

Business Law

Text & Exercises *6th Ed.*

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Chapter 7: Criminal Law

Learning Outcomes

- LO1** • Explain the difference between crimes and other types of wrongful conduct.
- LO2** • Indicate the essential elements of criminal liability.

Learning Outcomes

LO3

- **Describe the constitutional safeguards that protect the rights of persons accused of crimes.**

LO4

- **Define the crimes that affect business.**

LO5

- **Summarize the defenses to criminal liability.**



Civil Law and Criminal Law

- **Civil Law: duties that exist between persons and their governments.**
 - Contract law is part of civil law.
 - Tort law is also part of civil law.
- **Criminal Law: wrong against society, set forth in a statute, punishable by fines, imprisonment, or death.**

Civil Law and Criminal Law: A Comparison

| ISSUE | CIVIL LAW | CRIMINAL LAW |
|------------------------------|---|--|
| Area of concern | Rights and duties between individuals. | Offenses against society as a whole. |
| Wrongful act | Harm to a person or to a person's property. | Violation of a statute that prohibits some type of activity. |
| Party who brings suit | Person who suffered harm. | The state. |
| Standard of proof | Preponderance of the evidence. | Beyond a reasonable doubt. |
| Remedy | Damages to compensate for the harm. | Punishment (fine or imprisonment). |

Classification of Crimes

- **Felony**: serious crime punishable by death or imprisonment in a federal penitentiary for more than one year.
- **Misdemeanor**: Under federal law and in most states, any crime that is not a felony, punishable by fine or confinement for up to one year in a local prison.

What Constitutes Criminal Liability?

- **Two elements must exist for a person to be convicted of a crime:**
 1. Criminal Act. →
 2. Intent to Commit a Crime. →

The Criminal Act

- **Most crimes require an act of *commission* (a person must do something).**
- ***Omission* can be a crime, but only when a person has a legal duty to perform the omitted act.**

Intent to Commit a Crime

- **A wrongful mental state is as necessary as a wrongful act in establishing criminal liability.**
 - For murder, the act is the taking of a life.
 - The mental state is the specific intent to take a life.

Corporate Criminal Liability

- **A corporation is normally liable for crimes committed by its agents within the course of their employment.**
- **A corporation must have been in a position to prevent the act.**
- **A corporation can also be criminally liable for failing to perform duties.**

Corporate Criminal Liability

- **Corporate directors and officers are personally liable for the crimes they commit, whether they personally benefitted from the act or not.**
- **Corporate directors and officers are also personally liable for the crimes committed by employees under their supervision.**

- 1. Fourth amendment protection from unreasonable searches and seizures.**
- 2. Fourth Amendment requirement that no warrants for a search or an arrest can be issued without probable cause.**

- 3. Fifth amendment requirement for *due process*.**
- 4. Fifth amendment prohibition against *double jeopardy*.**
- 5. Fifth amendment requirement that no person can be forced to incriminate himself.**

- 6. Sixth amendment guarantees of a speedy, public trial, by jury, the right to confront witnesses, and the right to a lawyer.**
- 7. Eighth amendment prohibitions against excessive bail and fines, and cruel and unusual punishment.**

Searches and Seizures

- **Search warrant: an order from a judge or public official giving authorization.**
- **Probable cause requires evidence that would convince a reasonable person that the proposed search or seizure is justified.**

Exclusionary Rule

- **Under the exclusionary rule, all evidence obtained in violation of the constitutional rights spelled out in the Fourth, Fifth, and Sixth amendments usually must be excluded, as well as all evidence derived from the illegally obtained evidence.**

Informing Suspects of Their Rights

- **Individuals who are arrested must be informed of their Constitutional rights, otherwise their statements are usually not admissible in court.**
- **Voluntary confessions can be used as evidence in federal cases.**

- ***White Collar Crimes:*** nonviolent crimes by an individual or business.
 - Forgery.
 - Robbery.
 - Larceny.
 - Embezzlement.
 - Mail and Wire Fraud.
 - Cyber Crime.
 - Bribery.

Forgery

- **The fraudulent making or altering of any writing in a way that changes the legal rights and liabilities of another.**
 - Includes changing trademarks, counterfeits.

Robbery

- **Robbery is forcefully and unlawfully taking personal property of any value from another.**
 - Force or intimidation is usually necessary.

Larceny

- **Any person who wrongfully or fraudulently takes and carries away another person's personal property is guilty of larceny.**
 - Whereas robbery involves force or fear, larceny does not.

Embezzlement

- **When a person entrusted with another person's property or money fraudulently appropriates it, embezzlement occurs.**
 - 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.

Mail and Wire Fraud

- **Mail Fraud Act of 1990 states it is a federal crime to:**
 1. Mail or cause someone else to mail a writing—something written, printed, or photocopied—for the purpose of executing a scheme to defraud.
 2. Contemplate or organize a scheme to defraud by false pretenses.

Cyber Crime

- **The American Bar Association defines computer crime as any act that is directed against computers and computer parts, that uses computers as instruments of crime, or that involves computers and constitutes abuse.**

Types of Cyber Crime

- **Financial Crimes.**
- **Identity Theft.**
- **Cyberstalking.**
- **Hacking and Cyberterrorism**
 - Cyberterrorists are hackers who exploit computers to create a serious impact.

Prosecuting Cyber Crime

- **Jurisdiction is a problem.**
- **Identifying the wrongdoer can be difficult.**
- **Counterfeit Access Device and Computer Fraud and Abuse Act of 1984.**
- **National Information Infrastructure Protection Act of 1996.**

Bribery

- **Bribery of Public Officials.**
 - It is a crime to attempt a public official to act in a way serving private interest.
- **Commercial Bribery.**
 - i.e. Industrial espionage.
- **Bribery of Foreign Officials.**
 - The Foreign Corrupt Practices Act of 1977 prohibits American businessmen from bribing foreign officials for foreign contracts.

RICO

- **Racketeer Influenced and Corrupt Organizations Act (RICO):**
 1. It is a federal crime to use income from racketeering activity to purchase an enterprise,
 2. Acquire an enterprise through racketeering activity,
 3. Participate in an enterprise through racketeering activity,
 4. Or to conspire to do any of the above.

- **Infancy.**
- **Insanity.**
- **Entrapment: defendant claims to have been induced to commit a crime he would not normally have committed.**
- **Immunity: used in plea bargaining.**