

## 4-1 Criminal Law

### GOALS

- Understand the three elements that make up a criminal act
- Classify crimes according to the severity of their potential sentences
- Identify the types of crimes that affect business

### KEY TERMS

crime	felony
vicarious criminal liability	misdemeanor
	white-collar crimes

## Crimes and Criminal Behavior

### WHAT'S YOUR VERDICT?

O'Brien, a vice president at the Del Norte Credit Union, cleverly juggled the company books over a period of years. During that time, he took at least \$135,000 belonging to the credit union. When the theft was discovered by outside auditors, O'Brien repaid the money with interest.

**Has he committed a crime despite the repayment?**

The most fundamental characteristic of a **crime** is that it is a punishable offense against society. When a crime occurs, society—acting through police and prosecutors—attempts to identify, arrest, prosecute, and punish the criminal. These efforts are designed to protect society, not the victim of the crime. As a consequence, it is up to society's chosen representatives to determine what action to take against the person who committed the crime. The victim can sue identified criminals for civil damages. However, victims seldom do so because few criminals have the ability to pay judgments.

### A Question of ETHICS

Not more than two centuries ago society routinely imposed a single punishment for a felony. That punishment was death. What do you think was happening at that time in history that required such a level of punishment?

Crimes should be carefully defined by statutes, or laws enacted by state or federal legislatures. A well-worded criminal statute clearly and specifically defines the behavior it prohibits. It does not interfere with protected individual rights in so doing.

### Elements of Criminal Acts

Before you can be convicted of a crime, the prosecution must prove three elements regarding your behavior at the trial. These elements are

1. whether you had a duty to do or not to do a certain thing
2. whether you performed an act or omission in violation of that duty
3. whether or not you had criminal intent

**DUTY** Generally, under our system everyone has a legally enforceable *duty* to conform his or her conduct to the law's requirements. To establish a specific legal duty in a trial, the prosecutor cites to the judge a statute that prescribes the duty owed in the case at hand.

**VIOLATION OF THE DUTY** The *breach of duty*—the specific conduct of the defendant that violates the statute—is the *criminal act*. For example, all states have statutes that make battery a crime. These statutes often define criminal battery as “the intentional causing of bodily harm to another person.” A breach of this duty could be proved in a trial by the testimony of a witness who saw the defendant punch the victim.

**CRIMINAL INTENT** The third element, criminal intent, also must be proven in most cases. Criminal intent generally means that the defendant intended to commit the specific act or omission defined as criminal in the controlling statute.



Note that intent and motive are separate in the eyes of the law. Intent refers strictly to the state of mind that must be present concurrently with the alleged criminal act or failure to act. Motive refers to what specifically drives a person to act or refrain from doing so.

In *What's Your Verdict?* O'Brien owed a duty, defined by state statute, to not take the credit union's money. Violation of this duty, the criminal conduct of taking another's property or money by a person to whom it has been entrusted, is *embezzlement*. This act could be proved with the testimony of the auditors. O'Brien's criminal intent, to wrongfully deprive others of the money, can be inferred from his conduct. So O'Brien did commit a crime. His return of the money does not alter this fact.

Criminal intent creates two issues related to corporations. First, can a corporation, which is an organization, form criminal intent the way humans can? The answer is yes. If the corporation's employees have criminal intent, their employer may be judged to have criminal intent. If the employees were doing their assigned duties and the criminal act benefits the organization, most courts will hold that the organization had criminal intent.

The second issue relates to corporate presidents, treasurers, and other officers. When a corporate employee commits a crime, can officers be held criminally responsible? Again, the answer often is yes. In some situations, the officer will be held criminally liable under the doctrine of **vicarious criminal liability**. Vicarious means substituted. The criminal

intent of the employee is used as a substitute for the requirement of criminal intent for an officer.

Criminal intent also is related to age. Under early common law, children under age 7 were considered incapable of forming the criminal intent necessary for crimes. Those over age 14 were presumed capable of recognizing the difference between right and wrong and so were as accountable as adults for their acts. For children ages 7 through 14, such ability had to be proved.

Today, statutes in most states fix the age of criminal liability at 18, but the figure ranges from 16 to 19. State statutes provide that minors as young as 7 may be tried and punished as adults if they are accused of serious crimes such as murder. Generally, however, what is a crime for an adult is *juvenile delinquency* for a minor.

The lack of the mental capacity to know the difference between right and wrong can be a defense to being held responsible for the commission of criminal acts. Accordingly, insane persons are not held responsible for their criminal acts. However, people who voluntarily become intoxicated or drugged are held responsible.

Some minor crimes do not require the element of criminal intent. Traffic offenses are an example. A driver may be exceeding the speed limit without noticing, yet still be in violation of the law. In addition, in certain circumstances extreme carelessness may be considered the same as criminal intent. Suppose you drive 80 miles per hour through a residential neighborhood while drunk and kill a

## Economic Impact

### ADA ACCESSIBILITY GUIDELINES

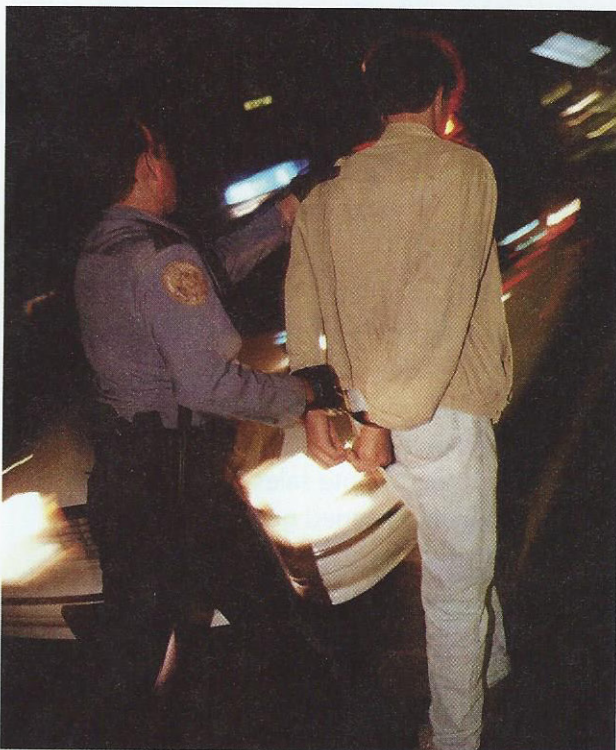
The Americans with Disabilities Act (ADA) is a comprehensive federal civil rights statute that outlaws discrimination on the basis of disability. On July 23, 2004, after years of planning and evaluation, the Architectural and Transportation Barriers Compliance Board (Access Board) issued several amendments to the Americans with Disabilities Act Accessibility Guidelines (ADAAG) to cover newly constructed and altered recreation facilities. These rules were intended to provide access for the disabled to facilities such as amusement park

rides, marinas, golf courses, physical fitness facilities, recreational camps, etc.

### THINK CRITICALLY

Evaluate these new rules based on their stated cost to the owners of such facilities. (Access [lawxtra.swlearning.com](http://lawxtra.swlearning.com) for a link to a detailed listing of estimated costs per type of facility.) If you were the president of a company in the recreational field, what impact might these rules have on your decision to update or build new facilities?





Imagine that the person in this photo killed a pedestrian while driving under the influence of alcohol. Do you think the law should treat the intent of this person as criminal? Why or why not?

pedestrian. You may not have intended to strike the pedestrian with your car. However, your conduct was so careless that in many jurisdictions courts will treat it the same as criminal intent. You could be convicted of the crime of vehicular homicide.

**CHECKPOINT** What three elements must be proven at trial before someone can be convicted of a crime?

## Classifications of Crimes

### WHAT'S YOUR VERDICT?

Murdock was a witness at a civil trial for damages. Before testifying, he took an oath "to tell the truth, the whole truth, and nothing but the truth." Nevertheless, while being questioned by one of the attorneys, Murdock deliberately lied, hoping to help the defendant.

**What crime has Murdock committed?**

Crimes can be classified in many different ways. One method of classification is to identify against whom or what they are committed. The table below lists and gives examples of this classification method. Crimes also can be classified as either felonies or misdemeanors according to the severity of their potential sentences.

### Felony

A **felony** is a crime punishable by confinement for more than a year in a state prison or by a fine of more than \$1,000, or both—or even death.

Murder, kidnapping, arson, rape, robbery, burglary, embezzlement, forgery, theft of large

### Classification of Crimes by Party, Interest, or Property Injured

Crimes against ...	Type of Crime
a person	assault and battery kidnapping rape murder
property	theft robbery embezzlement
government and administration of justice	treason tax evasion perjury
public peace and order	rioting disorderly conduct illegal speeding
realty	burglary arson criminal trespass
consumers	fraudulent sale of securities violation of pure food and drug laws
decency	bigamy obscenity prostitution



sums, and perjury are examples of felonies. People who lie under oath (as Murdock did in *What's Your Verdict?*) commit the felony of *perjury*.

### **Misdemeanor**

A **misdemeanor** is a less serious crime. It usually is punishable by confinement in a county or city jail for one year or less, by a fine of \$1,000 or less, or both. Crimes such as disorderly conduct and speeding usually are misdemeanors.

Some states classify lesser misdemeanors as *infractions*. Persons convicted of infractions can only be fined. Because there is no risk of being jailed, the defendant charged with an infraction is not entitled to a jury trial. Parking violations and littering are examples of infractions.

**CHECKPOINT** Name the two categories of crimes classified by the severity of their potential sentences.



Littering in this beach town carries a fine of \$1,000. Research to find out the fine for littering in your area.

## **Business-Related Crimes**

### **WHAT'S YOUR VERDICT?**

Officers of the major competing DRAM memory chip manufacturers met at a trade convention. All of the officers agreed to use the same wholesale prices in bids to supply computer retailers with the chips. They also agreed to follow the lead of the biggest company in making future price changes. Each officer agreed to promote sales by concentrating only within an assigned geographical region.

**Have the officers and their companies committed any crime?**

Like people, businesses are subject to general criminal law. Offenses committed in the business world typically are referred to as **white-collar crimes**. These crimes do not involve force or violence and do not cause physical injury to people or physical damage to property.

Common examples of white-collar crimes are not paying income taxes, stock fraud, using false weighing machines, conspiring to fix prices, making false fire insurance and auto insurance claims, engaging in false advertising, committing bribery, engaging in political corruption, and embezzling. Because physical violence is not involved, courts tend to be more lenient with white-collar criminals. Punishments usually include fines or short prison sentences.

In *What's Your Verdict?* the corporate officers and their corporations were guilty of violating criminal portions of the antitrust laws.

*Antitrust laws* state that competing companies may not cooperate in fixing prices or in dividing sales regions. Antitrust laws require that

business firms compete with one another. Some of the more common business-related crimes follow.

**LARCENY** *Larceny*, commonly known as *theft*, is the wrongful taking of money or personal property belonging to someone else, with intent



but only the loss of electrical impulses, which no one really owns. In response, the federal and state governments have created new criminal laws, such as the federal Computer Fraud and Abuse Act (Title 18 U.S.C. Section 1030) specifically targeting computer-related crimes.

**EXTORTION** *Extortion* (commonly known as *blackmail*) is obtaining money or other property from a person by wrongful use of force, fear, or

### IN THIS CASE

Intercomp is a U.S. company that routinely buys surplus computers in this country and markets them overseas. Intercomp agreed to reimburse its agent for gifts given to a foreign government official. The official decided which companies were to be placed on a list of those authorized to do business in the country. Intercomp's non-U.S. competitors all gave similar gifts to the official. However, for doing so, Intercomp was prosecuted in the United States under its Foreign Corrupt Practices Act, convicted, and fined \$500,000.

the power of office. For example, the extortionist (blackmailer) may threaten to inflict bodily injury. At other times, the threat may be to expose a secret crime or embarrassing fact if payment is not made.

**CONSPIRACY** An agreement between two or more persons to commit a crime is called *conspiracy*. Usually the agreement is secret. The conspiracy is a crime separate from the crime the parties planned to commit. Depending on the circumstances, conspiracy may be either a felony or a misdemeanor. Business executives of competing corporations sometimes conspire to fix prices or to divide markets.

**ARSON** *Arson* is the willful and illegal burning or exploding of a building. Arson occurs when someone intentionally starts a fire or causes an explosion that damages or destroys a building or other property without the owner's consent. In some states, arson also occurs if you burn your own building to defraud an insurer.

**CHECKPOINT** Name the types of business-related crimes.

## 4-1 Assessment

**Xtra!**  
Study Tools

[school.cengage.com/blaw/lawxtra](http://school.cengage.com/blaw/lawxtra)

### THINK ABOUT LEGAL CONCEPTS

1. Legally, a crime is considered an offense against (a) the victim (b) society (c) the court (d) none of the above
2. Ben is convicted and sentenced to two to five years in jail. The crime he has committed is a (a) misdemeanor (b) felony
3. In some situations, an officer of a corporation will be held criminally liable for the acts of an employee under the doctrine of \_?\_.
4. Falsely making or materially altering a writing to defraud another is known as the crime of false pretenses. **True or False?**

### THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

5. Phillips developed a scheme to generate funds by sending bogus bills for small amounts for District Sanitation Services to residents of affluent areas. Enough people paid these bills to make the practice quite profitable. What crime has Phillips committed?
6. A corporation was cited and charged with illegal pollution for dumping chemical wastes into a river. The dumping happened when an employee mistakenly opened the wrong valve. The company pleaded not guilty because the dumping was not intentional. Neither the company nor the employee knew of the ban on dumping this particular chemical. Is either argument a good defense? Why or why not?



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## 4-2 Criminal Procedure

### GOALS

- Know the rights people have when arrested and their potential criminal liability for the actions of others
- Name and describe the two types of defenses to criminal charges
- Understand appropriate punishments for crimes

### KEY TERMS

probable cause	immunity
defense	contempt of court
procedural defense	punishment
substantive defense	plea bargaining
self-defense	

## Rights and Responsibilities

### WHAT'S YOUR VERDICT?

During a routine traffic stop of a small truck for speeding, an officer became suspicious of the cargo the truck contained due to a smell coming from inside. When his request to search the truck was refused, the officer radioed for the assistance of a drug dog. Unfortunately, the dog was unavailable. Finally, he ordered the driver to open the cargo area. When the driver did so, the officer found more than a ton of marijuana. At trial, the defense attorney maintained that it was an illegal search and seizure and that the marijuana should not be allowed to be used as evidence.

**Do you agree? Why or why not?**

One of the major objectives of the framers of the Constitution of the United States was to protect individuals from the powers of the federal government. The constitutional limitations created as a consequence have been extended over the years so as to also apply to the state and local governments. The authors of the Constitution believed it was better for society to give individuals too much liberty than to allow the government too much power. Thus, in this country, people suspected or accused of criminal conduct have rights that are not available in many other countries. For an example of this, see the Global Issues feature on this page.

### *Rights of the Accused*

The constitutional right to due process requires fundamental fairness in governmental actions. It

requires fair procedures during an investigation and in court. As discussed in Chapter 2, criminal defendants may not be compelled to testify against themselves. Evidence presented against them cannot be developed by unreasonable searches and seizures by the authorities. For example, in *What's Your Verdict?* the police officer's sense of smell was not as keen as the police dog's. Therefore, the search was deemed unreasonable as it lacked **probable cause** (a reasonable ground for belief) and the marijuana could not be used as evidence.

Perhaps the most important right is the right of the accused criminal to be represented by a lawyer. The state will provide a lawyer for a person who cannot afford to hire one.

## GLOBAL ISSUES

### *Criminal Procedure in France*

Criminal procedure in France—and most other European countries—is significantly different from criminal procedure in the United States and Great Britain. A few examples from the French system are

- persons accused of crimes are not presumed innocent until proven guilty
- victims and their families can become parties to investigations
- judges take an active role in trials, including examining and cross-examining witnesses
- persons accused of crimes have no protection from self-incrimination and can be compelled to testify
- testimony based on hearsay and opinion is allowed.



## NETBookmark

Access [school.cengage.com/blaw/lawxtra](http://school.cengage.com/blaw/lawxtra) and click on the link for Chapter 4. Compare Amnesty International's reports on rights abuses for the United States and France. Write a one-page report on your findings.

[school.cengage.com/blaw/lawxtra](http://school.cengage.com/blaw/lawxtra)

To convict a person of a crime, the evidence must establish guilt with proof “beyond a reasonable doubt.” This means that there must be no sufficient basis placed in evidence at the trial that would logically indicate that the defendant did not commit the crime. Defendants have a constitutional right to a trial by jury. There will be a jury if either the state prosecutor or the defendant requests one. In criminal jury trials, the defendant usually is found guilty only if all the jurors vote to convict.

### *Responsibility for the Criminal Conduct of Others*

A person who knowingly aids another in the commission of a crime also is guilty of criminal wrongdoing. For example, one who acts as a lookout to warn a burglar of the approach of the police is an accomplice in the burglary. Similarly, one who plans the crime, or otherwise intentionally helps, is guilty of the same crime. In most jurisdictions, if someone is killed during the commission of a felony, all the people who participated are guilty of the crime of felony murder.

As discussed previously in this chapter, corporations can be held vicariously liable for the conduct of their employees. Also, officers of corporations may be criminally liable for their actions as managers.

**CHECKPOINT** What constitutional rights would you have if you were accused of a crime?

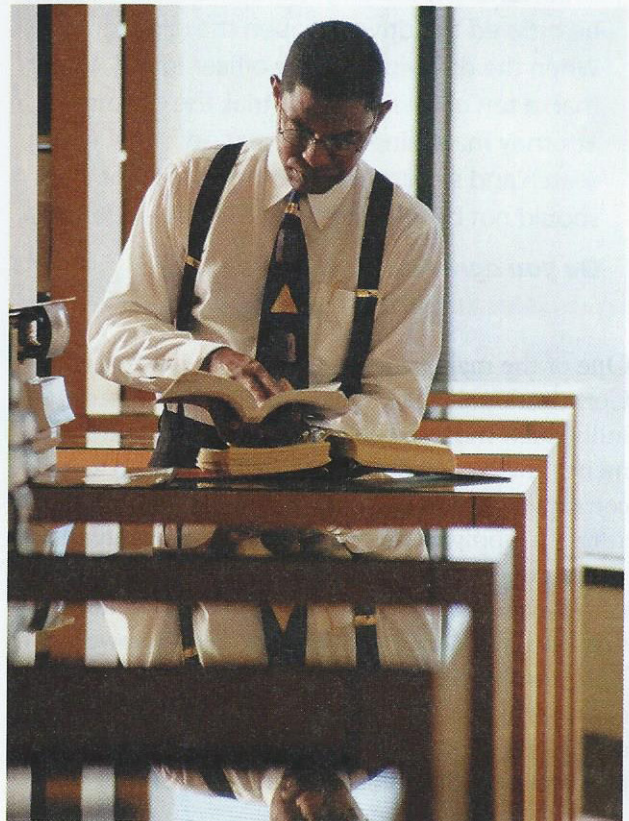
## Defenses to Criminal Charges

### WHAT'S YOUR VERDICT?

Will and Zack were arrested for stealing a car. Both signed confessions at the police station. At their trial, they claimed that their right to due process had been violated. They said they had not been advised of their right to remain silent and to have a lawyer present when questioned.

*If true, are those good defenses?*

To insure the fair application of laws, a criminal defendant may often be able to avoid conviction in court by the use of one or more defenses. In criminal law, a **defense** is a legal position taken by an accused to defeat the charges against him or her. In court the state must prove that the defendant is guilty beyond a reasonable doubt. Even when the prosecution has conclusive evidence to



Why would it be important to be represented by an attorney if you were accused of a crime?

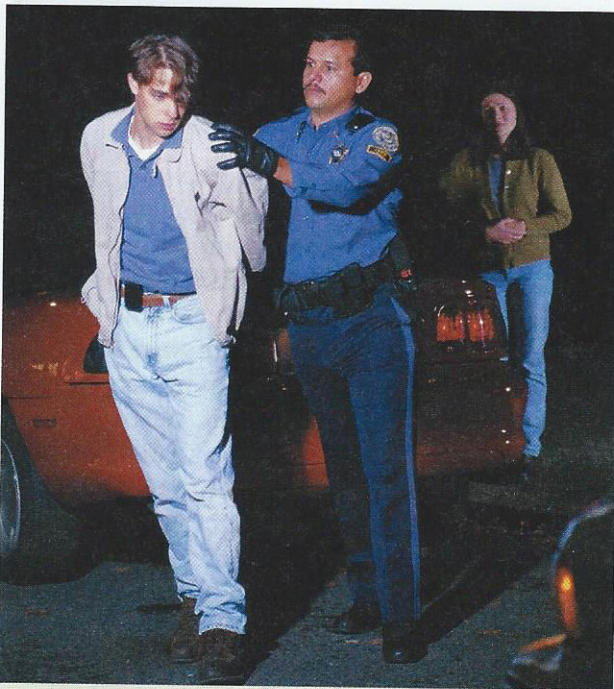


show such guilt, all too often that evidence cannot be introduced due to procedural defenses. In addition, even if there is sufficient admissible evidence to show guilt, defendants also may use substantive defenses to excuse their conduct.

## Procedural Defenses

**Procedural defenses** are based on problems with the way evidence is obtained or the way an accused person is arrested, questioned, tried, or punished. For example, a defendant who had confessed to a crime might say that she signed the confession only because she was threatened by the police. This would be a procedural defense.

Ignorance of the law is not a defense. The legal system assumes everyone knows the law. Thus, if you park in a no-parking area because you did not see the sign, you have no defense. In *What's Your Verdict?* if Will and Zack could prove they were not so advised, such a violation of their procedural rights under the Constitution would be a valid defense to any attempt by the prosecution to use their confessions as evidence against them. Because of the likelihood of such claims by defendants, however, most police departments videotape the rendering of the Miranda warning. They also obtain signed acknowledgements from suspects that the warning has been given.



Why must police officers be very careful in the way that they arrest and question accused individuals?

## Substantive Defenses

**Substantive defenses** disprove, justify, or excuse the alleged crime. Most substantive defenses discredit the facts that the state sought to establish. In other words they discredit the very substance of the prosecution's case against the defendant. For example, an eyewitness may have placed the defendant at the scene of the crime. The defendant may establish a substantive defense by showing that he was in the hospital at the time of the alleged crime. Self-defense, criminal insanity, and immunity are other examples of substantive defenses.

**Self-defense** is the use of the force that appears to be reasonably necessary to the victim to prevent death, serious bodily harm, rape, or kidnapping. This defense also extends to members of one's family and household and to others whom one has a legal duty to protect. You may not use deadly force if non-deadly force appears reasonably sufficient. Only non-deadly force may be used to protect or recover property. You may not set deadly traps to protect unoccupied buildings. In addition, a civilian may not shoot a thief who is escaping with stolen property.

**Criminal insanity** generally exists when, because of a verifiable mental disease or defect, the accused does not know the difference between right and wrong. If the accused is criminally insane, there is no criminal intent and therefore no crime. At a trial, the defendant must prove the criminal insanity.

**Immunity** is freedom from prosecution even when one has committed the crime charged. Sometimes one criminal may be granted immunity

### IN THIS CASE

A state law makes "hit-and-run" driving a crime. The law requires drivers of motor vehicles involved in an accident to stay at the scene, give their names and addresses, and show their driver's licenses. Barlow, who was arrested for violating this law, claimed that the law was unconstitutional. He said that the law violated his Fifth Amendment right against self-incrimination. In concluding the law was constitutional, the court said that the right against self-incrimination applies only to statements that would implicate a person in a crime. Merely identifying oneself as a party to an accident does not indicate guilt.





## LAW BRIEF

A law passed in Oklahoma in the late 1980s, known as the “Make My Day” gun law, is credited with cutting burglaries in that state in half since its passage. The law was enacted after 66-year-old Dr. Frank Sommer was charged with a criminal act for shooting a burglar in his own home. The state senator who sponsored the law said that its purpose is to protect the victim of crime who defends his home and his family against unlawful intrusion from any criminal prosecution or civil action.

in exchange for an agreement to testify about the criminal conduct of several other criminals. In other instances, there is no agreement. Instead, the government grants immunity to a reluctant witness to remove the privilege against self-incrimination. A witness who refuses to testify after the grant of immunity is in contempt of court. **Contempt of court** is action that hinders the administration of justice. It is a crime punishable by imprisonment.

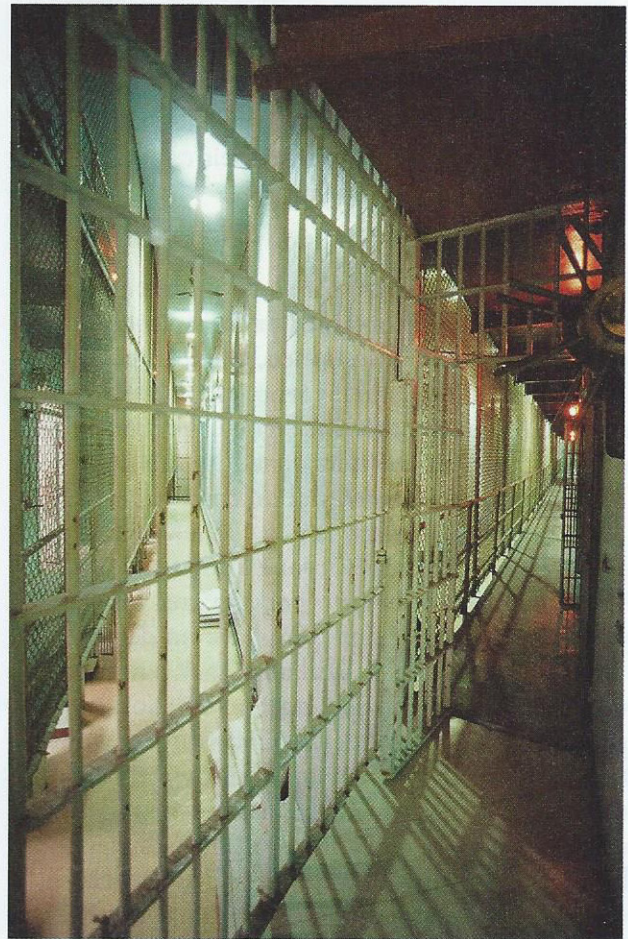
**CHECKPOINT** Name the two defense categories and give an example of each.

## Punishments for Crimes

### WHAT'S YOUR VERDICT?

To conserve water, a city ordinance prohibited the watering of gardens, flower beds, and yards after the declaration of a drought emergency. Gill was on vacation when the declaration was issued. As soon as she returned from the trip, she began to water her lawn. Gill was caught and cited for violating the ordinance.

**What is an appropriate penalty for this type of offense?**



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Why do you think society regards contempt of court a crime punishable by imprisonment?

“Let the punishment fit the crime” is more easily said than done. Any penalty provided by law and imposed by a court is called a **punishment**. The purpose is not to remedy the wrong but rather to discipline the wrongdoer. If reasonably swift and certain, punishment should also deter others from similar behavior. Punishment also may remove criminals from society and, in some cases, criminals may be rehabilitated during their sentences. Punishments for crimes range from fines to imprisonment, and in some cases, death.

In *What's Your Verdict?* Gill was guilty of an infraction, which did not require criminal intent. Nevertheless, her conduct was illegal so she would probably be fined. Criminal statutes ordinarily set maximum limits for punishment, but allow a judge discretion within those limits.

An accused person may agree to plead guilty to a less serious crime in exchange for having a more serious charge dropped. This is called **plea bargaining**. The accused voluntarily gives up



the right to a public trial to avoid the risk of a greater penalty if convicted. Plea bargains must be approved by the judge of the court with the criminal jurisdiction over the case.

**CHECKPOINT** What is the purpose of punishment for a crime?

## 4-2 Assessment

**Xtra!**  
Study Tools

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### THINK ABOUT LEGAL CONCEPTS

1. The authors of the Constitution believed it was better for society to give individuals too much liberty than to allow the government too much power. **True or False?**
2. An individual who helped in a car jacking in which someone was killed by another car jacker can be charged with felony murder. **True or False?**
3. Which of the following is not a substantive defense? (a) self-defense (b) immunity (c) criminal insanity (d) All of the above are substantive defenses.
4. Ignorance of the law is a procedural defense. **True or False?**
5. Immunity is never granted to someone who has committed the crime. **True or False?**
6. A deal in which the prosecutor offers an accused an opportunity to plead guilty to a lesser charge in return for the accused testifying against other involved parties is called a   ?  .

### THINK CRITICALLY ABOUT EVIDENCE

*Study the situation, answer the questions, and then prepare arguments to support your answers.*

7. Sharon spent the weekend with her friend Amelia. Amelia proposed a plan for shoplifting CDs from a local music store. Sharon was to go to the store clerk, say she felt ill, and then pretend to faint. This distraction would allow Amelia, at the other end of the store, to place CDs in her shopping bag without risk of being seen. At first Sharon said she could not do something like that because it is against the law. Amelia argued that Sharon would not be breaking the law, only Amelia would. Is Amelia right? If a person can think of a way to profit by violating the law without risk, what reasons are there for not breaking the law?
8. Art is charged with kidnapping. After listening to all the evidence, 11 of the 12 jurors found him guilty. The twelfth juror voted he was not guilty. Has Art been convicted of the crime?
9. Rosa shot a burglar in her home when he was about to enter her bedroom with a knife in his hand. What would be a good defense for her?
10. John left his home state of Missouri early one afternoon to drive to New Mexico. Eventually the sun set, but John continued on. Hours later, while driving 70 mph on an interstate highway east of Amarillo, he was pulled over by the Texas highway patrol. The last speed limit sign John had seen had been in Oklahoma and had read 70 mph. As she issued the ticket, the officer noted that the speed limit in Texas on interstates is 70 during the day but drops to 65 at night. John protested he was unaware of the change. Was he still guilty of speeding?



## CONCEPTS IN BRIEF

### 4-1 Criminal Law

1. A crime is a punishable offense against society. In order to convict, the prosecution must establish a duty, an act or omission in violation of the duty, and, in most cases, criminal intent.
2. Crimes are generally categorized as felonies or misdemeanors. Some states classify minor misdemeanors as infractions.
3. Some crimes in which a business may be the victim are robbery, burglary, shoplifting, employee theft, passing bad checks, vandalism, receiving stolen property, and embezzlement.
4. Some crimes in which a business person or firm may be the perpetrator are income tax evasion, price fixing, false advertising, and bribery.
5. Generally, any adult capable of knowing the difference between right and wrong is considered sane under the law.

### 4-2 Criminal Procedure

6. Anyone accused of committing a crime has certain due process rights. These rights include freedom from arrest without probable cause; the right to be represented by a lawyer; the right to cross-examine witnesses; the right to not testify against oneself; and the right to a speedy, public, fair trial.
7. Procedural defenses relate to the way evidence is obtained or the way the accused person is arrested, questioned, tried, or punished. Substantive defenses disprove, justify, or excuse the alleged crime. Common substantive defenses are self-defense, criminal insanity, and immunity.
8. Crimes are punishable by fine, imprisonment, or both. Some states execute certain criminals.

## YOUR LEGAL VOCABULARY

Match each statement with the term that it best defines. Some terms may not be used.

1. Legal position that disproves, justifies, or otherwise excuses an alleged criminal act
2. Accused person admitting guilt to a less serious crime in exchange for having a more serious charge dropped
3. The use of the force that appears to be reasonably necessary to the victim to prevent death, serious bodily harm, rape, or kidnapping
4. Punishable offense against society
5. Action that hinders the administration of justice
6. Crime punishable by either a fine of more than \$1,000 or by confinement for more than one year in a state prison or both or by death
7. Substituted criminal liability
8. Freedom from prosecution even when one has committed the crime charged
9. Any penalty provided by law and imposed by a court
10. Crime punishable by confinement in a county or city jail for one year or less, by fine of \$1,000 or less, or both
11. A criminal defense based on how the evidence was obtained or how the accused was arrested, questioned, or tried

- a. contempt of court
- b. crime
- c. defense
- d. felony
- e. immunity
- f. misdemeanor
- g. plea bargaining
- h. probable cause
- i. procedural defense
- j. punishment
- k. self-defense
- l. substantive defense
- m. vicarious criminal liability
- n. white-collar crime



## REVIEW LEGAL CONCEPTS

12. Why must criminal statutes carefully and clearly define the prohibited behavior?
13. Why are certain acts crimes in one state but not in another? Why are there varying levels of punishment for the same crime in different states?
14. Explain the significance of the main steps in a criminal prosecution. Is the cause of justice served when a defense attorney gets his client off because of a "loophole" in the law? Consider both the short-term and the long-term consequences.

## WRITE ABOUT LEGAL CONCEPTS

15. An old adage of the law states, "As society becomes less secure, criminal punishments become more severe." Write a paragraph relating this to the United States' experience with the death penalty and other punishments in the last few decades.
16. **HOT DEBATE** Write a paragraph debating whether or not the protections afforded those accused of criminal activity by the Constitution are mainly used by individuals who are truly guilty to avoid their deserved punishment.

## MAKE ACADEMIC CONNECTIONS

17. **SOCIAL STUDIES** As a result of a U.S. Supreme Court decision in the early 1960s, improperly or illegally obtained evidence cannot be used to convict an accused in the court system. This is referred to as the "exclusionary rule," as the evidence is excluded from consideration by the court. The rule was put into place to stop police from using the wrong tactics to obtain incriminating evidence. Other developed countries handle such actions by their police force in a different manner. Research how England and two other European countries discipline improper or illegal attempts to gather evidence by their police and whether or not the evidence developed thereby can be used against the accused at trial.

## THINK CRITICALLY ABOUT EVIDENCE

*Study the situation, answer the questions, and then prepare arguments to support your answers.*

18. Elton had three children. As they grew up and became eligible to drive, Elton bought each a car. To avoid paying high premiums for their car insurance, Elton titled each car in his name. He then stated to his insurance company that he and his wife were the primary drivers on the vehicles. When the youngest child totalled "his" car by hitting a large deer, the insurance company paid to replace the car. What could Elton be charged with should his deception be uncovered?
19. Bif was in Gail's office waiting to go to lunch with her. Gail owned a business in competition with Bif's business. When Gail excused herself to go to the restroom, Bif looked at her computer screen and saw part of a customer list. Bif had a blank diskette which he inserted into the computer. He quickly copied the file onto his diskette. Then he put his diskette in his pocket. The entire action took only 20 seconds. Bif finished long before Gail returned. Has Bif committed a crime? If so, what crime?
20. Paula's boyfriend moved to her home town, Oklahoma City, from Houston, Texas. Two weeks after he arrived, he asked her to phone his bank in Houston and inquire about his balance. She did so as a favor to him and found out the balance was more than \$40,000. As soon as she told him, he left and drove to Houston to remove it from his account. In Houston, he was arrested by the FBI for fraud and several related crimes. Paula was then charged with the federal crime of making a phone call across state lines for the furtherance of a fraudulent scheme. Her boyfriend only knew the scheme had been successful by Paula's report of the large balance in his old account. What would be a possible defense for Paula?



## ANALYZE REAL CASES

21. The Royal Scotsman Inn built a motel that did not comply with the building code. Therefore, Scotsman was refused an occupancy permit. The chair of the county council approached a representative of the motel and offered to have "everything taken care of" in exchange for the payment of \$12,000. Scotsman was faced with the possibility of a large loss of revenue. Therefore, Scotsman agreed to pay the money. The Federal Bureau of Investigation arrested the council chairperson after tape recording the discussion and seeing the exchange of the money. What crime did the council chairperson commit? (*United States v. Price*, 507 F.2d 1349)
22. Basic Construction Company was engaged in the road-paving business. Two of its lower-level managers rigged bids by giving competitors the prices that Basic would bid for work. That is a criminal violation of the Sherman Antitrust Act. Will Basic be criminally liable for the conduct of its manager? (*United States v. Basic Construction Company*, 711 F.2d 570)
23. Citrin was an employee of International Airport Centers (IAC). As such he was responsible for identifying properties that IAC might want to buy. To help in his work, IAC loaned Citrin a laptop computer on which to store the data he collected. Citrin eventually decided that he would branch off on his own and start a competing firm. Before quitting IAC and turning in his laptop, Citrin downloaded a computer program that wiped out the hard drive which contained the data IAC had paid him to collect as well as evidence of his misconduct. What statute was Citrin convicted of violating? (*Int'l Airport Ctrs. L.L.C. v. Citrin*, No. 05-1522, 7th Cir., 2006)
24. Pack was the president of Acme Markets, Inc., a large national retail food chain. Both Pack and Acme were charged with violating criminal provisions of the federal Food, Drug, and Cosmetics Act. They were charged with allowing interstate shipments of food contaminated by rodents in an Acme warehouse. Pack defended himself by stating that although he was aware of the problem, he had delegated responsibility for the sanitary conditions of food storage to responsible subordinates. Can Pack be criminally liable in these circumstances? (*United States v. Pack*, 95 S. Ct. 1903)
25. Feinberg owned a cigar store in a poor neighborhood of Philadelphia. He sold cans of Sterno, which contains about 4 percent alcohol, to people in the neighborhood who mixed it with water and drank it to become intoxicated. After conducting this business for some time, Feinberg purchased a quantity of Institutional Sterno. It contained 54 percent alcohol. The cans were marked "Danger—Poison," and had a picture of a skull and crossbones; Feinberg did not warn customers of the difference. As a result, 33 people died from alcohol poisoning. Did Feinberg commit a crime? (*Commonwealth v. Feinberg*, 234 A.2d 913, Pa.)
26. To help attract convention business to the city, a group of hotels, restaurants, and various other businesses in Portland, Oregon, formed an association. The association was funded by contributions. To provide incentives for contributions to the association, its members agreed to stop doing or curtail doing business with those who did not contribute. As a part of this effort, the Portland Hilton Hotel's purchasing agent threatened a Hilton supplier with the loss of the hotel's business unless such a contribution was forthcoming. Such activities and the agreement behind them are criminal violations of the federal antitrust laws. As a result, the federal government charged Hilton accordingly and a guilty verdict was returned at the trial. Hilton appealed, as it had been shown in court that the manager and assistant manager of the hotel had, on at least two occasions, told the purchasing agent not to participate in the boycott. He was instead to follow corporate policy and purchase supplies only on the basis of price, quality, and service. Should the decision be reversed on appeal given the employee's actions were clearly against corporate policy and directions by corporate executives? (*United States v. Hilton Hotels Corporation*, 467 F.2d 1000)



# Sports & Entertainment Law

## Criminal Intrusion or Protected Freedom

GALELLA V. ONASSIS 353 F. SUPP. 196, 487 F.2D 986



**BACKGROUND** The involvement of the paparazzi in the death of Princess Diana of England brought cries that they were guilty of criminal manslaughter. The incident brought to mind the actions of the man who is said to have given the paparazzi their original bad reputation, Ronald E. Galella. Paparazzi (Italian for “buzzing insects”) became known for their intrusive behavior as a result of documentation in the court records of the many incidents related to the case of *Galella v. Onassis*.

**FACTS** Jacqueline Onassis was the remarried widow of President John F. Kennedy and mother of the two Kennedy children, John and Caroline. Photos of Mrs. Onassis and the children, especially those exposing emotions or questionable behavior, were drawing a premium from publishers in the early 1970s. As a consequence, Galella began a campaign of intrusive behavior likely to provoke marketable snapshots. In her deposition, a ten-year-old Caroline Kennedy said, “Unlike the many other photographers, Mr. Galella often rushes at me, snaps flash bulbs in my face, trails me closely and uses other

techniques that I find dangerous and threatening.... I fear I will be hurt.” On September 24, 1969, Galella allegedly jumped out of some bushes in Central Park in front of John’s oncoming bicycle. The nine-year-old boy swerved to miss the photographer and crashed his bike, injuring himself and causing the Secret Service Agent accompanying the Onassis party to say, “Look what you almost did, you almost killed John.” Ultimately, because of his alleged criminal and tortious behavior, an injunction was issued by a federal district court preventing Galella from coming within 50 yards of Mrs. Onassis. In this action, Mr. Galella wants the injunction to be dismissed.

**THE LAW** The First Amendment through its interpretation by the U.S. Supreme Court sanctifies and renders almost inviolate the right of the press to report on the actions of public figures.

**THE ISSUE** Does this right provide immunity from all criminal and civil actions levied against the press for their actions in pursuing a story?

**HOLDING** No, it does not. Said the court, “... the First Amendment does not immunize all conduct designed to gather information about or photographs of a public figure. There is no general constitutional right to assault, harass, or unceasingly shadow or distress public figures.” The injunction was upheld that the “plaintiff, his agents, servants, employees and all persons in active concert and participation with him from, *inter alia*, approaching within 100 yards of the home of defendant and her children, 100 yards of the schools attended by the children; at all other places and times 75 yards from the children and 50 yards from defendant; from performing surveillance of defendant or her children; from commercially appropriating defendant’s photograph for advertising or trade purposes without defendant’s consent; from communicating or attempting to communicate with defendant or her children.”

### PRACTICE JUDGING

1. Do you think the court could have achieved its objective by simply enjoining Galella from selling any photos he took of the subjects? Why or why not?
2. Do you think the injunction as issued above was effective? Why or why not?



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