CLASSIFICATION OF CRIMES

- **Crime:** A wrong committed against society defined in a statute and punishable by fines and/or imprisonment -- and, in some cases, by death.

- Depending on their degree of seriousness, crimes are classified as *felonies* or *misdemeanors*.

  - **Felony:** A crime -- such as murder, rape, or robbery -- that carries the most severe sanction, ranging from one or more year(s) in prison to forfeiture of one’s life.

  - **Misdemeanor:** A lesser crime -- such as disorderly conduct, trespass, or petty theft -- punishable by a fine and/or imprisonment for up to one year.

  - **Petty Offense:** A subset of misdemeanor, comprised of the least serious criminal offenses, such as traffic violations and jaywalking.
CRIMINAL LIABILITY

- Two elements are required for a person to be convicted of a crime:

  (1) the performance of a **prohibited act** (or the failure to perform a required act) and

  (2) with a specified **state of mind** or **intent**.

- The type of mental state or the degree of intent required varies from crime to crime; however, absent the requisite **mens rea**, there can be no criminal liability, even for what may seem to be the most heinous acts.

- Corporate criminal liability: Corporations can be found criminally guilty for crimes committed by their agents and employees within the scope of their employment. Corporate officers may be held criminally liable regardless of whether he or she participated in, directed, or even knew about a given criminal violation.
CRIMES AFFECTING BUSINESS -
PART I

- **Robbery:** Forcefully and unlawfully taking personal property of any value from another; force or threat of force is typically required for an act of theft to be treated as robbery.

- **Aggravated Robbery** -- Robbery with the use of a deadly weapon -- is the most serious form of theft.

- **Burglary:** Unlawful entry into a building with the intent to commit a felony (or, in some states, the intent merely to commit any crime).

- **Aggravated Burglary** occurs when a deadly weapon is used and/or when the building entered is a dwelling.

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

- Common law distinguished between **grand** and **petit** larceny, depending on the value of property taken. In those states that retain the distinction, grand larceny is a felony, petit larceny a misdemeanor.
CRIMES AFFECTING BUSINESS - PART II

- **Obtaining Goods by False Pretenses:** Writing a bad check knowing there are insufficient funds in the account.

- **Receiving Stolen Goods:** Buying or receiving stolen goods is a crime. Under some state statutes, buying goods at a substantially lower price creates a presumption that the buyer knew or should have known that the goods were stolen.

- **Arson:** The destruction of any building by fire or explosion. Intentionally burning one’s own building to collect insurance is not only arson but also larceny.

- ** Forgery:** Fraudulently making or altering a writing (e.g. a check) in a way that changes the legal rights or obligations of another.
WHITE COLLAR CRIMES - PART I

- **White-Collar Crime:** Nonviolent crime committed by individuals or corporations to obtain a personal or business advantage.

- **Embezzlement:** Fraudulently appropriating money or other property by a person to whom the handling of the money or property has been entrusted.

- **Mail Fraud:** It is a federal crime to use the mails to defraud the public. Mail fraud requires:
  
  (1) mailing or causing someone to mail something written, printed, or photocopied in furtherance of

  (2) a scheme to defraud by **false pretenses**.

- **Wire Fraud:** It is also a federal crime to defraud the public through the use of wire, radio, or television.

- Mail and wire fraud often form the basis of a **RICO** prosecution.
WHITE-COLLAR CRIMES -
PART II

- **Bribery:** Unlawfully offering, giving, receiving, or soliciting money or any other thing of value in order to influence a public decision or action and/or to gain a personal or business advantage.

- Bribery can occur merely by offering or soliciting a bribe -- **no money need actually change hands.**

- **Money Laundering:** Falsely reporting income that has been obtained through criminal activity as income obtained through a legitimate business enterprise.

- **Insider Trading:** The purchase or sale of publicly-traded securities on the basis of information that has not been made available to the public (i.e., *inside information*) in violation of a duty owed to the company whose stock is being traded.

- **Securities Fraud:** Violations of federal and/or state statutes and/or regulations governing the offering, sale, and registration of stocks and bonds.
WHITE COLLAR CRIMES -
PART III

- **Bankruptcy Fraud:** White collar crimes committed during various phases of a bankruptcy proceeding.

- Like mail and wire fraud, money laundering, insider trading, and securities fraud often form the basis for **RICO** prosecution.

- **Theft of Trade Secrets:** The Economic Espionage Act of 1996 made the theft, buying or receiving of trade secrets of another person a federal crime.
COMPUTER CRIMES

- **Computer Crime:** Any act that is directed against computers, computer parts, data, software, and/or services, that uses computers to commit a crime or that involves abusive use of computers. Examples of computer crimes:
  - **Financial Crimes:** Using computers to fraudulently conduct financial transactions;
  - **Software Piracy:** Renting, leasing, lending, or copying computer software without permission;
  - **Property Theft:** Theft of computer equipment and/or theft of property that is controlled and/or accounted for by means of a computer;
  - **Vandalism and Destructive Programming:** Intentional destruction of computer hardware or software, including programming of computer “viruses”; and
  - **Theft of Data or Services:** Use of another’s computer or computerized information without permission.
CRIMINAL LIABILITY: DEFENSES -
PART I

- **Infancy/Insanity/Lack of Capacity:** Because of youth, mental illness, or lack of mental capacity, the accused was **unable** to form the requisite mental state.

- **Involuntary Intoxication:** The accused was forced to ingest, and/or was unaware that he or she was ingesting, drugs or alcohol which rendered the accused incapable of forming the requisite mental state and/or realizing the consequences of his or her actions.

- **Mistake:** While it is true that “[i]gnorance of the law is no excuse,” courts have recognized that, if:

  1. the law at issue is not published or otherwise made reasonably known to the public, or

  2. the accused relied upon an official statement of the law that was incorrect,

then **mistake of law** is a valid defense. Likewise, the accused may simply have made a **mistake of fact**, such that he or she could not have formed the requisite mental state.
CRIMINAL LIABILITY: DEFENSES - PART II

- **Consent:** Voluntary agreement to a proposition or an act of another. Consent is a defense to the extent that it cancels the harm that the law is designed to prevent.

- **Duress:** Unlawful pressure brought to bear on the accused, causing him or her to perform an act that he or she would not have performed otherwise. Elements of duress:
  
  (1) The threat of serious bodily harm or death (to self or another);

  (2) The harm threatened must be greater than the harm caused by the crime;

  (3) The threat must be immediate and inescapable; and

  (4) The accused must have been put into the situation giving rise to the threat through no fault of his or her own.

- **Justifiable Use of Force/Self-Defense:** The privilege to take *reasonably necessary* steps to protect one’s self, another person, or one’s property against injury by a third party.
CRIMINAL LIABILITY: DEFENSES - PART III

- **Entrapment**: A defense in which the accused claims that he or she was *induced* by a public official -- typically an undercover officer -- to commit a crime that he or she would not otherwise have committed.

  Entrapment generally requires that the public official both *suggest* the wrongful act and then *induce* the accused to commit it. It is not improper for the police to set a trap for the unwary, but it is improper to push the accused into the trap if he or she was not *predisposed* to committing the crime absent the entrapment.

- **Statute of Limitations**: Most criminal prosecutions (murder is generally an exception) must be brought within a period of years after the crime.

- **Immunity**: In cases in which the state wishes to obtain information from a person accused of a crime, the state can grant immunity from prosecution or agree to prosecute only for a less serious offense in exchange for that information.

CONSTITUTIONAL RIGHTS
OF THE ACCUSED - PART I

The U.S. Constitution provides protections for those accused of crimes, namely:

(1) The Fourth Amendment’s protection from unreasonable searches and seizures and requirement that a search or arrest warrant shall be issued only upon probable cause;

(2) The Fifth Amendment’s requirement of due process of law, prohibition against double jeopardy (trying the same person twice for the same criminal offense), and prohibition against self-incrimination (requiring a person to act as a witness against him- or herself);

(3) The Sixth Amendment’s guarantees of the rights to speedy trial, trial by jury, public trial, the right to confront witnesses, and counsel (at various stages of criminal proceedings); and

(4) The Eighth Amendment’s prohibitions against excessive bail and fines and cruel and unusual punishment.

CONSTITUTIONAL RIGHTS
OF THE ACCUSED - PART II
Constitutional Corollaries -- In addition to the specific protections set forth in the U.S. Constitution, the U.S. Supreme Court has developed certain “corollaries” -- safeguards that logically follow from the foregoing rules. Most prominent among these are:

- **The Exclusionary Rule:** Any evidence obtained in violation of the accused’s Fourth, Fifth, and/or Sixth Amendment rights, as well as any evidence derived from said illegally obtained evidence, is not admissible.

  The purpose of the Rule is to deter police from conducting warrantless searches and following other improper procedure.

- **The Miranda Rule:** Individuals who are arrested must be informed of certain constitutional rights, including their right to remain silent (i.e., not to incriminate themselves) and their right to counsel.

### CRIMINAL PROCESS - PART I
Stage I: Arrest -- Arrest must be made based upon probable cause -- a substantial likelihood that the person has committed or is about to commit a crime. Generally, arrest is pursuant to a warrant, but may be made without a warrant as long as probable cause exists.

Stage II: Indictment/Information -- Individuals must be formally charged with having committed one or more specific crime(s) before they may be brought to trial. Formal charges come from one of two sources:

(1) **Grand Jury Indictment** -- A grand jury is a group of citizens called to decide, after hearing the state’s evidence, whether probable cause exists for believing that a crime has been committed and whether a trial ought to be held. An indictment is the formal charge issued by the grand jury against one or more person(s).

(2) **Information** -- A formal accusation or complaint, without indictment, issued by a magistrate or other law officer, typically in cases involving lesser crimes.

CRIMINAL PROCESS - PART II
 Trial -- Once a criminal prosecution reaches trial, the state bears the burden of proving **beyond a reasonable doubt** that the accused is guilty of the crime(s) charged.

Since the state has the **burden of proof**, the accused is not **required** to testify or to put on any evidence in his or her defense, although the accused is **permitted** to do so.

The burden of proof in a criminal trial is much more difficult to satisfy than its counterpart in civil actions. In a civil case, the plaintiff need only show by a **preponderance of the evidence** that the defendant did what the plaintiff alleges.

The requirement of proof beyond a reasonable doubt, coupled with placing the burden of proof on the state, are consistent with the notion that a criminal defendant is “innocent until proven guilty.”