

# CLASSIFICATION OF CRIMES

- **Crime:** A wrong committed against society, as defined in a statute and punishable by fines, imprisonment, and, in some cases, by death.
  
- Depending on their degree of seriousness, crimes are classified as *felonies* or *misdemeanors*.
  - **Felony:** A crime – such as murder, rape, or robbery – that carries the most severe sanction, ranging from one or more year(s) in prison to forfeiture of one’s life.
  
  - **Misdemeanor:** A lesser crime – such as disorderly conduct, trespass, or petty theft – punishable by a fine or imprisonment for up to one year.
    - **Petty Offense:** A subset of misdemeanor, comprised of the least serious criminal offenses, such as traffic violations and jaywalking.

# CRIMINAL LIABILITY

- **Requisites:** A person may not be criminally liable unless she
  - (1) performed some **prohibited act** (or failed to perform some legally required act)
  - (2) with a specified **state of mind** or **intent**.
    - The mental state or the degree of intent required varies from crime to crime; however, absent the requisite *mens rea*, there can be no criminal liability, even for what may seem to be the most heinous acts.
- **Burden of Proof:** Because criminal liability carries harsher penalties than civil liability, and because the State has many more resources at its disposal in prosecuting a crime than the typical criminal defendant has at her disposal, the State must prove the alleged criminal's guilt of the crime *beyond a reasonable doubt*.
  - By contrast, a civil plaintiff suing the same defendant need only prove the defendant's civil liability by a *preponderance of the evidence* (meaning only that it is more likely than not that the defendant's acts or omissions caused the civil wrong).

# CORPORATE CRIMINAL LIABILITY

- A corporation may be criminally liable if:
  - (1) an agent or employee of the corporation (a) commits a criminal act **within the scope** of her employment and (b) the criminal act **violates a statute** whose purpose is to impose liability on the corporation; or
  - (2) the crime consists of a failure to perform a specific **duty imposed on the corporation by law**; or
  - (3) the crime was **authorized, requested, commanded, committed, or recklessly tolerated** by a “high managerial agent.”
  
- A corporate officer or director may be criminally liable for
  - (1) her **own criminal acts**, regardless of whether she committed them for her own benefit or the benefit of the corporation, as well as
  - (2) crimes committed by those **under her supervision**.
  
- Under the *responsible corporate officer* doctrine, a corporate officer may be criminally liable even if she did not participate in, direct, or even know of the criminal violation.

# CRIMES OF THEFT

- **Robbery:** Forcefully and unlawfully taking personal property of any value from another; force or threat of force is typically required for an act of theft to be treated as robbery.
  
- **Aggravated Robbery** – robbery with the use of a deadly weapon – is the most serious form of theft.
  
- **Burglary:** Unlawful entry into a building with the intent to commit a felony (or, in some states, the intent merely to commit any crime).
  
- **Aggravated Burglary** occurs when a deadly weapon is used or when the building entered is a dwelling.
  
- **Larceny:** Wrongfully taking and carrying away another person’s personal property with the intent to permanently deprive the owner of the property.
  
- Common law distinguished between **grand** and **petit** (or “petty”) larceny, depending on the value of property taken. In those states that retain the distinction, grand larceny is a felony, and petit larceny is a misdemeanor.

## OTHER PROPERTY CRIMES

- **Arson:** Willfully and maliciously burning a building (and, in some states, personal property) owned by another.
  - **Arson For Profit:** Every state has a special statute that prohibits burning one's own building or other property in order to collect insurance benefits on the property.
- **Receiving Stolen Goods:** Not only is theft a crime (*e.g.*, robbery, burglary, larceny), it is also a crime to receive goods one knows or has reason to know are stolen.
- **Forgery:** Fraudulently making or altering a writing (*e.g.*, a check) in a way that changes the legal rights or obligations of another.
- **False Pretenses:** Obtaining goods by deceiving the person from whom they are obtained (*e.g.*, writing a check knowing there are insufficient funds to cover it, buying goods using someone else's credit card number without authorization).

# WHITE-COLLAR CRIMES - PT. I

- **Embezzlement:** Fraudulent appropriation of money or other property by a person to whom the handling of the money or property has been entrusted.
  
- **Mail Fraud:** It is a federal crime to
  - (1) mail or cause someone to mail something written, printed, or photocopied in furtherance of
  
  - (2) a scheme to defraud by **false pretenses**.
  
- **Wire Fraud:** It is also a federal crime to defraud the public through the use of telephone, fax, radio, or television.
  
- **Bribery:** Unlawfully offering, giving, receiving, or soliciting money or other thing of value in order to influence a public decision or action or to gain a personal or business advantage.
  - Bribery can occur merely by offering or soliciting a bribe – **no money need actually change hands**.

## WHITE-COLLAR CRIMES - PT. II

- **Bankruptcy Fraud:** Knowingly attempting to evade the effect of rights and responsibilities arising under federal bankruptcy law.
- **Insider Trading:** The purchase or sale of publicly-traded securities on the basis of information that has not been made available to the public (*i.e.*, *inside information*) in violation of a duty owed to the company whose stock is being traded.
- **Theft of Trade Secrets:** The Economic Espionage Act of 1996 makes theft of trade secrets, as well as knowingly buying or possessing another's trade secrets without the other's authorization, a federal crime.

# ORGANIZED CRIME

- **Money Laundering:** Falsely reporting income that has been obtained through criminal activity as income obtained through a legitimate business enterprise.
  
- **RICO:** It is a federal crime to
  - (1) **use** any income obtained from racketeering activity to purchase any interest in an enterprise,
  - (2) **acquire** or maintain an interest in an enterprise through racketeering activity,
  - (3) **conduct** or participate in the affairs of an enterprise through racketeering activity, or
  - (4) **conspire** to do any of the foregoing.
  
- A person or entity engages in “a **pattern** of racketeering activity” by committing two or more offenses recited in the text of the RICO statute.
  
- Because of the broad reach of the RICO statute, any type of business fraud involving two or more persons may constitute “racketeering activity.”



# DEFENSES TO CRIMINAL LIABILITY - PT. I

- **Infancy/Insanity/Lack of Capacity:** Because of youth, mental illness, or lack of mental capacity, the accused was unable to form the requisite mental state.
- **Involuntary Intoxication:** The accused was forced to ingest, or was unaware that she was ingesting, drugs or alcohol which rendered the accused incapable of forming the requisite mental state or realizing the consequences of her actions.
- **Mistake:** While it is true that “[i]gnorance of the law is no excuse,” courts have recognized that **mistake of law** is a valid defense if
  - (1) the law at issue is not published or otherwise made reasonably known to the public, or
  - (2) the accused relied upon an official statement of the law that was incorrect.

Likewise, the accused may simply have made a **mistake of fact**, such that she could not have formed the requisite mental state.

## DEFENSES TO CRIMINAL LIABILITY - PT. II

- **Consent:** Voluntary agreement to a proposition or an act of another. Consent is a defense to the extent that it cancels the harm that the law is designed to prevent.
  
- **Duress:** Unlawful pressure brought to bear on the accused, causing him or her to perform an act that she would not have performed otherwise. A defendant claiming duress must prove that
  - (1) she or another was threatened with **serious bodily harm or death**,
  - (2) the harm threatened was **greater than** the harm caused by her crime,
  - (3) the threat was **immediate and inescapable**, and
  - (4) she was put into the situation giving rise to the threat through **no fault of her own**.
  
- **Justifiable Use of Force/Self-Defense:** The privilege to take *reasonably necessary* steps to protect one's self, another person, or one's property against injury by a third party.

## DEFENSES TO CRIMINAL LIABILITY - PT. III

- **Necessity:** The accused claims that the criminal act he committed was necessary in order to prevent or avoid a greater wrong.
  
- **Entrapment:** The accused claims that she was **induced** by a public official – typically an undercover officer – to commit a crime that she would not otherwise have committed.
  - Entrapment generally requires that the public official both suggest the wrongful act and then induce the accused to commit it. It is not improper for police to set a trap for the unwary, but it is improper to push the accused into the trap if she was not predisposed to committing the crime absent the entrapment.
  
- **Statute of Limitations:** Most criminal prosecutions (murder is generally an exception) must be brought within a specified period of years after the crime.
  
- **Immunity:** In cases in which the state wishes to obtain information from a person accused of a crime, the state can grant immunity from prosecution or agree to prosecute only for a less serious offense in exchange for that information.

# CONSTITUTIONAL RIGHTS OF THE ACCUSED

- The U.S. Constitution provides protections for those accused of crimes, namely:
  - (1) The Fourth Amendment's protection from unreasonable **searches and seizures** and requirement that a search or arrest warrant shall issue only upon **probable cause**;
  - (2) The Fifth Amendment's requirement of **due process of law**, prohibition against **double jeopardy** (trying the same person twice for the same criminal offense), and prohibition against **self-incrimination** (requiring a person to act as a witness against herself);
  - (3) The Sixth Amendment's guarantees of the rights to **speedy trial, trial by jury, public trial**, the right to **confront witnesses**, and **counsel** (at various stages of criminal proceedings); and
  - (4) The Eighth Amendment's prohibitions against **excessive bail and fines** and **cruel and unusual punishment**.

# CONSTITUTIONAL COROLLARIES

- **The Exclusionary Rule:** Any evidence obtained in violation of the accused's Fourth, Fifth, or Sixth Amendment rights, as well as any evidence derived from said illegally obtained evidence, is not admissible.
  
- **Purpose:** The exclusionary rule's purpose is to deter police from conducting warrantless searches and following other improper procedure.
  
- **Exceptions:** In recent decades, the U.S. Supreme Court has diminished the scope of the exclusionary rule by creating exceptions for, *e.g.*, evidence the police would have **inevitably** discovered and obtained, and evidence obtained in **good faith**.
  
- **The *Miranda* Rule:** Subject to certain exceptions, individuals who are arrested must be informed of certain constitutional rights, including their right to remain silent (*i.e.*, not to incriminate themselves) and their right to counsel.

## CRIMINAL PROCESS: PRETRIAL

- **Arrest:** A suspect's arrest must be made based upon **probable cause** – a substantial likelihood that the person has committed or is about to commit a crime. Generally, arrest is pursuant to a *warrant*, but may be made without a warrant as long as probable cause exists.
  
- **Indictment/Information:** Before they may be brought to trial, individuals must be formally charged with one or more specific crime(s). Formal charges come from either:
  - (1) **Grand Jury Indictment:** A *grand jury* is a group of citizens called to decide, after hearing the state's evidence, whether probable cause exists for believing that a crime has been committed and whether a trial ought to be held. An *indictment* is the formal charge issued by the grand jury against one or more person(s).
  
  - (2) **Information:** A formal accusation or criminal complaint issued by a magistrate or other law officer, without indictment, typically in cases involving lesser crimes.
  
- **Trial:** Once a criminal prosecution reaches trial, the state bears the burden of proving **beyond a reasonable doubt** that the accused is guilty of the crime(s) charged. The accused is not required to testify or to put on any evidence in her defense, although the accused is permitted to do so.

# CRIMINAL PROCESS: SENTENCING

- If the state satisfies its proof burden and secures a conviction, the trial judge will then, as a rule, impose sentence. The judge's sentencing discretion may be subject to:
  - **Federal Sentencing Guidelines:** Since 1987, all federal judges have been bound by guidelines that determine the range of permissible sentences for a given crime, as well as the weight to be given aggravating factors (*e.g.*, use of a firearm in the commission of the crime) and mitigating factors (*e.g.*, cooperation with the police).
  - **“Three Strikes” Laws:** Many states and the federal government have enacted “career criminal” statutes (commonly known as “three strikes” laws) that require stiffer sentencing of defendants who have prior felony convictions.

# CYBER THEFT

- **Cyber Theft:** The **National Information Infrastructure Protection Act** of 1996 makes it illegal to access or to attempt to access a computer online, without authority, in order to obtain classified, restricted, or protected data, such as financial, credit, or medical records, legal, military, or national security files, and other confidential information stored in government or private computers. Examples of cyber theft include:
  - **Financial Crimes:** Using computers to fraudulently conduct financial transactions;
  - **Identity Theft:** Stealing another person's identifying information (*e.g.*, Social Security number, name, date of birth) in order to access the victim's financial resources; and
  - **Hacking:** Gaining access to another's computer or computerized information without permission.



## OTHER CYBER CRIMES

- **Cyber Stalking:** The stalking laws enacted by many states require physical proximity to the victim; and, therefore, do not address using the Internet to stalk victims. Consequently, more than three-fourths of all states have enacted new statutes to specifically address cyber stalking. It is also a federal crime to use the wires (and mail) to harass someone.
  
- **Stalking:** Harassing or following a person while making a “credible threat” that causes the victim to be in reasonable fear of her safety or the safety of her immediate family.
  
- **Cyber Terrorism:** Using a computer to damage, alter, disrupt, or shut down or to threaten to damage, alter, disrupt, or shut down a critical computer system, such as the FAA air traffic control system, the regional power grid, the Federal Reserve check clearing system, or to commit industrial or military espionage going beyond “mere” theft or sabotage going beyond “mere” vandalism.
  
- **Vandalism and Destructive Programming:** Intentional destruction of computer hardware or software, including programming of computer viruses.

# PROSECUTING CYBER CRIMES

- Because committing cyber crime in a jurisdiction does not require the criminal to be physically present in the jurisdiction, and because of the high degree of anonymity that goes along with activity over the Internet, police and prosecutors have difficulty applying existing property-based criminal law to crimes committed over the Internet.
- The **Computer Fraud and Abuse Act** of 1984 (as amended by the National Information Infrastructure Protection Act of 1996) subjects a person who accesses or attempts to access a computer online, without authority, to obtain classified, restricted, or protected data – including financial and credit records, medical records, legal files, and other confidential or sensitive data – to criminal prosecution.
- The federal **wire fraud** statute, the **Economic Espionage Act**, **RICO**, the **Electronic Funds Transfer Act**, the **Anticounterfeiting Consumer Protection Act**, and the **National Stolen Property Act** also apply to crimes committed in cyberspace.