

PEARSON NEW INTERNATIONAL EDITION

**The Legal Environment of Business
and Online Commerce**
Henry R. Cheeseman
Seventh Edition



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property—including tangible property, trade secrets, computer programs, and other business property—is subject to larceny. Neither the use of force nor the entry of a building is required.

Examples Stealing automobiles and stealing XM satellite radios from automobiles are considered larcenies.

Some states distinguish between grand larceny and petit larceny. This distinction depends on the value of the property taken.

Theft

Some states have dropped the distinction among the crimes of robbery, burglary, and larceny. Instead, these states group these crimes under the general crime of **theft**. Most of these states distinguish between grand theft and petit theft. The distinction depends on the value of the property taken.

Receiving Stolen Property

It is a crime for a person to (1) knowingly **receive stolen property** and (2) intend to deprive the rightful owner of that property. Knowledge and intent can be inferred from the circumstances. The stolen property can be any tangible property (e.g., personal property, money, negotiable instruments, stock certificates).

Example David is walking down the street and is approached by a man who offers to sell David a Rolex watch “at a cheap price.” David looks at the twenty Rolex watches that the man has, chooses one that would normally sell in a retail store for \$1,000, and pays \$200 for it. It is an actual Rolex. David is guilty of the crime of receiving stolen property because it could easily be proven by circumstantial evidence that he had knowledge that the watch was stolen property.

Arson

In common law, **arson** is defined as the malicious or willful burning of the dwelling of another person. Modern penal codes have expanded this definition to include the burning of all types of private, commercial, and public buildings.

Examples An owner of a motel burns down the motel to collect fire insurance proceeds. The owner is guilty of the crime of arson. In this case, the insurance company does not have to pay the proceeds of any insurance policy on the burned property to the arsonist-owner. On the other hand, if a third-party arsonist burned down the motel without the knowledge or assistance of the owner, the third party is the arsonist, and the owner is entitled to recover the proceeds of any fire insurance he had on the property.

Business and White-Collar Crimes

Certain types of crimes are prone to being committed by businesspersons. These crimes are often referred to as **white-collar crimes**. Such crimes usually involve cunning and deceit rather than physical force. Many of the most important white-collar crimes are discussed in the paragraphs that follow.

Forgery

The crime of **forgery** occurs if a written document is fraudulently made or altered and that change affects the legal liability of another person. Counterfeiting, falsifying public records, and materially altering legal documents are examples of forgery.

receiving stolen property

A crime that involves (1) knowingly receiving stolen property and (2) intending to deprive the rightful owner of that property.

arson

The willful or malicious burning of a building.

white-collar crime

A type of crime that is prone to being committed by businesspersons.

forgery

The fraudulent making or alteration of a written document that affects the legal liability of another person.

Criminal Law and Cyber Crimes

Example Signing another person's signature to a check or changing the amount of a check without the owner's permission is forgery.

Note that signing another person's signature without intent to defraud is not forgery.

Example Forgery has not been committed if one spouse signs the other spouse's payroll check for deposit in a joint checking or savings account at the bank.

Embezzlement

embezzlement

The fraudulent conversion of property by a person to whom that property was entrusted.

The crime of **embezzlement** is the fraudulent conversion of property by a person to whom that property was entrusted. Typically, embezzlement is committed by an employer's employees, agents, or representatives (e.g., accountants, lawyers, trust officers, treasurers). Embezzlers often try to cover their tracks by preparing false books, records, or entries.

The key element here is that the stolen property was *entrusted* to the embezzler. This differs from robbery, burglary, and larceny, where property is taken by someone not entrusted with the property.

Examples A bank entrusts a teller to take deposits from its customers and deposit them into the customers' accounts at the bank. Instead, the bank teller absconds with the money. This is embezzlement. A lawyer who steals money from a trust fund that has been entrusted to him to administer commits the crime of embezzlement.

Bribery

bribery

A crime in which one person gives another person money, property, favors, or anything else of value for a favor in return. A bribe is often referred to as a *payoff* or *kickback*.

Bribery is one of the most prevalent forms of white-collar crime. A bribe can be money, property, favors, or anything else of value. The crime of commercial bribery entails the payment of bribes to private persons and businesses. This type of bribe is often referred to as a **kickback**, or **payoff**. Intent is a necessary element of this crime. The offeror of a bribe commits the crime of bribery when the bribe is tendered. The offeree is guilty of the crime of bribery when he or she accepts the bribe. The offeror can be found liable for the crime of bribery even if the person to whom the bribe is offered rejects the bribe.

Example Harriet Landers is the purchasing agent for the ABC Corporation and is in charge of purchasing equipment to be used by the corporation. Neal Brown, the sales representative of a company that makes equipment that can be used by the ABC Corporation, offers to pay her a 10 percent kickback if she buys equipment from him. She accepts the bribe and orders the equipment. Both parties are guilty of bribery.

Modern penal codes also make it a crime to bribe public officials.

Example If a real estate developer who is constructing an apartment building offers to pay the building inspector to overlook a building code violation, this is bribery.

Extortion

extortion (blackmail)

A threat to expose something about another person unless that other person gives money or property.

The crime of **extortion** involves the obtaining of property from another, with his or her consent, induced by wrongful use of actual or threatened force, violence, or fear. Extortion occurs when a person threatens to expose something about another person unless that other person gives money or property. The truth or falsity of the information is immaterial. Extortion of private persons is commonly referred to as **blackmail**. Extortion of public officials is called **extortion under color of official right**.

Example A person knows that an executive who works for a company has been engaged in a physical altercation with another person. The person who knows this information

threatens the executive that he will disclose this fact to the company unless the executive pays him money. The person who makes the threat of exposure has committed the crime of extortion even though the fact he threatens to divulge is true.

Criminal Fraud

Obtaining title to property through deception or trickery constitutes the crime of **false pretenses**. This crime is commonly referred to as **criminal fraud** or **deceit**.

Example Bob, a stockbroker, promises Mary, a prospective investor, that he will use any money she invests with him to purchase interests in oil wells. Based on this promise, Mary decides to make the investment. Bob never intended to invest the money. Instead, he used the money for his personal needs. This is criminal fraud.

criminal fraud (false pretenses or deceit)

A crime that involves obtaining title to property through deception or trickery.

Mail Fraud and Wire Fraud

Federal law prohibits the use of mail or wires (e.g., telephone, television, radio, computer) to defraud another person. These crimes are called **mail fraud**⁴ and **wire fraud**,⁵ respectively. The government often includes these crimes in a criminal charge against a defendant who is charged with committing another crime but who also used the mail or wires to further her crime. Sometimes the government prosecutes a suspect under these statutes if there is insufficient evidence to prove the real crime that the criminal was attempting to commit or did commit. Persons convicted of mail or wire fraud are subject to imprisonment and the imposition of monetary fines.

There are some frauds so well conducted that it would be stupidity not to be deceived by them.

C. C. Colton
Lacon, Volume 1 (1820)

Money Laundering

When criminals make money from illegal activities, they are often faced with the problem of having large sums of money and no record of how this money was earned. This could easily tip off the government to their illegal activities. In order to “wash” the money and make it look as though it was earned legitimately, many criminals purchase legitimate businesses and run the money through those businesses to “clean” it before they receive the money. The legitimate business has “cooked” books, showing faked expenditures and receipts, in which the illegal money is buried. Restaurants, motels, and other cash businesses make excellent money laundries.

To address the problem of **money laundering**, the federal government enacted the **Money Laundering Control Act**.⁶ This act makes it a crime to:

- Knowingly engage in a *monetary transaction* through a financial institution involving property from an unlawful activity worth more than \$10,000.

Examples Monetary transactions through a financial institution include making deposits, making withdrawals, conducting transactions between accounts, or obtaining monetary instruments such as cashiers’ checks, money orders, and travelers’ checks from a bank or another financial institution for more than \$10,000.

- Knowingly engage in a *financial transaction* involving the proceeds of an unlawful activity.

Examples Financial transactions involving the proceeds of an illegal activity include buying real estate, automobiles, personal property, intangible assets, or anything else of value with money obtained from illegal activities.

Thus, money laundering itself is now a federal crime. The money that is washed could have been made from illegal gambling operations, drug dealing, fraud, or

Money Laundering Control Act

A federal statute that makes it a crime to (1) knowingly engage in a *money transaction* through a financial institution involving property from an unlawful activity worth more than \$10,000 and (2) knowingly engage in a *financial transaction* involving the proceeds of an unlawful activity.

other crimes, including white-collar crimes. Persons convicted of money laundering can be fined up to \$500,000 or twice the value of the property involved, whichever is greater, and sentenced to up to twenty years in federal prison. In addition, violation of the act subjects any property involved in or traceable to the offense to forfeiture to the government.

Racketeer Influenced and Corrupt Organizations Act (RICO)

Organized crime has a pervasive influence on many parts of the U.S. economy. To combat this activity, Congress enacted the Organized Crime Control Act. The **Racketeer Influenced and Corrupt Organizations Act (RICO)** is part of this act.⁷ Originally, RICO was intended to apply only to organized crime. However, the broad language of the RICO statute has been used against non-organized crime defendants as well. RICO, which provides for both criminal and civil penalties, is one of the most important laws affecting business today.

Criminal RICO RICO makes it a federal crime to acquire or maintain an interest in, use income from, or conduct or participate in the affairs of an enterprise through a pattern of racketeering activity. An *enterprise* is defined as a corporation, a partnership, a sole proprietorship, another business or organization, or the government.

Racketeering activity consists of a number of specifically enumerated federal and state crimes, including such activities as gambling, arson, robbery, counterfeiting, and dealing in narcotics. Business-related crimes, such as bribery, embezzlement, mail fraud, and wire fraud, are also considered racketeering. To prove a *pattern of racketeering*, at least two of these acts must be committed by the defendant within a ten-year period. Commission of the same crime twice within this ten-year period constitutes **criminal RICO** as well.

Individual defendants found criminally liable for RICO violations can be fined, imprisoned for up to twenty years, or both. In addition, RICO provides for the *forfeiture* of any property or business interests (even interests in a legitimate business) that were gained because of RICO violations. This provision allows the government to recover investments made with monies derived from racketeering activities. The government may also seek civil penalties for RICO violations. These include injunctions, orders of dissolution, reorganization of business, and divestiture of the defendant's interest in an enterprise.

Civil RICO Persons injured by a RICO violation can bring a private **civil RICO** action against the violator to recover for injury to business or property. A successful plaintiff may recover *treble damages* (three times the actual loss) plus attorneys' fees.

Criminal Conspiracy

A **criminal conspiracy** occurs when two or more persons enter into an *agreement* to commit a crime. To be liable for a criminal conspiracy, a person must commit an *overt act* to further the crime. The crime itself does not have to be committed, however. The government usually brings criminal conspiracy charges if (1) the defendants have been thwarted in their efforts to commit the substantive crime or (2) there is insufficient evidence to prove the substantive crime.

Example Two securities brokers agree over the telephone to commit a securities fraud. They obtain a list of potential victims and prepare false financial statements necessary for the fraud. Because they entered into an agreement to commit a crime and took an overt act, the brokers are guilty of the crime of criminal conspiracy, even if they never carry out the securities fraud.

Racketeer Influenced and Corrupt Organizations Act (RICO)

A federal act that provides for both criminal and civil penalties for racketeering.

criminal conspiracy

A crime in which two or more persons enter into an agreement to commit a crime and an overt act is taken to further the crime.

The following feature discusses the criminal liability of corporations for the acts of its officers, directors, and employees.

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Ethics

Corporate Criminal Liability

A *corporation* is a fictitious legal person that is granted legal existence by the state when certain requirements are met. A corporation cannot act on its own behalf. Instead, it must act through *agents*, such as board of directors, officers, and employees.

Originally, under the common law, it was generally held that corporations lacked the criminal mind (*mens rea*) to be held criminally liable. Modern courts, however, impose **corporate criminal liability**. These courts have held that corporations are criminally liable for the acts of their directors, officers, and employees. Because corporations cannot be put in prison, they are usually sanctioned with fines, loss of a license or franchise, and the like.

Corporate directors, officers, and employees are individually liable for crimes that they commit on behalf of or to further the interests of the corporation. In addition, under certain circumstances, a corporate manager can be held criminally liable for the criminal activities of his or her subordinates. To be held criminally liable, the manager must have failed to supervise the subordinates appropriately. This is an evolving area of the law.

Ethics Questions Why is criminal liability imposed on a corporation? Do you think that the penalties (e.g., jail time) that are imposed on corporate executives for white-collar crimes are sufficient?

Cyber Crimes

The development of computers, e-mail, and the Internet has made it easier for criminals to perpetrate many existing crimes and has created the ability for them to commit crimes that did not exist before the digital age. These are commonly referred to as **cyber crimes**. The government has had to apply existing laws to these new mediums and develop new laws to attack digital crimes.

One of the most pervasive monetary crimes today is Internet fraud. The following feature discusses the crime of cyber identity theft.

cyber crime

A crime that is committed using computers, e-mail, the Internet, or other electronic means.

Pagdesign/Stockphoto



Digital Law

Internet Fraud: Identity Theft

The advent of the computer and the Internet has made one type of crime—identity theft—easier to commit. Identity theft was around long before the computer was invented, but computers and the Internet have made it much easier for criminals to obtain the information they need to commit identity theft. In **identity theft**—or **ID theft**—one person steals information about another person to pose as that person and take the innocent person's money or property or to purchase goods and services using the victim's credit information.

To commit ID theft, thieves must first obtain certain information about the victim. This could be the victim's name, Social Security number, credit card numbers, bank account information, and other personal information. With the use of computers, criminals can more easily obtain the information they need to commit ID theft. Credit card fraud is one of the crimes most commonly committed by ID thieves. An ID thief may use a victim's existing credit

card or open new credit card accounts in the victim's name and purchase goods and services with these credit cards, often using the Internet.

To address the growing problem of ID theft, Congress enacted the **Identity Theft and Assumption Deterrence Act**.⁸ This statute makes it a federal crime to knowingly transfer or use, without authority, the identity of another person with the



intent to commit any unlawful activity as defined by federal law and state and local felony laws. Violators can be sentenced to prison for up to fifteen years and have any property used in the commission of ID theft forfeited to the government.

The following feature discusses a federal criminal law designed specifically to apply to computers.



Digital Law

Crime of Intentionally Accessing and Acquiring Information from a Computer

The Internet and Information Age ushered in a whole new world for education, business and consumer transactions. It also made possible cyber crimes. Prosecutors and courts have wrestled over how to apply existing laws written in a nondigital age to new Internet-related abuses.

Congress responded by enacting the **Information Infrastructure Protection Act (IIP Act)**.⁹ In this federal law, Congress addressed computer-related crimes as distinct offenses. The IIP Act provides protection for any computer attached to the Internet.

The IIP Act makes it a federal crime for anyone to intentionally access and acquires information from a protected computer without authorization. The IIP Act does not

require that the defendant accessed a protected computer for commercial benefit. Thus, persons who transmit a computer virus over the Internet or hackers who trespass into Internet-connected computers may be criminally prosecuted under the IIP Act. Even merely observing data on a protected computer without authorization is sufficient to meet the requirement that the defendant has accessed a protected computer. Criminal penalties for violating the IIP Act include imprisonment and fines.

The IIP Act gives the federal government a much-needed weapon for directly prosecuting cyber-crooks, hackers, and others who enter, steal, destroy, or look at others' computer data without authorization.

unreasonable search and seizure

Protection granted by the Fourth Amendment for people to be free from unreasonable search and seizure by the government.

search warrant

A warrant issued by a court that authorizes the police to search a designated place for specified contraband, articles, items, or documents. A search warrant must be based on probable cause.

exclusionary rule

A rule that says evidence obtained from an unreasonable search and seizure can generally be prohibited from introduction at a trial or an administrative proceeding against the person searched.

The criminal is to go free because the constable has blundered.

Chief Judge Cardozo
People v. Defore (1926)

Protection Against Unreasonable Search and Seizure

In many criminal cases, the government relies on information obtained from searches of individuals and businesses. The **Fourth Amendment** to the U.S. Constitution protects persons and corporations from overzealous investigative activities by the government. It protects the rights of the people from **unreasonable search and seizure** by the government. It permits people to be secure in their persons, houses, papers, and effects.

Reasonable search and seizure by the government is lawful. **Search warrants** based on probable cause are necessary in most cases. Such a warrant specifically states the place and scope of the authorized search. General searches beyond the specified area are forbidden. **Warrantless searches** are permitted only (1) *incident to arrest*, (2) where evidence is in "plain view," or (3) where it is likely that evidence will be destroyed. Warrantless searches are judged by the probable cause standard.

Exclusionary Rule

Evidence obtained from an unreasonable search and seizure is considered tainted evidence ("fruit of a tainted tree"). Under the **exclusionary rule**, such evidence can generally be prohibited from introduction at a trial or an administrative proceeding against the person searched. However, this evidence is freely admissible against other persons. The U.S. Supreme Court created a *good faith exception* to the exclusionary rule.¹⁰ This exception allows evidence otherwise obtained illegally to be introduced as evidence against the accused if the police officers who conducted the unreasonable search reasonably believed that they were acting pursuant to a lawful search warrant.