

CHAPTER 9

LEGAL AND SOCIAL DIMENSIONS OF PROPERTY AND COMPUTER CRIMES

CHAPTER OUTLINE

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LECTURE OUTLINE

I. Introduction

Discuss why, in the opening case scenario, the accused could be convicted of theft.

II. Theft

Theft is depriving another of property. At common law, the offense was referred to as larceny, or the wrongful taking and carrying away of personal property of another, with the intent of converting to one's own use. It only covered personal property, and did not include misrepresentation or misappropriation to acquire property as criminal behavior.

Theft is a specific intent crime, meaning the intent is to specifically deprive the owner of property permanently or for an unreasonable period of time. Discuss elements of offense, especially the *mens rea*, which may be different than intent or purpose. Some jurisdictions only require the requisite mental state as when a person knowingly acquires property with the intent of depriving another.

A. Larceny

Larceny is a crime against possession, not ownership. Thus, one could commit the crime of larceny against the thief who stole that property. At common law it required the elements of 1) trespassory taking, 2) carrying away 3) personal property of another, 4) with the intent to steal. Grand larceny, as defined by statute, involves property of a certain value, or special property that has intrinsic value above its actual value (e.g., firearms, license plates, blank checks).

Trespassory taking consisted of exercising dominion and control over property without the consent of the person in possession. Carrying away, or asportation (distinguished from kidnapping) was required to as a means of assuring the intent to exercise dominion and control over the property. (Discuss the concept of "breaking the bulk" by the carrier of goods in transit. The property must be of another, and done with the specific intent to deprive that person of the property.)

B. Embezzlement

The fraudulent conversion of personal property of another after the defendant has obtained the property by lawful means. Once in possession of the property, the defendant converts the property by selling it, damaging it, or withholding possession from the true owner. The crime is distinguished from larceny in that the specific intent is not formed until after the defendant has lawfully obtained possession of the property.

C. False Pretenses

Here, the transfer of possession is obtained by misrepresentation, fraud, or deception. The false representation is of a material fact, past or present, that causes the owner of the property to pass title to the defendant.

D. Forgery

This crime generally involves a written instrument that is altered by the defendant with the purpose to defraud. Purpose and intent mean the same thing. The forgery offense includes a false writing or signature, or a writing signed without authority, or the passing or uttering of a false or forged document purporting it to be genuine. The statute will generally define what a writing is, but it is usually broad enough to include any document that is altered from its original condition. Discuss how even the smallest alteration, such as changing the number “10” on a prescription to a “40” constitutes the crime of forgery.

E. Receiving Stolen Property

This crime involves the receiving of property when the receiver has knowledge that the property is stolen, with the intent of depriving the owner of that property. Many statutes add in language such as, when the receiver knew or should have known the property was stolen. Give examples, such as the man selling expensive watches on the street corner for a fraction of their actual value. The receiver in this case “should have known” the property was stolen.

F. Robbery

Robbery is a theft offense that is perpetrated by force or the threat of force. It must be property that is in possession or within the victim’s ability to touch, observe, or control. The force necessary to commit the crime is that force necessary to overcome the will of the victim, including intimidation. More serious degrees of robbery may occur when the offender uses a firearm or causes serious bodily harm in the commission of the offense. Many jurisdictions include that the use of force occurring immediately after the commission of the offense is sufficient to constitute a robbery offense.

G. Extortion

At common law, this crime involved the corrupt collection or attempt to collect a fee by a public official. In the modern crime of extortion, property is obtained by the threat of future violence (contrasted with robbery that occurs with violence, force, or threat at the time or immediately after the theft). A form of extortion is blackmail, which consists of a threat to disclose a crime or other information about the victim that would put that person in danger of public disgrace.

H. Identity Theft – A New Type of Theft

This is quickly becoming a widespread issue in today's society that is difficult for law enforcement to prevent, detect, and prosecute. It entails the unauthorized use of another person's personal information to obtain property, money, or services with that person's identity with the intent of avoiding payment.

III. Consolidation of Theft Crimes

Modern statutes tend to merge most crimes involving the wrongful acquisition of another's property into one theft crime of different degrees. The different degrees will generally depend upon the value, amount, type, and characteristics of the property, whether the offender has previously been convicted of a theft offense, and some jurisdictions even enhance the degree of the offense if it involves a particular class of persons (e.g., a victim over 65 years of age).

Grading of Theft Crimes

Theft crimes are often graded by the values of the property that was stolen or embezzled. Theft statutes may also grade offenses by the nature of the property stolen.

IV. Burglary

At common law, burglary was the breaking and entering of the dwelling of another, in the night time, with the specific intent to commit a felony therein. Most modern statutes eliminate the night time requirement, and have modified the requirement that there be a breaking. Some statutes even include buildings other than dwellings, such as any house, apartment, hotel room, etc., and include things such as businesses and automobiles. The common theme in these protected places is that someone is present or likely to be present.

The breaking requirement was to protect the sanctity of a closed home, and it was a breaking to open an unlocked door or window, but not entering through an open door or partially opened window. The forced opening, even turning of a doorknob is sufficient.

Generally, a person who enters with permission cannot be charged with a burglary. The reason is that the breaking must be a trespass, and actual or constructive entry is required, even with minimal intrusion (opening the window and reaching through to steal a purse). Many jurisdictions have held that the initially lawful entry may change in the event a person forms the intent to commit a crime once inside. The status of such person then

ripens into one of a trespasser and the lawful entry now entails an unlawful purpose by that person.

Discuss with students the philosophy of the courts and the interest protected by the law. (E.g., an outside worker is given permission to use an inside bathroom, but chooses to wander into another room and steal something. The social guest is found in the host's bedroom, going through dresser drawers.)

Criminal trespass is a lesser included offense of burglary. In other words, as statutorily defined, an offender cannot commit a burglary without also committing the lesser offense, that of criminal trespass. Criminal trespass is entering or remaining on the land or premises of another without consent or beyond the scope of the express consent granted.

Statutory burglary not only broadens the category of places protected beyond dwellings, it also may include the element of intent to commit a felony, a theft offense, any offense, or even the act itself (e.g., the voyeur who comes in and watches someone sleep) may constitute a burglary. The intended crime does not need to be completed; hence, the offender found inside with goods stacked up by the door has committed the elements required of the burglary charge.

V. Arson

This was a common law felony that entailed the malicious burning of the dwelling of another. As with other common law felonies, the punishment was death. The malice required was an intent to burn the dwelling of another. The slightest ignition is sufficient, and there does not need to be extensive destruction to constitute an arson. Modern statutes expand the concept of what the crime entails to include any structure, building, vehicle and even personal property. As defined by statute, the elements may vary and change the degree of the arson offense.

VI. Computer and High-Technology Crimes

Those offenses that cannot be committed without a computer are considered computer crimes. Because the use of the computer is generally directed at violating traditional laws, early prosecutions consisted of crimes of theft, embezzlement, and fraud perpetrated with the use of a computer.

A. Early Computer Crime Cases

Crime perpetrated with the use of a computer often fell short of the required statutory elements to prove an offense. Unless the crime involved the commission of a traditional offense, there was no criminal liability. The early statutes in the federal system involving wire and mail fraud were used to prosecute offenses perpetrated with the use of a computer.

B. Computer Crime Laws

Every state and the federal government now have statutes related to computer crime. Those crimes aim at targeting those areas of wrongdoing that are non-traditional in the sense that the offense could not be committed without a computer. (E.g., unauthorized access into data systems.)

C. Types of Computer Crimes

The modern term is cybercrime, which is committed through the use of a computer. Those offenses generally entail computer fraud, computer trespass, theft of computer services, personal trespass by computer, and laws against computer viruses, also known as computer tampering.

D. Federal Cybercrime Enforcement Agencies

A number of federal and state law enforcement agencies now are involved in the enforcement of computer crime offenses through the pro-active detection, apprehension, and prosecution of offenders.

E. Internet-Based Crime

The internet has provided the opportunity to commit traditionally based offenses, such as theft and fraud, but it has also served as the vehicle through which child solicitation and enticement offenses may occur, as well as providing the possibility of procuring and disseminating child pornography.

STUDENT ACTIVITIES

1. Theft offenses usually have the same criminal mental state defined in most state statutes, which is the purpose and intent to deprive another of property. Have students research the state code to determine how many different degrees of theft exist and how those different offenses are distinguishable (e.g., amount, value, prior theft offenses, special property, and other enhancements).

REFERENCES AND RESOURCES

1. Financial Crimes Enforcement Network (FCEN). Sponsored by the U.S. Treasury Department, this site focuses on following laundered money from criminal enterprises:

www.fincen.gov

2. Computer Crime and Intellectual Property, U.S. Department of Justice. This U.S. government site provides information about computer crimes, with sections on policies, cases, laws and documents. Information is included on how to report computer crimes, and a newsletter is available through the site:

www.cybercrime.gov

3. Identity theft website by the U.S. government provides information about identity theft, and contains the strategic plan of the President's Identity Theft Task Force:

www.idtheft.gov

CHAPTER 10

OFFENSES AGAINST PUBLIC ORDER AND THE ADMINISTRATION OF JUSTICE

CHAPTER OUTLINE

I. Introduction

II. Crimes Against Public Order

A. Breach of Peace and Disorderly Conduct