

## CHAPTER 3 Criminal Law

### Teaching Outline

#### I. Introduction (p.64)

#### II. The Nature and Purpose of Law (p.64)

- Laws can be a product of rule creation, a guide for people's behavior, or both.
- Laws regulate relationships between people and between parties, such as government agencies and individuals.

**Law:** A rule of conduct, generally found enacted in the form of a statute, that proscribes or mandates certain forms of behavior. (p.64)

**Statutory Law:** The written or codified law; "the law on the books," as enacted by a government body or agency having the power to make laws. (p.64)

**Penal Code:** The written, organized, and compiled form of the criminal laws of a jurisdiction. (p.64)

**Case Law:** The body of judicial precedent, historically built on legal reasoning and past interpretations of statutory laws, that serves as a guide to decision making, especially in the courts. (p.64)

**Common Law:** The body of law originating from usage and custom rather than from written statutes. The term refers to an unwritten body of judicial opinion, originally developed by English courts, that is based upon nonstatutory customs, traditions, and precedents that help guide judicial decision making. (p.65)

#### III. The Rule of Law (p.65)

- Society must be governed by established principles and codes.

**Rule of Law:** The maxim that an orderly society must be governed by established principles and known codes that are applied uniformly and fairly to all of its members. (p.65)

**Jurisprudence:** The philosophy of law. Also, the science and study of the law. (p.65)

#### IV. Types of Law (p.65)

##### A. Criminal Law (p. 66)

**Criminal Law:** The body of rules and regulations that define and specify the nature of and punishments for offenses of a public nature or for wrongs committed against the state or society. Also called *penal law*. (p.66)

B. Statutory Law (p. 66)

**Substantive Criminal Law:** The part of the law that defines crimes and specifies punishments. (p.66)

**Procedural Law:** The part of the law that specifies the methods to be used in enforcing substantive law. (p.66)

C. Civil Law (p.67)

- Civil law seeks compensation, not punishment.
- A violation of the civil law is not a crime.

**Civil Law:** The branch of modern law that governs relationships between parties. (p.67)

**Tort:** A wrongful act, damage or injury not involving a breach of contract. Also, a private or civil wrong or injury. (p.68)

D. Administrative Law (p.68)

- The body of regulations that have been created by governments to control the activities of industry, business, and individuals.

E. Case Law (p.68)

- Comes from judicial decisions and represents the accumulated wisdom of trial and appellate courts in civil, criminal, and administrative law cases over the years

**Precedent:** A legal principle that ensures that previous judicial decisions are authoritatively considered and incorporated into future cases. (p.68)

***Stare Decisis:*** The legal principle that requires that in subsequent cases on similar issues of law and fact, courts are bound by their own earlier decisions and by those of higher courts having jurisdiction over them. The term literally means “standing by decided matters.” (p.68)

V. General Categories of Crime (p.68)

A. Felonies (p.68)

**Felony:** A criminal offense punishable by death or by incarceration in a prison facility for at least one year. (p.68)

B. Misdemeanors (p. 68)

**Misdemeanor:** An offense punishable by incarceration, usually in a local confinement facility, for a period whose upper limit is prescribed by statute in a given jurisdiction, typically one year or less. (p.68)

### C. Offenses (p.70)

**Offense:** A violation of the criminal law. Also, in some jurisdictions, a minor crime, such as jaywalking, that is sometimes described as ticketable. (p.70)

**Infraction:** A minor violation of state statute or local ordinance punishable by a fine or other penalty or by a specified, usually limited, term of incarceration. (p.70)

### D. Treason and Espionage (p.70)

- Two crimes that are often regarded as the most serious of felonies

**Treason:** A U.S. citizen's actions to help a foreign government overthrow, make war against, or seriously injure the United States. Also, the attempt to overthrow the government of the society of which one is a member. (p.70)

**Espionage:** The "gathering, transmitting, or losing" of information related to the national defense in such a manner that the information becomes available to enemies of the United States and may be used to their advantage. (p.70)

### E. Inchoate Offenses (p.70)

**Inchoate Offense:** An offense not yet completed. Also, an offense that consists of an action or conduct that is a step toward the intended commission of another offense. (p.70)

#### Instructional Cue

Discuss how the seriousness of a particular crime, as determined by the degree of punishment, can change over time. Drunk driving is a good example. Changes in the seriousness of drug crimes are another good example.

## VI. General Features of Crime (p.7-)

### A. The Criminal Act (*Actus Reus*) (p.71)

***Actus Reus:*** An act in violation of the law. Also, a guilty act. (p.71)

### B. A Guilty Mind (*Mens Rea*) (p.72)

***Mens Rea:*** The state of mind that accompanies a criminal act. Also, a guilty mind. (p.72)

\*Emphasize that *mens rea* is not the same as motive.\*

1. Reckless Behavior and Criminal Negligence (p.72)

**Reckless Behavior:** An activity that increases the risk of harm. (p.72)

**Criminal Negligence:** A behavior in which a person fails to reasonably perceive substantial and unjustifiable risks of dangerous consequences. (p.73)

**Motive:** A person's reason for committing a crime. (p.73)

2. Strict Liability (p.73)

**Strict Liability:** A liability without fault or intention. Strict liability offenses do not require *mens rea*. (p.73)

C. Concurrence (p.73)

**Concurrence:** The coexistence of (1) an act in violation of the law and (2) a culpable mental state. (p.73)

D. Other Features of Crime (p.74)

1. Causation (p.74)

- The concurrence of a guilty mind and a criminal act may produce or cause harm.

**Legal Cause:** A legally recognizable cause. A legal cause must be demonstrated in court in order to hold an individual criminally liable for causing harm. (p.74)

2. Harm (p.74)

- A harm occurs in any crime, but not all harms are crimes.

3. Legality (p.74)

- A behavior cannot be criminal if no law exists that defines it as such.

***Ex post facto*:** Latin for "after the fact." The Constitution prohibits the enactment of *ex post facto* laws, which make acts committed before the laws in question were passed punishable as crimes. (p. 75)

4. Punishment (p.75)

- Punishment needs to be specified for a crime to exist.

5. Necessary Attendant Circumstances (p.75)

**Attendant Circumstances:** The facts surrounding an event. (p.75)

Instructional Cue

After describing the various features of crime, you can help students understand that there can be no crime unless all the features are present by describing a courtroom situation in which a prosecutor proves each element of a specific offense.

## VII. Elements of a Specific Criminal Offense (p.75)

**Element (of a crime):** In a specific crime, one of the essential features of that crime, as specified by law or statute. (p.75)

### A. The Example of Murder (p.75)

- Murder involves four distinct elements:
  1. An unlawful killing
  2. Of a human being
  3. Intentionally
  4. With planning (or “malice aforethought”)

### B. The *Corpus Delicti* of a Crime (p.76)

***Corpus Delicti:*** The facts that show that a crime has occurred. The term literally means “the body of the crime.” (p.76)

## VIII. Types of Defenses to a Criminal Charge (p.77)

**Defense (to a criminal charge):** The evidence and arguments offered by a defendant and his or her attorney to show why the defendant should not be held liable for a criminal charge. (p.77)

### A. Alibi (p.78)

- An alibi differs from all other defenses because it denies that the defendant committed the act in question, and is based on the idea that the defendant is truly innocent.

**Alibi:** A statement or contention by an individual charged with a crime that he or she was so distant when the crime was committed, or so engaged in other provable activities, that his or her participation in commission of that crime was impossible. (p.78)

### B. Justifications (p.78)

- A justification is offered as a choice between two evils.

**Justification:** A legal defense in which the defendant admits to committing the act in question but claims it was necessary in order to avoid some greater evil. (p.78)

**Excuse:** A legal defense in which the defendant claims that some personal condition or circumstance at the time of the act was such that he or she should not be held accountable under the criminal law. (p.78)

**Procedural Defense:** A defense that claims that the defendant was in some significant way discriminated against in the justice process or that some important aspect of official procedure was not properly followed in the investigation or prosecution of the crime charged. (p.78)

### Instructional Cue

Explain the defense attorney's role in proving the existence of a criminal defense. Explain that a defense to a criminal charge does not necessarily mean that a person denies committing the act in question. Use self-defense as an example of how one person can kill another and still be found not guilty.

**Islamic Law:** A system of laws, operative in some Arab countries, based on the Muslim religion and especially the holy book of Islam, the Koran. (p.78)

**Hudud Crime:** A serious violation of Islamic law that is regarded as an offense against God. (p.78)

**Tazir Crime:** A minor violation of Islamic law that is regarded as an offense against society, not God. (p.78)

#### 1. Self-Defense (p.80)

**Self-Defense:** The protection of oneself or of one's property from unlawful injury or from the immediate risk of unlawful injury. Also, the justification that the person who committed an act that would otherwise constitute an offense reasonably believed that the act was necessary to protect self or property from immediate danger. (p.80)

**Reasonable Force:** A degree of force that is appropriate in a given situation and is not excessive. Also, the minimum degree of force necessary to protect oneself, one's property, a third party, or the property of another in the face of a substantial threat. (p.80)

#### 2. Defense of Others (p.80)

- The use of force to defend oneself has generally been extended to permit the use of reasonable force to defend others who are or who appear to be in imminent danger.

**Alter Ego Rule:** In some jurisdictions, a rule of law that holds that a person can only defend a third party under circumstances and only to the degree that the third party could act on his or her own behalf. (p.80)

#### 3. Defense of Home and Property (p.81)

- In most jurisdictions, a property owner can justifiably use reasonable non-deadly force to prevent others from unlawfully taking or damaging it.

#### 4. Necessity (p.81)

- The claim that some illegal action took place to prevent greater harm.

#### 5. Consent (p.82)

- Harm was done after permission was given for the behavior.

6. Resisting Unlawful Arrest (p.82)

- Resistance to arrest might be justifiable if excessive force is used.

C. Excuses (p. 82)

1. Duress (p.82)

- Any unlawful threat or coercion used to induce another to act or not to act.

2. Age (p.82)

- Based on the belief that children under a certain age cannot reason logically.

3. Mistake (p.83)

- Mistake of law or mistake of fact.

4. Involuntary Intoxication (p.83)

- If tricked into intoxication, not voluntarily.

5. Unconsciousness (p.83)

- An individual cannot be held responsible for anything he or she does while unconscious.

6. Provocation (p.83)

- A person can be emotionally enraged and strike out at the tormentor.

7. Insanity (p.84)

**Insanity Defense:** A legal defense based on claims of mental illness or mental incapacity. (p.84)

a. The M’Naghten Rule (p.84)

**M’Naghten Rule:** A rule for determining insanity that asks whether the defendant knew what he or she was doing or whether the defendant knew that what he or she was doing was wrong. (p.84)

b. Irresistible Impulse (p.84)

- Defense where there is an inability to stop the action, even though known to be wrong.

c. The Durham Rule (p.85)

- A person cannot be responsible if the behavior is the result of mental disease or defect.

d. The Substantial Capacity Test (p.85)

- Defines insanity as a lack of capacity to control behavior.

- e. The Brawner rule (p.86)
  - Insanity is determined by the jury.
- f. The Insanity Defense and Social Reaction (p.86)
  - Montana, Idaho and Utah have banned the use of the insanity defense.
- g. Guilty but Mentally Ill (p.86)

**Guilty But Mentally Ill (GBMI):** A verdict, equivalent to a finding of “guilty,” that establishes that the defendant, although mentally ill, was in sufficient possession of his or her faculties to be morally blameworthy for his or her acts. (p.86)

- h. Temporary Insanity (p.86)
  - The offender claims to be insane only at the time of the offense.
- i. The Insanity Defense under Federal Law (p.87)
  - Needs proof of “severe mental disease or defect.”
- j. Consequences of an Insanity Ruling (p.87)
  - After a verdict of NGBI, the judge may order the defendant to undergo psychiatric treatment until cured.
  - Such a sentence may result in more time spent in an institution than would have been spent in a prison.

#### 8. Diminished Capacity (p.87)

**Diminished Capacity:** A defense based on claims of a mental condition that may be insufficient to exonerate the defendant of guilt but that may be relevant to specific mental elements of certain crimes or degrees of crime. (p.87)

#### 9. Mental Incompetence (p.88)

**Incompetent to Stand Trial:** In criminal proceedings, a finding by a court that as a result of mental illness, defect, or disability, a defendant is incapable of understanding the nature of the charges and proceedings against him or her, of consulting with an attorney, or of aiding in his or her own defense. (p.82)

#### D. Procedural Defenses (p.88)

##### 1. Entrapment (p.88)

**Entrapment:** An improper or illegal inducement to crime by agents of law enforcement. Also, a defense that may be raised when such inducements have occurred. (p.88)

##### 2. Double Jeopardy (p.88)

**Double Jeopardy:** A common law and constitutional prohibition against a second trial for the same offense. (p.88)



3. *Collateral Estoppel* (p.89)

- Similar to double jeopardy but applies to facts that have been determined by a “valid and final judgment.”

4. Selective Prosecution (p.89)

- Based on the 14<sup>th</sup> Amendment’s guarantee of equal protection of the laws.

5. Denial of a Speedy Trial (p.89)

- The right to a speedy trial is guaranteed by the 6<sup>th</sup> Amendment.

6. Prosecutorial Misconduct (p.89)

- Actions undertaken by prosecutors that give the government an unfair advantage or prejudice the rights of a defendant or witness.

7. Police Fraud (p.90)

- Available to defendants victimized by the police through planted evidence, the fabrication of “facts” uncovered during police investigations, and false arrests.

### **Learning Activities Utilizing the World Wide Web**

The following are presented as instructor led activities, to be used in a classroom with online access.

Prior to class, visit <http://dictionary.law.com/>. Enter each of the key concepts found in Chapter 3 into the dictionary. Prepare slides for classroom projection which show the definitions from law.com and the textbook side by side. Ask your students to discuss what differences exist in the two definitions.

Visit the website for the *National Law Journal* (<http://www.nlj.com>) or one other major industry legal publication. Display each site to the class and discuss with your students the various issues that are highlighted on each site.

Other websites for organizations and agencies related to the material in Chapter 3 include:

The United States Code <http://www.law.cornell.edu/uscode>

WashLaw Web <http://www.washlaw.edu>

International Centre for Criminal Law Reform and Criminal Justice Policy  
<http://www.icclr.law.ubc.ca>

USDOJ: Office of the Attorney General <http://www.usdoj.gov/ag>

American Bar Association Criminal Justice Section

<http://www.abanet.org/crimjust/home.html>

Legal Law Help

<http://www.legallawhelp.com/>