

# Chapter 10

# Presentation

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- Section 1
- Civil Law and Criminal Law
- • Civil law Pertains to the duties that exist between persons or between persons and their government.
- • Criminal law in contrast has to do with “crime”.
- • Crime can be described as a wrongful act against society set forth on a statute and also be punishable by some sort of fine or imprisonment and in other cases death. (So crimes are offenses to society as a whole).
- Differences of Civil case and Criminal case
- • In a civil case a plaintiff usually has to prove his/ her case by a” preponderance” of evidence. Under this standard, the plaintiff must convince the court that based on the evidence presented by both parties it is more likely than not that the plaintiff’s allegation is true.
- • In a criminal case on the other hand the state has to prove its case beyond a reasonable doubt. If the jury views the evidence in the case as reasonable permitting either a guilty or not guilty verdict, then jury verdict must be no guilty.
- (In other word the government has to prove beyond reasonable doubt that the defendant did in fact do every offense that he/she is charged)

- Criminal sanctions: are designed to punish wrongdoers who commit crime and to deter others from committing similar acts. (Fines, loss of one's liberty by incarceration, community service, probation, treatment program, death).
- Classification of Crimes
  - Felonies- serious crimes punishable by death or imprisonment.
  - Misdemeanors - less serious crimes punishable by a fine or confinement.
  - Petty offenses – minor violation can be put in jail for a few days, fined or both depending by local law.

- Section 2
- • Criminal act “ Actus Reus or guilty act”
- • Guilty act requirements is based on one premises of criminal law that a person should be punished from harm done to society
- • For there to be a crime for the guilty act there must be harm to a person or property.
- State of Mind
- • Wrongful state of Mind “Mens Rea” is typically needed to establish criminal liability.
- • The required mental statue or intent is indicated in the applicable statue or law.
- Recklessness
- • The Court can also find the required mental state when a defendant acts recklessly or criminally negligent.
- • A defendant is criminally reckless if he/she consciously disregards a substantial and unjustifiable risk.

- Criminal Negligence
  - It involves the mental state in which the defendant takes an unjustified, substantial, and foreseeable risk that result in harm.
  - A defendant can negligent even if he/she was not actually aware of the risk but should have been aware of it.
  - Homicide is involuntary manslaughter when it results from act of negligence and there is no intent to kill.
- Strict Liability and Over Criminalization
  - Increasing number of laws and regulation impose criminal sanctions for strict liability crimes.
  - Strict liabilities- are offenses that do not need mental state to make criminal liability.
  - Federal Crimes- federal crime code lists 4 thousand criminal offenses which do not require a specific mental state and there are also lots of sanctions.
  - State Crimes- many states also made laws that punish behavior as criminal intent.
  - Over Criminalization- the act of imposing unbalanced penalties with no relation to the gravity of the offense committed or the culpability of the wrong doer. It is the imposition of excessive punishment or sentences without adequate justification.
- Corporate Criminal Liability
  - A corporation is a legal entity created under the laws of state.
  - Corporations can be fined or denied certain legal privileges for instance licenses.

# Types of Crimes

## 5 Broad Categories:

- Violent Crimes (Crimes Against People)
- Property Crimes
- Public Order Crimes
- White Collar Crimes
- Organized Crimes

# Violent Crimes

- Are crimes against people, they are considered violent crimes because they cause others to suffer harm or death.
- Examples are: Murder, Sexual Assault, Rape, and Robbery
- Violent Crimes are further classified by degrees, the degree all depends on the circumstances in which the crimes act occurred. (Intent, and wether a weapon was used or not.)

# Property Crime

- The goal of the offender is to obtain some kind of economic gain or the damaging of the property.
- Examples include:
- Burglary - breaking and entering into a dwelling of another at night with the intent to commit a felony.
- Larceny -Stealing or Theft
- Obtaining Goods By False Pretenses - A threat involving tricking or fraud
- Receiving Stolen Goods - receiving goods knowing that they are stolen or illegally obtained is a crime
- Arson - willfully and maliciously burning a building
- Forgery - fraudulently making or altering any writing

# Public Order Crime

- Some examples include:
- Public Drunkenness
- Prostitution
- Gambling
- Illegal Drug Use
- These are called "Victimless Crimes" because they usually harm only the offender

# White Collar Crimes

- Involve an illegal act or series of acts committed by an individual or business entity using some nonviolent means to obtain a personal or business advantage
- Types Include:
  - Embezzlement - When a person is entrusted with another persons property and Fradulently appropriates it.
  - Mail and Wire Fraud
  - Bribery - Offering to give something of value to a person in an attempt to influence that person, who is usually but not always a public official

# Defenses to Criminal Liability

- Persons charged with crimes can be relieved of that liability if they
- 1) Can prove that their criminal acts were justified under the circumstances in which the acts occurred
- 2) if they lack the required mental state
- 3) if there's not enough evidence to incriminate them

# Justifiable Force of Use

- Self-Defense - the most well-known defense for criminal liability
- Necessity - proving that a criminal act was necessary to prevent a greater harm from occurring
- Insanity - not having a capable state of mind required to commit a crime
- Mistake - Committing a crime by mistake. For example, taking something from someone because you genuinely thought it was yours
- Duress - wrongfully threatening someone to perform an act this person would normally not do. Duress can be used in defense to most crimes, except murder.
- Entrapment - The illegal act of tricking. Someone into committing a crime so that the person being tricked can later be arrested
- Statute of Limitations - Just as in civil crimes, SOL applies to criminal crimes with the exception of murder
- Immunity - a promise not to prosecute for a crime in exchange for information or testimony in a criminal matter, granted by the prosecutor, the judge, a grand jury, or an investigating legislative committee.

# Criminal Procedures

- The U.S Constitution provides specific safe guards for those accused of crimes. The 14th amendment protects and includes the following
  - 1) The 4th Amendment protection from unreasonable searches and seizure.
  - 2) The 4th Amendment requirement that no warrant for search or an arrest be issued without probable cause.
  - 3) The 5th Amendment requirement that no one be deprived of "life, liberty, or property without due process of law.
  - 4) The 5th Amendment prohibition against double jeopardy (trying someone twice for the same criminal offense.)
  - 5) The 5th Amendment requirement that no person be required to be a witness against incriminate himself or herself.
  - 6) The 6th Amendment guarantees of a speedy trial.
  - 7) The 8th Amendment prohibitions against excessive bail and fines against cruel and unusual punishment.

# 4th Amendment Protections

- It is the rights of the people to be secure in their persons, homes, papers and effects. Before searching or seizing private property , normally law enforcement officers must obtain a search warrant-an order from a judge or either public official authorizing the search or seizure.
- Probable Cause: To obtain a search warrant, law enforcement officers must convince, to believe a search will reveal a specific illegality probable Cause.
- Scope of Warrant: The 4th Amendment prohibits general warrants. It requires a particular description of what to be searched or seized.
- The Exclusionary Rule: Under what is known as the exclusionary rule, any evidence obtained in violation of the constitutional rights spelled out in the 4th, 5th & 6th amendments generally it is not admissible at trial. The purpose of this rule is to deter law enforcement officers from conducting searches or seizure in violation of the 4th amendment & provide remedies to defendants whose rights have been infringed upon.
- The Miranda Rule: The Supreme Court recognized it as a constitutional right in 1966. It requires that suspects be informed of their 5th and 6th amendment rights "prior to interrogation"if their statements are to be used against them in court.

- Criminal Process
- Arrest
- Indictment or information: individuals must be formally charged with having committed specific crimes before their brought to trial.
- Trial

- CYBER CRIMES
- Computer Crime: any violation of criminal law that involves knowledge of computer technology for its perpetration, investigation or prosecution.
- Examples:
  - Cyber Fraud: Is fraud committed over the Internet
  - Cyber Theft: Stealing data stored in a network computer:
    - Identity theft
    - Phishing
    - Employment Fraud
    - Credit-card numbers
  - HACKING: Use a computer to gain unauthorized access to data in a system.