

## Criminal Law

During lunch in the cafeteria, Grace, Jim, Liz, and Ben discuss their plans for the Friday night football game.

**Grace:** I'm certain about one thing. I'm not riding on the bus with those people from the south end. They're nothing but trouble.

**Jim:** You're prejudiced because they live on the other side of town.

**Grace:** That's not true. I've just heard about some of the crimes they commit.

**Ben:** Grace, are you sure they were guilty?

**Jim:** Grace, do you remember that time I broke Mr. Newman's window when we were playing baseball last summer? The police came but they didn't arrest me because I really didn't do anything wrong.

**Grace:** They didn't arrest you because you begged them not to take you to jail.

**Jim:** Well, yes, that too.

**Liz:** No, I remember one of the officers said that Jim didn't have the right mental state to commit a crime or something like that.

**Grace:** Now that I can believe.

**Ben:** Does that mean he didn't have a motive for breaking the window?

**Grace:** But he did have a motive. He was mad at Newman for embezzling some funds from his father's bank.

**Jim:** I like the way you talk about me as if I weren't here.

**Liz:** I remember that case. Newman pleaded entrapment and he got off scot-free.

**Grace:** I think that entrapment stuff is just another way to beat the system.

**Ben:** Sure, it's like that insanity defense I keep hearing about. Criminals just have to have their lawyer convince the judge that their client is insane.

**Liz:** I don't think it would have mattered that much in Newman's case anyway. I think Mrs. Martin said it was just a misdemeanor.

**Ben:** No way! That kind of thing has to be a felonious something or other.

**Liz:** Well, I heard Mr. Newman did his embezzling with that fancy new computer they installed at the bank last year.

**Grace:** How could you commit a crime with a computer?

**Jim:** Hit somebody over the head with it?

**Grace:** I think they should give him life.

**Ben:** Life imprisonment for embezzlement!

**Grace:** No! Not Mr. Newman, Jim.

**New Terms**

crime, p. 22

prosecutor, p. 22

defendant, p. 22

felony, p. 22

misdemeanor, p. 22

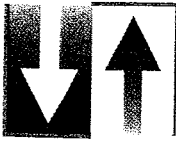
murder, p. 24

assault, p. 25

burglary, p. 26

robbery, p. 27

sentence, p. 32



### Cases in Point

*For each of the following cases, give your decision and state a legal principle that applies:*

1. George knows that Warren, Franklin High's first string quarterback, has placed bets on several of the games in which he has played. Warren always bets that Franklin High will win, and the team has won all the games on which he has placed bets. George reasons that revealing his knowledge would hurt Warren, the team, the team's chances for the state championship, and the overall reputation of the school. Therefore, using the greatest good principle, he decides to keep quiet. Identify the flaw in George's reasoning.
2. Amy Adler is a psychiatrist who treats patients who suffer from a variety of mental illnesses. One of her patients is arrested by the Secret Service for writing threatening letters to the President of the United States. When the patient goes to trial, Amy is asked to testify. However, she knows that the patient does not want her to reveal the nature of their conversations. Identify the ethical and legal conflicts facing Amy.
3. Alex Barsky witnesses a mugging while walking home from school one day. Alex continues on his way instead of getting involved. Can the law force Alex to testify? What can the law do about the mugger? How does this demonstrate why law is necessary?
4. Lucy Demps decides to drop out of high school. However, a state law forbids minors from dropping out of school. The same statute gives juvenile court judges the right to suspend the driver's license of any minor who has dropped out of school. Lucy argues that statutes passed by the legislature may be able to forbid certain acts like stealing, but they cannot order her to attend school. Is she correct? Explain.
5. Angela Gannon got a speeding ticket for driving 80 miles per hour in a 65 mile per hour zone. In addition, she was cited for not wearing her seat belt, a violation of state law. One day earlier, the state supreme court had held that the seat belt law was unconstitutional. How would you decide Angela's case?



### Cases to Judge

*In each case that follows, you be the judge.*

1. Ewing was a medical student at the University of Michigan. When he failed a qualifying examination, he asked for a chance to retake it. He knew that everyone else who had failed the exam was allowed to retake it. The university refused to allow Ewing to retake the exam. He sued, arguing that the university had acted unconstitutionally by depriving him of due process as promised by the Fourteenth Amendment to the U.S. Constitution. Can the court judge the constitutionality of a state university's action? Explain. *Ewing v. Board of Regents of the University of Michigan*, 742 F.2d 913 (6th Circuit)
2. A parent allegedly insulted his daughter's teacher in the presence of several students. The parent was charged with violating the following Kentucky state statute: "No person shall upbraid, insult or abuse any teacher of the public schools in the presence of the school or in the presence of a pupil of the school." The parent argued that the statute is unconstitutionally vague. Do you agree? Why? *Com. v. Ashcraft*, 691 S.W.2d 229 (Kentucky)

**Learning Objectives**

1. Identify the major classes of crimes.
2. Describe the elements of a crime.
3. Distinguish among a variety of particular crimes.
4. Explain the defenses available to criminal defendants.
5. Summarize the penalties provided under criminal statutes.



## The Spirit of the Law

When people commit crimes, they harm not only individuals, but also society as a whole. Our society does not allow acts that threaten the peace, safety, and well-being of the entire community. Thus, **crime** is an act against the public good, punishable by a fine, imprisonment, or both. No act can be considered a crime unless it is prohibited by the law of the place where it is committed and unless that law provides for the punishment of offenders.

### Legal Issues:

1. Is proof of a motive necessary to convict someone of a crime?
2. How does a person's mental state determine whether or not a crime has been committed?
3. Is entrapment a legitimate defense to criminal activity?
4. Does a criminal who successfully pleads not guilty by reason of insanity go free?

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## Classifications of Crimes

In a criminal proceeding the state or federal government, representing the public at large, is the *plaintiff*. That is, the government is the party that accuses the person of a crime. Usually, the government is referred to as the **prosecutor**. The person who is accused of a crime is called the **defendant**.

In the opening vignette, Ben and Liz have a disagreement over whether the crime allegedly committed by Mr. Newman was a felony or a misdemeanor. Without realizing it, they are discussing a concept that is fundamental to a proper understanding of criminal law. That concept involves the classifying of crimes according to the degree of seriousness.

### Felonies

A **felony** is a major crime punishable by imprisonment or death. To determine whether or not a crime is a felony, we look to the law to see what the punishment is for committing that particular crime. Murder, manslaughter, burglary, robbery, and arson are examples of felonies. A few states define felony as a crime subject to "punishment by hard labor," "an infamous crime," or a crime subject to "infamous punishment." The federal Comprehensive Crime Control Act defines felony as "any offense punishable by death or imprisonment for a term exceeding one year." Some states, New Jersey for example, do not use the word felony. Instead, they label their most serious crimes "high misdemeanors."

### Misdemeanors

A less serious crime with a less severe penalty is a **misdemeanor**. Misdemeanors require a penalty such as a fine or imprisonment in a county or city jail. Some examples of misdemeanors are driving an automobile without a license, lying about one's age to purchase alcoholic beverages, and leaving the scene of an automobile accident. Some states also classify

lesser crimes as minor misdemeanors or petty offenses. Typical minor misdemeanors would include traffic offenses and parking violations.

## Elements of a Crime

A crime is defined by two elements: (1) the criminal act and (2) the required state of mind. The explanations of each of these two elements may be different in different states. Still, the definitions of these elements have enough similarities to allow certain generalizations in regard to each.

### *Criminal Act*

Each statute that defines a crime must specifically explain the conduct that is forbidden by that statute. For example, a statute that makes stealing a crime specifically prohibits the wrongful taking of another person's personal property. Some criminal law statutes make failure to act a crime. For instance, a young man may fail to register for the draft after reaching his eighteenth birthday. He has committed a crime even though, strictly speaking, he has not acted but rather has failed to act. An act must also involve voluntary conduct. Reflexes, convulsions, or movements during hypnosis are involuntary actions that are not considered or termed criminal conduct. Finally, a person cannot be accused of a crime if that accusation is based on a person's status or condition. For example, the government could not make it a crime to be an alcoholic.

### *Required State of Mind*

The second element that is necessary to establish a crime is the required state of mind. The required state of mind is specified in the statute that defines the crime. Sometimes it is implied by provisions elsewhere in the criminal code. A statute defining murder forbids the intentional taking of a person's life. In such a statute the required mental state is intent. In contrast, a statute defining involuntary manslaughter outlaws the accidental taking of a person's life through negligence. Notice that in both statutes the criminal act of taking a person's life remains the same. The only thing that changes is the required state of mind.

In the opening vignette, recall that the police did not arrest Jim for breaking Mr. Newman's window. As Legal Issue 2 suggests, this was because Jim did not have the required state of mind. The breaking of the window did not occur because Jim had the intent to deliberately vandalize Mr. Newman's property. Rather it occurred by accident.

### *Motive*

In the opening vignette, Ben and Liz seem to think that the prosecution has to prove that an alleged criminal had a motive to commit the crime. This misconception is quite common. When television and movie detectives trail a crook, they always seem to make uncovering a motive a crucial part of their case. This is misleading because, as Legal Issue 1 suggests, motive actually plays no part in proving criminal liability. Uncovering a motive might help establish a list of suspects. However, the lack of a motive does not remove criminal liability. If a person has committed the forbidden act with the required state of mind, he or she is criminally liable.

## **R**educing Legal Risks

*If you are arrested, do not try to resist arrest or run away from the police. Know your rights. You do not have to answer questions. Be careful if you speak, for anything you say may be used against you in court. Do not sign any papers. Ask to have an attorney represent you, whether or not you can afford one.*

## FYI

At one time, a felony defendant had a right to an attorney only if he or she could afford one. In 1938 the U.S. Supreme Court required federal courts to provide attorneys for defendants in all federal felony cases if they could not afford one. In 1963 the Court extended this right to an attorney to felony defendants in state cases.

## Particular Crimes

Each crime must have an exact definition. One source of these definitions is common law. Another source is federal and state statutes. Defining a crime is necessary so that everyone can know, without any doubt, what is against the law. Overall, crimes can be grouped under three headings: crimes against people, crimes against property, and crimes against business interests.

### Crimes Against People

The killing of one human being by another is generally known as *homicide*. Justifiable homicide takes place when a police officer kills a criminal in the line of duty or in self-defense. It also takes place when a soldier kills the enemy in battle. When someone is killed by accident and no one is at fault, the death is an excusable homicide.

#### Murder

Under the law, **murder** is the unlawful killing of another human being with malice aforethought. The term *malice aforethought* means that the murderer had an evil intent before the killing took place. In many states the crime is divided into first-degree murder and second-degree murder.

The definition of first-degree murder, also sometimes called aggravated murder, differs from state to state. In general, however, first-degree murder involves one or more of the following circumstances: (1) killing someone with premeditation (thinking about it or planning it in advance); (2) killing someone in a cruel way, such as with torture; and (3) killing someone while committing a felony, such as rape, robbery, or kidnapping. If none of these conditions apply, the crime is known as second-degree murder. In most states, the distinction between first- and second-degree murder is important—first-degree murder usually carries the death penalty, second-degree murder does not.

#### Manslaughter

The unlawful killing of another human being without malice aforethought is known as *manslaughter*. The major difference between murder and manslaughter is that malice (evil intent) is found in murder, but not in manslaughter. Manslaughter can be divided into two types: voluntary manslaughter and involuntary manslaughter.

Voluntary manslaughter occurs when one person intends, at the time the act is committed, to kill another but does so suddenly and as the result of great personal distress. The wrongdoer must have become very upset before the killing.

**Example 1.** Alex Fielder's son was kidnapped and murdered. When the police caught the kidnapper, he immediately confessed to the killing. The next day Fielder had to identify the body of his son. Afterward, as he was leaving the police station, he saw the kidnapper being transported to another part of the jail. In a sudden rage, Fielder grabbed a nearby officer's service revolver and, before anyone could react, shot the kidnapper dead. Fielder was charged with voluntary manslaughter.

Involuntary manslaughter occurs when one person, while committing an unlawful or reckless act, kills another. There is no intent to kill.

**Example 2.** Rosco McMurphy and Max Cavendish live in a state in which drag racing is a misdemeanor. Roscoe and Max challenged one another to a drag race on the outskirts of town. Both cars hit a top speed of 85 miles per hour in an area where the speed limit was 45 miles per hour. McMurphy lost control of his car and crashed into the crowd of spectators who had gathered to watch the race. Two of the spectators were killed. He was charged with involuntary manslaughter because he killed the spectators while violating the law. In some states, this is called reckless or vehicular homicide.

If drag racing were a felony in the state in which Example 2 takes place, then McMurphy, Cavendish, and anyone else who had taken part in the drag race could be charged with murder rather than manslaughter. That is, the felony murder rule would apply—a killing that takes place during a felony is murder.

### **Assault and Battery**

The unlawful touching of another person is known as *battery*. Accidentally bumping another person in a crowded hallway or in the cafeteria line at school would not be battery, because the crime requires criminal intent or at least reckless behavior. Similarly, football players slamming each other during a football game would not be battery because they have consented to the contact within the rules of the game. Battery usually involves the forceful use of a person's hand, knife, or gun against another. However, battery could also be committed by giving poison or drugs to an unsuspecting victim, spitting in someone's face, siccing a dog on someone, or even kissing someone who does not want to be kissed.

An **assault** is an attempt to commit a battery. Pointing or shooting a gun at someone is the assault; the bullet striking the person is the battery. Some states no longer follow the common law distinction between assault and battery. Ohio, for example, has eliminated the term "battery" from its criminal code and substituted "assault" by itself.

Simple assault and battery are generally misdemeanors. Aggravated battery and aggravated assault, however, are felonies in most states. To qualify as an aggravated offense, the assault or battery would have to be committed with a deadly weapon, with the intent to murder, with the intent to commit rape, or with the intent to commit robbery. Some states call aggravated assault felonious assault.

### **Kidnapping**

Kidnapping involves the unlawful removal or restraint of a person against that person's will. Usually the victim is either threatened or forced to be a captive. Kidnapping usually includes unlawful imprisonment for ransom, terrorism, torture, rape, or to commit a felony. Contrary to popular belief, under most state laws the distance involved in the unlawful movement of the victim does not matter. The essence of the crime is illegally imprisoning rather than moving the victim.

### **Sex Offenses**

In the past, the crime of rape was limited to two types of situations. In one situation a male forced a female to have sexual intercourse. In the other situation a male had sexual intercourse with an under-aged female. Today

the law has expanded the crime of rape or sexual assault to include other types of sexual misconduct. The crime of statutory rape applies to situations in which the victim is under age. The definition of under age will vary from state to state. In most states, the younger the victim the more serious the offense and the more severe the penalty. Remember that, in cases of statutory rape, the consent of the under age person does not matter. A minor can also be prosecuted for having sex with another minor. Statutes defining rape do not specify the age of the offender. Recently recognized as a sex offense is sexual assault by a friend or a date. Such crimes are usually labeled date rape or acquaintance rape.

Sexual assault is an extremely serious crime. Victims are hurt not only physically but also emotionally and psychologically. For these reasons, among others, the crime of rape carries very serious penalties. In one state for instance, the rape of a child under the age of 13 carries the penalty of life in prison.

### ***Crimes Against Property***

The most common crimes against property include: burglary, robbery, arson, larceny, and embezzlement.

#### **Burglary**

Under common law, **burglary** is defined as the breaking (opening) and entering of a dwelling house at night with the intent to commit a felony. Today, the states have passed statutes covering other kinds of breaking and entering. These include breaking and entering in the daytime, breaking and entering a place that is not a dwelling house, and breaking and entering with the intent to commit a misdemeanor. If any part of the definition of burglary cannot be proven, the defendant cannot be found guilty.

**Example 3.** While walking along a sidewalk after dark, a man noticed a house with a partly opened window. He raised the window farther, climbed inside, and stole some expensive shoes. He was charged with burglary. Applying the common law definition, a court would find him not guilty because there was no breaking. The window was already open; he simply opened it farther. However, most state statutes today say that a breaking has occurred when someone raises a partly opened window. Therefore, he would be found guilty.

#### **Larceny**

The unlawful taking and carrying away of personal property of another with the intent to deprive the owner of it is *larceny*. It is a legal term for stealing. In many states larceny is classified as *petty* or *grand*, depending on the value of the property taken. Petty larceny is a misdemeanor; grand larceny is a felony. In some states stealing property with a value of \$300 or less is a misdemeanor, while stealing property valued at more than \$300 is a felony. Shoplifting is a form of larceny.

#### **Embezzlement**

The crime of embezzlement is similar to larceny in that both are forms of stealing. It is the wrongful taking away of another's property by a person who has been entrusted with that property.





◀ Larceny and embezzlement are both forms of stealing. What crime would be committed if a cleaning person took valuables from a home she was cleaning?

**Example 4.** Virginia Waddell worked as a cashier in a supermarket. A customer bought some groceries and gave Waddell the money. Waddell put the money directly into her pocket instead of placing it in the cash register. She intended to steal the money. This was embezzlement because she was entrusted with the money (she had it rightfully) before she stole it.

## Robbery

The wrongful taking and carrying away of the personal property of another accompanied by violence or threats is the crime of **robbery**. It is usually defined by various state statutes. There is one main difference between larceny and robbery. In robbery there is a taking "from the person"; that is, from the body or close to the body of the victim, by the use of force, violence, or threats. In larceny this is not so.

**Example 5.** Suppose, in Example 4, that someone came into the store while Waddell was working as a cashier, pointed a gun at her, and demanded the money from the register drawer. This would be armed robbery because the robber has forcefully taken the money from Waddell's personal custody against her will.

The penalty for robbery is greater than for larceny. In one state, for example, the punishment for robbery (whether armed or unarmed) is "imprisonment in the state prison for life or for any term of years." In contrast, the punishment for grand larceny in this state is "imprisonment in the state prison for not more than five years or by a fine of not more than \$600 and imprisonment for not more than two years." The punishment for petty larceny is "imprisonment in jail for not more than one year or by fine of not more than \$300."

## Arson

Under common law, arson is defined as the willful and malicious burning of the dwelling house of another. Originally the law protected people rather than property, and, therefore, it required the building to be a dwelling place. Most states have kept the common law definition but have added statutes to cover other forms of arson, such as the burning of a building other than a dwelling house. Today, then, *arson* is the willful and

malicious burning of a house or other building. The scorching or blackening of a part of a building is not enough to be considered arson. Some portion of the building must actually have been on fire so that the wood or other building material is charred.

### ***Crimes Against Business Interests***

Crimes that involve business interests are often referred to as white-collar crimes. These crimes usually involve some sort of fraud or deceit and are nonviolent. Among them are larceny by false pretenses, forgery, bribery, and extortion. Today, crimes committed with computers can also be added to this list.

#### **Larceny by False Pretenses**

The taking of someone's money or property by intentionally deceiving that person is known as larceny by false pretenses, or fraud. The false statements that are made must be intended to mislead, or defraud, the victim. The statements must also induce the victim to rely on them. This crime is popularly called a con, and a person who makes her or his living from committing it is known as a con artist.

**Example 6.** Lin Hau owned and operated an appliance store. She frequently used the services of Next Day Deliveries. Dennis Joyce, the business manager for Next Day, always picked up Hau's check for services rendered on the first of the month. In March, Joyce showed as usual but told Hau that his boss had told him to collect this month's payment in cash because they were in the process of changing banks. Hau gave Joyce \$317 in cash. Hau later found out that Joyce had lied to her. Not only had he not received those instructions from his boss, but he had also been fired on February 7. Joyce had committed larceny by false pretenses.

▼Signing another person's name to a check is forgery. Would it also be forgery to sign someone else's name to a baseball card or other collectible object?



## Forgery

The false making or changing of a writing with the intent to defraud is known as forgery. The signing of another person's name without authority to a check or other document is forgery. Signing one's own name, pretending to be someone else of the same name, is also forgery. Similarly, creating a false identity, then signing the name of that false person in order to deceive, is considered forgery. For there to be a crime in these circumstances, there must be an intent to defraud or deceive. The forged item also must have some legal effect. Thus, it would not be fraud to write someone else's signature on a will that was never witnessed, because an unwitnessed will has no legal effect in many states.

## Bribery and Extortion

It is illegal to pay or give anything of value to public officials in order to influence their official activity. This is known as *bribery*. It is a crime at any level of government, whether federal, state, or local. The penalty for bribery at the federal level is a fine of not more than \$20,000 or three times the monetary equivalent of the bribe, whichever is greater, or imprisonment for not more than 15 years, or both.

In addition, the person taking the bribe may be disqualified from holding a federal office. It is not a defense to a charge of bribery to say that the intended receiver of the bribe rejected it. Moreover, if the intended receiver of the bribe actually takes that bribe, then he or she is guilty of accepting a bribe.

Extortion, under common law, is the unjust taking of money or a thing of value by a public official. Some states have extended the crime so that extortion now is defined as the taking of property by public officials or others which is not due. In extortion, the victim agrees to give up the money or property, but does so out of fear.

**Example 7.** Joseph Peluso, a member of the city council, told Miguel Rosa that Rosa would have to pay him \$2,000 if he wanted to keep the rubbish collection contract in that city for another year. In fear of losing the contract, Rosa paid Peluso the money. Later, when the crime was discovered, Peluso was convicted of extortion.

## Computer Crimes

In the opening vignette, Grace seems surprised that someone could commit a crime with a computer. Whenever new technology is developed, the law must make certain adjustments to accommodate that new technology. Such was the case years ago when the telephone, the automobile, the airplane, and the tape recorder were first introduced into our lives. Today the law must deal with changes brought on by the development of the computer. Like the other inventions mentioned above, the computer has helped make our lives easier. However, like those other inventions, it also has introduced a new technology that some people use to commit crimes.

## Defenses to Crimes

As we have just seen, all crimes have exact definitions in the law that are broken down into the elements of the act and the required mental state. Thus, a defense often used in criminal cases is the failure of the prosecution to prove one of those needed elements. The defenses seen most often include insanity, entrapment, self-defense, and defense of family members.

## Working in the Law

### Police Dispatcher

A police department depends on many people other than police officers. One such person is the police dispatcher. Police dispatchers work in the communications center of the police department. They complete a training program, set up by the police department, to learn how to use the Law Enforcement Automated Data System (LEADS). LEADS is a statewide and nationwide computer system that links law enforcement agencies throughout the country.

Dispatchers perform many duties such as typing and processing all reports and arrest cards, accepting and recording bond monies and fees, and speaking with the public. Their most important function is dispatching immediate service for all incoming calls for help or crime reports.

Most police agencies today use computers. When a call comes in, a dispatcher types

the information into a computer, reviews the information, and sends it to an available patrol car. This process is more involved in large cities where, besides patrol cars, police officers may travel by horse, motorcycle, boat, or helicopter. Also, in large cities the dispatcher must be in contact with ambulance services, rescue teams, fire departments, alarm systems, traffic control systems, and crime information systems.

It takes special people to become skillful dispatchers. They must be good at communicating with others, handling emergencies, and making quick decisions. In addition, they must be able to work under pressure, handle stress, use common sense, and remain patient.

1. Where do police dispatchers work? What are their duties?
2. What type of personality must dispatchers have?

### Insanity

Recall that a statute defines a crime in terms of the act and the required mental state. American law recognizes that persons cannot be held responsible for their actions if they do not know what they are doing. In addition, it serves no practical purpose to imprison someone who really ought to be under the care of mental health professionals. For these reasons, *insanity* is recognized as a valid defense to criminal conduct.

The ancient Hebrews, Greeks, and Romans recognized that insane people could not be held responsible for actions they could not control. The oldest legal test of insanity is the *M'Naghten Rule*, developed in England in 1843. Under this rule, it must be proved that, at the time the crime was committed, the defendant was suffering from a mental disease so serious that he or she did not know the nature of the act or did not know that the act was wrong. This test is still used in about two-fifths of the states.

The American Law Institute (ALI) has developed a more modern insanity test. Under its test, a person is not responsible if "as a result of mental disease or defect he or she lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." About three-fifths of the states follow the ALI test.

In the opening vignette, Ben seems to be under the impression that individuals who are found not guilty by reason of insanity are released immediately. As Legal Issue 4 suggests, such people do not automatically go free. Instead, they are committed to institutions and must undergo periodic psychiatric examinations. Once they are found to be sane, they may be released. Many people object to the fact that these individuals can

look forward to release without serving any time in prison. That is why several states have introduced the guilty but mentally ill plea. Under this plea, defendants are sentenced to prison for a specified number of years. First, they are institutionalized in a state hospital until they are cured. They are then returned to prison to serve their sentences.

### ***Entrapment***

If a law enforcement officer induces a law-abiding citizen to commit a crime, it may be used as a defense to excuse the defendant. This is known as the defense of entrapment. The person using the defense must show that the crime would not have been committed had it not been for the inducement of the officer. A defendant who would have committed the crime even without the involvement of the officer cannot use this defense.

**Example 8.** Several students have told Mrs. Martin that Grant, a known drug pusher, has offered to sell them some crack. When Mrs. Martin reports this to the police, they send out an undercover officer. After Grant tries to sell the officer some crack, she arrests him. Grant would not be able to use the defense of entrapment because he would have sold the crack regardless of the intervention of the police officer.

Contrast Grant's situation in Example 8 with Mr. Newman's case in the opening vignette. Suppose Mr. Newman is and always has been a completely law-abiding citizen. Nevertheless, he has fallen on hard times financially. What if an undercover police officer entices him into embezzling funds from the bank? Mr. Newman could then legitimately use the entrapment defense because, unlike Grant, Mr. Newman was not already involved in an illegal activity when contacted by the undercover officer.

### ***Self-Defense***

When persons have good reason to believe that they are in danger of serious injury or death, they can use force to protect themselves. This is known as self-defense. Except in one's own home, the person claiming self-defense must retreat, if possible, before resorting to force. When self-defense is used in a criminal case, the defendant must show that he or she was not the one who started the altercation in the first place. Moreover, in all situations, the person claiming the defense of self-defense must not have used more force than was necessary to stop the unprovoked attack.

### ***Defense of Family Members***

If a person uses force to rescue a family member who has been attacked, most states will not punish the rescuer. This is known as defense of family members. As in the case of self-defense, the rescuer must have good reason to believe that the victim was in danger of severe bodily injury or even death. Again, the rescuer need not retreat if the attack on the family member takes place in his or her own home.

**Example 9.** Mark returned home one evening to find his sister being attacked in their living room. He struck and injured his sister's assailant. Most states would allow Mark to use defense of family members to explain his actions.

## YOU And The LAW

*Are there prisons or jails in or near your community? What kinds of prisoners are kept in them? What are the living conditions in these institutions like?*

# Sentencing Convicted Criminals

Once a person has been convicted of a crime, he or she must be sentenced by the court. This means that the judge must decide on a **sentence**, or appropriate punishment. The law provides certain sentencing guidelines. Penalties under the law can include fines, imprisonment, and death.

## Fines

A fine is the payment of a specified amount of money as a penalty for committing a crime. Fines are a frequently used method of punishment when the crime is considered a lesser offense. However, fines are also used as a form of punishment for serious crimes. In many states, even the crime of murder carries a possible fine, along with other forms of punishment. Often a judge will levy a fine against a convicted criminal and also impose an imprisonment penalty.

## Imprisonment

When most people think about crime and punishment, they think of imprisonment. The states have different ways of handling the question of imprisonment. One way is to have the judges hand down indefinite or indeterminate sentences. A judge using this approach would sentence a criminal to a minimum and a maximum amount of time in jail. Thus, a prisoner might be sentenced to spend five to ten years behind bars. The offender knows he or she will be in prison for at least five years but not more than ten.

In contrast, the use of definite or determinate sentencing means that the judge hands down an exact number of years that the convicted criminal will have to spend in prison. Under this system the offender would know exactly how long he or she will spend in prison. When that time period has passed, the offender is set free. In both of these cases the time spent in prison might be lessened by the prisoner's good behavior.

Good behavior would not be a factor, however, if the statute under which the offender is sentenced calls for a mandatory sentence. Such a sentence would require that the offender spend a specified length of time in prison. The judge would have no power to alter that time period nor suspend, or cancel, that sentence.

## The Death Penalty

In 1972 the U.S. Supreme Court made an important decision on the death penalty. It held that the death penalty would be constitutional only if there were enough guidelines to ensure that people were treated fairly. It also held that juries and judges could not give out the death penalty whenever they wished.

After the 1972 Supreme Court decision, many states changed their death penalty laws. In general, the new death penalty laws provide for murder trials to go through three phases. In the first phase, the jury determines the guilt or innocence of the person. If the person is found guilty, the second phase, called the presentence hearing, takes place. In the presentence hearing, the judge or jury listens to lawyers' arguments and examines other evidence to help determine the punishment to be given. The state's laws must clearly set forth factors to be considered before deciding on the punishment. The third phase is an appeal to the state's highest court. Only when these three phases are complete, can the death penalty be applied.

## 2 Review



### Summary

Carefully read the summary below before completing the chapter review.

1. Crimes are classified as felonies or misdemeanors. A felony is a serious crime punishable by imprisonment or death. A misdemeanor is a less serious crime with a less severe penalty.
2. A crime is defined by two elements: (a) the criminal act and (b) the required mental state, that is, intent.
3. Each statute that defines a crime must specifically explain the conduct that is forbidden by that statute. The required mental state will also be specified in that statute or will be implied by other statutes elsewhere in the criminal code.
4. Crimes against people include murder, manslaughter, assault, battery, kidnapping, and rape.
5. Crimes against property include burglary, larceny, embezzlement, robbery, and arson.
6. Crimes against business interests include larceny by false pretenses, forgery, bribery, and extortion.
7. The defenses seen most often in criminal law cases are insanity, entrapment, self-defense, and defense of family members.
8. Convicted criminals can be sentenced to pay a fine or to serve a prison term. The death penalty has also been upheld as a constitutional penalty.



### Language of the Law

Choose the term from the list that best completes each sentence below. Then write the complete sentence on a separate sheet of paper.

assault  
murder  
robbery

misdemeanor  
burglary  
felony

sentence  
defendant

prosecutor  
crime

1. Performing an act that is prohibited by law is committing a(n) \_\_\_\_\_.
2. When a diamond necklace disappeared from a locked drawer, a salesperson was accused of grand larceny, which is a(n) \_\_\_\_\_.
3. When Phil's wife died from multiple knife wounds, Phil was accused of \_\_\_\_\_.
4. John accused Ray of \_\_\_\_\_ after Ray attempted to hit John with a baseball bat.
5. A witness who claimed to have seen Kathy commit the crime was brought in by the \_\_\_\_\_ to testify.

## Chapter 2 Review

6. A woman saw the prowler climbing out of Jackson's window with a sack in his hands; the prowler was charged with \_\_\_\_\_.
7. Helen was a victim of \_\_\_\_\_; a man pushed her down and stole her purse.
8. Larry wanted to impress his date, so although he didn't have a driver's license, he drove his dad's car. This was a(n) \_\_\_\_\_.
9. The \_\_\_\_\_ pleaded not guilty.
10. The defendant received a(n) \_\_\_\_\_ of ten years in prison when he was found guilty of kidnapping.



### Questions for Review

Answer the following questions. Refer to the chapter for additional reinforcement.

1. Who is always the plaintiff in a criminal case? Why?
2. What is the difference between a felony and a misdemeanor?
3. What are the two elements of a crime? Explain.
4. What four defenses are available to alleged criminals?
5. What distinguishes murder from manslaughter? First-degree murder from second-degree murder?
6. What is the felony murder rule?
7. What is the difference between robbery and burglary?
8. A person who uses force to rescue a family member who is the victim of an attack will not be prosecuted in most states. Why?
9. What are four examples of white-collar crimes?
10. Under new death penalty laws, trials go through three phases. What are these phases?



### Applying Critical Thinking Skills

Apply your understanding of the chapter concepts by answering the questions below.

1. How does a "guilty but mentally ill" plea differ from a "not guilty by reason of insanity" plea? What effects might the new plea have?
2. Don decides to break into a house to steal any jewelry and money he can find. He opens a side window and climbs through, but when he is confronted by a vicious dog, he retreats without taking anything. Did he commit a crime?
3. What is the distinction between second-degree murder and voluntary manslaughter?
4. A judge can hand down three kinds of sentences for criminals whose crimes are punishable by imprisonment. What are the three kinds of sentences? When might each be used?





### Applying Decision-Making Skills

Your best friend runs into your house, scared and out of breath. She asks you to hide her. The police believe she shoplifted some expensive books from the bookstore and they are chasing her. She claims she did not steal anything. What will you do? Why? What are the possible consequences of your actions?



### Cases in Point

For each of the following cases, give your decision and state a legal principle that applies:

1. Fred Wright is arrested for shoplifting. He asks his attorney to plead not guilty by reason of insanity. Wright believes that, if he is found not guilty by reason of insanity, he will be freed immediately. Is Wright correct? Why or why not?
2. Ben Feeney runs a pawn shop. He often takes stolen merchandise, selling it and splitting the profits with the thief. Lt. José Urena sends several undercover police officers to catch Feeney in the act of fencing the goods Urena believes to be stolen. When Feeney is on trial, he attempts to use the defense of entrapment. Will his entrapment defense work? Explain.
3. Lena Gorin gave her state representative \$1,500 in exchange for his promise to award her company a state contract. Was a crime committed? Explain.
4. Mel Falls was convicted of embezzlement. Under state law, the penalty for embezzlement is a mandatory five-year sentence. Falls believes that he can be released earlier for good behavior. Is he correct? Why or why not?



### Cases to Judge

In each case that follows, you be the judge.

1. Joseph E. Moore, who had a history of passing bad checks, went to court and legally changed his name to Daniel E. Moore. Later, he bought groceries with a \$20 check, which he signed "Joseph E. Moore." The check was returned marked "No account." Was this a forgery? Explain. *Moore v. Commonwealth*, 153 S.E.2d 231 (Virginia)
2. Michael's brother James lived in California. With James's permission, Michael procured a Texas driver's license that bore his own picture and address but James's name. James asked Michael to use the altered license to open a Texas bank account, representing himself to be James Price and showing the license as identification. Michael signed James's name on the signature card, then sent a book of checks to James. The checks were imprinted with James's name and Michael's Texas address. James drew 11 checks on the Texas account totaling \$28,500. There was not enough money in the account to cover any of the checks. Is James guilty of forgery? Why or why not? *United States v. Price*, 655 F.2d 958 (9th Circuit)