

QUESTIONS & ANSWERS: CRIMINAL LAW

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QUESTIONS & ANSWERS: CRIMINAL LAW

Multiple-Choice and Short-Answer Questions and Answers

THIRD EDITION

Emily Marcus Levine, Esquire
of the Virginia Bar

Paul Marcus
Haynes Professor of Law
College of William and Mary

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Editorial Offices

121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800

201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200

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MATTHEW  BENDER

ABOUT THE AUTHORS

Emily Marcus Levine graduated from the University of Virginia Law School in 1998 and clerked for the United States District Court for the Eastern District of Virginia in 1999. She is an attorney with the Office of the General Counsel of the United States Department of Health and Human Services, where she specializes in legal issues relating to organ transplantation and vaccine injury compensation.

Paul Marcus is the Haynes Professor of Law at the College of William and Mary, Williamsburg, Virginia. He has written casebooks and treatises in both criminal law and criminal procedure, and has lectured on these topics throughout the United States and in many foreign nations as well. He is the former Law Dean at the University of Arizona, and Interim Law Dean at William and Mary.

PREFACE

The study of criminal law in the first year of law school (for most students) involves a rich overview of the United States criminal justice system, explores questions as to why, whom and how we punish, and requires us to face squarely the relationship of the individual to the state. The issues considered in the class are some of the most disturbing and important found throughout the law school curriculum: What are the limits on the ability of the state to sanction behavior? What is appropriate punishment for crimes? What evidence is sufficient to demonstrate a culpable state of mind? Should we have a felony murder rule? Does it make sense to establish degrees of murder? Is the crime of conspiracy which casts a wide net of criminal responsibility, justified? In relieving defendants of responsibility, have we as a society grown to rely too heavily on defenses such as self-defense, necessity, entrapment and insanity?

The key to learning criminal law is to ask, and then answer, several questions about each problem. These include:

- (1) What crime is charged — the answer is not always self evident, as the differences between crimes such as second degree murder and involuntary manslaughter, for instance, can be subtle.
- (2) Is the crime within the permissible scope of legislative action — are there some activities which simply cannot be prohibited by the state?
- (3) What are the elements of the crime — laying out the elements of “actus reus, mens rea” and causation is not difficult, defining particular elements (such as the act requirement for the attempt offense) can be very tough.
- (4) What is the standard of review to determine if the case can proceed — has the government offered sufficient evidence such that a reasonable person could find all the elements of the crime, beyond a reasonable doubt?
- (5) What evidence has the government brought forth to prove its case — often the prosecution will base its theory heavily, if not entirely, on circumstantial evidence while defense counsel will argue that such evidence is not persuasive.
- (6) Can the defendant rebut the government’s case by offering evidence of an affirmative defense — some of the defenses play a large role in the determination of criminal responsibility.

In answering these questions, we encourage you to do so as carefully as you can, whether in responding with short answers or in analyzing the multiple choices given. Your inclination might be to look at the question, think briefly about the answer, and then read the one that we have prepared. Going through the question thoroughly, however, will prove far more beneficial to you in developing your understanding of the underlying issues presented in the questions.

While the questions and answers you will read in this book contain a considerable amount of information, our purpose here is not to teach a short course in criminal law. Rather, we hope these materials will test your knowledge of the key principles in the subject and how they ought to be viewed as a whole. The book is designed as a supplement to the course casebook you will be assigned by your criminal law professor. You will find questions and answers in seven principal subject areas that correspond to the main topics most teachers cover in the introductory criminal law course: “Limits on the Criminal Sanction, Elements of the Offense, Parties to Crimes, Inchoate Offenses, Crimes, Causation,” and “Defenses”. This book is organized in much the same way as many of the more popular criminal law casebooks. Still, even if your professor covers the material in a different order the book should be helpful to you.

The problems in this book are not keyed to any one body of criminal law such as Federal law, the Model Penal Code or any one or more particular states. Instead, the problems are based on the majority principles, with notations as to significant minority views or developing modern trends. This approach is much the same as used by those who have developed the Multistate Bar Examination.

We wish you good luck with your study of the fascinating and important matters you will see in criminal law.

Emily Marcus Levine
Bethesda, MD
Paul Marcus
Williamsburg, VA
September, 2012

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