

1. A BASIC INTRODUCTION TO CRIMINAL PROCEDURE

1.1. The place of the law of criminal procedure in the legal system

The law of criminal procedure is the entire body of rules that prescribes the procedure to follow in punishing criminals by virtue of state authority.

Criminal procedure must, subject to the supremacy of the Constitution:

- provide a process to enforce criminal law;
- allocate power to state officials; and
- articulate fair process norms with reliable outcomes.

LAW		
	Public law	Private Law
Substantive law Legal rules determining the rights and duties of individuals and the state	<ul style="list-style-type: none">• Constitutional law• Administrative law• International law• Criminal law	<ul style="list-style-type: none">• Family law• Property law• Law of persons• Law of delict
Adjectival law Procedures to enforce substantive law by proving and judging the -	Offence <ul style="list-style-type: none">• <u>Public/Criminal procedure</u> law• Law of evidence	Instituted Claim <ul style="list-style-type: none">• Civil procedure law (used in public procedure, eg mandamus, interdict)• Law of evidence

1.2. Crime control and due process

Criminal procedure is a system which seeks to incorporate certain fundamental values and balance two conflicting social interests, namely individual freedom and effective crime control. This can be best explained in terms of the following models:

Crime Control Model	Due Process Model
Regards the repression of criminal conduct as the most important function of criminal procedure.	Regards the adherence to rules which duly and properly acknowledge individual rights at every stage of the criminal process as the only ground on which a conviction and sentence can be secured.

Not rival models! Both seek to vindicate the goals of substantive criminal law

No real-life systems conform exactly to one specific model, an appropriate balance must be secured, and there are certain tensions between the underlying values of the two models. Case law illustrates the tension between the two models:

Naidoo 1998 (1) SACR 479 N

The police had obtained incriminating evidence in breach of the constitutional right to privacy. This evidence was excluded on the basis of Section 35(5) and resulted in acquittal of the accused despite the fact that the robbery in question was (at that stage) the 'biggest robbery' in the history of South Africa.

N Y Criminal Procedure Law

Michael Hoelscher

N Y Criminal Procedure Law:

New York Criminal Practice Under the CPL Robert M. Pitler,1972 *Penal Law and the Code of Criminal Procedure of the State of New York* New York (State),1921 *N. Y. Criminal Procedure Law* Gould Publications (Firm),Gould Publications Staff,2001-01-01 Presents the Criminal Procedure Law Chapter 11 A of the Consolidated Laws of New York *New York Criminal Procedure* Christopher J. Morse,Brian J. Gorman,2011 This book presents an analysis of New York criminal procedure law that integrates the three sources of the law statutory law case law and constitutional law It is difficult if not impossible for anyone without formal legal education to acquire a reasonable understanding of the criminal procedure process without such integration and analysis New York Criminal Procedure covers the criminal procedure statute in its entirety from arrest arraignment pleadings hearings motions discovery evidence trial and appeal to special procedures such as immunity jurisdiction wiretapping the death penalty and extradition Morse integrates and analyzes the statute with court decisions and constitutional considerations presenting the reader with a ready knowledge of the criminal procedure process The book contains over eighty edited illustrative cases illustrating various aspects of criminal procedure law such as stop and frisk search warrants no knock entry grand jury proceedings plea bargaining bail admission at trial of previous statements of witnesses bodily intrusions DNA testing suppression of evidence jury trial sentencing and sex offender registration This second edition is revised and updated to include the myriad of new developments in the ever evolving area of criminal procedure law The authors illuminate the intersection of statutory law case law and constitutional law to demonstrate how they come together to create the lawful procedures required of criminal justice professionals Penal Law and Criminal Procedure Law of the State of New York Looseleaf Law Publications,2007-01-01

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