused is protected from prosecution for the same offense after an acquittal.
Second, the accused is protected from prosecution for the same offense after a conviction.
Third, the accused is protected from multiple punishments for the same criminal conduct.

The purpose of the doctrine is to protect a person from the harassment of multiple trials.

For double jeopardy to apply, the prosecution must be for the same offense as that involved in the earlier proceedings. Accordingly, if an individual is tried in state court for robbing a bank and is acquitted (a state crime), the individual may later be tried in a federal court for robbing a federally insured bank (a federal crime). In this example, although only one bank was involved the crimes are different and therefore the doctrine does not apply.

Learning Objectives

What students should know about criminal liability after studying this chapter:

❶ *State or federal jurisdiction.*

❷ *The meaning of the due process limitations in the Constitution.*

❸ *When a statute is void for vagueness.*

❹ *Issues involved in determining if there is federal or state jurisdiction.*

❺ *The relationship between social harm and criminal liability.*

❻ *The issues involved with the right to privacy.*

❼ *The constitutional limitations on criminal liability.*

❽ *The protections against "cruel and unusual" punishments and*

"double jeopardy."

❾ *The jurisdictional requirements in criminal law.*

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Questions in Review

1. Explain why certain conduct in your home is protected under the Constitution?

2. Why is it not a crime to be addicted to alcohol?

3. Why may an individual be tried in both state and federal court for the same criminal act?

4. How do the legal issues in Powell v. Texas case differ from the Robinson v. California case?

5. Why is there a prohibition on statutes that are vague?

Changes to Chapter 2 in the Sixth Edition

- The learning objectives were revised to provide more guidance to the students on the purpose of the chapter.
- Discussion on Jessica's law.
- Discussion on whether writing curse words on a traffic citation is a crime.
- Questions in Review were added to the chapter.

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