

## Chapter 7 – Criminal Law and Cyber Crime

### Civil Law and Criminal Law

- Key Differences between Civil Law and Criminal Law
  - Burden of proof
    - Civil case: Plaintiff must prove case by a preponderance of the evidence
    - Criminal case: Prosecution must prove case beyond a reasonable doubt
  - Criminal sanctions
    - Sanctions imposed in criminal cases are harsher than civil cases.
- Civil Liability for Criminal Acts

### Criminal Liability

- For a person to be convicted of a criminal act, two elements must exist simultaneously:
  - The performance of a prohibited act
  - A specified state of mind or intent on the part of the actor
- The Criminal Act
  - **Actus reus** – prohibited act
  - Most are acts of commission, but in some situations, failure to do something can be a criminal act, e.g., not filing a tax return.
- State of Mind
  - **Mens rea** – wrongful mental state
  - Recklessness and criminal negligence
  - Strict liability and overcriminalization

### Criminal Liability

- Corporate Criminal Liability
  - Liability of the corporate entity
    - Crimes must occur within scope of employment.
    - Corporations can be held criminally liable when they fail to fulfill certain statutory duties.
  - Liability of corporate officers and directors

### Types of Crimes

- Violent Crime
  - Crimes against persons further classified by degree depending on the circumstances
  - Robbery
  - Murder
  - Rape
  - Assault and battery
- Property Crime
  - Most common, involves money or property
  - Burglary
  - Larceny
  - Obtaining goods by false pretenses
  - Receiving stolen goods
  - Arson
  - Forgery

- Public Order Crime
  - Public drunkenness
  - Prostitution
  - Gambling
  - Illegal drug use
  
- White-Collar Crime – Financially motivated – non-violent
  - Embezzlement
  - Mail and wire fraud
  - Bribery
  - Theft of trade secrets
  - Insider trading
  
- Organized Crime
  - Money Laundering
  - Racketeer Influenced and Corrupt Organizations Act (RICO)
    - Criminal provisions (includes 26 different types of felonies with fines up to \$25,000 and 20 years in prison for each offense)
    - Civil penalties include forfeiture, and treble damages

### **Defenses to Criminal Liability**

- Justifiable Use of Force
- Necessity
- Insanity
- Mistake
- Duress
- Entrapment
- Statute of Limitations
- Immunity

### **Criminal Procedures**

#### Constitutional Safeguards

- Fourth Amendment – unreasonable searches and seizures
  - Fourth Amendment – no warrant without probable cause
  - Fifth Amendment – due process of law
  - Fifth Amendment – double jeopardy
  - Fifth Amendment – self-incrimination
  - Sixth Amendment – speedy trial, trial by jury, public trial, right to confront witnesses, right to counsel
  - Eighth Amendment – excessive bail and fines, cruel and unusual punishment
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- Fourth Amendment Protections
    - **Probable cause**
      - Reasonable grounds for believing that a search should be conducted or an arrest made
      - Reasonable expectation of privacy
  - The Exclusionary Rule
    - Prevents evidence obtained illegally or without a proper search warrant from being

admissible in court

- The *Miranda* Rule
  - 1966 *Miranda v. Arizona*
- Criminal Process
  - Arrest
  - Indictment or information
  - Trial
- Federal Sentencing Guidelines
  - Sentencing Reform Act

### **Cyber Crime**

- **Computer crime:** The unlawful use of a computer or network to take or alter data, or to gain the use of computers or services without authorization
- **Cyber crime:** A crime that occurs in the online environment rather than in the physical world
- Cyber Fraud
  - Fraud committed over the Internet with the intention to deceive for the purpose of obtaining property or funds
  - Online auction fraud
  - Online retail fraud
- Cyber Theft
  - Identify theft
    - Internet provides easier access to private data
  - Phishing
    - E-mail fraud scam
  - Employment fraud
    - Asks job seekers to reveal information for identity theft by posing as employment officer
  - Credit-card numbers
    - Companies take risks storing online customers' credit-card numbers for repeat purchases
- Hacking
  - **Hacker:** uses one computer to break into another
  - Malware
    - Worm
    - Virus
  - Cyberterrorism
- Prosecuting Cyber Crime
  - Determining the "location" of a cyber crime and identifying criminals are significant challenges for law enforcement
  - Jurisdiction and identification challenges
  - The Computer Fraud and Abuse Act (CFAA)
    - Counterfeit Access Device and Computer Fraud and Abuse Act

- Provides criminal prosecution for cyber crimes