

Ch. 6—CRIMINAL LAW

(1) the wrongful, or over, act (known as actus reus) and (2) the criminal, or mental, intent (known as mens rea)

Actus reus refers to all elements of a crime that are not mental, including the physical act that must be performed, the circumstances under which it must be performed and the consequences of the act

Mens rea, or mental fault, refers to all mental elements of a crime, either subjective or objective. Most common law and some statutory crimes require subjective fault. Some crimes only require objective fault, whereas other statutory crimes require no fault at all.

Mala in se—wrongs in themselves or morally wrong, such as murder

Mala prohibita—not morally wrong but declared wrongful by law, such as the failure to drive on the right side of the road

Liability of a Corporation

Traditionally, corporations were not held criminally liable because of the corporation's inability to possess criminal intent. Today, corporate liability may exist for the violation of a statute that imposes liability without fault or when a high corporate officer or the board of directors perpetrates the offense. Individuals affiliated with the corporation who bear responsibility for a criminal act may face either fines or imprisonment or both.

Computer Crime

- (1) theft of computer hardware, software, of secrets
- (2) unauthorized use of computer services
- (3) theft of money by computer
- (4) vandalism of computer hardware or software
- (5) theft of computer data

Larceny

Elements:

- (1) trespassory
- (2) taking and
- (3) carrying away of
- (4) personal property
- (5) of another
- (6) with the intent to deprive the victim permanently of the goods (not necessarily by force)

False Pretenses

Elements:

- 1) a materially false representation of an existing fact
- 2) which causes the victim
- 3) to pass title to
- 4) his property to the wrongdoer
- 5) who knows his representation to be false and intends thereby to defraud the victim

Notice the use of subjective reasonableness test: if the victim is actually deceived, the test is satisfied. Gullibility or lack of due care on the part of the victim is no defense.

Criminal Procedure

All states, as well as the federal government, have procedures for initiating and coordinating criminal prosecutions. The first ten amendments to the US Constitution also guarantee many defenses and rights of the accused.

Steps in Criminal Prosecution

Suspect is arrested, booked and charged.

Next, a preliminary hearing is held to determine probable cause.

If probable cause exists, the next stage is either indictment or information. An indictment is issued by a grand jury if it finds evidence sufficient for a trial. An

information is a formal accusation issued by a prosecuting officer.

At the arraignment, the defendant is formally charged and he enters a plea. If he pleads not guilty, he must stand trial, either a jury trial or a bench trial.

In a criminal trial:

- 1) The defendant is presumed innocent
- 2) The burden of proof on the prosecution is to prove criminal guilt beyond a reasonable doubt
- 3) The defendant cannot be required to testify