

Law for Business

Crimes

The Nature of Crimes

- Crimes are public wrongs – acts prohibited by the state or federal government.
- Prosecutions are brought by the prosecutors in the name of the government.
- Forms of punishments: fines, imprisonment and prosecution.

Classed as:

- ***Felonies*** – serious offences: murder, rape, arson

May result in **disenfranchisement** (loss of the right to vote) and **bar** a person **from practicing** some professions: law or medicine

- ***Misdemeanors*** – lesser crime: traffic offences or disorderly conduct.

Results in **fines** or **confinement** in a city or country jail.

The convicted must bear the **stigma** as well – social condemnation

The Essentials of Crime

- To convince a person of committing a crime, the state must:
 - 1. *Demonstrate*** a prior statutory prohibition of the act
 - 1. *Prove*** beyond a reasonable doubt that the defendant committed *every element* of the criminal offence prohibited by the statute
 - 1. *Prove*** that the defendant had the capacity to form a *criminal intent*

A Criminal Case

Did the defendant have the requisite criminal intent?
prosecutor prove

YES

Did the

of these
YES
elements beyond

each

reasonable doubt?

a

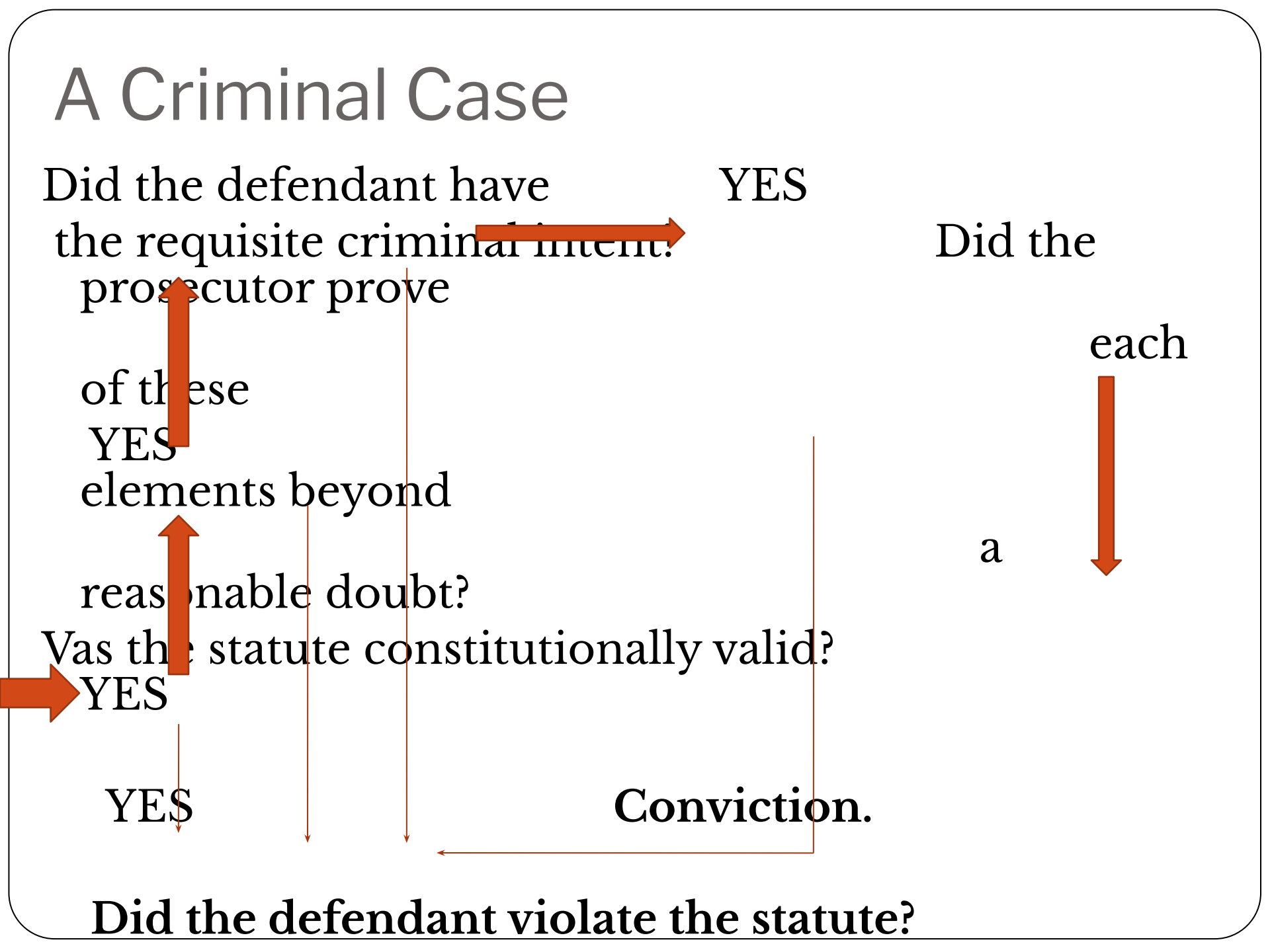
Was the statute constitutionally valid?

YES

YES

Conviction.

Did the defendant violate the statute?



Prior Statutory Prohibition

- For behavior to be treated as criminal, the legislature must have passed a statute making it criminal.
- *Ex post facto* laws - Constitution protects against being accused of smth back in time after it became a crime.
- Behavior **can't be accepted as criminal** if it is protected by the Constitution (1st Amendment – right to freedom of speech and expression).
- The Prohibited behavior **must be clearly defined** for an ordinary person to understand it (5th & 14th Amendments).

FLOOR BEYOND A REASONABLE Doubt

The legal system *places strong limits* on the power of the state to convict a person on a crime:

- Criminal defendants are *presumed innocent*.
- To *overcome the presumption*, the state must prove every element of the charged offence *beyond reasonable doubt*.
- The state must prove a case within a framework of procedural safeguards to protect the accused.

The Defendant's Capacity

- ***Mens rea*** (criminal intent) – element of most serious crimes. Conscious intent: ***not intoxication, infancy, insanity***.
- ***Voluntary intoxication*** – not a complete defense to criminal liability. (***no premeditation*** – a conscious desire to commit a crime (as to kill))
- ***Infancy*** - the children under 7 are incapable of forming an intent; of 7-14 are presumed incapable; 14-21 are presumed capable.
- ***Insanity*** – at the moment of trial (the trial is delayed); after trial but before sentencing – is not sentenced until regains sanity; at the time of criminal act – absolves of criminal liability.
- Some states have instituted “guilty but mentally ill” verdict.

Crime and People in Business

- ***White collar crime*** – nonviolent criminal offences committed by businesspersons and organizations, primarily harm people outside the corporation. (bribery, fraud, price fixing)
- ***Responsible corporate officer doctrine*** – (a category of liability) – official tried for crimes if their actions (or lack of actions) lead to accidents.
- ***Personal liability*** for corporate executives is necessary to deter them from violating laws and viewing any fines on corporations as merely a cost of doing business.

Under the Sarbanes-Oxley Act

- It is a **crime** to knowingly **alter or destroy documents** with the intent to obstruct or influence a government investigation (no eating!)
- It is a **felony to defraud** shareholders of a publicly traded company
- **Procedures for whistleblowing**, including anonymous reporting, must be established. Employees who “blow the whistle” on their employers for fraud are offered legal protection.
- Do you approve of the last point?

RICO

- Racketeer Influenced and Corrupt Organizations Act.
- Designed to stop the entry of organized crime into legitimate business enterprises.
- Passed by the Congress in 1970 as a part of Organized Crime Control Act.
- Effective and much-needed weapon against unethical business practices.

RICO prohibits

1. Using income derived from “a pattern of racketeering activity” to acquire an interest in an enterprise
2. Acquiring or maintaining an interest in an enterprise through a pattern of racketeering activity
3. Conducting or participating in the affairs of an enterprise through a pattern of racketeering activity
4. Conspiring to do the preceding.

Racketeering activity – includes the commission of any of over 30 federal or state crimes include bribery, mail, wire, and securities fraud; and extortion.

To show a pattern of activity, the prosecution must prove, at a minimum, the commission of 2 offences within a 10-year period.

Penalty

- ***Criminal:***

1. fine up to \$25 000
2. imprisonment up to 20 years
3. forfeiture (confiscation)

- ***Civil:***

- ***In government suit:***

1. Divestiture (deprive)
2. Dissolution
3. Other forfeiture

- ***In private suit:***

1. Treble damages (big ones)
2. Attorneys' fees

Other Acts

against corruption , bribery, etc

The USA Patriot Act

- (against money-laundering rules) includes traditionally involved organizations:
securities and commodities brokers; travel agencies; dealers in precious metals or jewels; car, boat, airplane dealers; etc
- **must report suspicious** activity, including large cash transactions.

The Foreign Corrupt Practices Act

- 1977, (against bribery beyond national borders)
Crime for any American firm is to offer, promise or make payments or gifts to foreign officials and certain others.

For violation of FCPA:

- Individual - \$100 000 fine and/or up to 5 years prison.
- Corporation – up to \$2 000 000 fine.

Global Anticorruption Initiatives

- Rapid trade since 1990s.
 1. 2000 – Inter-American Convention Against Corruption. Initiated by the Organization for American States (23 members). It criminalizes transitional bribery in the Western Hemisphere.
 2. Convention on Combating Bribery of Officials in International Business Transactions. Requires from 35 members to make it a crime to bribe foreign officials, designate appropriate punishments and extradite charged.
 3. WTO, the World Bank, the IMF implemented anti-corruption policies & procedures.

Financial Action Task Force Group

- French name: Groupe d'action financi`ere. (GAFI)
- Created by G7 in 1989 to combat money laundering and terrorism financing, 36 members.
- Groups of 40 recommendations:
 1. Policy and coordination
 2. Money laundering and confiscation
 3. Terrorism financing
 4. Prevention measures
 5. International cooperation

Cybercrime

Specifics of computer crime

According to federal and state law a computer crime is:

1. To access or use a computer without authorization
2. To access the services of commercial service providers without paying their fees
3. To alter or destroy data stored in another person's computer.
4. A range of online activities:
 - Theft
 - Distribution of obscene materials
 - Destruction of property
 - Trespass

Federal law

Electronic Communication Privacy Act

Wiretap Act

- Protects against unauthorized interception of electronic communications. (providers)

Stored Communication Act

- Protects against unauthorized access and disclosure of electronic communication. (third parties)

Covers 1/3 senders.

Federal law

The Computer Fraud and Abuse Act

Prohibits certain access to computers:

- Bars an unauthorized person from knowingly transmitting a program, information, code, command with the intent of causing damage to a computer
- Prohibits interference with computers used by, or for the benefit of, the government or financial institutions
- Prohibits acts of sabotage or vandalism to protected computers or networks

International efforts to combat cybercrime

The Council of Europe's "Convention on Cybercrimes" aims to:

- Harmonize computer crime laws around the world to outlaw computer intrusion, child pornography, commercial copyright infringement, online fraud.
- Permit the government to search and seize e-mail and computer records, perform internet surveillance, etc.
- G-8 developed the task forces to address high-tech crime.
- NGOs and private corporations fight cybercrime.

Torts

Tort – private (civil) wrongs against persons or property.

Injury in tort can include:

Intentional Torts

Intentional tort – type of behavior that indicate either the wrongdoer's ***conscious desire to cause harm*** or the wrongdoer's knowledge such harm was ***substantially certain to result***.

- Physical injury. Plus result – loss of pay and medical benefits.
- Loss of privacy
- Emotional distress
- Injury to reputation
- ***Punitive damages*** – in excess of plaintiff's actual injures
- Injured may file a civil suit for actual (compensatory) damages to compensate

A rapist is liable for



Civil (tort)

Criminal

- Assault, battery,
- false imprisonment,
- Intentional infliction of emotional distress.

Sometimes are not filed because defendants unable to pay.

crimes

	Crime	Intentional torts
Nature	Criminal	Civil
Elements	1. Violation of a statute	1. Harm to another person or property
	2. Intent	2. Intent
Actors	Government prosecutor v. defendant	Plaintiff v. defendant (victim) (tortfeasor)
Burden of proof	Prosecutor must establish Defendant's guilt beyond a reasonable doubt	Plaintiff must establish defendant's liability by a preponderance of the evidence
Punishment	Fines, imprisonment, execution	Defendant may have to pay the plaintiff compensatory and punitive damages

Types of Intentional Torts

Battery

- Is an *intentional*, unconsented-to touching that is harmful or offensive.
- It produces injury or would be considered offensive *to a person of ordinary sensibilities*.
- It is sufficient to touch anything connected to the plaintiff's body: to snatch a bag, to kick a dog on a leash, etc.
- This makes many problems.

Assault

- Putting another in in apprehension of immediate threat to his or her physical safety. No contact is necessary. A gesture is enough.

False Imprisonment

- Is an *intentional confinement* of a person for an appreciable time (2 minutes is enough) without the person's consent.
- Protects physical and mental interests.
- *Confinement* – a person substantially restricts another person's freedom of movement.
- A person must know that he is confined, and any consent to confinement must be freely given.
- *Partial obstruction* – is not false imprisonment: you stand on the path or lock smb inside leaving the back door open.
- Some states passed statutes giving the shop owners a *conditional privilege* to stop persons reasonably believed to be shoplifters. (but not to exceed the privilege)

Intentional Infliction of Mental Distress

- Thanks to modern medicine such injuries became *more provable*.
- Some courts require *physical manifestation* of the emotional distress (tic or ulcer), before they allow a suit to be brought.
- The defendant's conduct must be *outrageous* – certain to produce severe emotional distress in a person of ordinary sensibilities.

Defamation

- Injury to a person's reputation
 1. The torts of **libel** (written defamation)
 2. The torts of **slander** (oral defamation)

The *basis for the torts* – publication (to at least 1 person) of an *untrue statement* that injures a person's reputation or character. Jury decides if a statement is defamatory.

Concerns only a person (not a group or one of the group).

Corporations or other business entities have a limited right to protect their reputation.

Truth is the complete defense to a defamation suit.

Defamation

- Does it mean that you can not speak without fear of liability in certain situations?
 - Statements communicated in some situations are granted *absolute privilege* – they can *never serve* as a basis for a defamation suit:
 1. Statements by members of Congress on the floor of congress
 2. Statements by participants in judicial proceedings
 3. Private statements between spouses
- Other statements are only *conditionally privileged* . Can serve as a basis for a suit.