



# BUSINESS LAW

## Chapter 8 Criminal Law and Cyber Crimes

# Learning Objectives

- List and describe the essential elements of a crime.
- Describe criminal procedure, including arrest, indictment, arraignment, and the criminal trial.
- Identify and define business and white-collar crimes.
- List and describe cybercrimes.
- Explain the constitutional safeguards provided by the Fourth, Fifth, Sixth, and Eighth Amendments to the U.S. Constitution.

# Introduction

- **U.S. criminal law system**
  - Person accused of a crime is **presumed innocent until proven guilty**
  - The **burden of proof** is on the government
  - Accused must be found guilty **beyond a reasonable doubt**
  - Conviction requires unanimous jury vote
  - Accused is provided with constitutional safeguards during the criminal justice process

# Crime

- Any act done by an individual in violation of those duties that he or she owes to society
  - For the breach of which the law provides that the wrongdoer shall make amends to the public

## Crime (cont.)

- **Penal code:** Collection of criminal statutes
- **Regulatory statutes:** Statutes such as environmental laws, securities laws, and antitrust laws that provide for criminal violations and penalties
- Statutes are the primary source of criminal law
- States have adopted comprehensive penal code
  - Define activities considered to be crimes
  - Penalties imposed for their commission
- Federal criminal code defines federal crimes

# Crime (cont.)

- State and federal **regulatory statutes** provide for criminal violations and penalties
- Penalty for crime includes:
  - Imposition of fine
  - Imprisonment
- Imprisonment is imposed to:
  - Incapacitate the criminal and provide rehabilitation
  - Deter others from similar conduct
  - Inhibit personal retribution by the victim

# Crime (cont.)

- Parties to a criminal action
  - **Plaintiff:** The government
  - **Defendant:** The accused
  - The government is represented by a **prosecutor**
  - The accused is represented by a **defense attorney**
  - **Public defender:** Government defense attorney

# Classification of Crimes

Felonies

Misdemeanors

Violations



# Crime (cont.)

- **Intent crimes**
  - Criminal act (*actus reus*)
  - **Criminal intent (*mens rea*)**
    - Specific intent crime
    - General intent crime
- Merely thinking about a crime is not a crime, because no action has been taken

# Crime (cont.)

- **Nonintent crimes**
  - Imposes criminal liability without a finding of intent
  - Imposed for reckless or grossly negligent conduct that causes injury to another person
  - **Involuntary manslaughter** is a nonintent crime

# Criminal Procedure

- **Arrest**
  - Police must obtain **arrest warrant** based on showing **probable cause**
  - **Warrantless arrests** allowed when police arrive during:
    - Commission of crime
    - A person is fleeing from the scene of crime
    - A situation where evidence is likely to be destroyed

# Criminal Procedure (cont.)

- Indictment or information
  - An accused is formally charged with a crime by:
    - **Indictment:** Charge of having committed a crime, based on the judgment of a grand jury
    - **Information:** Charge of having committed a crime based on the judgment of a magistrate
  - **Grand jury**
    - Determines whether there is enough evidence to hold accused for trial and issues an indictment

# Criminal Procedure (cont.)

- **Magistrate**
  - Deals with accused of lesser crimes
  - Determines whether there is enough evidence
  - Issues an information statement
- **Arraignment:** Proceeding during which:
  - Accused informed of all charges
  - Asked to enter a **plea**
    - **Guilty**
    - **Not guilty**

# Criminal Procedure (cont.)

- ***Nolo contendere***
  - Does not admit guilt, but agrees to penalty
  - Cannot be used as evidence of liability against the accused at subsequent civil trials
- **Plea bargain:** Negotiations prior to trial with the intent of avoiding a trial
- **Plea bargain agreement:** Agreement in which the accused admits to a lesser crime than charged

# Criminal Procedure (cont.)

- Government agrees to impose a lesser sentence than might have been obtained if tried
- Saves money and time
- Avoids risk of trial
- Prevents further overcrowding of jails

# Criminal Trial

- Verdict must be unanimous
  - Accused cannot be found guilty even if:
    - One juror doubts the guilt of the accused
  - **Hung jury:** Jury that cannot come to a **unanimous decision** about the defendant's guilt
- Convicted defendant can appeal
  - If defendant found not guilty, government cannot appeal



# Common Crimes

- **Murder**
  - Unlawful killing of a human being by another person without justification
  - Different degrees of murder depending upon level of intent
  - **Felony murder rule:** Murder committed during commission of any felony may be prosecuted as murder
    - Intent to commit murder is inferred from intent to commit another crime

# Common Crimes (cont.)

- **Robbery**

- The taking of personal property from another person by use of fear or force
- If a weapon is used, it is considered armed or aggravated robbery

- **Burglary**

- The taking of personal property from another's home, office, or commercial or other type of building

# Common Crimes (cont.)

- **Larceny**
  - Wrongful and fraudulent taking of another person's personal property
    - Includes tangible property, trade secrets, computer programs, other business property
  - Force or entry into a structure not required
  - States distinguish between grand and petit larceny, based on value of property taken

# Common Crimes (cont.)

- **Receiving stolen property**
  - Knowingly receiving stolen property with the intention of depriving rightful owner of that property
  - Can be tangible property
- **Arson**
  - Malicious or willful burning of another's dwelling
  - Latest law applies to burning all types of structures
  - Includes willful burning by structure's owner

# Business and White-Collar Crimes

- **Forgery**
  - Fraudulent making or alteration of a written document that affects the legal liability of another person
- **White-collar crime:** Crimes that are often committed by businesspeople
- **Embezzlement**
  - Fraudulent conversion of property by a person to whom that property was entrusted

# Business and White-Collar Crimes (cont.)

## ■ **Bribery**

- Crime in which one person gives another person anything of value for a favor in return
- Offeror commits crime when bribe is offered
- Offeree commits crime when bribe is accepted

## ■ **Extortion**

- Threat to expose something about another person unless that other person gives money or property
- **Blackmail:** Extortion of private persons

# Business and White-Collar Crimes (cont.)

- **Criminal fraud**
  - Obtaining title to property through deception or trickery
  - Includes:
    - **Mail fraud**
    - **Wire fraud**
  - Also called false pretenses or deceit

# Business and White-Collar Crimes (cont.)

- Under **Money Laundering Control Act**, a crime to:
  - Knowingly engage in monetary transaction through financial institution involving property from unlawful activity worth more than \$10,000
  - Knowingly engage in financial transaction involving proceeds of illegal activity
  - If convicted, fines of up to \$500,000 or twice the value of property – Whichever is greater and sentenced to up to 20 years in federal prison



# Business and White-Collar Crimes (cont.)

- **Racketeer Influenced and Corrupt Organizations Act (RICO)**
  - **Criminal RICO:** A federal crime to acquire or maintain an interest in, use income from, or conduct or participate in the affairs of an enterprise through a pattern of racketeering activity
  - **Civil RICO:** Persons injured by a RICO violation can bring a private civil RICO action against the violator to recover for injury to business or property

# Business and White-Collar Crimes (cont.)

- **Criminal conspiracy:** Two or more persons enter into an agreement to commit a crime
  - To be liable for criminal conspiracy
    - Persons intending it must commit an overt act to further the crime
    - Crime does not have to be committed

# Cybercrimes

- **Counterfeit Access Device and Computer Fraud and Abuse Act (CFAA)**
  - Federal crime to use a computer knowingly to obtain:
    - Restricted federal government information
    - Financial records of financial institutions
    - Consumer reports of consumer reporting agencies

# Cybercrimes (cont.)

- **Identity Theft and Assumption Deterrence Act:**  
Federal act that makes it a crime to transfer or use, without authority, the identity of another person knowingly and with the intent to commit any unlawful activity
- **Information Infrastructure Protection (IIP) Act:**  
Federal act that makes it a crime for anyone to access and acquire information intentionally from a protected computer without authorization

# Case 8.1: Computer Crime

- Case

- United States v. Barrington
- 648 F.3d 1178, 2011 U.S. App. Lexis 16535 (2011)
- United States Court of Appeals for the Eleventh Circuit

- Issue

- Was Barrington guilty of the crimes charged and was the prison sentence appropriate?

# Protection Against Unreasonable Search and Seizure

- **Fourth Amendment** protects persons and corporations from overzealous investigative activities by the government
- Reasonable search and seizure by the government is lawful
- **Search warrants** based on a probable cause are necessary in most cases
  - Government may not search businesses without a search warrant

# Protection Against Unreasonable Search and Seizure (cont.)

- **Exclusionary rule**
  - Evidence obtained from an **unreasonable search and seizure** is prohibited from introduction at a trial or proceeding against person searched
  - **Good faith exception**
    - Evidence may be introduced if law enforcement reasonably believed that they were acting pursuant to a lawful search warrant

# Case 8.2: Search

- Case
  - Navarette v. California
  - 134 S.Ct. 1683, 2014 U.S. Lexis 2930 (2014)
  - Supreme Court of the United States
- Issue
  - Did the stop and search of the truck violate the Fourth Amendment?



# Case 8.3: Search

- Case
  - Maryland v. King
  - 133 S.Ct. 1958, 2013 U.S. Lexis 4165 (2013)
  - Supreme Court of the United States
- Issue
  - Did Maryland's collection of King's DNA during the booking procedure in 2009 constitute an unreasonable search and seizure?

# Case 8.4: Search of Cell Phones

- Case

- Riley v. California and United States v. Wurie
- 134 S.Ct. 2473, 2014 U.S. Lexis 4497 (2014)
- Supreme Court of the United States

- Issue

- Can the police, without a warrant, search digital information on a cell phone from an individual who has been arrested?

# Privilege Against Self-Incrimination

- **Fifth Amendment** states that no person shall be compelled in any criminal case to be a witness against himself or herself
- Protects only natural persons who are accused of crimes
- **Attorney-client privileges**
  - Client can tell his or her attorney anything about the case without fear that the attorney will be called as a witness against the client

# Privilege Against Self-Incrimination (cont.)

- **Miranda rights:** Rights that a suspect must be informed of before being interrogated
  - Ensures that suspect does not unwittingly give up his or her Fifth Amendment right
  - Following is read out to suspect before interrogation:
    - You have the right to remain silent
    - Anything you say can and will be used against you

# Privilege Against Self-Incrimination (cont.)

- You have the right to consult a lawyer and to have a lawyer present
- If you cannot afford a lawyer, a lawyer will be appointed free of charge

# Case 8.5: Miranda Rights

- Case
  - Ragland v. Commonwealth of Kentucky
  - 191 S.W.3d 569, 2006 Ky. Lexis 251 (2006)
  - Supreme Court of Kentucky
- Issue
  - Was defendant Ragland properly given his Miranda rights?

# Privilege Against Self-Incrimination (cont.)

- Other privileges
  - Psychiatrist/psychologist-patient privilege
  - Priest/minister/rabbi/imam-penitent privilege
  - Spouse-spouse privilege
  - Parent-child privilege
- No **accountant-client privilege** under federal law
  - Accountant can be called as a witness in cases involving federal crimes

# Privilege Against Self-Incrimination (cont.)

- **Immunity from prosecution**
  - Government may offer a person immunity from prosecution in exchange for testimony
  - Once granted, person loses right to assert Fifth Amendment privilege
- **Protection against double jeopardy**
  - Fifth Amendment provides that persons cannot be tried twice for same crime




# Other Constitutional Protections

- Right to a public trial
  - **Sixth Amendment** guarantees that:
    - A criminal defendant be tried by an impartial jury of the state or district in which the alleged crime was committed
    - To confront (cross-examine) the witnesses against the accused
    - To have the assistance of a lawyer
    - To have a speedy trial

# Protection Against Cruel and Unusual Punishment

- **Eighth Amendment** protects criminal defendants from torture or other abusive punishment
  - Does not prohibit capital punishment



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