CHAPTER 6
Criminal Law and Cyber Crimes

Learning Objectives

• What two elements must exist before a person can be convicted of a crime? Can a corporation commit a crime?
• What are five broad categories of crimes? What is white-collar crime?
• What defenses might be raised by a criminal defendant to avoid liability for criminal acts?
• What constitutional protections exist to protect persons accused crimes? What are the basic steps in the criminal process?
• What is a cyber crime? What laws apply to crimes committed in cyberspace?

Civil Law vs. Criminal Law

<table>
<thead>
<tr>
<th>Civil Law</th>
<th>Criminal Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preponderance of the evidence</td>
<td>Beyond a reasonable doubt</td>
</tr>
<tr>
<td>Remedy is damages</td>
<td>Punishment is incarceration</td>
</tr>
<tr>
<td>Injured party represents herself</td>
<td>State represents the victim</td>
</tr>
</tbody>
</table>

Classification of Crimes

• A person’s wrongful act may hold him liable (or guilty) in civil actions (tort) and criminal actions.
• Classification of Crimes:
  – Felony: serious crimes punished by death or imprisonment for at least 1 year.
  – Misdemeanor: punished by fine or confinement for less than 1 year.

Criminal Liability

• To be convicted of a crime, the State must show beyond a reasonable doubt that the Defendant:
  – Performed an illegal act (actus reus) AND
  – While performing the act, had the required intent or specific state of mind (mens rea).
• Without the required intent there can be no conviction.

Corporate Criminal Liability

• A corporation is a legal “person.”
• A corporation can be fined or denied legal privileges (license) for criminal activity.
• Responsible Corporate Officer: officers and directors can be criminally liable.
Types of Crimes

• Violent Crime.
  – Crimes against persons (murder, rape).
  – Robbery is a violent crime.

• Property Crime - Most common, involves money or property:
  – Burglary.
  – Larceny.
  – Receiving Stolen Goods.
  – Arson.
  – Forgery.

• White Collar Crime: non-violent crimes involving a business transaction:
  – Embezzlement.
  – Mail and Wire Fraud.
  – Bribery.
  – Theft of Trade Secrets.
  – Insider Trading.

• Organized Crime – RICO and Money Laundering.

Defenses

<table>
<thead>
<tr>
<th>Infancy (juvenile)</th>
<th>Mistake.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intoxication: voluntary vs. involuntary</td>
<td>Consent.</td>
</tr>
<tr>
<td>Insanity.</td>
<td>Duress.</td>
</tr>
<tr>
<td>Justifiable Use of Force.</td>
<td>Entrapment.</td>
</tr>
<tr>
<td>Immunity.</td>
<td>Statute of Limitations.</td>
</tr>
</tbody>
</table>

Constitutional Safeguards

• Fourth Amendment Protections.
  – Search Warrants:
    • Officer must have Probable Cause.
    • Exceptions to Warrant.
  – Search and Seizure in Businesses.
    • Warrant required in some cases.
    • No warrant required for contaminated food or highly regulated liquor or gun businesses.

• Fifth Amendment.
  – Due Process of Law.
    • Opportunity to Object.
    • Hearing before a neutral Magistrate.
  – Double Jeopardy.
    • Person cannot be retried for the same offense in the same court.
    • Civil action, however, is permitted.
  – Self-Incrimination.
    • “Right to Remain Silent” or not testify against yourself

• Sixth and Eighth Amendments.
  – Right to Speedy Trial.
  – Right to Jury Trial.
  – Right to Public Trial.
  – Right to Confront Witnesses.
  – Right to Counsel.
  – Prohibition on cruel and unusual punishment.
    • Fellers v. United States (2004).
Constitutional Safeguards

- Exclusionary Rule.
  - Evidence obtained in violation of constitutional procedures must be excluded.
  - Evidence derived from illegal evidence is “fruit of the poisonous tree.”
  - Deters police from misconduct.
  - People v. McFarlan (2002).

- Miranda Rule.
  - Inform suspect of his rights.
  - Exceptions: coercion, illegally obtained evidence.

Criminal Process

1. Arrest
2. Booking
3. Initial Appearance
4. Preliminary Hearing
5. Trial
6. Arraignment
7. Charges Filed
8. Guilty Plea
9. Plea Bargain
10. Trial
11. Guilty Plea
12. Plea Bargain
13. Trial
14. Guilty Plea
15. Plea Bargain
16. Trial
17. Guilty Plea
18. Plea Bargain
19. Trial
20. Guilty Plea
21. Plea Bargain
22. Trial
23. Guilty Plea
24. Plea Bargain
25. Trial
26. Guilty Plea
27. Plea Bargain
28. Trial
29. Guilty Plea
30. Plea Bargain
31. Trial
32. Guilty Plea
33. Plea Bargain
34. Trial
35. Guilty Plea
36. Plea Bargain
37. Trial
38. Guilty Plea
39. Plea Bargain
40. Trial
41. Guilty Plea
42. Plea Bargain
43. Trial
44. Guilty Plea
45. Plea Bargain
46. Trial
47. Guilty Plea
48. Plea Bargain
49. Trial
50. Guilty Plea
51. Plea Bargain
52. Trial
53. Guilty Plea
54. Plea Bargain
55. Trial
56. Guilty Plea
57. Plea Bargain
58. Trial
59. Guilty Plea
60. Plea Bargain
61. Trial
62. Guilty Plea
63. Plea Bargain
64. Trial
65. Guilty Plea
66. Plea Bargain
67. Trial
68. Guilty Plea
69. Plea Bargain
70. Trial
71. Guilty Plea
72. Plea Bargain
73. Trial
74. Guilty Plea
75. Plea Bargain
76. Trial
77. Guilty Plea
78. Plea Bargain
79. Trial
80. Guilty Plea
81. Plea Bargain
82. Trial
83. Guilty Plea
84. Plea Bargain
85. Trial
86. Guilty Plea
87. Plea Bargain
88. Trial
89. Guilty Plea
90. Plea Bargain
91. Trial
92. Guilty Plea
93. Plea Bargain
94. Trial
95. Guilty Plea
96. Plea Bargain
97. Trial
98. Guilty Plea
99. Plea Bargain
100. Trial
101. Guilty Plea
102. Plea Bargain
103. Trial
104. Guilty Plea
105. Plea Bargain
106. Trial
107. Guilty Plea
108. Plea Bargain
109. Trial
110. Guilty Plea
111. Plea Bargain
112. Trial
113. Guilty Plea
114. Plea Bargain
115. Trial
116. Guilty Plea
117. Plea Bargain
118. Trial
119. Guilty Plea
120. Plea Bargain
121. Trial
122. Guilty Plea
123. Plea Bargain
124. Trial
125. Guilty Plea
126. Plea Bargain
127. Trial
128. Guilty Plea
129. Plea Bargain
130. Trial
131. Guilty Plea
132. Plea Bargain
133. Trial
134. Guilty Plea
135. Plea Bargain
136. Trial
137. Guilty Plea
138. Plea Bargain
139. Trial
140. Guilty Plea
141. Plea Bargain
142. Trial
143. Guilty Plea
144. Plea Bargain
145. Trial
146. Guilty Plea
147. Plea Bargain
148. Trial
149. Guilty Plea
150. Plea Bargain

Cyber Crime

- Cyber crimes involve the use of computers in cyberspace to injure a person or property.
- Most cyber crimes are based on existing common law crimes, with exceptions:
  - Cyber Theft.
  - Cyber Stalking.
  - Hacking.
  - Cyber Terrorism.
- Computer Fraud and Abuse Act helps prosecute computer crime.