I. Classification of crimes

A. Felony classification versus classification

1. Felony offenses

   a. Common law felonies: Common law felonies were Murder, Rape, Manslaughter, Robbery, Sodomy, Larceny, Arson, Mayhem, and Burglary (MR. & MRS. LAMB).

   b. Maryland felonies

      (1) Common law felonies

      (2) Statutory offenses that provide that the offense is a felony
2. **Misdemeanor offenses:** In Maryland, offenses that are not felonies are misdemeanors.

3. **Significance of felony-misdemeanor distinction**
   a. **Within the elements of the crime:** e.g., felony murder, burglary, misprision of a felony, compounding a felony.
   b. **Subject matter jurisdiction:** District Court has exclusive jurisdiction over most misdemeanors, and Circuit Court has exclusive jurisdiction over most felonies.
   c. **Statutes of limitation:** For all felonies and for misdemeanors with confinement in the Division of Correction (DOC), there is no statute of limitations. For most misdemeanors with no statutory penalty of DOC confinement, there is a one-year statute of limitations.
   d. **Accomplice liability consequences**
      (1) **Felonies:** For felonies, accomplice liability is divided into principals in the first degree, principals in the second degree, accessories before the fact, and accessories after the fact.
      (2) **Treason:** For treason, all parties are principals.
      (3) **Misdemeanors:** For misdemeanors, all parties are principals, except accessories after the fact have no criminal liability.
   e. **Effect on applicability of defenses**
      (1) **Defense of property:** Defense of property requires an inherently dangerous felony to permit the use of deadly force.
      (2) **Crime prevention:** At common law, misdemeanor warrantless arrests required the crime to be committed in the officer’s presence. There was no limitation on felony warrantless arrests.
   f. **Sentencing consequences**
      (1) **Value of property:** Classification of a crime against property as a felony or misdemeanor is based on the value of the property. Under the theft offense statute, if the value of the property is at least $1,000, the offense is a felony. Otherwise, it is a misdemeanor. Under the bad check statute, if the value of the goods or services is at least $500, the offense is a felony. Otherwise, it is a misdemeanor.
      (2) **Enhancement, recidivist, & mandatory sentencing statutes**
(a) Penalty more severe because of prior felony
(b) Classification changed from misdemeanor to felony because of prior offenses

g. Criminal procedure consequences

(1) Right to counsel: The Sixth Amendment right to counsel applies to all felonies, but it only applies to misdemeanors if there is potential incarceration.

(2) Grand jury indictment: The Fifth Amendment requirement of a grand jury indictment for federal felony prosecutions does not apply to federal misdemeanor prosecutions.

h. Evidentiary consequences: Some jurisdictions permit impeachment based on certain felony convictions but not based on certain misdemeanor convictions.

i. Collateral consequences

(1) Employment: Hiring, suspension, and termination may all be affected by felony convictions more severely than by misdemeanor convictions.

(2) Licensing: Licensing procedures may be more negative based on a felony conviction, compared with a misdemeanor conviction.

(3) Contractual rights: Contractual rights may be limited by a felony but not by a misdemeanor.

(4) Right to vote: The right to vote may be denied to convicted felons but not to convicted misdemeanants.

(5) Eligibility for elected office: The right to seek elected office may be denied to convicted felons but not denied to convicted misdemeanants.

(6) Jury service: The right to serve on a jury may be denied to convicted felons but not denied to convicted misdemeanants.

B. Mala in se classification versus mala prohibita: Mala in se is inherently wrong, but mala prohibita is wrong solely because the legislature makes it a crime.

II. Sources of criminal law

A. Primary authority: Primary authority consists of case law and enacted law (constitutions, charters, statutes, ordinances, administrative regulations, rules of court, and treaties).

B. Maryland criminal law: Maryland criminal law exists in both a common law format and an enacted law format.
1. **Common law**: Md. Decl. Rights art. 5 adopts, as Maryland law, as of July 4, 1776, all English case law and those English statutes that “by experience have been found applicable and been used.” Maryland’s common law may be amended by constitutional amendment, legislative enactment, Court of Appeals promulgated rule, or judicial abrogation of the common law.

2. **Enacted law – Md. Code Ann.**

C. **Federal criminal law**

1. **Common law**: There is no federal common law, except in the District of Columbia.

2. **Enacted law**: The federal criminal code is 18 U.S.C.

3. **Assimilative Crimes Act**: Federal law applies in federal enclaves located in states. When there is a “gap” in federal criminal law because Congress has not prohibited certain conduct, federal law is found in the Assimilative Crimes Act, which adopts, as federal criminal law, the criminal law of the state in which the federal enclave is located.

III. **Interpretation of substantive criminal law**

A. **Common law/case law**: Mandatory case law for state courts in Maryland includes cases decided by the Supreme Court, the Court of Appeals, and the Court of Special Appeals. All other case law is persuasive only and not mandatory. Mandatory case law for the United States District Court for the District of Maryland, i.e., the federal trial court, includes cases decided by the Supreme Court and the United States and the Court of Appeals for the Fourth Circuit. All other case law is persuasive only and not mandatory.

B. **Enacted law**

1. **Applicability of rules of statutory construction**: Under separation of powers, since Marbury v. Madison, in 1803, the judicial branch is the ultimate interpreter of the law, which usually requires application of principles of statutory construction.

   a. **Statutes plain on their face**: Statutes that are plain on their face require no statutory construction, but whether a statute is plain on their face itself presents an issue of statutory construction.

   b. **Statutes that are ambiguous**: Most statute have room for argument as to the meaning of the statute. Those arguments are resolved by application of the principles of statutory construction.

   c. **Statutes that are void for vagueness**: The Fifth Amendment Due Process Clause applies against the federal government, and the Fourteenth Amendment Due Process Clause applies against the states. A statute must provide fair warning and notice, must not be susceptible to arbitrary and discriminatory enforcement, and must not create a “chilling effect” on the exercise of constitutional
rights.

2. **Principles of statutory construction**

   a. **Legislative intent**

   (1) **Everyday language:** Everyday words and phrases are presumed to have their everyday meaning.

   (2) **Terms of art:** Terms of art are presumed to have their meaning, as evolved over the years during which they became terms of art in the law.

   (3) **Statutorily defined terms:** Statutorily defined terms are presumed to have the meaning set forth by the legislature.

   (4) **Legislative history**

   (a) **Federal legislation:** Federal legislation has extensive written legislative history.

      i. **Reports**

         a. **Joint House-Senate conference committee reports**

         b. **House or Senate committee reports**

      ii. **Debates & comments in House or Senate**

      iii. **Hearings**

   (b) **State legislatures:** In Maryland, there is published legislative history for statute enacted since 1975.

   (c) **Local legislatures:** Local legislation rarely has published legislative history.

   (5) **General purpose of statute:** Start with the title of the legislation and examine its preamble or introduction.

   (6) **Presumption of legislative awareness of existing law**

   (a) **Implicit acceptance of appellate interpretation through re-enactment with no change**

   (b) **Implicit acceptance of appellate interpretation through no subsequent legislation**

   (c) **Express rejection of appellate interpretation through change in the law following appellate interpretation**

   b. **Strict or narrow statutory construction**

   (1) **Statutes in derogation of common law are strictly construed**
(2) Criminal statutes are strictly construed

c. Constitutional questions

(1) Presumption of constitutionality of enacted law

(2) Severability if presumption fails: If a statute is found unconstitutional, in part, the remainder of the statute survives if (a) there is a general severability statute (as in Maryland) or a severability clause in the statute at issue, and (b) the statute, after severance, can effectuate the legislative intent.

d. Common sense approach

e. Implied exceptions: Courts may “read into” a statute an exception that the legislature must have meant.

f. Construe statute as a whole: No statute should be construed to render superfluous or nugatory any word, phrase, clause, or sentence.

g. Statutes in pari materia: Multiple statutes should be read and construed together to give effect to all statutes, if possible.

h. Special statutes control over general statutes

i. Later statutes control over earlier statutes

j. Reconciling conflicts among rules of reconciliation: If the rule of “special over general” would produce a different result than the rule of “later over earlier,” an “earlier-special” statute will control over a “later-general” statute.

k. Comparison: Compare the statute with the same law, same bill, similar statutes in other jurisdictions, and the common law.

l. Ejusdem generis: A general phrase following a list of specific items or examples indicates that the list is not closed, and the statute includes items not listed if they are of the same kind as the items listed.

m. Expressio unius, exclusio alterius: The expression of one thing (or some things) means the exclusion of other things. Thus, unlike with ejusdem generis, the list is closed.

n. Characterization versus limitation: Determine whether adjectives and adverbs are used to characterize the category or to place a limitation on the category.

o. Mandatory language (shall, must, or shall not) versus directory language (may or should)

p. Disjunctive language (any one) versus conjunctive language
q. **Singular language versus plural language**: One includes more than one, and more than one includes one.

r. **Gender**: Either gender means both genders.

s. **Verb tense**: Present tense includes future tense.

Class #2: Criminal Jurisdiction, Juvenile Jurisdiction, & Venue

I. **Power of governments or sovereigns to create substantive criminal law**

A. **Limitations under substantive due process**: Fifth and Fourteenth Amendment due process preclude federal and state governments from controlling certain conduct. Substantive due process limitations typically involve the right of privacy. The Government cannot control abortion under certain circumstances. The Government may not control sexual conduct that is conducted in private, is consensual, is among adults, is non-commercial, and does not involve incest.

B. **Limitations under federalism**: If the Government can control certain conduct, “federalism” requires a determination of whether the power is exclusively in the federal government, is exclusively in state governments, or is shared.

1. **Federal government**

   a. **Congressional power to enact laws that control conduct in federally owned & controlled territory**: Congress has broad police powers to enact laws that control conduct in federally owned and controlled territory.

      (1) **District of Columbia**

      (2) **U.S. territories**

      (3) **Federal enclaves in states**: Federal law applies in federal enclaves in states, including military posts, federal buildings, and national parks and forests. If there is a “gap” in federal criminal law, federal law adopts, through the Assimilative Crimes Act, the criminal law of the state in which the federal enclave is located.

      (4) **U.S. territorial waters**: There is exclusive U.S. power to control, pursuant to international law and treaties, conduct on waters up to 12 miles beyond U.S. borders.

   b. **Congressional power to enact laws that control conduct in state owned & controlled territory**

      (1) **Express constitutional powers**: U.S. Const. provides 17 expressly enumerated congressional powers to control conduct in state owned and controlled territory, including counterfeiting and crimes in international waters:

      (2) **Implied constitutional powers**: There are laws that are
“necessary and proper for carrying into execution” the 17 expressly enumerated constitutional powers.

(3) **Pre-emption doctrine:** Congress may have intended the federal government to be the exclusive legislative body governing particular conduct because Congress enacted pervasive legislation, the subject is dominated by federal interests, and/or state legislation would seriously hamper effective federal enforcement.

2. **State governments**
   a. **Tenth Amendment:** Powers not delegated to the federal government are reserved to the states.
   b. **Fourteenth Amendment police powers:** States have broad police powers to enact laws that control conduct in that state.

3. **Concurrent powers of multiple governments to control conduct**
   a. **Concurrent power between the federal government & foreign governments:** Congress and a foreign government may provide, by treaty, concurrent power to control conduct on U.S. ships and aircraft and/or foreign ships and aircraft in or over international waters or in or over foreign territory.
   b. **Concurrent power between the federal government & state governments**
      (1) **Federal enclaves in states:** Congress may provide that, in federal enclaves, states also have the power to control conduct, e.g., national forests.
      (2) **Internal U.S. waters not in any state:** There is concurrent federal/state power to control conduct, under federal law, if the conduct is committed on internal U.S. waters not located in any state.
      (3) **In state owned & controlled territory:** In state owned and controlled territory, the federal government may have the power to control conduct, pursuant to express or implied constitutional powers, and simultaneously states have the power to control conduct, under their broad police powers.
   c. **Concurrent power between multiple state governments:** Two states may provide that both states have the power to control particular conduct, e.g., on boundary waters if unlawful in both states.

4. **Double jeopardy:** Fifth Amendment prohibition against double jeopardy is not violated if two governments/sovereigns, with concurrent power to control conduct, both prosecute the Defendant for the same conduct
because double jeopardy only protects against being twice placed in jeopardy by the same sovereign.

II. **Personal jurisdiction of a government or sovereign over the conduct & over the Defendant:** There must be sufficient connection between the government/sovereign and Defendant’s conduct for that sovereign to have personal jurisdiction over Defendant.

A. **Personal jurisdiction in state criminal cases**

1. **Territorial jurisdiction:** Personal jurisdiction in state courts is determined on a territorial theory of jurisdiction, i.e., whether the situs or locus of the offense occurred in that sovereign. Maryland’s common law requires that the “essential,” “key,” or “vital” element take place in Maryland.

2. **Situs or locus of offense**
   a. **Affirmative act offense:** The situs or locus of an affirmative act offense is the place where the prohibited conduct occurred.
   b. **Omission/failure to act offense:** The situs or locus of an omission to act offense is the place where the omission to act took place, i.e., where the required act should have been performed.
   c. **Continuous conduct:** Personal jurisdiction over an offense that is part of a continuous conduct may include jurisdiction for offenses in other jurisdictions that are part of that continuous conduct.
   d. **Required result offense:** If the offense requires a specific result, the situs or locus of the offense is where the result occurred. It may be sufficient if the result was intended to take place in the jurisdiction, even if the Defendant never entered the jurisdiction.

3. **Burdens**
   a. **Burden of production:** Territorial jurisdiction is not an element, but it is required. Because territorial jurisdiction is rebuttably presumed, the Defendant must generate the issue, which requires evidence and not a bare allegation.
   b. **Burden of persuasion:** If the Defendant produces evidence that the crime did not take place in Maryland, that rebuts the presumption of territorial jurisdiction, and the State must persuade the finder of fact, beyond a reasonable doubt, that there is territorial jurisdiction.

B. **Personal jurisdiction in federal criminal cases**

1. **Territorial jurisdiction:** Personal jurisdiction requires the situs or locus of the offense to take place in the prosecuting federal district.

2. **Alternative tests**
   a. **Personal jurisdiction based on a national or citizenship theory:** A national or citizenship theory of personal jurisdiction is based on
the federal government’s authority to control the conduct of U.S. citizens abroad, including U.S. ships or aircraft on or over international waters or foreign territory.

b. **Personal jurisdiction based on the protective principle theory:** The protective principle theory of personal jurisdiction is based on protecting U.S. citizens against acts committed by aliens abroad.

**III. Criminal subject matter jurisdiction:** In state courts, there are usually two trial level courts. One court is a court of general jurisdiction, and one court is a court of limited jurisdiction. The legislature decides which cases go to which court. Courts of general jurisdiction usually have subject matter jurisdiction for felonies and/or offenses with higher sentences and/or jury trials. Criminal courts of limited jurisdiction usually have subject matter jurisdiction for misdemeanors and/or offenses with lower sentences and/or non-jury trials. Sometimes, one court or the other court has exclusive jurisdiction. Sometimes, there is concurrent jurisdiction and the prosecution selects the court. If the prosecution files the case in a non-jury court, and if the Defendant has a constitutional or statutory right to a jury trial, the Defendant may move the case to a court with jury trials.

A. **Exclusive jurisdiction in District Court of Maryland:** In Maryland, District Court is a non-jury court of limited jurisdiction. District Court has exclusive subject matter jurisdiction over misdemeanors with a penalty of less than three years or $2,500, plus motor vehicle laws and the State Boat Act.

B. **Exclusive jurisdiction in Circuit Court:** In Maryland, Circuit Court is a court of general jurisdiction, hearing both jury trials and non-jury trials. Circuit Court has exclusive subject matter jurisdiction over (1) most felonies, and (2) jury trials. If any one count places the case in Circuit Court, the Circuit Court has jurisdiction over all counts.

C. **Concurrent jurisdiction:** District Court and Circuit Court have concurrent subject matter jurisdiction over (1) misdemeanors with a penalty of at least three years or $2,500, and (2) felony theft, bad check, credit card, forgery, and uttering.

D. **Jury trials:** Circuit Court has exclusive jurisdiction when the Defendant has a constitutional or statutory right to a jury trial and exercises that right.

1. **U.S. Constitution:** The Sixth Amendment provides for a jury trial when the authorized incarceration exceeds six months on any given count.

2. **Maryland**

   a. **Circuit court:** The Defendant has a common law right to a jury trial when there is potential incarceration.

   b. **District court:** If the potential incarceration exceeds 90 days on any given count, the Defendant may demand a jury trial, which divests the District Court of jurisdiction and transfers the case to Circuit Court.
IV. Juvenile status/jurisdiction

A. Common law

1. **Under age seven**: A person under age seven lacked criminal capacity.

2. **Under age 14**: A person under age 14 lacked criminal capacity for rape and was rebuttably presumed to lack criminal capacity for other offenses.

3. **Age 14 or older**: A person age 14 or older had criminal capacity.

B. Maryland

1. **Two-step process**: If Defendant was under age 18 on the date of the offense, determine whether jurisdiction will be in Circuit Court, sitting as a juvenile court, or in Circuit Court, sitting as a criminal court.

   a. **Step one is where jurisdiction starts, which is primarily a legal question**: Determine whether jurisdiction commences in juvenile or criminal court. Answer this question by examining three documents – juvenile jurisdiction statute, charging document, and the juvenile’s birth certificate.

   b. **Step two is where jurisdiction ends, which is primarily a factual question**: Determine whether jurisdiction will remain where it commenced or whether jurisdiction will go to the other court. Answer this question by examining the offense and the offender.

2. **Step one analysis**: This is a variable of age and the severity of the offense.

   a. **At least age 16 but less than age 18**: A person at least age 16, at the time of the conduct, is subject to criminal court jurisdiction (unless transferred/waived) for the following offenses and other charges arising from the same incident. The list consists of actual and attempted felonious crimes against persons, handguns, and traffic offenses.

      (1) Abduction & kidnapping
      (2) Second degree murder
      (3) Voluntary manslaughter
      (4) Second degree rape
      (5) Second & third degree sex offense
      (6) Robbery with a dangerous weapon
      (7) Handgun offenses
      (8) Carjacking
      (9) First degree assault
(10) **Vehicle & boat offenses**

b. **At least age 14 but less than age 18:** A person at least age 14, at the time of the conduct, is subject to criminal court jurisdiction (unless transferred/waived) for offenses punishable by death or life, plus other offenses arising from the same transaction, i.e., first degree murder, first degree rape, first degree sexual offense, and inchoate crimes thereof, i.e., attempt, solicitation, and conspiracy.

3. **Step two analysis:** This is a variable of the offense and the offender.

a. **Waiver of juvenile court jurisdiction (sending the case to criminal court):** If step one resulted in juvenile court jurisdiction, the juvenile court may waive its jurisdiction, sending the case to criminal court.

   (1) **At least age 15 but less than age 18:** A juvenile at least age 15 is eligible for waiver of juvenile court jurisdiction for all offenses.

   (2) **Under age 14:** A juvenile under age 14 is only eligible for waiver of juvenile court jurisdiction for offenses punishable by death or life, plus other offenses arising from the same transaction.

b. **Transfer (“reverse waiver”) from criminal court jurisdiction (sending the case to juvenile court):** If step one resulted in criminal court jurisdiction, the criminal court may transfer the case (“reverse waive”), sending the case to juvenile court.

   (1) **Transfer applicable:** Juveniles age 14 to 17, who are charged with offenses that makes them adults under age 18, are generally eligible for transfer from criminal court to juvenile court.

   (2) **Transfer inapplicable:** Juveniles age 14 to 17 are ineligible for transfer from criminal court to juvenile court under certain circumstances.

   (a) **Previously transferred:** A juvenile may not be transferred from criminal court to juvenile court if the juvenile was previously transferred from criminal court to juvenile court and was adjudicated delinquent.

   (b) **Previously convicted:** A juvenile may not be transferred from criminal court to juvenile court if the juvenile was previously charged with – and convicted of – an offense as an adult.

   (c) **First degree murder:** A juvenile may not be transferred from criminal court to juvenile court if the juvenile is at least age 16 and charged with first
degree murder.

(3) Only one waiver or transfer: If jurisdiction is in criminal court, and the juvenile is transferred to juvenile court, or if jurisdiction is in juvenile court, and the juvenile court waives its jurisdiction, the transfer or waiver is final.

4. Factors for waiver/transfer in either direction:
   a. Age of the juvenile
   b. Mental & physical condition of the juvenile
   c. Amenability of the juvenile to juvenile treatment
   d. Nature of the offense & the juvenile’s participation
   e. Public safety

5. Waiver/transfer proceedings & standard: When a juvenile court decides whether to waive its jurisdiction, or a criminal court decides whether to transfer its jurisdiction, the moving party (the State in a waiver case, and the Defendant in a transfer case) must persuade the court by a preponderance of the evidence. In a waiver case, the State argues that, when balancing the interests of the juvenile and society, the juvenile should be treated as an adult. In a transfer case, the Defendant argues that, when balancing the interest of the Defendant and society, the Defendant should be treated as a juvenile. In a waiver case, the juvenile court assumes that the juvenile committed the alleged conduct. In a transfer case, the criminal court does not assume that the juvenile committed the alleged conduct. A standard of preponderance of the evidence is constitutional because, in the waiver/transfer analysis, the court is determining amenability to juvenile rehabilitation and is not determining whether the juvenile committed the crime.

6. Juvenile court proceedings
   a. Right to counsel: Juveniles have a right to counsel at every stage of the proceedings.
   b. Merits of a juvenile delinquency hearing: Juvenile court must determine, without a jury, whether the evidence establishes, beyond a reasonable doubt, that the juvenile committed an act that would be a criminal offense if in criminal court.
   c. Disposition hearing if adjudicated delinquent: If the juvenile court finds the juvenile delinquent, the court must determine whether the juvenile needs guidance, treatment, or rehabilitation.
   d. Status under juvenile court jurisdiction: The juvenile is a delinquent and not a criminal.
   e. Collateral consequences: Juvenile records are confidential. Statements made by juveniles and evidence admitted in juvenile
proceeding are inadmissible in other contexts, unless the juvenile is charged with perjury and the evidence is otherwise admissible. Adjudication of delinquency is inadmissible in a criminal case (except for sentencing), in a juvenile proceeding, and in a civil proceeding.

f. **Termination of juvenile jurisdiction & juvenile custody:** Juvenile jurisdiction and juvenile custody may not exceed three years or extend beyond age 21.

g. **Parental consequences:** Parents may be required to make restitution and/or pay fines up to $2,500 for contributing to juvenile delinquency.

V. **Venue:** Venue determines the trial/hearing location among the 24 political subdivisions in Maryland

   A. **Situs or locus of actus reus:** Like personal or territorial jurisdiction, venue is determined based on the situs or locus of the actus reus.

   B. **Burden of production & persuasion:** Because venue is rebuttably presumed, the Defendant must generate evidence that the offense did not take place in that county. If the Defendant does not raise the issue, it is waived. If the Defendant does generate the issue, the State must persuade the finder of fact, by a preponderance of the evidence, that venue is in that county.

   C. **Statutory venue**

   1. **Crimes committed on common carriers:** Venue is in any county from, to, or through which the common carrier travels.

   2. **Murder & manslaughter:** If the death blow is inflicted in County A, and the victim dies in County B, venue is in County A, where the death blow was inflicted. If the death blow is inflicted on the Chesapeake Bay, and the victim dies in a county, venue is in the county where the victim died. If the death blow is inflicted in a county, but the victim dies on the Chesapeake Bay, venue is in the county where the death blow was inflicted.

   3. **Chesapeake Bay offenses:** If a crime is committed on the Chesapeake Bay, venue is in the county where Defendant is arrested or brought.

   4. **Crimes committed on or near a county boundary:** For a crime committed on or near a county border, venue is in the county where the Defendant is arrested.

   5. **Rape & sex offenses:** Venue is in any county where transportation is offered, solicited, begun, continued, or ended.