
TABLE OF CONTENTS

PREFACE.....	V
ACKNOWLEDGMENTS.....	VII
TABLE OF CASES.....	XXI
TABLE OF STATUTES & GUIDELINES.....	XXVII
Chapter 1. Purposes of Punishment.....	1
A. Conventionally Recognized Purposes of Punishment.....	3
1. Utilitarian Purposes of Punishment.....	4
a. General Deterrence.....	5
b. Control of the Dangerous: Specific Deterrence, Incapacitation, Rehabilitation.....	9
i. Specific Deterrence.....	10
ii. Incapacitation.....	12
iii. Rehabilitation.....	17
c. Financial and Human Costs of Punishment.....	19
2. Retribution (Desert) and Proportionality.....	22
a. Implementing Desert-Based Proportionality.....	23
b. Why Should Desert Matter for Punishment?.....	29
Notes & Questions.....	35
Problem 1-1: Is a Prison Sentence Justified?.....	36
Questions.....	40
3. Utilitarianism vs. Retributivism: Must One Take a Side?.....	40
4. Victims and Restorative Justice.....	42
B. Putting Purposes Together.....	49
American Law Institute, Model Penal Code (1962).....	49
Section 1.02. Purposes; Principles of Construction.....	49
Section 7.01. Criteria for Withholding Sentence of Imprisonment and for Placing Defendant on Probation.....	50
Notes & Questions.....	50
Sentencing Reform Act of 1984 (as codified).....	52
18 U.S.C. 3553. Imposition of a sentence.....	52
Notes & Questions.....	52
United States v. Stern.....	55
Notes & Questions.....	62
American Law Institute, Model Penal Code: Sentencing (2017).....	63
Section 1.02. Purposes of Sentencing and the Sentencing System.....	63
Notes & Questions.....	63
C. Collateral Purposes of Punishment.....	66
1. Efficient Functioning of the Criminal Justice System.....	66
2. Generation of Revenue.....	68
Wayne A. Logan & Ronald F. Wright, Mercenary Criminal Justice.....	69
3. Career Preservation and Advancement.....	70
4. Control of the Poor and Marginalized.....	72

Chapter 2. Sentencing Systems—Past & Present.....	79
A. Origins & Evolution of Sentencing Practices in the United States.....	79
1. Colonial Period to Mid-1800s	79
2. Late 1800s to Mid-1970s.....	82
3. Mid-1970s to Mid-1980s	86
4. Mid-1980s to Late 2000s.....	87
5. 2010 to Present.....	93
B. Sentencing Systems Today.....	98
1. Determinacy	100
2. Guidelines.....	103
a. Types of Guidelines	104
b. First Illustration of Presumptive Guidelines: The Minnesota System	106
Minnesota Sentencing Guidelines (2021)	107
Part 4A. Sentencing Guidelines Grid.....	107
State v. Chauvin.....	110
Notes & Questions.....	116
c. Second Illustration of Presumptive Guidelines: Pre-2005 Federal System.....	117
United States Sentencing Guidelines (2021).....	119
Part 5A. Sentencing Table	119
United States Sentencing Guidelines (2021).....	120
§ 2B3.1. Robbery	120
United States Sentencing Guidelines (2021).....	123
§ 1A1. Original Introduction to the Guidelines Manual	123
Notes & Questions.....	128
3. Mandatory Minimums	133
C. Which System Is Best?	135
1. Discretion & Its Discontents	135
2. System Design & Sentence Severity.....	139
3. Guidelines & Disparity	143
Problem 2-1: Writing on a Blank Slate.....	146
Chapter 3. Sentencing Process	147
A. Overview of the Sentencing Process	147
1. Plea Bargaining.....	148
2. Presentence Investigation & Report	152
Federal Rules of Criminal Procedure	153
Rule 32. Sentencing and Judgment.	153
Sample Federal Presentence Report.....	155
Notes & Questions	163
3. Sentencing Hearing	165
Federal Rules of Criminal Procedure	166
Rule 32. Sentencing and Judgment.	166
Notes & Questions	167
State v. Taylor	173
Notes & Questions	182
4. Misdemeanor Sentencing	185

B.	Constitutional Procedural Rights at Sentencing	190
1.	Right to Confront Accusers.....	191
	Williams v. New York	191
	Notes & Questions.....	195
2.	Rights to Jury Trial & Proof Beyond a Reasonable Doubt	196
	Apprendi v. New Jersey	196
	Notes & Questions.....	201
	United States v. Booker	204
	Notes & Questions.....	207
3.	Privilege Against Self-Incrimination	212
	Mitchell v. United States	212
	Notes & Questions.....	219
	Problem 3-1: Right to Remain Silent?	222
4.	Other Procedural Rights at Sentencing.....	222
	Notes & Questions.....	227
	Problem 3-2: “Shall Consider as an Aggravating Factor”	233
C.	Victim Impact Statements and Victim Rights at Sentencing	235
	Paul G. Cassell, In Defense of Victim Impact Statements.....	235
	Notes & Questions	242
	Crime Victims’ Rights Act of 2004 (as codified)	245
	18 U.S.C. § 3773. Crime victims’ rights	245
	Notes & Questions	247
D.	Problem Solving Courts.....	251
	Bruce J. Winick, Therapeutic Jurisprudence and Problem Solving Courts.....	252
	Notes & Questions	254
Chapter 4. Sentencing Factors		261
A.	Criminal History & Recidivism Risk	261
1.	Justifications for Considering Criminal History.....	262
	Notes & Questions.....	266
2.	Which Priors Should Count and to What Extent?	269
	United States Sentencing Guidelines (2021).....	270
	§ 4A1.1. Criminal History Category	270
	Notes & Questions.....	270
3.	Habitual Criminality Statutes	272
	Taylor v. United States	273
	Notes & Questions.....	279
B.	Defendant Characteristics.....	284
1.	Overview	284
	Sentencing Reform Act of 1984 (as codified)	286
	18 U.S.C. § 3553. Imposition of a sentence.....	286
	28 U.S.C. § 994. Duties of the [U.S. Sentencing] Commission.....	286
	American Law Institute, Model Penal Code: Sentencing (2017).....	287
	§ 6B.06. Eligible Sentencing Considerations.....	287
	Notes & Questions.....	287

2.	Family Responsibilities	290
	United States v. Bueno	291
	United States v. Christman.....	295
	Notes & Questions	297
3.	Mental Illness and Intellectual Disability.....	299
	Notes & Questions	302
4.	Socioeconomic Status.....	307
	United States v. Boucher.....	308
	Notes & Questions	312
5.	Race and Implicit Bias.....	317
C.	Offense Seriousness Factors	321
1.	Robbery.....	322
	Notes & Questions	323
2.	Role in the Offense.....	324
	United States Sentencing Guidelines (2021)	324
	§ 3B1.1. Aggravating Role	324
	§ 3B1.2. Mitigating Role	325
	United States v. Irlmeier.....	325
	Notes & Questions	328
3.	Quantitative Factors.....	331
	Notes & Questions	335
4.	Motive & Hate Crimes.....	340
	Wisconsin v. Mitchell.....	342
	Notes & Questions	346
D.	Post-Offense Conduct and Assistance to the Authorities	350
1.	Post-Offense Conduct Generally.....	350
2.	Assistance in the Investigation or Prosecution of Others	353
	Sentencing Reform Act of 1984 (as codified)	353
	18 U.S.C. § 3553. Imposition of a sentence.....	353
	United States Sentencing Guidelines (2021)	353
	§ 5K1.1. Substantial Assistance to Authorities.....	353
	Notes & Questions	353
E.	Additional Offenses.....	359
	Problem 4-1: Sentencing Smith	362
	Chapter 5. Doing Time	363
A.	History	364
B.	Life in Confinement.....	366
1.	Solitary Confinement.....	368
2.	Overcrowding	369
3.	Gangs	370
4.	Geographic Location	371
5.	Prison Labor.....	374
6.	Physical Harm and Death	377
7.	Sexual Victimization.....	378
	Notes & Questions	379
8.	Physical and Mental Health.....	380
	Notes & Questions	384
C.	Elderly in Prisons	384

D. Women’s Institutions	386
E. Experimental Testing on Inmates	388
Notes & Questions	390
F. Private Correctional Institutions.....	391
Notes & Questions	392
G. Faith and Character-Based Institutions	393
H. Impact on Families and Communities.....	394
I. A Brief History of Prisoners’ Rights Litigation.....	395
Notes & Questions	398

Chapter 6. Constitutional Limits on Punishment

(Non-Capital)	399
A. Limits on Imprisonment.....	400
1. Sentence Proportionality Limits—Adults	401
Ewing v. California	401
Notes & Questions.....	408
2. Sentence Proportionality Limits—LWOP for Kids	412
Graham v. Florida.....	412
Notes & Questions.....	425
B. Physical Punishment as Cruel and Unusual Punishment.....	429
State v. Brown.....	430
Notes & Questions	431
C. Equal Protection	433
Skinner v. State of Oklahoma ex rel. Williamson.....	433
Notes & Questions	438
D. “Public Policy”	444
People v. Baum.....	445
Notes & Questions	446

Chapter 7. Capital Punishment

A. Background	449
B. Decision-Making Procedures in the Capital Process	453
Problem 7-1: Arguments That Go Too Far?	459
C. Victim Impact Evidence in Capital Trials.....	462
Payne v. Tennessee	463
Notes & Questions	475
D. Racial Discrimination and the Death Penalty	477
McCleskey v. Kemp.....	478
Notes & Questions	490
E. Categorical Limits on Death	491
Kennedy v. Louisiana	492
Notes & Questions	501
Problem 7-2	503
F. Execution Methods.....	504
Notes & Questions	508
G. Life on Death Row.....	509

Chapter 8. Community Supervision	515
A. Pathways to Community Supervision	517
1. Probation	517
2. Discretionary Parole and Other Post-Prison Supervision.....	521
a. Discretionary Parole Release	522
b. Other Pathways to Post-Prison Supervision	525
Sentencing Reform Act of 1984 (as codified)	525
18 U.S.C. § 3583. Inclusion of a term of supervised release after imprisonment.....	525
United States Sentencing Guidelines (2021).....	526
§ 5D1.1. Imposition of a Term of Supervised Release	526
§ 5D1.2. Term of Supervised Release.....	526
Notes & Questions.....	526
c. Special Challenges of Prisoner Reentry.....	529
B. Experience of Community Supervision	530
1. Conditions.....	530
18 U.S.C. § 3563. Conditions of probation.....	530
Notes & Questions	533
United States v. Gementera.....	539
Notes & Questions	546
Problem 8-1: A Sandwich Board for Bank Robbery?	551
2. Supervision.....	551
Edward J. Latessa & Myrinda Schweitzer, Community Supervision and Violent Offenders: What the Research Tells Us and How to Improve Outcomes	552
Notes & Questions	558
3. Violations & Revocation	559
a. Potential Responses to Violations	559
18 U.S.C. § 3565. Revocation of probation.....	560
United States Sentencing Guidelines (2021).....	560
§ 7B1.1. Classification of Violations (Policy Statement).....	560
§ 7B1.3. Revocation of Probation or Supervised Release (Policy Statement)	561
Notes & Questions.....	561
b. Consequences of Revocation	564
Problem 8-2: Responding to Probation Violations	566
c. Due Process.....	567
Morrissey v. Brewer	567
Notes & Questions.....	573
4. Modification of Terms and Conditions.....	579
C. Intermediate Sanctions	581
1. Home Detention and Electronic Monitoring	582
2. Day Reporting Centers	583
3. Boot Camps.....	584
4. Community Service.....	584

5.	Intensive Supervision	585
	Edward J. Latessa & Myrinda Schweitzer, Community Supervision and Violent Offenders: What the Research Tells Us and How to Improve Outcomes.....	585
	Notes & Questions.....	586
Chapter 9. Economic Sanctions		589
A.	Types.....	590
1.	Fines.....	590
	United States Sentencing Guidelines (2021).....	590
	§ 5E1.2. Fines for Individual Defendants	590
	Notes & Questions.....	591
2.	Restitution	596
	Mandatory Victims Restitution Act of 1996 (as codified)	597
	18 U.S.C. § 3663A. Mandatory restitution to victims of certain crimes	597
	18 U.S.C. § 3664. Procedure for issuance and enforcement of order of restitution	598
	Notes & Questions.....	599
	Paroline v. United States.....	604
	Notes & Questions.....	615
3.	Forfeiture.....	617
a.	Civil Forfeiture	617
	21 U.S.C. § 881	618
	18 U.S.C. § 983	619
	United States v. Funds in the Amount of One Hundred Thousand & One Hundred Twenty Dollars (\$100,120.00).....	620
	Notes & Questions.....	625
b.	Criminal Forfeiture	630
4.	Costs, Fees, Assessments, Surcharges, and the Like	632
	Wayne A. Logan & Ronald F. Wright, Mercenary Criminal Justice	633
	Notes & Questions.....	634
B.	Enforcement of Economic Sanctions.....	637
C.	Constitutional Limitations	641
1.	Safeguards for Indigent Defendants	642
	Bearden v. Georgia.....	642
	Notes & Questions.....	646
2.	Excessive Fines Clause	648
	United States v. Bajakajian	648
	Notes & Questions.....	654
Chapter 10. Sentencing of Corporations		659
A.	Theoretical Background	661
B.	Modern Trends	663
1.	Nonprosecution Agreements (NPAs)	665
2.	Deferred Prosecution Agreements (DPAs)	666

C.	Organizational Sentencing Guidelines.....	668
1.	Fines.....	669
2.	Restitution.....	670
3.	Probation.....	671
4.	Forfeiture.....	671
D.	The Judicial Role.....	671
	United States v. Aegerion Pharmaceuticals, Inc.	672
	Notes & Questions.....	678
Chapter 11. Collateral Consequences of Conviction.....		681
A.	The Broader Landscape.....	683
1.	Civil and Political Rights.....	683
a.	Voting.....	683
	Richardson v. Ramirez.....	683
	Notes & Questions.....	688
b.	Jury Service.....	691
2.	Employment and Licensure.....	693
3.	Government Benefits.....	694
4.	Drivers' Licenses.....	695
5.	Firearms.....	696
	Question.....	698
6.	Immigration.....	698
B.	Sex Offender Specific Collateral Consequences.....	699
1.	Involuntary Commitment.....	700
	Kansas v. Hendricks.....	700
	Notes & Questions.....	710
2.	Registration and Community Notification.....	713
	Smith v. Doe.....	715
	Notes & Questions.....	725
3.	Residence Exclusion Zones.....	729
	Doe v. Miller.....	730
	Notes & Questions.....	738
4.	Other Sanctions.....	743
a.	Electronic Monitoring.....	743
b.	Internet and Social Media Limits.....	745
C.	Advocacy.....	746
D.	Bases for Relief from Collateral Consequences.....	750
	Problem 11-1: Inter-Jurisdictional Considerations.....	753
Chapter 12. Sentence Review & Modification.....		755
A.	Correction of Erroneously Imposed Sentences.....	756
	State v. Gallion.....	756
	Notes & Questions.....	761
B.	Judicial Modification Based on New Circumstances.....	769
	Cecelia Klingele, Changing the Sentence Without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release.....	770
	Notes & Questions.....	775

C. Role of the Executive Branch 781

 1. Powers of the Parole Board & Department of Corrections..... 781

 Problem 12-1: Issue Spotter—What’s the Real Length of a
 Prison Term?..... 784

 2. Clemency..... 784

INDEX 789