Test Bank for Criminal Law 2nd Moore

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Criminal Law (Justice Series), 2e **(Moore/Worrall)**
Chapter 2 Limitations on the Criminal Law

2.1 Multiple Choice

1) The U.S. Constitution divides governmental authority into three branches. Which one is NOT a branch of the U.S. government?
A) Executive.
B) Legislative.
C) Jurisdictive.
D) Judicial.
Answer: C
Page Ref: 21
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Basic

2) A system of government where power is constitutionally divided between a central governing body and various constituent units is known as:
A) Federalism.
B) Confederation.
C) Principle of Legality.
D) Principle of Leniency.
Answer: A
Page Ref: 22
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Basic

3) Which Amendment states "no state shall deny to any person within its jurisdiction the equal protection of the laws"?
A) Second.
B) Fifth.
C) Eighth.
D) Fourteenth.
Answer: D
Page Ref: 24
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Basic

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4) The _____ test states the law must be "narrowly tailored" to serve a "compelling" government interest.
A) Strict Scrutiny.
B) Intermediate Scrutiny.
C) Rational Basis.
D) Balanced Basis.
Answer: A
Page Ref: 25
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Difficult

5) This test is used under the Equal Protection Clause of the Fourteenth Amendment for classifications based on race.
A) Strict Scrutiny.
B) Intermediate Scrutiny.
C) Rational Basis.
D) Balanced Basis.
Answer: A
Page Ref: 25
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

6) This test is used under the Equal Protection Clause of the Fourteenth Amendment for classifications based on gender.
A) Strict Scrutiny.
B) Intermediate Scrutiny.
C) Rational Basis.
D) Balanced Basis.
Answer: B
Page Ref: 25
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

7) This test is used under the Equal Protection Clause of the Fourteenth Amendment for classifications which are not based on race or gender.
A) Strict Scrutiny.
B) Intermediate Scrutiny.
C) Rational Basis.
D) Balanced Basis.
Answer: C
Page Ref: 25
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

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8) Assume that a state decides to define a juvenile as someone under the age of 16, not the usual 18. Assume further that a 17-year-old committed robbery before the change. To suddenly try him or her as an adult could constitute a (n) _____ violation.
A) *Malum prohibitum.*
B) *Malum in se.*
C) *Stare decisis.*
D) *Ex post facto*.
Answer: D
Page Ref: 26
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

9) This Supreme Court case raises the issue of whether an *ex post facto* violation occurs when the punishment scheme for an offense is altered after its commission.
A) *Keeler v. Superior Court.*
B) *Lynce v. Matthis.*
C) *Garner v. Jones.*
D) *Winters v. New York.*
Answer: B
Page Ref: 27
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Difficult

10) A law will be _____ if it prohibits action that is protected by the Constitution.
A) Void for vagueness.
B) Void for nebulousness.
C) Void for overbreadth.
D) Void for equal protection.
Answer: C
Page Ref: 27
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

11) Overbreadth cases frequently involve the _____ Amendment, which protects the freedom of religion, assembly, and speech.
A) First.
B) Second.
C) Fifth.
D) Eighth.
Answer: A
Page Ref: 29
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Basic

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12) _____ is defamation by the written or printed word.
A) Slander.
B) Group Libel.
C) Libel.
D) Seditious Speech.
Answer: C
Page Ref: 29
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

13) _____ is defamation by the spoken word.
A) Slander.
B) Group Libel.
C) Libel.
D) Seditious Speech.
Answer: A
Page Ref: 29
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

14) _____ is an attack on the good reputation of another.
A) Slander.
B) Group Libel.
C) Defamation.
D) Libel.
Answer: C
Page Ref: 29
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

15) _____ advocates rebellion against the government.
A) Slander.
B) Group Libel.
C) Libel.
D) Seditious Speech.
Answer: D
Page Ref: 32
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

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16) This Supreme Court case decided that the death penalty, *as it was being carried out at the time*, was unconstitutional.
A) *Furman v. Georgia.*
B) *Atkins v. Virginia.*
C) *Roper v. Simmons.*
D) *Coker v. Georgia.*
Answer: A
Page Ref: 32
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

17) This Supreme Court case determined that the death penalty is not permitted for the rape of an adult.
A) *Furman v. Georgia.*
B) *Atkins v. Virginia.*
C) *Roper v. Simmons.*
D) *Coker v. Georgia.*
Answer: D
Page Ref: 33
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

18) This Supreme Court case determined that the death penalty is not permitted for the rape of a juvenile.
A) *Gregg v. Georgia.*
B) *Atkins v. Virginia.*
C) *Kennedy v. Louisiana.*
D) *Coker v. Georgia.*
Answer: C
Page Ref: 33
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

19) This Supreme Court case determined that a mentally retarded convicted defendant cannot be executed.
A) *Atkins v. Virginia*.
B) *Roper v. Simmons*.
C) *Coker v. Georgia*.
D) *Kennedy v. Louisiana*.
Answer: A
Page Ref: 34
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

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20) This Supreme Court case determined that if the defendant is under the age of eighteen when they commit the capital crime, they cannot be executed.
A) *Furman v. Georgia.*
B) *Atkins v. Virginia.*
C) *Roper v. Simmons.*
D) *Coker v. Georgia.*
Answer: C
Page Ref: 34
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

21) Which Amendment to the U.S. Constitution addresses the issue of double jeopardy?
A) First.
B) Second.
C) Fifth.
D) Eighth.
Answer: C
Page Ref: 35
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

22) For double jeopardy purposes, which is NOT considered a separate sovereign?
A) The Federal Government.
B) Counties within the same State.
C) Each State Government.
D) Each Native American Tribe.
Answer: B
Page Ref: 35
Objective: Explain the guarantee against double jeopardy.
Level: Basic

23) Early English common law contains the foundations of the modern-day double jeopardy. The rule of _____ prohibited the retrial of a defendant who was found not guilty.
A) *Autrefois acquit.*
B) *Malum prohibitum.*
C) *Malum in se.*
D) *Autrefois convict.*
Answer: A
Page Ref: 36
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

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24) There are four main exceptions to the *Blockburger* rule. Which is NOT one of the exceptions?
A) Conduct Committed after the First Prosecution.
B) Defense Plea Bargains over the Prosecution's Objection.
C) Court Case is Dismissed by the Judge but the Defendant is not Acquitted.
D) Court Hearing the First Offense Lacks Jurisdiction.
Answer: C
Page Ref: 36-37
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

2.2 True-False

1) Indirect protections are more concerned with the criminal law itself than they are with the treatment of individuals.
Answer: TRUE
Page Ref: 21
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

2) The courts presume that all laws are constitutional.
Answer: TRUE
Page Ref: 21
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Basic

3) The federal government's law-making authority is limited.
Answer: TRUE
Page Ref: 22
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

4) The government is not required to treat everyone exactly the same.
Answer: TRUE
Page Ref: 24
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

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5) First degree murder is fundamentally equivalent to negligent homicide.
Answer: FALSE
Page Ref: 26
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Basic

6) It is legal to punish someone for an action that wasn't illegal when it was committed.
Answer: FALSE
Page Ref: 26
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Basic

7) Similar to *ex post facto* prohibition, there are specific constitutional provisions that ban overly vague laws.
Answer: FALSE
Page Ref: 28
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

8) The equal protection requirement, the ban on *ex post facto* laws, and the ban on overly vague statutes apply to some criminal laws some of the times.
Answer: FALSE
Page Ref: 28
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

9) The Supreme Court has sanctioned bans on freedom of speech.
Answer: TRUE
Page Ref: 29
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Basic

10) Both the federal government *and* the states are bound by this constitutional limitation of cruel and unusual punishment.
Answer: TRUE
Page Ref: 32
Objective: Describe the protections against cruel and unusual punishments.
Level: Basic

11) In *Furman v. Georgia*, the Supreme Court held that the death penalty itself constitutes cruel and unusual punishment.
Answer: FALSE
Page Ref: 32
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

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12) It is unconstitutional to execute a mentally retarded murderer.
Answer: TRUE
Page Ref: 34
Objective: Describe the protections against cruel and unusual punishments.
Level: Basic

13) The Supreme Court has declared that the Fifth Amendment's protection against double jeopardy is not a fundamental right.
Answer: FALSE
Page Ref: 35
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

14) An individual who is acquitted in criminal court cannot be charged in civil court for the same action.
Answer: FALSE
Page Ref: 35
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

15) If a defendant successfully appeals a criminal conviction or otherwise succeeds in overturning a conviction, he or she may not be re-prosecuted in a new trial.
Answer: FALSE
Page Ref: 37
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

2.3 Fill in the Blank

1) Procedural protections that hail from the U.S. Constitution are known as _____ protections.
Answer: Direct
Page Ref: 21
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Difficult

2) Whenever federal and state laws are at odds, the _____ law supersedes.
Answer: Federal
Page Ref: 22
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Basic

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3) The rational basis test is used under the Equal Protection Clause of the Fourteenth Amendment for _____.
Answer: Classifications
Page Ref: 25
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

4) The *ex post facto* law is a law enacted to _____ punish behavior.
Answer: Retroactively
Page Ref: 26
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

5) A constitutional doctrine based on the Fifth and _____ Amendments requiring that the laws be written with sufficient clarity and specificity.
Answer: Fourteenth
Page Ref: 28
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

6) _____ speech is that which advocates rebellion against the government.
Answer: Seditious
Page Ref: 29
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

7) Guided discretion laws are laws that provide for the death penalty based on weighing aggravating and _____ circumstances.
Answer: Mitigating
Page Ref: 32
Objective: Describe the protections against cruel and unusual punishments.
Level: Basic

8) If a defendant is under the age of _____ when they commit a capital crime, they cannot be executed.
Answer: Eighteen
Page Ref: 34
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

9) Double jeopardy prevents a second _____ for the same offense.
Answer: Prosecution
Page Ref: 36
Objective: Explain the guarantee against double jeopardy.
Level: Basic

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10) Double jeopardy does not apply when the court hearing the first offense lacks _____ to try the second offense.
Answer: Jurisdiction
Page Ref: 37
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

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2.4 Matching

Match each term related to separation of powers with its definition.

A) A legal principle stating that a defendant cannot be convicted of a crime unless there is specific legislation making it illegal and defining the potential punishment.
B) A system of government that lacks a strong central authority.
C) A system of government where power is constitutionally divided between a central governing body and various constituent units.
D) A legal principle requiring that any ambiguity in a statue should benefit the defendant, not the government.

1) Federalism
Page Ref: 21-23
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

2) Confederation
Page Ref: 21-23
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

3) Principle of Legality
Page Ref: 21-23
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

4) Principle of Lenity
Page Ref: 21-23
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

Answers: 1) C 2) B 3) A 4) D

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Match each legal term with its explanation.

A) A principle found in the Fifth Amendment that prevents an individual from being charged twice for the same crime.
B) A constitutional principle requiring that laws do not infringe on constitutionally protected behavior.
C) A constitutional doctrine based on the Fifth and Fourteenth Amendments requiring that the laws be written with sufficient clarity and specificity.
D) The Eighth Amendment prohibits barbaric punishment and disproportionate sentencing.
E) A clause in the Fourteenth Amendment requiring that the government justify any differential treatment on the basis of race, gender, age, sexual orientation, or other characteristic with a state interest.
F) A law enacted to in order to retroactively punish behavior.

5) Equal Protection Clause
Page Ref: 24-37
Level: Intermediate

6) *Ex Post Facto* law prohibition
Page Ref: 24-37
Level: Intermediate

7) Void for Vagueness Doctrine
Page Ref: 24-37
Level: Intermediate

8) Void for Overbreadth Doctrine
Page Ref: 24-37
Level: Intermediate

9) Cruel and Unusual Punishment Provision
Page Ref: 24-37
Level: Intermediate

10) The Double Jeopardy Prohibition
Page Ref: 24-37
Level: Intermediate

Answers: 5) E 6) F 7) C 8) B 9) D 10) A

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2.5 Essay

1) Compare and contrast the law of legality and the law of lenity.
Answer: The law of legality is a legal principle stating that a defendant cannot be convicted of a crime unless there is specific legislation making it illegal and defining the potential punishment. The advantage of the legality principle is that a criminal code provides prior notice to the people of what behavior is illegal. The principle of legality prevents governmental abuse. Yet its downside is flexibility. The criminal law has a hard time keeping pace with new actions, that although harmful, are not yet considered criminal. The principle of lenity is a legal principle requiring that any ambiguity in a statue should benefit the defendant, not the government. When statues are overly vague, for example, that vagueness should be resolved in favor of the defendant. The potential downside of lenity is that there is plenty of room for interpretation in the language of criminal law. As such, when taken to the extreme, the rule of lenity can be used to interpret a statue in a manner that is at odds with legislative intent. For this reason, many states have abolished the rule of lenity.
Page Ref: 23
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

2) Describe the Fourteenth Amendment's equal protection clause including how the determination is made whether a statue violates the Equal Protection Clause.
Answer: The Equal Protection Law is a clause in the Fourteenth Amendment of the U.S. Constitution requiring that the government justify any differential treatment on the basis of race, gender, age, sexual orientation, or any characteristic with a state interest. In order to determine whether a statue violates the equal protection clause, the courts now apply one of three tests depending on the classification in question. If a law classifies people based on race or national origin than the strict scrutiny test is applied. If a law classifies people based on gender than the intermediate scrutiny tested is applied. Finally, a law that classifies people on any other basis is subjected to the rational basis test.
Page Ref: 24-27
Objective: Describe the Fourteenth Amendment's equal protection clause and the prohibition of ex post facto laws.
Level: Intermediate

3) Compare and contrast libel, group libel, slander, defamation, and seditious speech.
Answer: Libel is defamation by the printer word. Group libel is speech that defames a certain group or class of people or is "libelous" towards a specific group. Slander is defamation by the spoken word. Defamation is written or spoken words that damage the reputation of the object of the speech. Seditious speech is speech that advocates rebellion against the government.
Page Ref: 29-32
Objective: Summarize the void for vagueness and void for overbreadth doctrines.
Level: Intermediate

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4) Identify the factors the courts must consider when deciding what length of term is appropriate, in determining whether a long prison term violates the Eighth Amendment. Identify which factors is the most important.
Answer: (1) the gravity of the offense compared to the sentence, (2) the penalties imposed on other offenders in the same state for the same offense, (3) the penalties imposed in other states for the same offense, and (4) the defendant's recidivism. Courts are not required to consider all these criteria, however. To this day, there is some uncertainty as to which (if any) combination is important.
Page Ref: 32-35
Objective: Describe the protections against cruel and unusual punishments.
Level: Intermediate

5) Define the *Blockburger* rule. Identify and explain the four situations in which double jeopardy protection does not apply.
Answer: An offense is considered the "same offense" for purposes of double jeopardy if two separate statutes that define the offense both contain the same elements. Conduct Committed after the First Prosecution: Double jeopardy does not apply if the second prosecution is based on conduct committed after the first prosecution; Defendant Responsible for the Second Prosecution: If the defendant is responsible for the second prosecution, double jeopardy does not apply; Court Hearing the First Offense Lacks Jurisdiction: Double jeopardy does not apply when the court hearing the first offense lacks jurisdiction to try the second offense; Defense Plea Bargains over the Prosecution's Objection: If the defense plea bargains over the prosecution's objection, double jeopardy protections do not apply.
Page Ref: 36
Objective: Explain the guarantee against double jeopardy.
Level: Intermediate

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2.6 Critical Thinking

1) The drug trade from Central and South America is causing a dramatic increase in criminal activity in New Mexico. The New Mexico legislature wants to take action. They pass a statute with this language: "Any person found transporting illegal substances, including but not limited to, heroin, cocaine and marijuana, into New Mexico will be punished to the full extent of the law." Is this criminal statute enforceable? Why or why not?
Answer: The principle of legality is a legal principle stating that the defendant cannot be convicted of a crime unless there is specific legislation making it illegal and defining the potential punishment. The statue proposed by the New Mexico legislature indicates that certain illegal substances (such as heroin, cocaine and marijuana) are already illegal and that existing legislation exists defining these substances as illegal and defining the potential punishment. The proposed statue does not enhance existing legislation and does not meet the principle of legality as it does not define the potential punishment. This specific statue does not appear to be enforceable, rather, the possession of an illegal substance may be enforceable under existing laws within New Mexico. It is not known whether New Mexico has a rule of lenity but the ambiguity in the statue could benefit the defendant, not the government.
Page Ref: 23-24
Objective: Explain how the separation of powers and federalism limit the government's law-making authority.
Level: Intermediate

2) There are six constitutional limits on the criminal law. Which limit most often applies to obscenity laws and those dealing with loitering and vagrancy statues? Identify and define the constitutional limit and explain why it best applies.
Answer: The void for vagueness doctrine is a constitutional doctrine based on the Fifth and Fourteenth Amendments to the U.S. Constitution requiring that laws be written with sufficient clarity and specificity. Void for vagueness cases have historically fallen into two categories—those dealing with obscenity laws and those dealing with loitering and vagrancy statues. Several cases, including *Winters v. New York* and *State v. Metzger* address void for vagueness specific to obscenity laws. In both cases the courts declared the laws were too vague. Several cases have also dealt with the meaning of loitering and vagrancy statues. Students can cite examples such as *Kolender v. Lawson* and *Papachristou* v. *City of Jacksonville*.
Page Ref: 28
Objective: Summarize court organization.
Level: Intermediate

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