

Essentials of Business Law, 10th edition

INSTRUCTOR'S MANUAL

Chapter 3 Criminal Law

LESSON OVERVIEW

In Chapter 1 we discussed how law enforcement authorities enforce specific laws called *statutes* that are designed to protect the public at large. In Chapter 3, we discuss and distinguish between a crime (violation of these statutes), and a tort (a private wrong) [Note: A tort is a form of civil law]. We examine and define the classification of crimes into treason, felony, and misdemeanor, based on the seriousness of the offense. Finally, we study the instances and types of crimes commonly committed in the business world—white-collar crime, arson, larceny, bribery, false pretenses, forgery, perjury, embezzlement, extortion, and other business-related crimes.

CHAPTER OUTLINE

- A. CRIME
- B. CLASSIFICATION OF CRIMES
 - 1. Treason
 - 2. Felony
 - 3. Misdemeanor
- C. CRIMES IN THE BUSINESS WORLD
 - 1. White-Collar Crime
 - 2. Arson
 - 3. Larceny
 - 4. Bribery
 - 5. False Pretenses
 - 6. Forgery
 - 7. Perjury
 - 8. Embezzlement
 - 9. Extortion
 - 10. Other Business-Related Crimes
- D. CHAPTER SUMMARY
- E. CHAPTER ASSESSMENT
 - 1. Matching Key Terms
 - 2. True/False Quiz
 - 3. Discussion Questions
 - 4. Thinking Critically About the Law
 - 5. Case Questions
 - 6. Case Analysis
 - 7. Legal Research

KEY TERMS

Key terms are listed at the beginning of the chapter, posted in the student textbook margins, and placed in bold in the copy. They are listed here for your quick reference.

- crime
- tort
- treason
- felony
- misdemeanor
- white-collar crime
- RICO
- Securities Fraud
- Ponzi Scheme
- arson
- burning to defraud
- larceny
- robbery
- burglary
- bribery
- false pretenses
- forgery
- perjury
- embezzlement
- extortion

LEARNING OUTCOMES

The chapter Learning Outcomes will help you and the students discover the concepts and information that should be understood upon completion of the chapter. You may want to access the **PowerPoint (PPT) slides for Chapter 3** when you begin the study of the chapter and discuss each Learning Outcomes. Each Learning Outcomes will be covered separately in the Instructor Notes, but they are shown here in total as an overview of the sections being presented in Chapter 3. These slides should be used to reinforce the main points of the lecture.

After completing this chapter, the students will be able to:

1. Define crime and distinguish between crimes and torts.
2. Identify the three major classifications of crimes.

3. Discuss several common crimes of particular concern to businesses and employees.

LECTURE OUTLINE

A. **CRIME**

The law enforcement authorities of federal, state, and local governments enforce specific laws against society called criminal statutes that are designed to protect the public at large. A violation of a criminal statute is a **crime**. A private wrong that causes injury to another person's physical well-being, property, or reputation is called a **tort**.

Certain actions may be both a crime and a tort.

It is important to note here that a certain action may be both a crime and a tort. An act, or failure to act, is a crime because the governing statutes establish the behavior as criminal. A high degree of uniformity has emerged among states, so it is uncommon for a particular act to be legal in one state and illegal in another.

[Note: However, currently there are differences in states that have legalized marijuana while in others it remains a criminal act.]

Legislatures attempt to reflect the public interest and will enact legislation that makes a certain act a crime if there is sufficient public demand. In other instances, also reflecting changing public sentiments, legislatures and courts may decide that a particular act previously considered a crime should no longer be viewed as a violation of the law. Similarly, a legislature may repeal statutes, thus making an act legal when it previously had been a crime.

B. **CLASSIFICATION OF CRIMES**

Crimes are classified into three groups according to the seriousness of the offense:

- Treason
- Felony
- Misdemeanor

Federal law and the laws of the states determine the classification and largely specify the punishment.

1. **Treason**

Treason is a major crime defined by the Constitution of the United States in Article III as follows: “Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.”

2. Felony

A **felony** is a serious crime against society, such as murder, arson, larceny, bribery, and embezzlement. It may be punished by execution, by a prison sentence of more than a year, or by a fine.

3. Misdemeanor

A **misdemeanor** is a less serious offense than a felony. It is usually punished by a limited fine and/or imprisonment for no more than one year.

C. CRIMES IN THE BUSINESS WORLD

1. White-Collar Crime

White-collar crime is the term used to describe various crimes that typically do not involve force or violence committed by and against businesses. Originally, white-collar crime related only to nonviolent crimes against businesses, usually committed by their own employees (embezzlement). In recent years, however, this unofficial category of illegal activity has been applied to nonviolent crimes committed by business firms as well as against business firms (stock swindles, frauds against insurance companies, credit card fraud, income tax evasion, cyberspace fraud, and theft of computer programs). Depending on its seriousness, a white-collar crime may be either a felony or a misdemeanor and may violate federal or state law.

The Racketeer Influenced and Corrupt Organizations Act of 1970 also known as **RICO**, is one of the most successful laws used to combat white-collar crime. It was created to restrict the entry of organized crime into legitimate businesses and prohibits an organization’s employees from engaging in a pattern of racketeering activity. Interestingly, the law

defines an organization as “racketeering” if it has committed two or more crimes; a definition that easily may bring a business into this category.

2. **Securities Fraud**

Securities fraud occurs when a person or company, such as a stockbroker or investment firm, provides false information to potential investors to influence their decisions to buy or sell securities.

A **Ponzi scheme** is a type of securities fraud also known as a “pyramid scheme” in which large gains are promised to investors; but in reality, newer investments are used to provide a return on older investments.

These schemes inevitably collapse over time as older investments eventually become too large to cover with new investments. The term Ponzi comes from the original offender, Charles Ponzi convicted in New York in 1910.

3. **Arson**

The crime of **arson** is the willful or malicious act of causing the burning of property belonging to another person. Some states have broadened the definition of arson to include the burning of a house or business by its owner and the destruction of property by other means. Most instances of arson are profit-related. Most states have statutes that provide for the punishment of persons who burn their own property with the aim of collecting insurance money. Such statutes establish a special category of crime called **burning to defraud**. To combat these practices, the insurance industry has developed very sophisticated investigation techniques and has an impressive record of assisting in successful prosecutions.

4. **Larceny**

Larceny is a broad term that includes most forms of theft (robbery, hijacking, embezzlement, and shoplifting). Larceny is often classified as petty (small) or grand (large), depending upon the value of the stolen property. It is important to distinguish among the various types of larceny.

Robbery is defined as the taking of property in the possession of another person against that person’s will and under threat of bodily harm—as in the case of a holdup. **Hijacking** is stealing from a vehicle in transit or the vehicle itself, and **shoplifting** is stealing merchandise from a retail store. **Burglary** is the illegal forceable entering of another person’s premises for the purpose of committing a crime.

5. Bribery

The crime of **bribery** consists of giving or taking money or property of value with the intent of influencing someone (usually a public official) in the performance of his or her duty against that duty. Some states have enacted laws that also make it a crime to bribe someone other than a public official. Both the giver of the bribe and the receiver may be charged with bribery.

6. False Pretenses

The term **false pretenses** describes a broad category of crimes that involve activities intended to deceive others by making false claims, or to obtain goods by using false pretenses. A number of federal and state statutes govern activities that might be considered false pretenses. These may include impersonating another, false statements on a credit report to a bank among others.

7. Forgery

The crime of **forgery** consists of wrongfully making or altering any legal document of another with the intent to defraud. Forgery could include falsifying a signature on a check or the endorsement (the signature on the reverse side of the check). The act of signing another person’s name to a credit card charge slip without permission is also considered forgery.

8. Perjury

The crime of **perjury** consists of intentionally giving false oral or written statements under oath in a judicial proceeding after having sworn to tell the truth. In some instances, giving false information on a government form or application is also considered perjury.

9. Embezzlement

The crime of **embezzlement** may be defined as the wrongful taking of money or other property that has been entrusted to the care of a person as a part of his or her employment. Some jobs (accountant, cashier, and bank teller) generally provide more opportunity for embezzlement than other jobs where the employee has little contact with money. The use of computers in business had led to some ingenious schemes for embezzling.

10. Extortion

The crime of **extortion** is the act of taking or demanding money or other property from someone by using force, threats of force, or economic harm. The difference between extortion and bribery is that in bribery both parties are willing participants, whereas in extortion one person is willing and the other is unwilling.

11. Other Business-Related Crimes

The number of crimes that involve businesses continue to grow as changes in business practices and technology offer new opportunities for wrongdoers to benefit from illegal or questionable activities.

a) Credit Card Fraud

Certain individuals have seized the opportunity for illegal gain by using stolen or counterfeit credit cards. Frequently, persons with knowledge of computers access the credit card numbers of consumers who have made purchases on the Internet and use these credit card numbers without authorization. The practice of obtaining credit cards under false pretenses continues to plague banks, credit card issuers, and consumers.

b) Identity Theft

Identity theft occurs when an unscrupulous individual steals the name and personal information of someone else by stealing private mail, by obtaining personal data on the Internet, or by soliciting personal information from an unwitting victim over the telephone. The person stealing another's identity does so in order to obtain credit cards and other types of loans, with no intention of ever repaying these. It is as important to protect one's identity as it is to protect one's credit cards.

c) *Environmental Pollution*

Federal environmental acts make it a criminal act to discharge pollutants onto land, waterways and air under certain circumstances. More recently as seen in the case of Volkswagen, these criminal laws also apply to falsifying environmental tests and results to the government and public.

INSTRUCTOR NOTES

A resulting answer or explanation is provided below for each Learning Outcomes in Chapter 3. Every outcome is also mapped to corresponding text page numbers, PPT slides, and relevant chapter assessment exercises and activities for ease of reference and use.

LO1. Define crime and distinguish between crimes and torts.

A crime is a violation of a specific statute. A tort is a private wrong that causes injury to another person's physical well-being, property, or reputation.

LO2. Identify the three major classifications of crimes.

The three classifications of crimes, based upon their perceived seriousness, are (a) treason, (b) felonies, and (c) misdemeanors.

LO3. Discuss several common crimes of particular concern to businesses and employees.

Many crimes are particularly important to business and employees, including the following: white-collar crime, arson, burning to defraud, larceny, robbery, hijacking, shoplifting, burglary, bribery, false pretenses, forgery, perjury, embezzlement, extortion, credit card fraud, and identity theft.

Chapter 3 Assessment Answers

Matching Key Terms

- | | | | |
|------|------------|------|-------|
| 1. e | 4. b | 7. j | 10. h |
| 2. g | 5. f | 8. c | |
| 3. a | 6. Robbery | 9. i | |

True/False Quiz

- | | | | | |
|-------|-------|-------|-------|-------|
| 11. F | 14. T | 17. F | 20. T | 23. F |
| 12. T | 15. T | 18. T | 21. F | 24. T |
| 13. T | 16. T | 19. F | 22. F | 25. F |

Discussion Questions

26. The difference between a crime and a tort is that a crime is the violation of the rights of society, whereas a tort is the violation of the rights of an individual.
27. The three major classifications of crimes are treason, felony, and misdemeanor.
28. Nearly all crimes, except perhaps kidnapping, are in varying degrees applicable to business.
29. Some acts that were previously considered a crime but are no longer viewed as a violation of the law include abortion, homosexuality, and drug abuse.
30. Some typical misdemeanors common to most jurisdictions are certain traffic offenses, thefts of small amounts of money, illegal picketing, using illegal measuring devices, and other relatively minor infractions of statutes.
31. Some common examples of white-collar crime include embezzlement, stock swindles, frauds against insurance companies, credit card frauds, income tax evasion, computer fraud and theft of computer programs, agreements to fix prices, stock trading based on nonpublic information, and others.

Thinking Critically About the Law

32. Some would recommend legislation that provides stricter penalties and jail time for convicted executives. It would appear that some highly paid business executives engage in illegal practices because they doubt that their misdeeds will ever be discovered or that they will not be prosecuted.
33. It would be difficult to predict the effect on the insurance business, and on the economy generally, if there were no “burning to defraud” statutes. It is only speculation to suggest that the legislation and the threat of punishment act as a deterrent.
34. The use of computers is likely to have increased opportunities for embezzlement because of the greater anonymity provided.
35. The difference between extortion and bribery is that both parties to bribery are willing participants, whereas in extortion one person is willing and the other is unwilling. Both try to alter someone’s behavior. Bribery attempts to gain favors from someone in authority—often a public official—by offering an inducement. Extortion, on the other hand, uses force or threats of force to influence behavior.
36. The intent of someone who engages in “false pretenses” is to fraudulently deceive another for his or her own gain.
37. Students should consider and weigh the importance of freedom of speech and association, and compare this to national security and the rights of individuals and societal safety.

Case Questions

38. a. Y b. Y c. Y d. N
39. a. Y b. N c. N d. N
40. a. Y b. N c. N

Case Analysis

41. **Principle of law:** Buckley was guilty of several crimes including larceny, credit card fraud, obtaining goods by false pretenses, and forgery.
Decision: Buckley will be found guilty.
42. **Principle of law:** Criminal violation of a federal FDA law.
Decision: The owner of the egg business was sentenced to federal prison consistent with the federal sentencing guidelines.
43. **Principle of law:** Federal regulations prohibit officers of a corporation from trading in the stock of the corporation without reporting the transaction.
Decision: Franken would likely be found guilty.
44. **Principle of law:** Embezzlement is a white-collar crime.
Decision: Searle will be prosecuted and likely found guilty.

Legal Research

45. Students might point to concerns regarding the following: arson, burning to defraud, larceny, robbery, hijacking, shoplifting, burglary, bribery, false pretenses, forgery, perjury, embezzlement, extortion, credit card fraud, and identity theft.
46. Students might locate Web sites regarding the following: arson, bribery, forgery, larceny (including embezzlement), perjury, extortion stock swindles, frauds against insurance companies, credit card fraud, income tax evasion, cyberspace fraud and theft of computer programs, agreements with competitors to fix prices, stock trading based on nonpublic information, and others.

BONUS ACTIVITIES

- Have each student complete an individual essay on a high profile corporate breach of ethics case.
- Have the students explore the FBI Web site. Ask them to focus on information regarding criminal statutes. Students should discuss their findings in class.