

Crimes

- Wrongs against society
 - Criminal law punishes wrongdoers who affect the ownership of property
 - Federal and state penal codes define criminal acts and omissions
- **White-collar crime:** Any illegal offense that occurs in a business or professional setting
 - Committed to harm the business or for personal gains

Table 13.1 - Examples of White-Collar Crimes

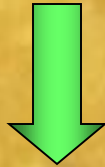
Accounting fraud
Bankruptcy fraud
Bribery
Conspiracy
Counterfeiting
Embezzlement
False statements

Forgery
Income tax evasion
Insider trading
Kickbacks
Larceny
Mail fraud
Money laundering

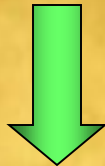
Obstruction of justice
Price fixing
Racketeering
Securities fraud
Wire fraud

Classification of Crime

Felony



Indictment
Grand Jury



Fine Or
Imprisonment

Misdemeanor



Information
Gov't Charge



Fine Or
Jail < 1 yr.

Basic Concepts

Crime

Intent



**Willfully
Or
Knowingly**

Pleas in Criminal Cases

Guilty

Not Guilty

**Nolo Contendere
("no contest")**

Criminal conviction may be basis for civil damages suit

Grand Jury

- Fifth Amendment to the U.S. Constitution
 - Before a trial, there must be presentment or an indictment by a grand jury
- Comprises of 23 citizens
- Determine **probable cause**
 - **Presumption of innocence:** Presuming that an indicted person is innocent until found guilty by a petit jury
- Serve as an investigative body
- Functioning depends upon the secrecy of the proceedings

pop pop pop

QUIZQUIZQUIZ

Crimes punishable by imprisonment for one year or more are called _____.

- a. Misdemeanors**
- b. Criminal indiscretions**
- c. Felonies**
- d. Indictments**

Bill of Rights

- First ten amendments to the Constitution
 - Referred as civil liberties
- Protects individuals from the power of government
 - Includes persons accused of crimes
- Protects businesses from excessive regulation

Fourth Amendment

- Protects individuals and corporations from unreasonable searches and seizures by the government
 - Requires the police to obtain a **search warrant**
- Extends to certain civil matters
- **Expectation of privacy**
 - Warrantless inspection of:
 - Commercial premises is reasonable
 - A private residence is unconstitutional

Case 13.1 - Search Warrant

➤ Case

- Riley v. California
- 573 U.S. ___ (2014)
- Supreme Court

➤ Issue

- Riley was stopped for a traffic violation which led to his arrest on weapons charges
- Plaintiff moved to suppress the evidence obtained from his cell phone
 - Trial court denied the motion

Fifth Amendment: Protection Against Self-incrimination

- Protects the accused from being compelled to testify against self
- Does not protect:
 - Against being required to produce physical evidence
 - A person who is required to produce business records
 - Corporations
 - Exception - Sole proprietorship business

Fifth Amendment: Double Jeopardy

- Individuals cannot be tried twice by the same governmental entity for the same crime
- Does not prevent two prosecutions
- Doctrine of *res judicata*
 - Prohibits subsequent civil actions involving the same parties, claims or causes of action

Sixth Amendment

- Provides multiple protections that offer the right to:
 - Speedy and public trial
 - Trial by jury
 - Be informed of the charge against oneself
 - Confront the accuser
 - Subpoena witnesses in one's favor
 - Have the assistance of an attorney

think think think

TANK TANK TANK

**When corporations are charged with
crime, corporate officers can also be
criminally charged**

- a. True**
- b. False**

think think think

TANK TANK TANK

Employees of certain industry do not have Fourth Amendment protections because of public policy considerations

- a. True**
- b. False**

Fraud

- Creates criminal liability
- Actionable under state criminal codes
- Fines and/or imprisonment are exerted on individuals who knowingly and willfully defraud another
 - **Scheme to defraud:** Plan designed to take from a person the tangible right of honest services

Mail and Wire Fraud

- Unlawful to use the U.S. Postal Service or electronic means of interstate communication to defraud someone
- Statutory penalties involve fines and up to 20 years in prison
 - Prosecutors must prove the accused used the mail or wire communication

Legal Aspects of Mail and Wire Fraud

- Material fact is vital to a reasonable person in determining whether to engage in a particular transaction
 - **Intent to defraud:** To act knowingly and with the specific intent to deceive someone
 - **Good faith**
 - Expression of an honestly held opinion or a belief which does not have fraudulent intent even though the opinion is erroneous or the belief is mistaken

Case 13.2 - Honest Services

➤ Case

- Skilling v. United States
- 130 S. Ct. 2896 (2010)
- Supreme Court

➤ Issue

- Defendant, the former chief executive officer of Enron Corporation, was convicted of conspiracy, securities fraud, and insider trading
 - The United States Court of Appeals affirmed defendant's convictions

Securities Fraud and Health Care Fraud

- Securities fraud
 - Securities Exchange Act and rule 10(b)5 of the Securities and Exchange Commission
 - Cover fraud in purchase or sale of a security
- Health care fraud
 - Prosecution of false claims under the False Claims Act
 - Investigations are aided by information revealed by whistleblower suits

Counterfeiting and Bankruptcy Fraud

- Counterfeiting
 - Use of counterfeit access devices to initiate transfer of funds is outlawed
 - Use of an unauthorized access device is prohibited
- Bankruptcy fraud - Proceeding conducted in federal courts
 - **Bankruptcy crimes**
 - Certain conduct by the debtors, creditors, and others that are said to be a crime as per the U.S Code
 - **Concealment**
 - Fraudulent if done with intent to deceive or cheat any creditor, trustee, or bankruptcy judge

Conspiracy

- Agreement or a partnership for criminal purposes
 - Each member becomes the agent or partner of every other member
- An offence occurs when one makes a conspiracy agreement and commits an overt act
 - **Overt act:** Any event knowingly committed by a conspirator to accomplish some object of conspiracy
- Circumstantial evidence can prove conspiracy

Obstruction of Justice

- Commission of an act with the intent to obstruct legislative or judicial process
- Laws are designed to protect the integrity of:
 - Legislative and judicial proceedings
 - Proceedings before federal departments or agencies

False Statement to a Bank

- Law aims to protect banks and ensure the accuracy of financial information
- A statement or report is false if it:
 - Relates to a material fact and is untrue
 - Is known to be untrue by the person making it

False Statement to a Federal Agency

- False statement must be related to a material matter
- Defendant must act willfully and with knowledge of the falsity
- **Exculpatory no**
 - Exception that protects an individual when the person's statement denies criminal wrongdoing

Larceny

Robbery

Burglary

Embezzlement

Racketeer Influenced and Corrupt Organizations Act (RICO)

- Imposes criminal and civil liability on businesspersons who engage in prohibited activities and interstate commerce
 - Includes proof of **pattern of racketeering** activity or collection of an unlawful debt
 - **Racketeering**: Any act or threat involving specified state law crimes and federal offenses

Cyber Crime

- Person who intentionally accesses a computer without authorization or exceeds authorized access to obtain classified, restricted, or protected data, is subject to criminal prosecution
 - Electronic theft - Hackers steal money, trade secrets, personnel records, and customer lists
 - Identity theft

Endangering Workers

- Reckless activities of corporate officials endanger workers resulting in injury or death
 - Appropriate remedy is to be offered through the workers' compensation system
 - Employers have to warn employees of life-threatening hazards in the workplace
- Occupational Safety and Health Administration (OSHA)
 - Brings actions against businesses for violation of health and safety standards

Aiding and Abetting

- Federal charge
 - Person acting under the direction of someone accused of criminal activities can be held responsible
 - Allegations indict persons only minimally involved with the actual crime
- **Accessory:** State level charge
 - Person can be an accessory before or after the crime is committed

Bribery and Kickbacks

- Bribery of a public official is illegal under federal law
- Sports Bribery Program
 - Helps college and professional sporting associations
 - Investigates violations of federal statutes related to gambling and corruption
- **Kickbacks:** Payments made to a person who facilitated a transaction

Sentencing Guidelines

- Purpose
 - To make the criminal system more just
 - To ensure similar crimes receive similar sentences
- Advisory in nature
- Federal judges are free to decide the duration of the sentences
- Special guidelines are available for sentencing organizations
 - Include both punishment and deterrence

Trends

- Increase in prosecution of white-collar criminals and legislative efforts to protect the public from fraud
 - Sarbanes-Oxley Act
- Investigation of illegal activities by top management
 - Plea bargaining with mid-level employees in exchange for testimony against top-level employees
- Prosecutors capitalize on high-profile prosecutions