What Are Crimes?
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 rather than to aid the victim of the crime.

Crimes contrast with civil offenses, which are offenses against just the victim, not society. For almost all crimes, the victim can sue identified criminals for civil damages. However, victims seldom do so because few criminals have the ability to pay judgments.

Crimes are defined by statute (laws enacted by state or federal legislatures). Statutes tell us what conduct is prohibited, so that we can conform our conduct to the law.

Elements of a Crime
Before anyone can be convicted of a crime, three elements usually must be proved at the trial. They are: (1) a duty to do or not to do a certain thing; (2) an act or omission in violation of that duty; and (3) criminal intent.

Duty. State statutes prohibiting certain conduct usually describe duty. Less frequently, federal statutes or city ordinances identify criminal behavior. To establish duty in a trial, the prosecutor cites a statute to the judge.

Violation of the Duty. The breach of duty – the specific conduct 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, must be proved in most cases. Criminal intent generally means that the defendant (1) intended to commit the act and (2) intended to do evil. If in a basketball game you deliberately punch an opposing player, you display criminal intent. You have committed a crime. On the other hand, if you lose your balance, and while flailing your arms hit the nose of a bystander, there would be no crime. You did not intend the act nor did you intend to do evil.

Criminal intent also is related to age. 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.

To have criminal intent, one must have sufficient mental capacity to know the difference between right and wrong. Accordingly, insane persons are not held responsible for their criminal acts. Neither voluntary intoxication nor use of drugs relieves a person from criminal responsibility in most circumstances.

Some crimes do not require the element of criminal intent. For the less serious crimes where being sentenced to jail is very unlikely, criminal intent is not required. Traffic offenses are an example. A speeding driver who did not intend to speed or intend evil has still committed a traffic offense.

Another exception applies to actions involving extreme carelessness. Suppose you drive 80 mph through a residential neighborhood while drunk and kill a pedestrian. You may not have intended to speed or intended to do evil. However, your conduct was so careless that some courts treat it the same as criminal intent. You could be convicted of the crime of vehicular homicide.
Criminal Conduct
Criminal conduct may be categorized by who or what the crime is against:
1. crimes against a person (assault and battery, kidnapping, rape, murder);
2. crimes against property (theft, robbery, embezzlement);
3. crimes against the government and administration of justice (treason, tax evasion, perjury);
4. crimes against public peace and order (rioting, disorderly conduct, illegal speeding);
5. crimes against realty (burglary, arson, criminal trespass); and
6. crimes against decency (bigamy, obscenity, prostitution)

Classification of Crimes
Crimes are classified by the seriousness of the offense: (1) felonies; (2) misdemeanors; or (3) infractions. Certain crimes may also be classified as white-collar crimes.

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 sums, and perjury are examples of felonies. People who lie under oath commit perjury; they may be imprisoned for 2 or 3 years.

Misdemeanor. A misdemeanor is a less serious crime. It is usually punishable by confinement in a county or city jail for less than one year, by fine, or both. Such crimes as disorderly conduct and speeding are usually misdemeanors.

Infractions. 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.

White-Collar Crimes. Offenses committed in the business world typically are referred to as white-collar crimes. These crimes do not involve force or violence, do not cause injury to people, and do not cause physical damage to property. Common examples of white-collar crimes are evading income taxes, defrauding consumers, conspiring to fix prices, making false 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.

Business-Related Crimes
Larceny. Larceny (commonly known as theft) is the wrongful taking of money or personal property belonging to someone else, with intent to deprive the owner of possession. Robbery is a variation of larceny. It is the taking of property from another’s person or immediate presence, against the victim’s will, by force or by causing fear. Burglary is another variation of larceny. It is entering a building without permission when intending to commit a crime. Other types of larceny include shoplifting, pick pocketing, and purse snatching. Larceny may be either a felony or a misdemeanor. The classification is determined by the value of the property stolen and other circumstances. Robbery and burglary are always felonies. A thief who sells the stolen goods is guilty of the separate crime of selling stolen property.

Receiving Stolen Property. Knowingly receiving stolen property consists of either receiving or buying property known to be stolen, with intent to deprive the rightful owner of the property. One who receives stolen property is known as a fence.

False Pretenses. One who obtains money or other property by lying about a past or existing fact is guilty of false pretenses. This crime differs from larceny because the victim parts with the property voluntarily. False pretenses is a type of fraud.

Forgery. Forgery is falsely making or materially altering a writing to defraud
another. The most common forgeries are found on checks when one signs another's name without permission to do so. Forgery also includes altering a check, such as changing "$7" to "$70" and "Seven" to "Seventy." Forgery is usually a felony. Of course, if others authorize you to sign their names, there is no forgery.

**Bribery.** Bribery is unlawfully offering or giving anything of value to influence performance of an official. Soliciting or accepting the bribe is also criminal. In many states, bribing nongovernmental parties is also a form of bribery called commercial bribery. Thus, paying a private company's purchasing agent to obtain a sale may be bribery. It is usually bribery when a professional gambler pays an athlete to lose a game intentionally.

**Computer Crime.** The computer revolution has created a range of problems for criminal law. For example, larceny is “the wrongful taking of the personal property of others.” This traditional definition of the crime made it difficult to prosecute those who steal computer data. Many courts concluded that there was not a “taking” if an intruder merely copied the information in the computer. Even if an intruder copied and erased computer information, some courts concluded that there was no taking of “personal property” but only the loss of electrical impulses which no one really owns. In response, many states have created new criminal laws for 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 the power of office. The extortionist (blackmailer) may threaten to inflict bodily injury. Sometimes the extortionist threatens 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, the crime 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 of a building. Arson occurs when someone intentionally starts a fire and burns a structure without the owner's consent. In some states, arson also occurs if you burn your own building to defraud an insurer.

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### 5-2 Criminal Procedure

#### Rights and Responsibilities

One of the major objectives of the Constitution of the United States is to protect individuals from certain actions of the federal government. These constitutional limitations now also apply to state and local governments. The authors of the Constitution believed it was better for our 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.

#### Rights When Arrested

The constitutional right to due process requires fundamental fairness in governmental actions. It requires fair procedures during an investigation and in court. For example, criminal defendants may not be compelled to testify against themselves. They have the right to cross-examine witnesses. Perhaps the most important right is the right of the accused criminal to be represented by a lawyer. For a person who cannot afford to hire a lawyer, a public defender or a private lawyer is provided by the state.

To convict a person of a crime, the evidence must establish guilt with proof beyond a reasonable doubt. This means the vast majority of the evidence (perhaps 90 percent) supports
the guilty verdict. 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 jury trials, the defendant is usually found guilty only if all the jurors vote to convict.

Responsibility for the Criminal Conduct of Others
A person who aids another in the commission of a crime is also 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 a felony, all accomplices are guilty of the homicide. 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.

Defenses to Criminal Charges
The state must prove that the defendant is guilty beyond a reasonable doubt. But even when it appears this has been done, the defendant may escape criminal liability by subsequently establishing a defense. A defense often allows the defendant to escape liability. The defendant must produce the evidence to support any defense. There are two types of defenses: (1) procedural and (2) substantive.

Procedural Defenses.
Procedural defenses are based on problems with the way evidence is obtained or the way the accused person is arrested, questioned, tried, or punished. For example, a defendant who had confessed to a crime might assert the defense 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 that everyone knows the law. Thus, if you park in a no-parking area because you did not see the sign, you have no defense.

Substantive Defenses.
Substantive defenses disprove, justify, or excuse the alleged crime. Most substantive defenses discredit the facts that the state sought to establish. 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. 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. Criminal insanity generally exists when 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. Immunity is freedom from prosecution even when one has committed the crime charged. Sometimes one criminal may be granted immunity 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.
Punishments for Crimes
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.

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.

Think Critically About Evidence

1. Mary received a citation for failing to remove the snow from the sidewalk in front of her dress shop. The fine was $60. Mary thought the citation was unfair because she did not have enough time to shovel the snow. She received the citation 5 hours after the snowstorm ended. In court she protested and asked for a jury trial. When she was told that the matter would be heard only by a judge, she said her constitutional rights to a trial by jury in criminal matters was being violated. Is she right?

2. Phillips developed a scheme to generate funds by sending bogus bills for a relatively small amount for District Sanitation Services to residents of certain affluent neighborhoods. Enough people paid these bills to make the practice quite profitable. Has Phillips committed a crime? If so, what crime?

3. Sharon spent the weekend with her friend Amelia. Amelia proposed a plan for shoplifting compact disks (CDs) from a local music store. Sharon was to go to the store clerk, say she felt very ill, 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?

4. Ben and Eric have been friends for years. One day Ben asks Eric to participate in an armed robbery that Ben has been planning. Eric agrees. Ben confides he has robbed several convenience stores recently and has never been caught. Police arrive during the robbery and both men are caught. The prosecutor wants to try Ben for his previous criminal acts but needs Eric’s testimony. How would you advise the prosecutor to assure Eric’s testifying to convict Ben?

5. 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?

6. 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?

7. Bob was driving 70 mph when he was pulled over by the state highway patrol. The last speed limit sign Bob had seen said 70 mph. The patrolman admitted that a nearer sign indicating a 55 mph speed limit had been blown down recently. Nonetheless, he wrote Bob a ticket. Why?

8. There was nothing Lucy wanted more than a stereo sound system. When Harper, an older student, offered to sell her a practically new deluxe system for just $100, Lucy agreed to buy. But then Lucy said, “Hey, how come so cheap?” Harper replied, “Had some happy hunting, and now I’ve got surplus stock.” Later that day, the deal was completed. Has any crime been committed?
CONCEPTS IN BRIEF

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 also recognize 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 responsible for or her crimes.
6. Anyone accused of committing a crime has certain constitutional rights, including freedom from arrest without probable cause; the right to be represented by a lawyer; the right to cross-examine witnesses; he right to not testify against oneself; and the right to a speedy, public, fair trial.
7. Common substantive defenses are self-defense, criminal insanity, and immunity.
8. Crimes are punishable by fine, imprisonment, or both. Some states execute certain criminals.