Instructor Manual

Miller, Business Law Today – Comprehensive Edition: Text and Cases 13e 2022,

9780357634783; Chapter 9: Criminal Law and Cyber Crime

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# Purpose and Perspective of the Chapter

# The purpose of this chapter is for students to learn how laws dealing with crime are an important part of the legal environment of business. Students will also learn how a variety of sanctions protects businesses from harm so that they can compete and flourish. These sanctions include damages for tortious conduct, damages for breach of contract, various equitable remedies, and sanctions imposed under criminal law.

# Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)

# MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Differentiate between *actus reus* and *mens rea*.
2. Identify types of white-collar crime.
3. List available defenses to criminal activity.
4. Summarize the constitutional protections for the criminal defendant.
5. Explain the burden of proof required in a criminal case.
6. Summarize criminal liability under the Federal Computer Fraud and Abuse Act.

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# Key Terms

***Actus reus***: a guilty (prohibited) act; it is one of the two essential elements required to establish criminal liability.

**Arson**: the intentional burning of a building.

**Beyond a reasonable doubt**: the standard of proof used in criminal cases.

**Botnets**: networks of compromised computers connected to the Internet that can be used to generate spam, relay viruses, or cause servers to fail.

**Burglary**: the unlawful entry or breaking into a building with the intent to commit a felony.

**Computer crime**: any violation of criminal law that involves knowledge of computer technology for its perpetration, investigation, or prosecution.

**Crime**: a wrong against society proclaimed in a statute and, if committed, punishable by society through fines, imprisonment, or death.

**Cyber crime**: a crime that occurs in the online environment.

**Cyber fraud**: any misrepresentation knowingly made over the Internet with the intention of deceiving another for the purpose of obtaining property or funds.

**Cyberterrorist**: criminals who use technology and the Internet to cause fear, violence, and extreme financial harm.

**Double jeopardy**: the Fifth Amendment requirement that prohibits a person from being tried twice for the same criminal offense.

**Duress**: unlawful pressure that causes a person to perform an act that the person would not otherwise perform.

**Embezzlement**: the fraudulent appropriation of funds (or other property) by a person who was entrusted with the funds (or property).

**Entrapment**: a defense in which a defendant claims to have been induced by a public official to commit a crime that would otherwise not have been committed.

**Exclusionary rule**: a rule that prevents evidence that is obtained illegally or without a proper search warrant from being admissible in court.

**Felony**: a serious crime—such as arson, murder, rape, or robbery—that carries the most severe sanctions, ranging from more than one year in a state or federal prison to the death penalty.

**Forgery**: the fraudulent making or altering of any writing in a way that changes the legal rights and liabilities of another.

**Hacker**: a person who uses computers to gain unauthorized access to data.

**Identity theft**: the illegal use of someone else’s personal information to access the victim’s financial resources.

**Insider trading**: the purchase or sale of securities on the basis of information that has not been made available to the public.

**Larceny**: the wrongful taking and carrying away of another person’s personal property with the intent to permanently deprive the owner of the property.

**Malware**: malicious software programs, such as viruses and worms, that are designed to cause harm to a computer, network, or other device.

***Mens rea***: a wrongful mental state (“guilty mind”), or intent; it is one of the two essential elements required to establish criminal liability.

**Misdemeanor**: a lesser crime than a felony, punishable by a fine or incarceration in jail for up to one year.

**Money laundering**: engaging in financial transactions to conceal the identity, source, or destination of illegally gained funds.

**Petty offense**: the least serious kind of criminal offense, such as a traffic or building-code violation.

**Phishing**: a form of identity theft in which the perpetrator sends e-mails purporting to be from a legitimate business to induce recipients to reveal their personal financial data, passwords, or other information.

**Plea bargaining**: the process by which a criminal defendant and the prosecutor work out an agreement to dispose of the criminal case, subject to court approval.

**Probable cause**: reasonable grounds for believing that a search or seizure should be conducted.

**Robbery**: the act of forcefully and unlawfully taking personal property of any value from another.

**Search warrant**: an order granted by a public authority, such as a judge, that authorizes law enforcement personnel to search particular premises or property.

**Self-defense**: the legally recognized privilege to do what is reasonably necessary to protect oneself, one’s property, or someone else against injury by another.

**Self-incrimination**: giving testimony in a trial or other legal proceeding that could expose the person testifying to criminal prosecution.

**Virus**: a software program that can replicate itself over a network and spread from one device to another, altering files and interfering with normal operations.

**White-collar crime**: nonviolent crime committed by individuals or business entities to obtain a personal or business advantage.

**Worm**: a software program that automatically replicates itself over a network but does not alter files, and is usually invisible to the user until it has consumed system resources.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* New subsection on Card Testing under “Cyber Identity Theft” section
* 8 New Numbered Examples:
  + on criminal recklessness
  + on criminal negligence
  + on state crimes regarding criminal intent
  + on violent crime (assault)
  + on public order crime
  + on insanity defense
  + on stolen credit-card numbers
  + on phishing
* 2 New Numbered Case Examples:
  + on mail and wire fraud based on 2019 case
  + on cyber fraud based on 2019 case
* 1 New Classic Case Example:
  + on reasonable expectation of privacy based on 1988 case
* New ALOE: *Should Bitcoin Be Illegal?*
* New Cybersecurity and the Law: *Counter-Strike: Global Offensive*

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 9. (PPT Slide 3).*

1. **09-1 Civil Law and Criminal Law (PPT Slide 5-12)**
   1. **Key Differences Between Civil Law and Criminal Law**
      1. Burden of Proof – In a civil case, the plaintiff usually must meet the *preponderance of the evidence* standard. In a criminal case, in contrast, the state must prove its case beyond a reasonable doubt.
      2. Criminal Sanctions – Designed to punish those who commit crimes and to deter others from committing similar acts in the future.
   2. **Civil Liability for Criminal Acts**
      1. Some torts, such as assault and battery, provide a basis for a criminal prosecution as well as a tort action.
      2. **Example 9.1** Carlos
   3. **Classification of Crimes**
      1. Felony
      2. Misdemeanor
      3. Petty offense
2. **09-2 Criminal Liability (PPT Slide 13-16)**
3. **The Criminal Act**
   * 1. *Actus Reus* – guilty act
4. **State of Mind**
   * 1. *Mens rea* – wrongful mental state required to establish criminal liability
     2. Recklessness
        1. Defendants are criminally reckless if they consciously disregard a substantial and unjustifiable risk.
        2. **Example 9.2** Vanderbilt University Medical Center
     3. Criminal Negligence
        1. Occurs when the defendant takes an unjustified, substantial, and foreseeable risk that results in harm.
        2. **Example 9.3** Griffith Campbell
     4. Strict Liability and Overcriminalization
        1. Federal Crimes
           1. Strict liability crimes are particularly common in environmental laws, laws aimed at combatting illegal drugs, and other laws affecting public health, safety, and welfare.
           2. **Case Example 9.4** Paul Kenner
        2. State Crimes
           1. Many states have also enacted laws that punish behavior as criminal without the need to show criminal intent.
           2. **Example 9.5** Selling Alcohol to Underaged
5. **Corporate Criminal Liability**
   * 1. Liability of the Corporate Entity
        1. Corporations are normally liable for the crimes committed by their agents and employees within the course and scope of their employment.
        2. **Spotlight Case Example 9.6** Gold Club
     2. Liability of Corporate Officers and Directors
        1. Corporate directors and officers are personally liable for the crimes they commit, regardless of whether the crimes were committed for their personal benefit or on the corporation’s behalf.
        2. **Case Example 9.7** Austin DeCoster
6. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge about the five broad categories of crime. After answer is provided, review with students what is include in each of the five broad categories, and how they differ from one another.*
7. **09-3 Types of Crimes (PPT Slide 17)**
8. **Violent Crime**
   * 1. Robbery
     2. **Example 9.8** Mario Batali
9. **Property Crime**
   * 1. Burglary
     2. Larceny
     3. Obtaining Goods by False Pretenses
     4. Receiving Stolen Goods
     5. Arson
        1. **Example 9.10** Benton
     6. Forgery
10. **Public Order Crime**
    * 1. Most common public order crimes include public drunkenness, prostitution, gambling, and illegal drug use.
      2. **Example 9.12** Man Screaming Obscenities
11. **White-Collar Crime**
    * 1. Embezzlement
         1. When a person who is entrusted with another person’s funds or property fraudulently appropriates it, embezzlement occurs.
      2. Mail and Wire Fraud
         1. **Case Example 9.13** Donavan Davis
      3. Bribery
         1. **Example 9.14** Kent
      4. The Foreign Corrupt Practices Act (FCPA)
         1. Prohibition against the Bribery of Foreign Officials
         2. Accounting Requirements
            1. **Case Example 9.15** Noble Corporation
      5. Bankruptcy Fraud
      6. Theft of Trade Secrets
      7. Insider Trading
12. **Organized Crime**
    * 1. Money Laundering
         1. **Example 9.16** Leo
      2. Racketeering
         1. Broad Application of Racketeer Influenced and Corrupt Organizations Act (RICO)
         2. Civil Liability
13. **09-4 Defenses to Criminal Liability (PPT Slide 18-21)**
14. **Justifiable Use of Force**
    * 1. Self-defense
      2. Defense of one’s dwelling
      3. Defense of other property
      4. Prevention of crime
    1. **Necessity**
       1. Sometimes, criminal defendants are relieved of liability if they can show that a criminal act was necessary to prevent an even greater harm.
       2. **Example 9.17** Trevor
    2. **Insanity** 
       1. **Example 9.18** Medina Espinosa
    3. **Mistake**
       1. **Example 9.19** Oliver Wheaton
    4. **Duress**
       1. Exists when the *wrongful threat* of one person induces another person to perform an act that would not otherwise have been performed.
    5. **Entrapment** 
       1. Defense designed to prevent police officers or other government agents from enticing persons to commit crimes, so that they can later be prosecuted for criminal acts.
    6. **Statute of Limitations**
       1. State must initiate criminal prosecution within a certain number of years.
    7. **Immunity** 
       1. Self-incrimination
       2. Plea bargaining
15. **09-5 Constitutional Safeguards (PPT Slide 22-29)**
16. **Fourth Amendment Protections**
    * 1. Protects the “right of the people to be secure in their persons, houses, papers, and effects.”
      2. Search warrant – Order from a judge or other public official authorizing the search or seizure.
      3. **Spotlight Case Example 9.20** Antoine Jones
17. **Probably Cause**
    * 1. To believe a search will reveal a specific illegality.
      2. **Classic Case Example 9.21** Oscar Gutierrez

1. **Reasonable Expectation of Privacy** 
   * 1. A reasonable expectation of privacy exists if (1) the individual actually expects privacy, and (2) the person’s expectation is one that society as a whole would consider legitimate.
     2. **Classic Case Example 9.22** Jenny Stracner
2. **Fifth Amendment Protections**
   * 1. Due Process of Law
     2. Double Jeopardy
     3. Self-Incrimination
3. **The Exclusionary Rule**
   * 1. Any evidence obtained in violation of the constitutional rights spelled out in the Fourth, Fifth, and Sixth Amendments generally is not admissible at trial.
4. **The *Miranda* Rule**
   * 1. In *Miranda v. Arizona*, a case decided in 1966, the United States Supreme Court established the rule that individuals who are arrested must be informed of certain constitutional rights.
5. **09-6 Cyber Crime (PPT Slide 30-36)**
6. **Cyber Fraud**
   1. Any misrepresentation knowingly made over the Internet with the intention of deceiving another for the purpose of obtaining property or funds.
   2. **Case Example 9.23** Ionut Ciobanu
7. **Cyber Identity Theft**
   1. Identity Theft
      1. Stolen Credit Card Numbers
         1. **Example 9.24** Wawa
      2. Card Testing
   2. Password Theft
   3. Phishing
      1. **Example 9.25** FedEx
8. **Hacking**
   1. **Example 9.26** Apple, Inc.
   2. Malware
      1. Worm
      2. Virus
   3. Service-Based Hacking
9. **Cyberterrorism**
   1. Using technology and the Internet to cause fear, violence, or extreme financial harm
10. **Prosecution of Cyber Crime**
    1. Jurisdiction and Identification Challenges
    2. The Computer Fraud and Abuse Act (CFAA)
       1. A person who accesses a computer online, without authority, to obtain classified, restricted, or protected data (or attempts to do so) is subject to criminal prosecution.
11. ***Knowledge Check Video Activity (2) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer****). Tests students’ knowledge of the steps of a criminal prosecution. After answer is provided, review with students the steps involved in a criminal prosecution, how reasonable doubt applies, and what elements are involved in a crime.*

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Civil Law and Criminal Law (PPT Slide 5-12). Duration 5 Minutes.**
2. **What are some of the significant differences between criminal law and civil law?**
3. Crimes are consid­ered of­fenses against society as a whole; civil law is concerned with wrongs more personal in nature. Criminal de­fendants are prosecuted by public officials; civil defendants are sued by private individuals. Those who are found guilty of crimes are punished; those who lose in a civil suit are generally required to compensate the in­jured. Criminal law is primarily statutory; much of civil law is based on judicial rul­ings. The burdens of proof are different—in a criminal proceeding, the guilt of the accused must be estab­lished be­yond a reason­able doubt; in a civil proceeding, elements must be proved by a lesser standard (which varies).
4. **Discussion – Criminal Liability (PPT Slide 13-16). Duration 10 Minutes.**
5. **What are the elements of a crime?**
6. A crime requires (1) the performance of a prohibited act, and (2) a specified state of mind. All criminal statutes prohibit certain acts. Most are acts of commission; some are acts of omission. Attempting a criminal act may also be a crime, if substantial steps toward a crimi­nal ob­jec­tive are taken. Elements of the requisite state of mind vary with the act. For larceny, for exam­ple, the re­quired act is the taking of another person’s property, and the necessary state of mind is both the knowl­edge that the prop­erty is another’s and the intent to deprive the other of it. States of mind also vary in de­gree, and punishment varies accordingly.
7. **Describe the prosecutorial process from arrest to conviction.**
8. Probable cause must exist for be­liev­ing that an individual has committed a crime. A warrant for arrest is then issued (an arrest may be made with­out a warrant if there is no time to get one, but the probable cause standard still applies). A grand jury or a magistrate determines whether there is sufficient evidence to bring the individual to trial. (The standard used to determine this varies—some courts use probable cause; others, preponderance of the evidence; some, a prima facie case standard.) Individuals are formally charged after the indictment or in­formation is filed, the defendant is arraigned (brought before a judge, informed of the charges, and asked to enter a plea). If the de­fendant pleads guilty, he or she waives the right to a trial. If not, the case goes to trial. At the trial, the ac­cused need not prove his or her innocence; the prosecution proves the ac­cused’s guilt (which must be estab­lished beyond a reasonable doubt).
9. **Discussion – Constitutional Safeguards (PPT Slide 22-29). Duration 5 Minutes.**
10. **What are some important constitutional protections of individuals’ rights in the area of criminal law?**
11. Important constitutional protections of individuals’ rights in the area of criminal law in­clude the Fourth Amendment protection against unreasonable searches and seizures; the Fourth Amendment re­quirement of probable cause before a warrant for a search or an arrest can be issued; the Fifth Amendment requirement that no one can be deprived of life, liberty, or property without due process; the Fifth Amendment prohibition against double jeopardy; the Fifth Amendment ban on self-incrimination; the Sixth Amendment guarantees of a speedy trial, trial by jury, a public trial, the right to confront witnesses, and the right to legal counsel; and the Eighth Amendment prohibitions against excessive bail and fines and cruel and unusual punishment. All evidence obtained in violation of the rights guaranteed by the Fourth, Fifth, and Sixth Amendments must be excluded, as must all evidence de­rived from any illegally obtained evidence. Individuals who are arrested must be informed of their rights to remain silent and to have legal counsel.
12. **Discussion – Cyber Crime (PPT Slide 30-36). Duration 25 Minutes.**
13. **Is the global reach of the Internet a reason in support of a court’s assertion of authority over activities that occur in another jurisdiction? Discuss.**
14. One reason in favor of the assertion of such authority is the rationale that supports the exercise of jurisdiction under long-arm statutes. If a party is violating the laws of a jurisdiction, and his or her “minimum contacts’ with that jurisdiction can be proved, then he or she should expect to be hauled into court for those violations. Reasons against the exercise of such authority include the practicalities affected by the sheer numbers of jurisdictions and laws, and the vast reach of the Internet.
15. **Suppose that a foreign nation does not prosecute cyber criminals and does not cooperate with U.S. authorities to investigate cyber crimes against U.S. citizens. What effect might this have on the deterrence or proliferation of cyber crime?**
16. The most likely effect is that these circumstances would allow cyber crime to increase. The Internet is not limited by political boundaries, and cyber crime similarly knows no bounds. An individual who resides in a nation that does not prohibit or punish acts constituting crimes in other nations and does not cooperate with those that do, can operate with near impunity from that locale. Even if such acts were universally recognized as crimes, issues of jurisdiction, evidence and proof, and national sovereignty could delay or limit criminal prosecutions.
17. **The media has exposed Web sites that purported to sell tickets to certain concerts and would accept credit and banking information from would-be buyers, but did not deliver the tickets. What can consumers do to avoid being duped by such fraud?**
18. A legitimate Web site that offers concert tickets to the public should have several features that are likely to distinguish it from a bogus site. A legitimate seller, for example, would probably offer tickets to more than one event and possibly to more than a single venue. A legitimate seller would likely post one or more customer service phone numbers that someone would actually answer. A legitimate seller is more likely to offer a refund and describe how it could be obtained (even if a service charge is imposed). A consumer might also be more protected if he or she uses a credit card rather than debit card.
19. **Why will cyber crime always be a worldwide problem?**
20. The Internet expanded opportunities for identity theft and related crimes by providing easy access to private data. This data can be accessed illegally through any number of secretive methods from anywhere in the world.
21. **Considering the cyber crime discussed in this chapter, what are the greatest risks to an information technology system or computer network in a business environment?**
22. The risks within such an information technology system include the unauthorized access to data that can result in the destruction of the data or improper changes to it, including the entry of unauthorized, false, or nonexistent transactions or simply the inaccurate recording of transactions. Other risks include unauthorized changes to the system’s basic programs, which may result through direct manual entry of changes or indirectly through the presence of robotic malware. The potential loss of data is a significant risk.

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# Additional Activities and Assignments

1. **MindTap** – Why Does Criminal Law Matter to Me?
   1. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **MindTap** – Learn It: Actus Reus and Mens Rea; Larceny, Robbery, Embezzlement, and Theft; Criminal Constitutional Protections; Procedural Steps in a Criminal Prosecution
   1. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students’ comprehension of the topics. Consists of 2 multiple choice questions in each.
3. **MindTap** – Check Your Understanding: Criminal Law and Cyber Crime
   1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Cyber Crime
   1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Criminal Defense, Law, and Protections
   1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.
6. **MindTap** – Business Cases: Constitutional Law; Alternative Dispute Resolution; Negligence; Intellectual Property; Internet Privacy; Criminal Law
   1. Online auto-graded activity that presents a robust fact pattern and assesses students’ ability to filter out important information, and apply legal concepts at a high level of learning. Consists of 5 multiple choice questions. This assignment ties to all objectives.
7. **Open Response –** Business Case: Criminal Law (pairs with auto-graded MindTap Business Case: Criminal Law assignment)
   1. The following content can be used as supplemental in-class work, test prep, or for assessments alongside the Business Case fact pattern presented to students in the MindTap Business Case. This assignment ties to all objectives.
   2. Discussion Questions –
      1. Eddie, an electrician, who was responsible for wires to stay a certain foot away from trees, inspected the wires on Broadway Ave. Later in the day, a spark from the wires on Broadway Ave caused a fire on a tree near a restaurant, causing thousands of dollars in damages. Would Eddie have the required mental state (*mens rea*) to be convicted of a crime? Why, or why not?
      2. Suppose a defendant in a murder trial had been exposed to a chemical spill at work just before committing the alleged crime. How could the defendant’s attorney use the workplace accident in the client’s defense?
      3. If unsanitary conditions at an egg-production facility spark sickness among consumers, can the corporate owner be held criminally liable?
   3. Group Work – Break into small groups of 5-7 students. Half of the students in the group should represent Eddie the electrician (question i from above), half the students in the group should represent the prosecution, and one student should act as a mediator. Each side should develop arguments as to why they have a greater priority in the collateral than the other. Each side should then present their arguments to the designated mediator who shall make a ruling.
   4. Short Answer Essay – In 7-10 sentences, answer the following: At any point during the course of events, has the bank perfected a security interest? Why, or why not?
   5. Ethics Question – Today’s cell phones can store countless pages of text, thousands of pictures, and hundreds of videos. Such data can remain on a mobile phone for years. Also, since the advent of the “cloud,” much of the data viewable on a mobile phone is stored on a remote server. Should police nonetheless be able to force you to unlock your phone? Or does this practice violate the Fifth Amendment protection against self-incrimination? In *Riley v. California*, the United States Supreme Court unanimously held that warrantless search and seizure of digital contents of a mobile phone during an arrest is unconstitutional. Chief Justice John Roberts stated, “The fact that technology now allows for an individual to carry [the privacies of life] in his hand does not make the information any less worthy of the protection for which the Founders fought.” Nevertheless, a number of federal courts have allowed evidence obtained from cell phones to be used against a defendant even when there was no search warrant. Should police be able to force you to unlock your mobile phone?
8. **Research Project**:
   1. Have students research bankruptcy fraud cases.
   2. Have students research the Racketeer Influenced and Corrupt Organizations Act (RICO) and provide a couple of cases.

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# Additional Resources

## Cengage Video Resource

* MindTap Quick Lesson Video:
  + Steps of a Criminal Prosecution. Duration 2:11 minutes.

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