

## **Chapter 10–The Criminal Law and Business**

Below is a table that highlights the differences between civil law and criminal law:

Crime—a wrong against society proclaimed in a statute and, if committed, punishable by society through fines and/or imprisonment. Because crimes are offenses against society as a whole, they are prosecuted by a public official.

### Classification of Crimes

Felony—a serious crime punishable by death or imprisonment in a federal or state penitentiary for more than a year.

Misdemeanor—crimes punishable by a fine or by confinement for up to a year. Disorderly conduct and trespass are common misdemeanors.

### Criminal Liability

Two elements must exist simultaneously for a person to be convicted of a crime:

Most crimes require an act of commission; that is, a person must do something to be accused of a crime. In some cases, an act of omission can be a crime, but only when a person has a legal duty to perform the omitted act.

A wrongful mental state is as necessary as a wrongful act in establishing criminal liability. What constitutes such a mental state varies according to the wrongful action. For theft, the guilty act is the taking of another person's property and the mental state involves both the knowledge that the property belongs to another and the intent to deprive the owner of it.

### Constitutional Safeguards

The federal constitution provides specific safeguards for those accused of crimes. These safeguards include the following:

#### The Exclusionary Rule

Under what is known as the exclusionary rule, all evidence obtained in violation of the constitutional rights spelled out in the Bill of Rights normally must be excluded as well as evidence derived from the illegally obtained evidence.

The purpose of the exclusionary rule is to deter police from conducting warrantless searches and other misconduct.

### The Miranda Rule

In *Miranda v. Arizona*, the Supreme Court established the rule that individuals who are arrested must be informed of certain rights, including their right to remain silent and their right to counsel. If the arresting officers fail to inform a criminal suspect of these rights, any statements the suspect makes will not be admissible in court.

Over time, several exceptions to the Miranda rule have been created. In federal cases, a voluntary confession can be used in evidence even if the accused was not informed of his or her rights (for example).

### Criminal Process

See the table on the last page of this outline that summarizes the major steps in processing a criminal case.

### Arrest

Before a warrant for arrest can be issued, there must be probable cause for believing that the individual in question has committed a crime. Probable cause is a substantial likelihood that the person has committed or is about to commit a crime. Arrests may sometimes be made without a warrant if there is no time to get one, but the action of the arresting officer is still judged by the standard of probable cause.

### Indictment or Information

Indictment—

Grand Jury—

For lesser crimes, an individual may be formally charged with a crime by what is called an information.

Information—

## Trial

At a criminal trial, the accused person does not have to prove anything; the entire burden of proof is on the prosecutor. The prosecutor must show that, based on all the evidence presented, the defendant's guilt is established beyond a reasonable doubt. Note that giving a verdict of "not guilty" is not the same as stating that the defendant is innocent.

The requirement that a defendant's guilt be proved beyond a reasonable doubt is a stricter standard of proof than the standard normally used in civil trials, in which a defendant's liability is usually decided based on a preponderance of the evidence.

## Crimes Affecting Business

Many of the crimes that occur in business are referred to as white-collar crimes. It refers to an illegal act or series of acts committed by an individual or business entity using some nonviolent means to obtain a personal or business advantage. Following are some white-collar crimes:

### Forgery—

Robbery—the act of forcefully and unlawfully taking personal property of any value from another; force or intimidation is usually necessary for an act of theft to be considered a robbery.

Burglary—the unlawful entry into a building with the intent to commit a crime.

Larceny—the wrongful taking and carrying away of another person's personal property with the intent to permanently deprive the owner of the property. Some states classify larceny as either grand or petit, depending on the value of the property.

In most states, the definition of property that is subject to larceny has expanded. Stealing computer programs may constitute larceny even though the property consists of magnetic impulses. Stealing computer time may constitute larceny. Trade secrets can be subject to larceny statutes. Intercepting cellular phone calls to obtain another's phone card number—and then using that number to place long-distance calls is a form of property theft.

Obtaining Goods by False Pretenses—it is unlawful to obtain goods by false pretenses.

Receiving Stolen Goods—it is a crime to receive stolen goods. The recipient of such goods need not know the true identity of the owner of the thief. All that is necessary is that the recipient knows or should have known that the goods are stolen, which implies an intent to deprive the owner of those goods.

Embezzlement—the fraudulent appropriation of money or other property by a person to whom the money or property has been entrusted. Businesses face this problem when corporate officers or accountants “jimmy” the books to cover up the fraudulent conversion of money for their own benefit. Embezzlement is not larceny because the wrongdoer does not physically take the property from the possession of another and it is not robbery because force or fear is not used.

Arson—the willful or malicious burning of a building owned by another. Every state has a special statute that covers a person’s burning a building for the purpose of collecting insurance.

#### Mail and Wire Fraud

One of the most potent weapons against white-collar crime is the Mail Fraud Act of 1990. Under this act, it is a federal crime to use the mails illegally. Illegal use of the mails must involve:

#### Computer Crime

#### Computer crime—

Let us consider some of the ways in which computers have been involved in crime.

#### Financial crimes

Employees of accounting and computer departments can transfer monies among accounts with little effort and without the risk involved in transactions evidenced by paperwork.

## Software piracy

## Property theft

Computer crimes can also involve property theft. One type is the theft of computer hardware. Another type is the theft of computer-related property, which may involve taking goods that are controlled and accounted for by means of a computer application program.

## Vandalism and Destructive Programming

Another form of computer crime is the intentional destruction of computer hardware or software.

## Prosecuting Computer Crime

The Counterfeit Access Device and Computer Fraud and Abuse Act of 1984, as amended, prohibits unauthorized access to certain types of information, such as restricted government information, information contained in a financial institution's financial records, and information contained in a consumer reporting agency's files.

One reason computer crime is often unreported is because business firms are reluctant to disclose the vulnerability of their systems.

## Bribery

Three types:

## Bankruptcy Fraud

Numerous white-collar crimes may be committed during the many phases of a bankruptcy proceeding. A creditor may file a false claim against a debtor.

## Money Laundering

Wrongdoers have invented ways to launder “dirty” money to make it “clean.” The laundering is the false reporting of income that has been obtained through criminal activity as income obtained through a legitimate business.

Racketeer Influenced and Corrupt Organizations Act (RICO) is aimed at preventing the use of legitimate business as shields for racketeering activity and to prohibit the purchase of a legitimate business with illegally obtained funds. Most RICO offenses have little to do with normal business activities.

## Conspiracy

It is a separate crime for anyone to conspire or agree with someone else to do something that, if carried out, would be a criminal offense. The essence of a conspiracy offense is the making of the agreement itself followed by the commission of any overt act. An overt act is any transaction or event knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy.

To convict one of conspiracy, the government need not prove the conspirators actually succeeded at accomplishing their intended crime. The defendant must willfully become a member of the conspiracy but need not know all the details of the scheme.