

Chapter 15

Criminal Law and Procedures

Chapter Outline

1. Introduction
2. What Is a Crime?
3. Elements of Criminal Liability
4. Types of Crimes
5. Cyber Crime
6. Constitutional Safeguards
7. Criminal Procedures Prior to Prosecution
8. The Prosecution Begins
9. The Trial

Chapter Objectives

After completing this chapter, you will know:

- The difference between crimes and other wrongful acts.
- The two elements that are required for criminal liability and some of the most common defenses that are raised in defending against criminal charges.
- Five broad categories of crimes and some common types of crimes.
- The constitutional rights of persons accused of crimes.
- The basic steps involved in criminal procedure from the time a crime is reported to the resolution of the case.
- How and why criminal litigation procedures differ from civil litigation procedures.

Chapter 15 Criminal Law and Procedures

Chapter Outline

- I. INTRODUCTION
 - A. Criminal cases are prosecuted by *public prosecutors*.
 - B. A public prosecutor may be referred to as a *prosecuting attorney*, *state prosecutor*, *district attorney*, *county attorney*, or *city attorney*.
- II. WHAT IS A CRIME?
 - A. Key Differences Between Civil and Criminal Law
 - i. A *crime* is an offense against society as a whole.
 - ii. Criminal defendants are prosecuted by public officials on behalf of the state.
 - iii. In a criminal case, the state must prove its case *beyond a reasonable doubt*.
 - B. Civil Liability for Criminal Acts
 - i. The same act can result in both a tort action and a criminal action against the wrongdoer.
 - C. Classification of Crimes
 - i. Crimes are generally divided into two broad classifications: felonies and misdemeanors.
 - ii. Felonies
 - 1. A *felony* is a serious crime such as murder, rape, and robbery.
 - 2. The penalty for a felony may include imprisonment for a year or longer or, in some states, death.
 - iii. Misdemeanor
 - 1. *Misdemeanors* are less serious crimes such as disturbing the peace and public intoxication.
 - 2. The penalty for a misdemeanor may include imprisonment for up to a year.
 - iv. Petty Offenses
 - 1. A *petty offense* (or infraction) is a subset of misdemeanors, such as a violation of building codes.
 - D. Jurisdiction Over Crimes
 - i. Most crimes are defined by state statutes. The states have jurisdiction in cases involving these crimes.
 - ii. Federal jurisdiction is limited to crimes in which a federal law or federal government agency is involved.

Criminal Law and Procedure: A “Commonality”

Criminal law and procedure represent matters with which you are already familiar. You already know about constitutional and statutory law from Chapter 5 (and you will know more after Chapter 16). You already know some of the civil wrongs, analogous to criminal wrongs, from reading Chapters 7 (Tort Law), 8 (Contracts), and 9 (Real Property, Estates, and Family Law). And, as of Chapter 14, you are familiar with trial procedure. You're good to go.

III. ELEMENTS OF CRIMINAL LIABILITY

A. The Criminal Act

- i. For a person to be convicted of a crime, the performance of a criminal act, or *actus reus*, must exist.
- ii. Most crimes require that a person **do** something in order to be accused of a crime.
- iii. In some cases, an act of **omission** can be a crime (failing to file a tax return).

B. State of Mind

- i. For a person to be convicted of a crime, the required state of mind, or *mens rea*, must exist.
- ii. Criminal liability may be avoided if the state of mind was lacking.

C. Corporate Criminal Liability

- i. Under modern criminal law, a corporation may be held liable for crimes under the *responsible corporate officer doctrine*.
- ii. Under this doctrine, a court may impose criminal liability on a corporate officer regardless of whether he participated in, directed, or even knew about a given criminal violation.

D. Defenses to Criminal Liability

- i. The Required Mental State Is Lacking
 1. A person's state of mind is a subjective attribute.
 2. One mental state is *insanity* (the inability to distinguish between right and wrong due to diminished mental capacity).
 3. *Duress* (where one is forced to commit a specific act) or *mistake* are other examples.
- ii. Protection of Persons or Property
 1. The defense of *self-defense* is raised when protecting oneself from physical attacks by others.
 2. The *defense of others* is used when defending someone else threatened with imminent harm.
 3. The *defense of property* can be used when someone is illegally trespassing on one's property or stealing one's property. However, the force used must be reasonable.
- iii. Statutes of Limitations
 1. With some exceptions, in a criminal case the action must be prosecuted within a certain number of years.
- iv. Other Defenses
 1. Further defenses include *mistaken identity*, *alibi*, and *violations of procedural law*.

IV. TYPES OF CRIMES

A. Violent Crime

- i. *Robbery* is the taking of money, personal property, or any other article of value by means of force or fear.
 - ii. *Aggravated robbery* is robbery with the use of a deadly weapon.
- B. Property Crime
 - i. *Burglary* involves breaking and entering onto the property of another with the intent to commit a felony.
 - ii. *Larceny* is “stealing.”
 - iii. An example of *Obtaining Goods by False Pretenses* is buying goods with a check that one knows has insufficient funds to cover it.
 - iv. *Receiving Stolen Goods* is when the recipient knew or should have known that the goods were stolen.
 - v. *Arson* is the willful and malicious burning of a building owned by another.
 - vi. *Forgery* is the fraudulent making or altering of any writing in a way that changes the legal rights and liabilities of another.
- C. Public Order Crime
 - i. Today, the most common public-order crimes include public drunkenness, prostitution, gambling, and illegal drug use.
- D. White-Collar Crime
 - i. *Embezzlement* is when a person entrusted with another person’s property or money fraudulently appropriates it.
 - ii. *Mail and Wire Fraud* is a federal crime under the Mail Fraud Act of 1990. This is illegal use of the mails to defraud the public.
 - iii. *Bribery* is the attempt to influence a public official to act in a way that serves a private interest.
 - iv. *Bankruptcy Fraud* includes filing a false claim against the debtor.
 - v. *Theft of Trade Secrets* is buying or possessing trade secrets. It is a federal crime.
- E. Organized Crime
 - i. *Money Laundering* is passing money from an illegal transaction through a legitimate business in such a way as to make it “clean.”
 - ii. *The Racketeer Influenced and Corrupt Organizations Act (RICO)* makes it a federal crime to, among other things, use income obtained from racketeering activity to purchase any interest in an enterprise.

Old Crime, New Venue

Cyber crimes are not new crimes, but they represent crimes committed with the use of a computer, occurring in cyberspace. For example, theft can occur with the use of computers—stealing information, money, and identities. State and federal governments are enacting laws to specifically address cyber crimes. Keeping yourself educated in this area (or in any area for that matter) is a constant challenge. Never give up.

V. CYBER CRIME

A. Cyber Theft

- i. *Financial Crimes* include sabotage, fraud, embezzlement, and theft of proprietary data, such as trade secrets or other intellectual property.
- ii. *Identity Theft* is when the wrongdoer steals a form of another's identification.
- iii. *Cyber Stalking* uses cyberspace to put a person in reasonable fear for his or her safety or the safety of his or her immediate family.
- iv. *Hacking* is done by a person who uses one computer to break into another.
- v. Prosecuting cyber crimes raises many issues such as identifying the true wrongdoer, jurisdiction, and physical evidence.
- vi. *The Computer Fraud and Abuse Act* makes it illegal for a person to access or attempt to access a computer online, without authority, to obtain classified, restricted, or protected data.
- vii. *Other Federal Statutes* include the Electronic Fund Transfer Act of 1978 and the Consumer Protection Act of 1996.

VI. CONSTITUTIONAL SAFEGUARDS

- A. Specific procedural safeguards to protect persons accused of crimes are in the *Bill of Rights*.
- B. Under the *exclusionary rule*, any evidence or confession obtained in violation of the suspect's rights will normally not be admissible in court.
- C. Under the *Miranda* rule, individuals who are arrested and taken into custody must be informed of certain constitutional rights.
 - i. Challenges to the *Miranda* Rule
 1. The Omnibus Crime Control Act said that statements by defendants can be used against them as long as the statements are made voluntarily.
 - ii. Exceptions to the *Miranda* Rule
 1. There is a public safety exception when the need to protect the public warrants the admissibility of statements made by the defendant, even though the defendant had not been informed of his *Miranda* rights.

VII. CRIMINAL PROCEDURES PRIOR TO PROSECUTION

A. Arrest and Booking

- i. *Booking* refers to the process of entering a suspect's name, the offense, and time of arrival into the police log.
- ii. *Detention* Is Not an Arrest

1. Even a stop-and-frisk is not an arrest.
 - iii. Probable Cause
 1. There must be a substantial likelihood that a crime was committed and that the individual committed the crime before *probable cause* exists.
 - iv. Warrants
 1. An *arrest warrant* is a written order, based on probable cause and issued by a judge, commanding the named person be arrested by the police.
 2. A *search warrant* is a written order, based on probable cause and issued by a judge, commanding that police officers search a specific person, place, or property to obtain evidence.
- B. Investigation after the Arrest
- i. Individuals may be put into a *lineup* where the suspect appears with a group of several others.

VIII. THE PROSECUTION BEGINS

A. Complaint and Initial Appearance

- i. The criminal litigation against a suspect begins when the prosecutor decides to prosecute the case and files a *complaint*.
- ii. In most jurisdictions, defendants are usually taken before a magistrate for their *initial appearance* within 24 hours of arrest.
- iii. Sometimes, *bail* (the amount of money paid by the defendant to the court as insurance that he will show up for future court appearances) is set.

B. Preliminary Hearing

- i. The defendant again appears before a magistrate or judge at a *preliminary hearing*.
- ii. The magistrate or judge determines whether the evidence presented is sufficient to establish probable cause.
- iii. If the evidence is insufficient to establish probable cause, the charges are reduced or dropped.
- iv. If the magistrate believes that probable cause exists, the prosecutor issues an *Information* (the formal charge against the defendant), and the defendant is bound over for trial.
- v. Grand Jury Review
 1. The *grand jury* is a group of citizens called to decide whether there is probable cause.
 2. A prosecutor may call a grand jury to evaluate the evidence against a suspect.
 3. If the grand jury finds probable cause exists, it issues an *indictment* against the defendant.

vi. Arraignment

1. Based on the information or the indictment filed, the prosecutor submits a motion to the court ordering the defendant to appear for *arraignment*.
 2. At the arraignment, the defendant is informed of the charges against him and offered an opportunity to respond to the charges.
 3. Many times, *plea bargaining* may be agreed upon by the prosecutor and the defendant.
- vii. Pretrial Motions
1. Prior to the trial, the defendant's attorney may file pretrial motions requesting the court to dismiss the case for various reasons.
 - a. Motions to Suppress
 - 1) The *motion to suppress evidence* asserts that the evidence against the defendant was illegally obtained and should be excluded or inadmissible.
 - b. Motions to Dismiss
 - 1) A *motion to dismiss* can be filed to dismiss all or some of the charges pending against the defendant.
 - c. Other Common Motions
 - 1) A *motion in limine* is filed to prevent certain evidence from being offered by the other side.
 - 2) A *motion for change in venue* asks the court to relocate the trial.
 - 3) A *motion to recuse* asks the trial judge to remove herself from the case.

C. Discovery

- i. Although similar to civil litigation, *discovery* in criminal litigation is more limited, and the time constraints relating to it are different as well.

IX. THE TRIAL

A. The Presumption of Innocence

- i. In criminal trials, the defendant is innocent until proven guilty.

B. The Privilege Against Self-Incrimination

- i. The defendant cannot be forced to testify at trial.

C. The Right to a Speedy Trial

- i. Although the Sixth Amendment requires a speedy or public trial for criminal prosecutions, it does not specify what is meant by "speedy."

D. The Requirement for a Unanimous Verdict

- i. In most jurisdictions, jury verdicts in criminal cases must be unanimous *for acquittal* or conviction.

E. Sentencing

- i. When the judge pronounces the *sentence*, she imposes the penalty on the person convicted of a crime.

F. Incarceration

- i. When defendants are sentenced to a county jail or a state prison, they are said to be *incarcerated*.

G. Probation

- i. *Probation* is when the defendant is sentenced to substantially less than the maximum penalty.

H. Diversion

- i. *Diversion programs* are available to defendants charged with certain types of offenses specified by statute. This is an alternative to prosecution.

I. Appeal

- i. Persons convicted of crimes have a right of appeal to the intermediate court of appeal.
- ii. Only a minority of decisions are reversed on appeal.
- iii. A decision reversed “with prejudice” may not be tried again.