**Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Business Law**

**Chapter 2 - Criminal Law**

I. Classifications of Crimes

A. Who is Who?

1. Plaintiff - The state or federal government representing the

public at large. Civil act = tort law.

2. Prosecutor - The party who accuses the person of a crime

(usually the government).

3. Defendant - The person accused of a crime.

B. **Felonies**

1. Def. - A major crime punishable by imprisonment or death.

2. Examples

a. murder

b. manslaughter

c. burglary

d. robbery

e. arson

3. "Federal Comprehensive Crime Control Act" defines

felony as "any offense punishable by death or imprisonment for a term exceeding one year."

4. New Jersey uses the word *High Misdemeanor* in place of

the word *Felony.*

C. **Misdemeanors**

1. Def. - A less serious crime with a less severe penalty.

2. Requires a penalty such as a fine or imprisonment in a

county or city jail.

3. Examples:

a. Driving an auto without a license.

b. Lying about your age to purchase alcohol.

c. Leaving the scene of an auto accident

4. Minor Misdemeanors or Petty Offenses

a. Lesser crimes.

b. traffic offenses & parking violations

II. 3 Elements of a Crime

* Criminal Act
* Required State of Mind
* Motive

A. **Criminal Act** (1st Main Element of a Crime)

1. Each Statute defining an act must specifically explain

the conduct that is forbidden by the Statute.

*Example: "A Statute that makes stealing a crime*

*specifically prohibits the wrongful taking of another*

*person's personal property."*

2. Some Statutes make failure to act a crime

*Example: "A young man may fail to register for the*

*draft after reaching his 18th birthday."*

3. An act must involve voluntary conduct.

*Example: "Reflexes, convulsions, or movements*

*during hypnosis are involuntary and not considered*

*criminal conduct."*

4. A person cannot be accused of a crime if that accusation is

based on a person's status or condition.

*Example: "The government could not make it a crime*

*to be an alcoholic."*

B. **Required State of Mind** (2nd Major Element of a Crime)

1. Specified in the Statute that defines the crime.

2. A Statute defining murder forbids the intentional taking of a person's life. The required mental state is an *intent*.

3. In contrast, a Statute defining involuntary manslaughter

outlaws the accidental taking of a person's life through

negligence.

C. **Motive** (3rd Major Element of a Crime)

1. Motive plays **no** part in providing criminal liability.

2. Uncovering a motive may help establish a list of suspects.

3. Lack of motive does not remove criminal liability.

4. If a person has committed the forbidden act with the

required state of mind, he or she is criminally liable.

III. Particular Crimes

A. Crimes Against People

1. Homicide - the killing of one human being by another.

a. Justifiable Homicide - takes place when a police

officer kills a criminal in the line of duty or in

self-defense or when a soldier kills the enemy in

battle.

b. Excusable Homicide - when someone is killed by

accident and no one is at fault.

2. **Murder**

a. Def. - the unlawful killing of another human being

with *malice* *aforethought*. (evil **intent**)

b. First-Degree Murder

1) Also called aggravated murder.

2) Usually carries the death penalty.

3) One or more of the following circumstances

must occur.

a) Killing with premeditation (planning ahead).

b) Killing someone in a cruel way (torture).

c) Killing someone while committing a felony

(such as rape, robbery or kidnapping).

c. Second-Degree Murder

1) None of the above conditions apply.

2) No death penalty.

3. **Manslaughter**

a. Def. - Unlawful killing of another human being

*without* malice aforethought (evil intent).

b. There is no evil intent.

c. Voluntary Manslaughter

1) One person intends, at the time the act is

committed, to kill another but does so suddenly

and as a result of great personal distress.

2) The wrongdoer must have become very upset

before killing.

3) Example 1, pg. 24

d. Involuntary Manslaughter

1) When one person, while committing an unlawful

or reckless act, kills another.

2) There is no intent to kill.

3) Example 2, pg. 25

4. **Assault & Battery**

a. Battery - Unlawful touching of another person.

1) Requires criminal intent or reckless behavior.

2) Involves the forceful use of a person's hand,

knife, or gun against another.

3) Also involved:

a) Giving poison or drugs to an unsuspecting

victim.

b) Spitting in someone's face.

c) Siccing a dog on someone.

d) Kissing someone who does not want to

be kissed.

b. Assault

1) Def. - An *attempt* to commit battery.

2) Pointing or shooting a gun at someone; the bullet

striking the person is the battery.

c. Assault & Battery are generally Misdemeanors.

d. Aggravated Assault & Aggravated Battery

1) Must be committed: with a deadly weapon, with

the intent to murder, with the intent to commit

rape or with the intent to commit robbery.

2) Usually Felonies.

B. Sex Offenses

1. **Rape**

a. Ages of the offender doesn't matter with rape.

b. Statutory Rape - Applies to situations in which the

victim is under age.

1) Ages vary from state to state.

2) The younger the victim the more severe the

offense and penalty.

3) Consent does not matter.

c. Date Rape/Acquaintance Rape

2. **Sexual Assault**

a. Victims hurt physically and emotionally.

b. Very serious penalties, when the crime is committed

to a child under the age of 13, punishment = life in

prison.

C. **Crimes Against Property**

1. Burglary

a. Def. - The breaking (opening) and entering of a

dwelling house at night with the intent to commit

a felony.

b. Now also includes, during the day, entering a place

that is not a dwelling house, and with the intent to

commit a misdemeanor (new statutes).

c. If any part of the definition cannot be proven, the

defendant cannot be found guilty.

d. Example 3, pg. 26

2. Larceny (Stealing)

a. Def. - The unlawful taking and carrying away of

personal property of another with the intent to deprive

the owner of its larceny (shoplifting).

b. Petty Larceny

1) Usually a value of $300 or less.

2) Misdemeanor

3) Punishment: Imprisonment in jail for 1 year or

less or by a fine of $300 or less.

c. Grand Larceny

1) Usually more than $300.

2) Felony

3) Punishment: Imprisonment in the state prison for

5 years or less, or by a fine for $600 or less and

imprisonment for 2 years or less.

3. Embezzlement

a. A form of stealing (like larceny).

b. Def. - The wrongful taking of another person's

property by an individual who has been entrusted with

that property.

c. Example 4, pg. 27

4. **Rob**bery

a. Def. - the wrongful taking of someone else's personal

property accompanied by violence or threats.

b. Robbery is taking from the body of a person (or from

close to the body of a victim) using force, violence or

threats (unlike Larceny).

c. Penalty: Whether armed, or unarmed, imprisonment

in the state prison for life or for any term of years.

d. Example 5, pg. 27

5. Arson

a. Def. - The willful and malicious burning of a dwelling

house or other building.

b. Some part of the building must actually have been on

fire so that it is charred.

D. **Crimes Against Business Interests**

1. Larceny by False Pretenses (Fraud)

a. Taking of someone's money or property by intentionally deceiving that person.

b. The false statements must intend to mislead the victim

and the victim must rely upon them.

c. Often called a "con" by a "con artist."

d. Example 6, pg. 28

2. Forgery

a. The false making or changing of a document with the intent to defraud.

b. Signing another person's name and pretending to be

someone else.

c. The forged item must also have some legal effect.

d. What legally doesn't count: "Signing someone else's

name on a Will that hasn't been witnessed."

3. Bribery & Extortion

a. Bribery - Paying or giving anything of value to public

officials in order to influence their official activity.

1) A crime at any level of gov't.

2) Penalty: A fine less than $20,000 or 3 times the

amount of the bribe, whichever is greater) or

imprisonment for less than 15 years, or BOTH.

3) Person taking the bribe will lose their job.

b. Extortion - The unjust taking of money or a thing of

value by a public official.

1) The victim agrees to give up money or property

out of fear.

2) Example 7, pg. 29

4. Computer Crimes - When new technology is developed the

law must make certain adjustments to accommodate the

new technology.

IV. Defenses to Crimes

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* *Most common: "Failure of the prosecution to prove one of the needed elements."*
* **Criminal Act**
* **Required State of Mind**
* **Motive**
* *Defenses seen most often: insanity, entrapment, self-defense, and defense of family members.*

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A. Insanity

1. Insanity is recognized as a valid defense to criminal

conduct.

2. A statute defines a crime in terms of the act and the

required mental state.

3. American law states that persons cannot be held

responsible for their actions if they do not know what

they are doing.

4. American law believes that it serves no practical purpose to

imprison someone who really ought to be under the care of

mental health professionals.

5. Ancient Hebrews, Greeks and Romans recognized that

insane people could not be held responsible for actions they

cannot control.

6. The Oldest Legal Test of Insanity "M'Naghten Rule"

(1843 England)

a. It must be proved that, at the time the crime was

committed, the defendant was suffering from a

mental disease.

b. The mental disease must be so serious that he/she did

not know the nature of the act and did not know that

the act was wrong.

c. This test is still used in about 2/5 of the states.

7. More Modern Insanity Test by ALI

a. ALI - American Law Institute

b. A person is not responsible if "as a result of mental

disease or defect he/she lacks substantial capacity to

appreciate the criminality of his conduct or to conform

his conduct to the requirements of law."

c. About 3/5 of the states follow this test.

8. In the beginning Ben believes that individuals found not

guilty by reason of insanity are released immediately.

a. Such people do not automatically go free.

b. They are committed to institutions and must undergo

periodic psychiatric exams.

c. Once they are found to be sane they may be released.

1) Many people dislike this, how do you feel about

their release without serving prison time?

2) Several states have introduced the Guilty but

Mentally Ill Plea.

a) Defendants are sentenced to prison for a

specified number of years.

b) They are first institutionalized in a state

hospital until cured and then returned to

prison to serve their sentences.

B. Entrapment

1. If a law enforcement officer induces a law-abiding citizen

to commit a crime (defense).

2. The person using the defense must know that the crime

would not have been committed had it not been for the

inducement of the officer.

3. A defendant who would have committed the crime even

without the involvement of the officer cannot use

this defense.

4. Example 8, pg. 31

C. Self-Defense

1. When persons have good reason to believe that they are in

danger of serious injury or death, they can use force to protect themselves.

2. When using self-defense in a criminal case, the defendant

must show that he/she was not the one who started the

altercation in the first place.

3. The person claiming the defense of self-defense must not

have used more force than was necessary to stop the

unprovoked attack.

D. Defense of Family Members

1. If a person uses force to rescue a family member who has

been attacked, most states will not punish the rescuer.

2. The rescuer must have good reason to believe that the

victim was in danger of severe bodily injury or even death.

3. The rescuer need not retreat if the attack on the family

member takes place in his or her own home.

4. Example 9, pg. 31

V. Sentencing (Punishing) Convicted Criminals

A. Fines

1. The payment of a specified amount of money as a penalty

for committing a crime.

2. Frequently used method when crime is considered a lesser

offense.

3. Fines are also used as a form of punishment for serious

crimes.

a. In many states even the crime of murder carries a

possible fine along with other forms of punishment.

b. A judge will often levy a fine against a convicted

criminal and impose an imprisonment penalty.

B. Imprisonment

1. States have different ways of handling the question of

imprisonment.

a. A judge may hand down indefinite or indeterminate sentences (minimum and maximum amount of time in jail).

b. 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 (offender will know exactly how long they will be in prison).

c. Time may be lessened by good behavior.

1) Except when the statute under which the offender

is sentenced calls for a mandatory sentence.

2) A Mandatory Sentence requires that the offender

spend a specified amount of time in prison.

3) The Judge would have no power to alter the time

under a Mandatory Sentence.

C. The Death Penalty

1. In 1972:

a. The US Supreme Court held that the Death Penalty

would be Constitutional only if there were enough

guidelines to ensure that people were treated fairly.

b. It also held that the juries and judges could not give

out the death penalty whenever they wished.

2. After 1972:

a. Many states changed their death penalty laws.

b. The new laws provide for murder trials to go through

three phases.

3. The 3 Phases

a. Phase 1 - the jury determines the guilt or innocence of

the person.

b. Phase 2 - If the person is found guilty the pre-sentence

hearing takes place.

1) Here the judge or jury listens to the lawyers'

arguments and examines other evidence to help

determine the punishment to be given.

2) The states laws must clearly set forth factors to

be considered before deciding on the punishment.

c. Phase 3 - An appeal to the state's highest court.

d. Only when these three phases are complete, can the

death penalty be applied.