

Criminal Law

During lunch in the cafeteria, Grace, Jim, Liz, and Ben discuss their plans for the Friday night football game.

Grace: I'm certain about one thing. I'm not riding on the bus with those people from the south end. They're nothing but trouble.

Jim: You're prejudiced because they live on the other side of town.

Grace: That's not true. I've just heard about some of the crimes they commit.

Ben: Grace, are you sure they were guilty?

Jim: Grace, do you remember that time I broke Mr. Newman's window when we were playing baseball last summer? The police came but they didn't arrest me because I really didn't do anything wrong.

Grace: They didn't arrest you because you begged them not to take you to jail.

Jim: Well, yes, that too.

Liz: No, I remember one of the officers said that Jim didn't have the right mental state to commit a crime or something like that.

Grace: Now that I can believe.

Ben: Does that mean he didn't have a motive for breaking the window?

Grace: But he did have a motive. He was mad at Newman for embezzling some funds from his father's bank.

Jim: I like the way you talk about me as if I weren't here.

Liz: I remember that case. Newman pleaded entrapment and he got off scot-free.

Grace: I think that entrapment stuff is just another way to beat the system.

Ben: Sure, it's like that insanity defense I keep hearing about. Criminals just have to have their lawyer convince the judge that their client is insane.

Liz: I don't think it would have mattered that much in Newman's case anyway. I think Mrs. Martin said it was just a misdemeanor.

Ben: No way! That kind of thing has to be a felonious something or other.

Liz: Well, I heard Mr. Newman did his embezzling with that fancy new computer they installed at the bank last year.

Grace: How could you commit a crime with a computer?

Jim: Hit somebody over the head with it?

Grace: I think they should give him life.

Ben: Life imprisonment for embezzlement!

Grace: No! Not Mr. Newman, Jim.

New Terms

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The Spirit of the Law

When people commit crimes, they harm not only individuals, but also society as a whole. Our society does not allow acts that threaten the peace, safety, and well-being of the entire community. Thus, **crime** is 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.

Legal Issues:

1. Is proof of a motive necessary to convict someone of a crime?
2. How does a person's mental state determine whether or not a crime has been committed?
3. Is entrapment a legitimate defense to criminal activity?
4. Does a criminal who successfully pleads not guilty by reason of insanity go free?

Classifications of Crimes

In a criminal proceeding the state or federal government, representing the public at large, is the *plaintiff*. That is, the government is the party that accuses the person of a crime. Usually, the government is referred to as the **prosecutor**. The person who is accused of a crime is called the **defendant**.

In the opening vignette, Ben and Liz have a disagreement over whether the crime allegedly committed by Mr. Newman was a felony or a misdemeanor. Without realizing it, they are discussing a concept that is fundamental to a proper understanding of criminal law. That concept involves the classifying of crimes according to the degree of seriousness.

Felonies

A **felony** is a major crime punishable by imprisonment or death. To determine whether or not a crime is a felony, we look to the law to see what the punishment is for committing that particular crime. Murder, manslaughter, burglary, robbery, and arson are examples of felonies. A few states define felony as a crime subject to "punishment by hard labor," "an infamous crime," or a crime subject to "infamous punishment." The federal Comprehensive Crime Control Act defines felony as "any offense punishable by death or imprisonment for a term exceeding one year." Some states, New Jersey for example, do not use the word felony. Instead, they label their most serious crimes "high misdemeanors."

Misdemeanors

A less serious crime with a less severe penalty is a **misdemeanor**. Misdemeanors require a penalty such as a fine or imprisonment in a county or city jail. Some examples of misdemeanors are driving an automobile without a license, lying about one's age to purchase alcoholic beverages, and leaving the scene of an automobile accident. Some states also classify

Particular Crimes

Each crime must have an exact definition. One source of these definitions is common law. Another source is federal and state statutes. Defining a crime is necessary so that everyone can know, without any doubt, what is against the law. Overall, crimes can be grouped under three headings: crimes against people, crimes against property, and crimes against business interests.

Crimes Against People

The killing of one human being by another is generally known as *homicide*. Justifiable homicide takes place when a police officer kills a criminal in the line of duty or in self-defense. It also takes place when a soldier kills the enemy in battle. When someone is killed by accident and no one is at fault, the death is an excusable homicide.

Murder

Under the law, **murder** is the unlawful killing of another human being with malice aforethought. The term *malice aforethought* means that the murderer had an evil intent before the killing took place. In many states the crime is divided into first-degree murder and second-degree murder.

The definition of first-degree murder, also sometimes called aggravated murder, differs from state to state. In general, however, first-degree murder involves one or more of the following circumstances: (1) killing someone with premeditation (thinking about it or planning it in advance); (2) killing someone in a cruel way, such as with torture; and (3) killing someone while committing a felony, such as rape, robbery, or kidnapping. If none of these conditions apply, the crime is known as second-degree murder. In most states, the distinction between first- and second-degree murder is important—first-degree murder usually carries the death penalty, second-degree murder does not.

Manslaughter

The unlawful killing of another human being without malice aforethought is known as *manslaughter*. The major difference between murder and manslaughter is that malice (evil intent) is found in murder, but not in manslaughter. Manslaughter can be divided into two types: voluntary manslaughter and involuntary manslaughter.

Voluntary manslaughter occurs when one person intends, at the time the act is committed, to kill another but does so suddenly and as the result of great personal distress. The wrongdoer must have become very upset before the killing.

Example 1. Alex Fielder's son was kidnapped and murdered. When the police caught the kidnapper, he immediately confessed to the killing. The next day Fielder had to identify the body of his son. Afterward, as he was leaving the police station, he saw the kidnapper being transported to another part of the jail. In a sudden rage, Fielder grabbed a nearby officer's service revolver and, before anyone could react, shot the kidnapper dead. Fielder was charged with voluntary manslaughter.

Involuntary manslaughter occurs when one person, while committing an unlawful or reckless act, kills another. There is no intent to kill.

FYI

At one time, a felony defendant had a right to an attorney only if he or she could afford one. In 1938, the U.S. Supreme Court required federal courts to provide attorneys for defendants in all federal felony cases if they could not afford one. In 1963, the Court extended this right to an attorney to felony defendants in state cases.

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Example 2. Rosco McMurphy and Max Cavendish live in a state in which drag racing is a misdemeanor. Roscoe and Max challenged one another to a drag race on the outskirts of town. Both cars hit a top speed of 85 miles per hour in an area where the speed limit was 45 miles per hour. McMurphy lost control of his car and crashed into the crowd of spectators who had gathered to watch the race. Two of the spectators were killed. He was charged with involuntary manslaughter because he killed the spectators while violating the law. In some states, this is called reckless or vehicular homicide.

If drag racing were a felony in the state in which Example 2 takes place, then McMurphy, Cavendish, and anyone else who had taken part in the drag race could be charged with murder rather than manslaughter. That is, the felony murder rule would apply—a killing that takes place during a felony is murder.

Assault and Battery

The unlawful touching of another person is known as *battery*. Accidentally bumping another person in a crowded hallway or in the cafeteria line at school would not be battery, because the crime requires criminal intent or at least reckless behavior. Similarly, football players slamming each other during a football game would not be battery because they have consented to the contact within the rules of the game. Battery usually involves the forceful use of a person's hand, knife, or gun against another. However, battery could also be committed by giving poison or drugs to an unsuspecting victim, spitting in someone's face, siccing a dog on someone, or even kissing someone who does not want to be kissed.

An **assault** is an attempt to commit a battery. Pointing or shooting a gun at someone is the assault; the bullet striking the person is the battery. Some states no longer follow the common law distinction between assault and battery. Ohio, for example, has eliminated the term "battery" from its criminal code and substituted "assault" by itself.

Simple assault and battery are generally misdemeanors. Aggravated battery and aggravated assault, however, are felonies in most states. To qualify as an aggravated offense, the assault or battery would have 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. Some states call aggravated assault felonious assault.

Kidnapping

Kidnapping involves the unlawful removal or restraint of a person against that person's will. Usually the victim is either threatened or forced to be a captive. Kidnapping usually includes unlawful imprisonment for ransom, terrorism, torture, rape, or to commit a felony. Contrary to popular belief, under most state laws the distance involved in the unlawful movement of the victim does not matter. The essence of the crime is illegally imprisoning rather than moving the victim.

Sex Offenses

In the past, the crime of rape was limited to two types of situations. In one situation a male forced a female to have sexual intercourse. In the other situation a male had sexual intercourse with an under-aged female. Today

the law has expanded the crime of rape or sexual assault to include other types of sexual misconduct. The crime of statutory rape applies to situations in which the victim is under age. The definition of under age will vary from state to state. In most states, the younger the victim the more serious the offense and the more severe the penalty. Remember that, in cases of statutory rape, the consent of the under age person does not matter. A minor can also be prosecuted for having sex with another minor. Statutes defining rape do not specify the age of the offender. Recently recognized as a sex offense is sexual assault by a friend or a date. Such crimes are usually labeled date rape or acquaintance rape.

Sexual assault is an extremely serious crime. Victims are hurt not only physically but also emotionally and psychologically. For these reasons, among others, the crime of rape carries very serious penalties. In one state for instance, the rape of a child under the age of 13 carries the penalty of life in prison.

Crimes Against Property

The most common crimes against property include: burglary, robbery, arson, larceny, and embezzlement.

Burglary

Under common law, **burglary** is defined as the breaking (opening) and entering of a dwelling house at night with the intent to commit a felony. Today, the states have passed statutes covering other kinds of breaking and entering. These include 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. If any part of the definition of burglary cannot be proven, the defendant cannot be found guilty.

Example 3. While walking along a sidewalk after dark, a man noticed a house with a partly opened window. He raised the window farther, climbed inside, and stole some expensive shoes. He was charged with burglary. Applying the common law definition, a court would find him not guilty because there was no breaking. The window was already open; he simply opened it farther. However, most state statutes today say that a breaking has occurred when someone raises a partly opened window. Therefore, he would be found guilty.

Larceny

The unlawful taking and carrying away of personal property of another with the intent to deprive the owner of it is *larceny*. It is a legal term for stealing. In many states larceny is classified as *petty* or *grand*, depending on the value of the property taken. Petty larceny is a misdemeanor; grand larceny is a felony. In some states stealing property with a value of \$300 or less is a misdemeanor, while stealing property valued at more than \$300 is a felony. Shoplifting is a form of larceny.

Embezzlement

The crime of embezzlement is similar to larceny in that both are forms of stealing. It is the wrongful taking away of another's property by a person who has been entrusted with that property.



◀ Larceny and embezzlement are both forms of stealing. What crime would be committed if a cleaning person took valuables from a home he was cleaning?

Example 4. Virginia Waddell worked as a cashier in a supermarket. A customer bought some groceries and gave Waddell the money. Waddell put the money directly into her pocket instead of placing it in the cash register. She intended to steal the money. This was embezzlement because she was entrusted with the money (she had it rightfully) before she stole it.

Robbery

The wrongful taking and carrying away of the personal property of another accompanied by violence or threats is the crime of **robbery**. It is usually defined by various state statutes. There is one main difference between larceny and robbery. In robbery there is a taking "from the person"; that is, from the body or close to the body of the victim, by the use of force, violence, or threats. In larceny this is not so.

Example 5. Suppose, in Example 4, that someone came into the store while Waddell was working as a cashier, pointed a gun at her, and demanded the money from the register drawer. This would be armed robbery because the robber has forcefully taken the money from Waddell's personal custody against her will.

The penalty for robbery is greater than for larceny. In one state, for example, the punishment for robbery (whether armed or unarmed) is "imprisonment in the state prison for life or for any term of years." In contrast, the punishment for grand larceny in this state is "imprisonment in the state prison for not more than five years or by a fine of not more than \$600 and imprisonment for not more than two years." The punishment for petty larceny is "imprisonment in jail for not more than one year or by fine of not more than \$300."

Arson

Under common law, arson is defined as the willful and malicious burning of the dwelling house of another. Originally the law protected people rather than property, and, therefore, it required the building to be a dwelling place. Most states have kept the common law definition but have added statutes to cover other forms of arson, such as the burning of a building other than a dwelling house. Today, then, *arson* is the willful and

malicious burning of a house or other building. The scorching or blackening of a part of a building is not enough to be considered arson. Some portion of the building must actually have been on fire so that the wood or other building material is charred.

Crimes Against Business Interests

Crimes that involve business interests are often referred to as white-collar crimes. These crimes usually involve some sort of fraud or deceit and are nonviolent. Among them are larceny by false pretenses, forgery, bribery, and extortion. Today, crimes committed with computers can also be added to this list.

Larceny by False Pretenses

The taking of someone's money or property by intentionally deceiving that person is known as larceny by false pretenses, or fraud. The false statements that are made must be intended to mislead, or defraud, the victim. The statements must also induce the victim to rely on them. This crime is popularly called a con, and a person who makes her or his living from committing it is known as a con artist.

Example 6. Lin Hau owned and operated an appliance store. She frequently used the services of Next Day Deliveries. Dennis Joyce, the business manager for Next Day, always picked up Hau's check for services rendered on the first of the month. In March, Joyce showed as usual but told Hau that his boss had told him to collect this month's payment in cash because they were in the process of changing banks. Hau gave Joyce \$317 in cash. Hau later found out that Joyce had lied to her. Not only had he not received those instructions from his boss, but he had also been fired on February 7. Joyce had committed larceny by false pretenses.

► Signing another person's name to a check is forgery. Would it also be forgery to sign someone else's name to a baseball card or other collectible object?



Forgery

The false making or changing of a writing with the intent to defraud is known as forgery. The signing of another person's name without authority to a check or other document is forgery. Signing one's own name, pretending to be someone else of the same name, is also forgery. Similarly, creating a false identity, then signing the name of that false person in order to deceive, is considered forgery. For there to be a crime in these circumstances, there must be an intent to defraud or deceive. The forged item also must have some legal effect. Thus, it would not be fraud to write someone else's signature on a will that was never witnessed, because an unwitnessed will has no legal effect in many states.

Bribery and Extortion

It is illegal to pay or give anything of value to public officials in order to influence their official activity. This is known as *bribery*. It is a crime at any level of government, whether federal, state, or local. The penalty for bribery at the federal level is a 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, or both.

In addition, the person taking the bribe may be disqualified from holding a federal office. It is not a defense to a charge of bribery to say that the intended receiver of the bribe rejected it. Moreover, if the intended receiver of the bribe actually takes that bribe, then he or she is guilty of accepting a bribe.

Extortion, under common law, is the unjust taking of money or a thing of value by a public official. Some states have extended the crime so that extortion now is defined as the taking of property by public officials or others which is not due. In extortion, the victim agrees to give up the money or property, but does so out of fear.

Example 7. Joseph Peluso, a member of the city council, told Miguel Rosa that Rosa would have to pay him \$2,000 if he wanted to keep the rubbish collection contract in that city for another year. In fear of losing the contract, Rosa paid Peluso the money. Later, when the crime was discovered, Peluso was convicted of extortion.

Computer Crimes

In the opening vignette, Grace seems surprised that someone could commit a crime with a computer. Whenever new technology is developed, the law must make certain adjustments to accommodate that new technology. Such was the case years ago when the telephone, the automobile, the airplane, and the tape recorder were first introduced into our lives. Today the law must deal with changes brought on by the development of the computer. Like the other inventions mentioned above, the computer has helped make our lives easier. However, like those other inventions, it also has introduced a new technology that some people use to commit crimes.

Defenses to Crimes

As we have just seen, all crimes have exact definitions in the law that are broken down into the elements of the act and the required mental state. Thus, a defense often used in criminal cases is the failure of the prosecution to prove one of those needed elements. The defenses seen most often include insanity, entrapment, self-defense, and defense of family members.

LAW & Ethics

You just installed the latest accounting software on your computer. Your best friend asks if you will copy it onto a disk so he can load it onto his computer. What is the difference between what the law requires and what ethics suggest?

Police Dispatcher

A police department depends on many people other than police officers. One such person is the police dispatcher. Police dispatchers work in the communications center of the police department. They complete a training program, set up by the police department, to learn how to use the Law Enforcement Automated Data System (LEADS). LEADS is a statewide and nationwide computer system that links law enforcement agencies throughout the country.

Dispatchers perform many duties such as typing and processing all reports and arrest cards, accepting and recording bond monies and fees, and speaking with the public. Their most important function is dispatching immediate service for all incoming calls for help or crime reports.

Most police agencies today use computers. When a call comes in, a dispatcher types

the information into a computer, reviews the information, and sends it to an available patrol car. This process is more involved in large cities where, besides patrol cars, police officers may travel by horse, motorcycle, boat, or helicopter. Also, in large cities the dispatcher must be in contact with ambulance services, rescue teams, fire departments, alarm systems, traffic control systems, and crime information systems.

It takes special people to become skillful dispatchers. They must be good at communicating with others, handling emergencies, and making quick decisions. In addition, they must be able to work under pressure, handle stress, use common sense, and remain patient.

1. Where do police dispatchers work? What are their duties?
2. What type of personality must dispatchers have?

Insanity

Recall that a statute defines a crime in terms of the act and the required mental state. American law recognizes that persons cannot be held responsible for their actions if they do not know what they are doing. In addition, it serves no practical purpose to imprison someone who really ought to be under the care of mental health professionals. For these reasons, *insanity* is recognized as a valid defense to criminal conduct.

The ancient Hebrews, Greeks, and Romans recognized that insane people could not be held responsible for actions they could not control. The oldest legal test of insanity is the *M'Naghten Rule*, developed in England in 1843. Under this rule, it must be proved that, at the time the crime was committed, the defendant was suffering from a mental disease so serious that he or she did not know the nature of the act or did not know that the act was wrong. This test is still used in about two-fifths of the states.

The American Law Institute (ALI) has developed a more modern insanity test. Under its test, 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 the requirements of law." About three-fifths of the states follow the ALI test.

In the opening vignette, Ben seems to be under the impression that individuals who are found not guilty by reason of insanity are released immediately. As Legal Issue 4 suggests, such people do not automatically go free. Instead, they are committed to institutions and must undergo periodic psychiatric examinations. Once they are found to be sane, they may be released. Many people object to the fact that these individuals can

