

Chapter 10—The Criminal Law and Business

Criminal Liability

Two elements must exist at the same time for a person to be convicted of a crime:

1—the performance of a prohibited act (actus reus)

2—a specified state of mind or intent on the part of the actor (mens rea)

Constitutional Safeguards

- 1. The 4th Amendment protection from unreasonable searches and seizures**
- 2. The 4th Amendment requirement that no warrants for a search or an arrest can be issued without probable cause**
- 3. The 5th Amendment requirement that no one can be deprived of “life, liberty, or property without due process of law”**
- 4. The 5th Amendment prohibition against double jeopardy (trying someone twice for the same criminal offense)**
- 5. The 5th Amendment requirement that no person can be required to be a witness against himself or herself**

- 6. The 6th Amendment guarantees of a speedy trial, a trial by jury, a public trial, the right to confront witnesses, and the right to counsel**

- 7. The 8th Amendment prohibitions against excessive bail and fines and cruel and unusual punishment**

Exclusionary rule

Evidence derived from the illegally obtained evidence is known as the “fruit of the poisonous tree.” For example, if a confession is obtained after an illegal arrest, the arrest would be the “poisonous tree” and the confession, if tainted by the arrest, would be the “fruit.”

Indictment—a charge by a grand jury that a named person has committed a crime

Grand jury—a group of citizens called to decide, after hearing the state's evidence, whether a reasonable basis (probable cause) exists for believing that a crime has been committed and whether a trial ought to be held

Information—a formal accusation or complaint (without an indictment) issued in certain types of actions (usually criminal actions involving lesser crimes) by a law officer, such as a magistrate

Forgery—the fraudulent making or altering of any writing in a way that changes the legal rights and liabilities of another is forgery. If, without authorization, Severson signs Bennett’s name to the back of a check made out to Bennett, Severson is committing forgery. Forgery also includes changing trademarks, falsifying public records, counterfeiting, and altering a legal document.

Obtaining goods by false pretenses

Buying groceries with a check, knowing that one has insufficient funds to cover the check.

Mail fraud

Illegal use of the mails must involve:

1—mailing or causing someone else to mail a writing—something written, printed, or photocopied for the purpose of executing a scheme to defraud and

2—a contemplated or an organized scheme to defraud by false pretenses

Computer crime—any act that is directed against computers and computer parts, that uses computers as instruments of crime, or that involves computers and constitutes abuse

Software piracy—many individuals and businesses have been tempted to steal software by decoding and making unauthorized copies of software programs. Under most state laws, software piracy is classified a crime. Federal law also outlaws such activities.

Bribery

Three types:

1—bribery of public officials—the attempt to influence a public official to act in a way that serves a private interest is a crime. As an element of this crime, intent must be present and proven. The bribe can be anything the recipient considers to be valuable. The commission of the crime of bribery occurs when the bribe is offered.

2—commercial bribery—typically, people make commercial bribes to obtain proprietary information, cover up an inferior product, or secure new business.

3—bribery of foreign officials

Criminal RICO violations

Most criminal RICO offenses involve gambling, arson, and extortion, securities fraud, as well as mail fraud, wire fraud, welfare fraud, embezzlement, and numerous other offenses defined by state or federal statutes.

The Steps in the Criminal Process

- . Report of Crime—For white-collar crimes, the prosecutor may merely suspect that a crime has taken place, and the process begins when the prosecutor brings the matter to the attention of a grand jury. The grand jury may issue an indictment if it finds probable cause to believe that a crime has occurred.**

- . Pre-Arrest Investigation—complex investigation is generally done only in serious cases. Pre-arrest investigation has two purposes: first, to determine whether a crime has been committed and second, if so, who did it.**
- . Arrest—may occur with or without a warrant. A warrant, whether for a search or an arrest, must be supported by an affidavit, under oath, establishing probable cause. Any defendant must be “Mirandized.”**

Booking—a suspect is fingerprinted, his photo is taken, and background information may be obtained.

Preliminary Arraignment—the defendant is informed of the charges against him and receives a copy of the initial charging document, generally called the complaint. For felonies, an information or indictment will replace

the complaint. At the preliminary arraignment, the defendant is told about his critical rights, such as the right to counsel. For a felony, a preliminary hearing date will be set and bail will be determined.

Continuing Investigation—The full range of investigative techniques—lineups, photospreads, witness interviews, DNA and other laboratory analysis, subpoenas, searches and seizures, may be relied upon.

. Preliminary Hearing—the federal system generally involves a preliminary hearing before a judge, followed by a grand jury hearing. Under a second model, prevailing in many states, the defendant is “bound over” at a preliminary hearing and the the prosecutor files an information. State courts use numerous variations on these models. The preliminary hearing may sometimes be waived where a

defendant pleads guilty. There is no preliminary hearing if a defendant is first indicted. Where a hearing is held, the judge must decide whether there is probable cause to bind the case over for trial or whether the case should be dismissed.

- . Grand Jury Review—states vary widely in their use of grand juries. In some states, grand jury review and indictment are required for felonies. The federal system requires indictment for all felonies unless waived by the defendant. If a preliminary hearing has been held, the grand jury is not bound by the decision of the hearing judge in deciding whether to indict.**
- . Filing the Information or Indictment—if a defendant is held for court after a preliminary hearing, an information is filed against him. If a grand jury has reviewed the case, the indictment becomes the charging document.**

- **Arraignment**—before trial and after the final charging documents have been filed, the defendant is again arraigned. He is told what charges he will face and is asked to enter a plea.
- **Pretrial Motions**—these motions are held before trial because the double jeopardy clause prevents the prosecutor from appealing what he believes to be an erroneous ruling unless the ruling is made before jeopardy attaches, that is, when the trial jury has been empaneled or in a bench trial, after the first witness has been sworn. One of the most common pretrial motions is a motion to suppress evidence.
- **Trial**—all prosecutorial and defense planning must be geared toward discovery and trial. Even if the defendant pleads guilty, his likelihood of doing so turns on his expected

outcome at trial. That outcome is often in turn strongly affected by the result of suppression motions. If key evidence is suppressed, a defendant's chances of prevailing at trial will increase.

- . Sentencing—in many courts, sentencing guidelines establish minimum and maximum sentences based on prior records and offense severity.**