



Criminal Law

Business Law
Chapter 2



Criminal Law

- Crime – an act against the public good, punishable by a fine, imprisonment, or both
- No act can be considered a crime unless it is prohibited by the law of the place where it is committed and unless that law provides for the punishment of offenders.

Criminal Law

- Criminal Proceedings – the state or federal government, representing the public at large, is the plaintiff
- Government is the Prosecutor – the party that accuses the person of a crime
- Defendant – the person who is accused of a crime

Criminal Law

- **Felony – a major crime punishable by imprisonment or death**
 - Examples: murder, manslaughter, burglary, robbery, and arson
- **Federal comprehensive Crime Control Act – defines felony as “any offense punishable by death or imprisonment for a term exceeding one year”**

Criminal Law

- Misdemeanor – a less serious crime with a less severe penalty
 - Penalty is fine or imprisonment in a county or city jail
 - Examples: driving an automobiles without a license, lying about one's age to purchase alcoholic beverages, and leaving the scene of an automobile accident
 - Some states classify lesser crimes as minor misdemeanors or petty offenses
 - Traffic offenses and parking violations

Criminal Law

Elements of a Crime

- A crime is defined by 2 elements: the criminal act and the required state of mind
- Criminal Act – Each statute that defines a crime must specifically explain the conduct that is forbidden by the statute.
- Required State of Mind – is specified in the statute that defines the crime. (normally *intent* defined in the statute)
- The lack of motive does not remove criminal liability. If the person has committed the crime and has the required state of mind, he or she is criminally liable.

Criminal Law

- Crimes are grouped under three headings:
 - Crimes against **people**
 - Crimes against **property**
 - Crimes against **business interests**

Criminal Law

■ Crimes against People

- Murder – the unlawful killing of another human being with malice aforethought
- First Degree Murder (Aggravated murder) – (1) killing someone with premeditation or (2) killing someone in a cruel way, such as torture or (3) killing someone while committing a felony, such as rape, robbery, or kidnapping

Criminal Law

- Manslaughter – the unlawful killing of another human being without malice (evil intent) and thought.
- Voluntary Manslaughter – the wrong doer must have become very upset before the killing – occurs when one person intends, at the time the act is committed, to kill another but does so suddenly and as the result of personal distress
- Involuntary Manslaughter – when one person, while committing an unlawful or reckless act, kills another. There is no intent to kill.

Criminal Law

- The killing of a human being due to the act or omission of another. Included among homicides are murder and manslaughter, but not all homicides are a crime, particularly when there is a lack of criminal intent (required state of mind or a legal defense).
- Non-criminal homicides include killing in self-defense, a misadventure like a hunting accident or automobile wreck without a violation of law like reckless driving, or legal (government) execution.
- Suicide is a homicide, but in most cases there is no one to prosecute if the suicide is successful. Assisting or attempting suicide can be a crime.

Criminal Law

- **Assault and Battery** - In most states are misdemeanors
 - Battery - unlawful touching of another person
 - Must have criminal intent
- Ex.: giving poison or drugs to an unsuspecting victim; forceful use of a person's hand, knife or gun; spitting in someone's face; siccing a dog on someone; kissing someone who does not want to be kissed

Criminal Law

- Assault – an attempt to commit battery
 - (Pointing or shooting a gun at someone is the assault; the bullet striking the person is the battery)

Aggravated Assault and Aggravated Battery

- Felonies in most states
- The assault or battery has to be committed with a deadly weapon, with the intent to murder, with the intent to commit rape, or with the intent to commit robbery

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- Kidnapping – the unlawful removal or restraint of a person against the person's will
 - Usually threatened or forced to be a captive
- Sex Offenses – extremely serious crimes because victims are hurt physically, emotionally and psychologically
 - Statutory rape – applies to situations in which the victim is under age / the consent of the underage person does not matter (under 16)

Criminal Law

■ Crimes Against Property

- Burglary

- Robbery

- Arson

- Larceny

- Embezzlement

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- Burglary - (originally under common law) the breaking (opening) and entering of a dwelling house at night with the intent to commit a felony
- (Currently the definition includes): breaking and entering in the daytime. Breaking and entering a place that is not a dwelling house and breaking and entering with the intent to commit a misdemeanor

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- Larceny (stealing) – unlawful taking and carrying away of personal property of another with the intent to deprive the owner of it. Shoplifting – is a form of larceny
- Petty Larceny – a misdemeanor (stealing property that with a value of \$300 or less)
- Grand Larceny – a felony (stealing property valued at more than \$300)

Criminal Law

- Embezzlement – a form of stealing (taking another's property by the person that has been entrusted with that property)
- Example: grocery clerk taking the money instead of putting it in the cash register / treasurer of business taking money / bank teller/ PTO treasurer takes money

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- Robbery – The wrongful taking and carrying away of the personal property of another accompanied by violence or threats
 - Taking of something from the body or close to the body of the victim by the use of force, violence, or threats
- Arson – the willful and malicious burning of the dwelling house or other building of another

Criminal Law

■ Crimes against Business Interests

- Larceny by False Pretenses
- Forgery
- Bribery and Extortion
- Computer Crimes

Criminal Law

- Larceny by False Pretenses (Con by a con artist) – the taking of someone's money or property by intentionally deceiving that person
 - Intended to mislead
 - Statements made induce the victim to rely on them

Criminal Law

- Forgery – the false making or changing of a writing with the intent to defraud
- Signing of another person's name without authority to a check or other document

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- Bribery and Extortion – paying or giving anything of value to public officials in order to influence their official activity
- Penalty is fine of not more than \$20,000 or three times the monetary equivalent of the bribe, whichever is greater, or imprisonment for not more than 15 years of both
- The person taking the bribe may be disqualified from holding the federal office

Criminal Law

- Extortion, under common law, is the unjust taking of money or a thing of value by a public official
- The victim agrees to give up the money or property, but does so out of fear

Criminal Law

- Defenses to Crimes – insanity, entrapment, self-defense, and defense of family members
 - Insanity – a person is not responsible if “as a result of mental disease or defect he or she lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to requirements of law.”
- American Law Institute (ALI) has developed a modern insanity test.
- About 3/5 the of the states follow the ALI test

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- If found not guilty by reason of insanity, people are committed to institutions and must undergo periodic psychiatric examinations. Once they are found to be sane, they are released.
- Some states sentence guilty by mentally ill pleas
 - The defendant is first institutionalized until cured and then serves a number of years in a prison

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- Entrapment – a law enforcement officer induces a law-abiding citizen to commit a crime
 - The crime would not have been committed had it not been for the inducement of the officer.

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- Self-Defense – when persons have good reason to believe that they are in danger of serious injury or death and they use force to protect themselves.
- Except in one's own home, the person claiming self-defense must retreat before resorting to force. (if possible!)
- Must show that he/she did not start the altercation.
- Must not have used more force than necessary.

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- Defense of a Family Member – force is used to rescue a family member who has been attacked
- Must have good reason to believe that the victim was in danger of severe bodily injury or even death.
- Rescuer need not retreat if the attack takes place in his/her own home.

Criminal Law

- Sentencing Convicted Criminals – fines, imprisonment, the death penalty
- Sentence – an appropriate punishment
 - Fines – the payment of a specified amount of money as a penalty for committing a crime
 - Lesser crimes only a fine
 - Serious crimes fine and imprisonment

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■ Imprisonment

- Different ways to approach imprisonment
- Sentencing a minimum and a maximum amount of time in jail.
 - Minimum is the for sure amount of time spent behind bars.
 - Could be released before maximum time for good behavior.

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- Sentencing can be for an definite or determinate amount of time
 - judge hands down the exact number of years to serve
 - may be lessened for good behavior
- If the statute under which the offender is sentenced calls for the mandatory sentence, good behavior is not an option.

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■ Death Penalty

■ Murder Trials must go through 3 phases

- 1st phase – the jury determines the guilt or innocence of the person
- 2nd Phase – (presentence hearing) the judge or jury listens to the lawyers; arguments and examines other evidence to help determine the punishment to be given.
- 3rd Phase – an appeal to the state's highest court

■ Only when these three phases are complete can the death penalty be applied.

Criminal Law

- Criminal Law in the American System

- Two systems: federal system and state system

- State Criminal System

- Each state government has police power
- Allows states to protect the health, safety, welfare, and morals.
- Exact definitions and penalties for crimes differ from state to state

Criminal Law

Federal Criminal Law

- Have no police power
- Can only create criminal statutes over which it has jurisdiction
 - Ex. Counterfeiting because it has power to coin money
- Do have several national police agencies
 - Federal Bureau of Investigation (FBI)
 - Drug Enforcement Agency (DEA)
- The power comes from Commerce Clause to U.S. Constitution
- Congress can regulate commerce among the states

Criminal Law

- Treason – (defined by U.S. Constitution)
need a confession in open court or
testimony of 2 witnesses to convict someone
of treason
- Betraying one's country

Criminal Law

- Double Jeopardy- 5th Amendment to the Constitution guarantees that no person can be tried twice for the same crime.
- Federal and State systems of justice sometimes overlap
 - (both federal and state laws address the manufacture, sale, and use of illicit drugs)
- An individual may be tried twice for the same actions in two different courts but not the same court twice

Criminal Law

- Hate Crimes – The use of certain symbols, writings, pictures, or spoken words to cause fear or anger in people because of their race, religion, color, or gender.
- A statute can outlaw language or symbols that are designed to rouse fear or outrage regardless of the content of that speech
- A statute cannot make it illegal to use speech designed to entice outrage or fear based on only race, religion, color gender, or any similar category.

Criminal Law

■ Crimes against Property

Vandalism – willful or malicious damage to property and may also be called malicious mischief or criminal damaging

- A “lookout” can also be charged with vandalism

■ Shoplifting – The act of stealing goods from a store

- Costs American consumers billions of dollars each year
- Shoplifting losses, extra security – increase prices considerably
- Many states have laws that regard the concealment on one's person of an article of merchandise to be persuasive evidence of the intent to steal.

Criminal Law

■ Motor Vehicle Violations

- A license to drive is a privilege and may be suspended temporarily or permanently
- Drag racing – unauthorized racing of two vehicles side by side and the timing of vehicles that separately run a prearranged course
- Joyriding – when someone temporarily takes a motor vehicle without the owner's permission
 - All participants are held liable, not just the drivers

Criminal Law

■ Crimes Involving Controlled Substances

- Drug abuse is a serious problem in our society

■ Alcohol

- Major chemical found in beer, wine, whiskey, and other distilled beverages
- Most commonly used drug in the United States
- Selling alcohol to minors is illegal and is penalized by imprisonment, fines or both, and may lose the license to sell alcohol
- The underage individual may also be prosecuted for making the illegal purchase

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■ Drugs

- Chemicals that alter the functions of the mind or body.
- Possession, distribution, or sale of certain drugs may violate a federal law, a state law, or both. Each state sets its own penalties in relationship to drug offenses. The sale of drugs is always considered a more serious crime than the mere possession or use of drugs. It is also a crime to give drugs away.

Criminal Law

- Computer Crimes
- Federal Crimes and Laws
 - The Computer Fraud and Abuse Act is specifically aimed at computer hackers.
 - Hackers gain unauthorized entry to a computer system, generally to do some sort of mischief.

Criminal Law

■ State Crimes and Computers

- Some states have created the crime of computer trespass, which simply outlaws using a computer to commit any crime.
- Other states have passed computer fraud statutes, which make it an offense to use a computer to acquire property, services, or money by fraud.
- Some states have a detailed list of computer-related crimes, including theft of computer services, destruction of equipment, and misuse of computer information.