

## TABLE OF CONTENTS

PREFACE .....	17
ABBREVIATIONS .....	21
ORGANIZATION OF THE JUDICIARY CHART.....	24
LESSON 1. THE PRINCIPLES OF SPANISH CRIMINAL PROCEEDINGS..	27
1. Criminal Proceedings.....	27
2. General notions on the principles of spanish criminal proceedings.....	31
2.1. The importance of the principles.....	31
2.2. The location of the principles .....	33
2.3. The notion of “principle” and its classifications.....	33
3. The principles of the spanish criminal proceedings.....	36
3.1. Legal-natural principles .....	36
3.1.1. Audience, equality of arms, duality and jurisdictional guarantee .....	36
3.1.2. The fair trial principle.....	38
3.1.3. The accusatory or adversarial principle.....	40
3.2. Legal-technical principles.....	43

*Table of contents*

3.2.1. The search for objective truth . . . . .	43
3.2.2. The officiality principle (which includes the legality, necessity and ex officio inquiry principles)	44
3.2.3. The opportunity principle . . . . .	45
3.2.4. The proportionality principle . . . . .	46
3.2.5. The burden of the proof rests on the prosecution .	47
3.2.6. The free assessment of evidence . . . . .	47
3.2.7. Care for the victim . . . . .	48
3.3. Forms . . . . .	49
3.3.1. Oral and written forms . . . . .	49
3.3.2. Publicity . . . . .	50
<b>LESSON 2. CRIMINAL COURTS AND THE CLASSIFICATION OF MODE TRIALS . . . . .</b>	<b>53</b>
1. Criminal Courts . . . . .	53
2. The criteria for determining the jurisdiction of criminal courts . . . . .	63
2.1. Generic jurisdiction . . . . .	64
2.2. Extension and limits of criminal jurisdiction . . . . .	65
2.3. Objective competence . . . . .	68
2.4. Territorial competence . . . . .	73
2.5. Functional competence . . . . .	74
2.6. Procedural treatment of the lack of jurisdiction and competence . . . . .	75
3. Types of criminal proceedings . . . . .	76
3.1. Ordinary procedure . . . . .	76
3.2. Abbreviated procedure . . . . .	76
3.3. Procedure for minor offences . . . . .	77
3.4 Other procedures . . . . .	78
<b>LESSON 3. PROSECUTORS AND DEFENDANTS . . . . .</b>	<b>81</b>
1. Concept of parties in criminal proceedings . . . . .	81
2. Classification of the parties in criminal proceedings . . . . .	82

3. Parties to the criminal proceedings.....	83
3.1. Prosecuting parties.....	83
3.1.1. The Public Prosecutor's Office.....	83
3.1.2. The particular prosecution.....	85
3.1.3. The popular prosecution .....	86
3.1.4. The private prosecution.....	89
3.2. Capacity and representation of the prosecuting parties ..	90
3.3. Defendants.....	90
3.3.1. Different designations of the defendant depending on the time of the criminal proceedings .....	90
3.3.2. Natural or legal persons as a defendant.....	91
3.3.3. Standing and representation of the defendant in criminal proceedings.....	92
4. Civil procedural parties in criminal proceedings.....	94
4.1. The civil actor .....	94
4.2. The civil party responsible.....	94
<b>LESSON 4. PROCEDURAL SAFEGUARDS FOR SUSPECTS AND ACCUSED PERSONS AND VICTIMS' RIGHTS .....</b>	<b>97</b>
1. Introduction .....	97
2. Common rights recognized for all parties.....	99
2.1. The right to effective protection of the judges and the courts. ....	99
2.1.1. The right to use the relevant evidence .....	99
2.1.2. The right to a reasoned and motivated ruling ..	100
2.1.3. The intangibility of the rulings .....	100
2.1.4. The right of access to an appeal .....	101
2.1.5. The right to enforcement of final judgments....	101
2.2. The right to a proceeding with full guarantees .....	101
2.2.1. The right to an impartial judge .....	101
2.2.2. The right to immediacy and contradiction .....	102
2.2.3. The right to equality of arms .....	102
2.2.4. The right of access to the ordinary judge predetermined by law .....	103

*Table of contents*

2.3. The right to criminal legality.....	103
2.4. The right to defence.....	104
2.5. The right to a proceeding without undue delay.....	105
3. The rights of suspects and accused persons .....	105
3.1. The right to a proceeding with full of guarantees .....	107
3.1.1. The prohibition of general inquiries <i>(inquisito generalis)</i> .....	107
3.1.2. The exclusionary rule of evidence obtained by means that violate fundamental rights .....	107
3.1.3. The impossibility of condemning an acquitted person or aggravating the conviction in second instance or cassation in certain circumstances ..	108
3.1.4. The accusatory principle .....	108
3.2. The right of defence and its instrumental rights .....	109
3.2.1. The right to information about rights .....	109
3.2.2. The right to be informed about the charges and accusation against them .....	109
3.2.3. The right of access to the materials of the case ..	110
3.2.4. The right of access to a lawyer and to legal aid ..	111
3.2.5. The right to remain silent and the right not to incriminate oneself .....	112
3.2.6. The right to interpretation and translation .....	113
3.2.7. The right to be present at the trial .....	114
3.4. Right to the presumption of innocence and <i>in dubio pro reo</i> .....	115
3.5. The right to <i>non bis in idem</i> .....	116
3.6. The right to a double degree of jurisdiction .....	117
4. Special rights of arrested or detained persons .....	118
5. The Rights Of The Victims .....	119
5.1. State of play .....	119
5.2. Specific victim's rights .....	119
5.2.1. Right to access justice (an aspect of the right to effective judicial protection). <i>Ius ut procedatur</i> ..	119
5.2.2. The right to participate in the proceedings .....	120

5.2.3. The right to understand and be understood . . . . .	121
5.2.4. The right to receive information . . . . .	121
5.2.5. The right of access to legal aid. . . . .	122
LESSON 5. INITIATION OF THE CRIMINAL PROSECUTION.	
DIFFERENT STAGES OF THE PROCEEDINGS . . . . .	123
1. The pre-trial phase . . . . .	123
1.1. Concept and purposes . . . . .	123
1.2. Legal nature . . . . .	126
1.3. General rules . . . . .	128
1.4. Parts . . . . .	131
2. Subjects of the instruction . . . . .	133
2.1. Competent judicial body . . . . .	133
2.2. Public Prosecutor's Office . . . . .	133
2.3. Judicial police . . . . .	135
2.4. Under investigation or prosecution . . . . .	138
3. Acts of initiation of the investigation . . . . .	138
3.1. Own-initiative procedure . . . . .	138
3.2. Initiation at the request of a party . . . . .	139
3.2.1. Report . . . . .	139
3.2.2. Complaints . . . . .	141
3.2.3. Police statement . . . . .	144
4. Different stages of proceedings . . . . .	145
LESSON 6. INVESTIGATION OF CRIMINAL OFFENCES:	
INVESTIGATIVE MEASURES LIMITING FUNDAMENTAL RIGHTS . . .	147
1. Basic concepts about the investigation of criminal offences . . . . .	147
1.1. Concept . . . . .	147
1.2. Classification of investigative measures . . . . .	148
1.3. Value of results . . . . .	149
2. International protection of fundamental rights arising from investigative measures . . . . .	149

*Table of contents*

3. Fundamental rights under the spanish constitution and requirements to affect them by an investigative measure .	150
4. Investigative measures limiting fundamental rights .....	152
4.1. Entering and searching premises .....	152
4.2. Searching books and papers.....	156
4.3. Seizure and opening of written and telegraphic correspondence .....	157
4.4. Bodily inspection, examination or intervention .....	159
4.5. Technological investigative measures.....	161
 LESSON 7. INVESTIGATION OF CRIMINAL OFFENCES: INVESTIGATIVE MEASURES NOT LIMITING FUNDAMENTAL RIGHTS .....	169
1. Investigative measures not limiting fundamental rights ..	169
1.1. Main concepts .....	169
1.2. Investigative measures that do not affect fundamental rights .....	170
1.2.1. Visual inspection .....	170
1.2.2. The corpus delicti .....	172
1.2.3. Investigative measures relating to the identity of the offender and their personal circumstances .	175
1.2.4. The declaration of the party under investigation .	178
1.2.5. Witness statements .....	180
1.2.6. The confrontation of witnesses and accused....	183
1.2.7. The expert report.....	184
1.2.8. Controlled movement or delivery of toxic drugs, narcotics or psychotropic substances and other banned substances.....	186
1.2.9. The undercover agent.....	186
 LESSON 8. PRECAUTIONARY AND PROTECTIVE MEASURES DURING THE PROCEEDINGS .....	189
1. Purpose and general conditions for the application of precautionary and protective measures .....	189

2. Precautionary and protective measures in personam during criminal proceedings . . . . .	192
2.1. Arrest . . . . .	192
2.1.1. The power to arrest . . . . .	192
2.1.2. The detention clock . . . . .	194
2.1.3. Rights of the detainee . . . . .	196
2.1.4. Challenge of an unlawful arrest. The <i>habeas</i> <i>corpus</i> proceedings . . . . .	198
2.2. Remand in custody or pre-trial detention . . . . .	201
2.2.1. Requirements for the pretrial detention . . . . .	201
2.2.2. Duration of the pretrial detention . . . . .	202
2.2.3. Pretrial detention modalities . . . . .	203
2.2.4. Compensation for wrongful pretrial detention . .	203
2.3. Provisional release . . . . .	204
2.4. Protective measures . . . . .	205
2.4.1. Restraining orders . . . . .	205
2.4.2. Protection order . . . . .	206
2.4.3. The European Protection Order . . . . .	208
3. Precautionary measures in rem during criminal proceedings . . . . .	209
 LESSON 9. PRE-TRIAL AND INDICTMENT . . . . .	211
1. Introduction . . . . .	211
2. Acts prior to the beginning of the pre-trial phase . . . . .	212
2.1. The indictment . . . . .	213
2.1.1. Indictment in ordinary proceedings . . . . .	214
2.1.2. Indictment in fast-track proceedings . . . . .	215
2.1.3. Effects of the indictment . . . . .	215
2.2. The conclusion of the investigation phase . . . . .	216
2.2.1. Ordinary proceedings . . . . .	216
2.2.2. Fast-track proceedings . . . . .	217
3. The pre-trial phase . . . . .	218
3.1. Competence, beginning and end of the pre-trial phase . .	218

*Table of contents*

3.2. Proceedings in the pre-trial phase . . . . .	219
3.2.1. In ordinary proceedings. . . . .	219
3.2.2. In fast-track proceedings. . . . .	220
3.3. Dismissal of the proceedings . . . . .	222
3.3.1. Full dismissal. . . . .	222
3.3.2. Provisional dismissal. . . . .	223
3.3.3. Complete or partial dismissal . . . . .	224
3.3.4. Appeals . . . . .	224
3.4. Order for the opening of the oral trial . . . . .	225
4. Acts after the pre-trial phase, the trial phase . . . . .	226
4.1. Articles of pre-trial proceedings . . . . .	226
4.2. Preliminary questions . . . . .	228
4.3. Writs of classification . . . . .	229
4.3.1. Concept . . . . .	229
4.3.2. Content . . . . .	230
4.3.3. Positions of defendant in the statement of charges . . . . .	231
5. Admission and inadmissibility of the proposed evidence . . . . .	231
 LESSON 10. THE HEARING, THE USE OF EVIDENCE IN COURT, THE TERMINATION OF PROCEEDINGS AND RES JUDICATA . . . . .	233
1. The hearing . . . . .	233
1.1. Concept of the hearing . . . . .	233
1.2 Preparation for the hearing . . . . .	234
1.2.1. Preparatory acts to ensure the concentration of the hearing. . . . .	234
1.2.2. Ruling on the limitation of the publicity of oral proceedings . . . . .	235
1.3. Conduct of the hearing . . . . .	237
1.3.1. Precondition for the holding of the hearing: the necessary presence of the defendant . . . . .	237
1.3.2. Beginning of the sessions. . . . .	238
1.3.3. The practice of the test . . . . .	239

1.3.3.1. The defendant's statement . . . . .	239
1.3.3.2. Examination of witnesses . . . . .	240
1.3.3.3. Expert evidence . . . . .	242
1.3.3.4. Documentary evidence . . . . .	243
1.3.3.5. Ocular inspection . . . . .	243
1.3.4. Definitive conclusions . . . . .	244
1.3.5. Presentation of the thesis by the judicial body . . . . .	245
1.3.6. Reports . . . . .	246
1.3.7. Right to the last word . . . . .	247
1.4. Conclusion of the hearing . . . . .	247
1.5. Suspension of the trial . . . . .	247
2. Termination Of Proceedings: Special Reference To Conformity And Judgment . . . . .	248
2.1. Provisional completion and final completion . . . . .	248
2.2. Conformity . . . . .	249
2.2.1. Concept . . . . .	249
2.2.2. Formalities . . . . .	250
2.2.2.1. Scope of application . . . . .	250
2.2.2.2. Procedural moments for the provision of conformity . . . . .	250
2.2.2.3. Requirements . . . . .	251
2.2.2.4. Judicial review of conformity . . . . .	251
2.2.3. Conformity sentencing; effects and challenges . . . . .	251
2.3. The judgment . . . . .	252
2.3.1. Concept . . . . .	252
2.3.2. Form of judgment: written or oral . . . . .	252
2.3.3. Structure of the judgment . . . . .	253
2.3.4. Presumption of innocence and <i>in dubio pro reo</i> . . . . .	253
2.3.4.1. The presumption of innocence . . . . .	254
2.3.4.2. The <i>in dubio pro reo</i> principle . . . . .	255
2.3.5. Correlation between indictment and sentence: congruence . . . . .	256
3. Res judicata . . . . .	257

LESSON 11. APPEALS AND OTHER REMEDIES .....	259
1. General aspects of appeals.....	259
1.1. Concept and definition.....	259
1.2. Classification of appeals.....	261
1.2.1. Reconsideration appeals and appeals to a higher court .....	261
1.2.2. Ordinary and extraordinary appeals .....	261
1.2.3. Appeals against interlocutory decisions and against final decisions .....	262
2. Appeals against interlocutory decisions .....	262
2.1. Recourse of reconsideration .....	263
2.2. Appeal for reversal .....	264
2.3. Appeal of complaint.....	264
2.3.2. Instruments of the appeal of complaint .....	265
2.3.3. Appeal of complaint with a time limit .....	265
2.4. Recourse to appeal.....	266
2.4.1. Appeal in ordinary proceedings.....	266
2.4.2. Appeal in the summary procedure .....	267
3. Appeals against final decisions .....	267
3.1. Appeals and the second instance in criminal cases .....	268
3.1.1. Appealable decisions .....	268
3.1.2. Jurisdiction .....	269
3.1.3. Grounds for appeal .....	269
3.1.4. Procedure.....	271
3.2. The appeal in cassation .....	272
3.2.1. Appealable decisions .....	273
3.2.2. Grounds for appeal .....	274
3.2.3. Procedure .....	275
4. <i>Appealing final judgments</i> .....	277
4.1. Appeal for judicial review.....	278
4.2. Action for annulment.....	280
4.3. Incident of invalid proceedings .....	281