Criminal law has to do with relations between the misbehaving individual and his government. Criminal law establishes rules of conduct; their breach, if prosecuted and conviction follows, results in punishment.

— Lawrence M. Friedman, American Law

Almost all crimes require an act, accompanied by a guilty state of mind. A guilty state of mind usually means that the prohibited act was done intentionally, knowingly, or willfully. In most cases, mere carelessness is not considered a guilty state of mind. For example, if Meredith accidentally forgot to turn the stove off before leaving for work and the whole apartment building caught fire as a result, she would not be guilty of arson, which is the intentional burning of a person's property. She committed the act (burning a person's property) but did not have the guilty state of mind (intent).

State of mind is different from motive. While state of mind deals with the level of awareness of performing some act—whether it was done purposely, intentionally, or recklessly—motive is the reason for performing the act. For example, in murder, the motive is the reason a person kills someone (for revenge, to obtain money, etc.). Robin Hood may have had a good motive for stealing from the rich: to give to the poor. However, his state of mind in committing the theft was still intentional and knowing and, therefore, he would be guilty of a crime.
A few crimes are strict liability offenses. These crimes do not require a guilty state of mind. The act itself is criminal, regardless of the knowledge or intent of the person committing the act. For example, the law makes it a strict liability crime to sell alcoholic beverages to minors. This is true regardless of whether or not the seller knew the buyer was underage. Just because a crime does not specify a state of mind, however, does not mean it is a strict liability offense. Courts will usually assume that some guilty state of mind is required unless the legislature specifically intended to pass a strict liability law. Most often, strict liability statutes are limited to crimes that do not carry severe penalties or to crimes that are part of a larger attempt to regulate some area of conduct.

General Considerations

Every crime is defined by certain elements, each of which must be proven at trial in order to convict the offender. Thus, in addition to proving any required guilty mental state, the prosecutor must prove beyond a reasonable doubt that every element of the crime was committed. For example, robbery is defined as the unlawful taking and carrying away of goods or money from someone’s person by force or intimidation. Thus, the elements of robbery are (1) the taking and carrying away of goods or money, (2) the taking from someone’s person, and (3) use of force or intimidation.

Problem 8.1

Anton is a bully. One night while eating at a local diner, he notices Derek selecting a tune on the jukebox. Anton does not like the song Derek picks, so to show his pals who is in charge, Anton orders Derek to change the song. When Derek refuses, Anton punches him in the face, breaking Derek’s jaw. As a result of the injury, Derek misses several weeks of work and has to pay both medical and dental bills.

a. Has Anton violated civil laws, criminal laws, or both?
b. Who decides whether Anton should be charged criminally? Sued in a civil action?
c. If Anton is charged with a crime and sued in a civil action, would the civil and criminal cases be tried together? Why or why not?
d. Would procedures in a criminal trial be the same as those in a civil trial? Why or why not?
e. Is going to court the only way to handle this problem? What alternatives are there and which do you think would work best?

If someone breaks into your house when you are not home and takes your property, the person cannot be convicted of robbery. The person did not take the property from a person (no one was home)
and did not use force or intimidation. However, the person could be guilty of burglary—breaking and entering into a home with intent to commit a felony—because the elements of that crime do not require the taking from a person or the use of force.

A single act can be both a crime and a civil wrong. For example, if Clay purposely sets fire to Tamika’s store, the state may file criminal charges against Clay for arson. Tamika may also bring a separate civil action (lawsuit) against Clay to recover for the damage to her store. You will learn more about civil cases (torts) in Unit 3.

State and Federal Crimes

Criminal laws exist at both the state and federal levels. Some acts, such as simple assault, disorderly conduct, drunk driving, and shoplifting, can be prosecuted only in a state court unless they occur on federal property, such as a national park. Other acts, such as failure to pay federal taxes, mail fraud, espionage, and international smuggling, can be prosecuted only in a federal court. Certain crimes, such as illegal possession of drugs and bank robbery, can violate both state and federal law and can be prosecuted in either state or federal court.

Classes of Crimes

Crimes are classified as either felonies or misdemeanors. A felony is a crime for which the potential penalty is imprisonment for more than one year. Felonies are usually more serious crimes. A misdemeanor is any crime for which the potential penalty is imprisonment for one year or less. Minor traffic violations are not considered crimes, although they are punishable by law. This chapter deals primarily with felonies and major misdemeanors.

Parties to Crimes

The person who commits a crime is called the principal. For example, the person who fires the gun in a murder is the principal. An accomplice is someone who helps the principal commit a crime. For example, the person who drives the getaway car during a bank robbery is an accomplice. An accomplice may be charged with and convicted of the same crime as the principal. A person who orders a crime or helps the principal commit the crime but who is not present during the crime—for example, the mob leader who hires a professional killer—is known as an accessory before the fact. This person can usually be charged with the same crime and can receive the same punishment as the principal. An accessory after the fact is a person who, knowing a crime has been committed, helps the principal or an accomplice avoid capture or helps them escape. This person is not charged with the original crime but may be charged with harbor-
ing a fugitive, aiding the escape, or obstructing justice. Being an accessory after the fact has been made a separate crime by statute in many jurisdictions.

**Problem 8.2**

Jeb and Marci decide to burglarize Superior Jewelers. Their friend Carl, an employee at Superior, helps by telling them the location of the store vault. Marci drives a van to the store and keeps a lookout while Jeb goes inside and cracks the safe. After Jeb and Marci make their getaway, Jeb meets a friend, Shawn, who was not involved in the actual burglary. Jeb tells Shawn about the burglary, and Shawn helps Jeb get a train out of town. David, a former classmate of Jeb and Marci, witnesses the crime but does not tell the police, even though he recognizes both Jeb and Marci. How will each person be charged?

**Crimes of Omission**

Most crimes occur when a person does something or performs some act in violation of a law. In a few cases, however, failing to act—called an omission—may be a crime if the person had a legal duty to act. For example, it is a crime for a taxpayer to fail to file a tax return or for a motorist to fail to stop after being involved in an automobile accident. A person is guilty of a crime of omission when he or she fails to perform an act required by a criminal law, if he or she is physically able to perform the required act.
Preliminary Crimes

Certain types of behavior take place before, and often in preparation for, the commission of a crime. However, these preliminary crimes are nevertheless complete crimes in themselves. These offenses—solicitation, attempt, and conspiracy—give the police the opportunity to prevent the intended crime. Each offense can be punished even if the harm intended never occurred. For example, when two people agree to rob a bank, they commit the offense of conspiracy—whether or not they actually commit the robbery.

Solicitation

A number of states make it a crime for a person to solicit—or ask, command, urge, or advise—another person to commit a crime. The offense is committed at the time the solicitation is made. It does not require that the person solicited, or asked, actually commits the crime. For example, Dennis wishes to kill his wife, Carmella. Lacking the nerve to do the job himself, he asks William to kill her. Even if William refuses, Dennis has committed the crime of solicitation.

Attempt

In most states, an attempt to commit a crime is itself a crime. To be guilty of an attempted crime, the accused must have both intended to commit a crime and taken some “substantial step” toward committing the crime. Mere preparation to commit a crime is not enough.

When someone performs all of the elements of a crime but fails to achieve the criminal result, an attempt has occurred. For example, when a person intends to shoot and kill someone but misses or merely wounds the intended victim, the person is guilty of attempted murder. Sometimes, the crime is foiled before all of the necessary steps are completed, such as when a person purchases a gun, intends to shoot another person, but is arrested on the way to the intended victim’s house. Courts must then determine whether the actions of the accused constituted a “substantial step” toward the actual commission of the crime or were mere acts of preparation.

The Drowning Girl

Abe, Kristi, Chin, and Hannah see Jill drowning in a lake, but none of them takes steps to save her. Abe is the girl’s father. Kristi deliberately pushed Jill into the lake by shoving Chin against her. Hannah, a medal-winning swimmer, just stands and watches. Would any of the four be criminally liable for Jill’s drowning? Should any of them be liable? Explain your answer.
Problem 8.3

Examine the following situations and decide whether any of the individuals involved would be guilty of the crime of attempt.

a. Martin, a bank teller, figures out a foolproof method of stealing money from the bank. It takes him some time to get up the nerve to steal any money. Finally, he makes up his mind and tells his girlfriend, Yuka, that tomorrow he will steal the money. Yuka goes to the police, and Martin is arrested an hour later.

b. Gilbert, an accomplished thief, is caught while trying to pick Lewis’s pocket. He pleads not guilty and says he cannot possibly be convicted, because Lewis did not have a penny on him.

c. Rita and Anwar decide to rob a liquor store. They meet at a pub and talk over their plans. Rita leaves to buy a revolver, and Anwar leaves to steal a car for use in their getaway. Rita is arrested as she walks out of the gun shop with her new revolver. Anwar is arrested while trying to hot-wire a car.

d. Amy decides to burn down her store to collect the insurance money. She spreads gasoline around the building. She is arrested while leaving the store to get a book of matches.

Conspiracy

A conspiracy is an agreement between two or more persons to commit a crime. The designation of conspiracy as a crime is meant to prevent other crimes and to strike against criminal activity by groups. It also allows police to arrest conspirators before they come dangerously close to completing the crime. For example, the federal government aggressively pursued anyone believed to have conspired with the
al-Qaeda network in the terrorist attacks of September 11, 2001. The goal is to punish those involved in the attacks and to prevent any future terrorist activities from being carried out against U.S. interests. However, the designation of conspiracy as a crime is sometimes criticized as a threat to freedom of speech and association. For example, during the Vietnam War, the government charged several people with conspiracy for speaking publicly to young men on how to avoid the draft. Many critics of criminal conspiracy said the accused were being denied the freedom of speech.

An example of criminal conspiracy is the situation in which Nick, a drug dealer, asks Lyle, his associate, to help him kill another dealer. If Lyle agrees to Nick’s request and then takes some step toward committing the crime, both are guilty of conspiracy to commit murder, even if the murder is never attempted or accomplished.

In most states and under federal law, an overt act—an act that is open to view—is required for conviction on a conspiracy charge. For example, a young man named John Walker Lindh was charged and pled guilty to several counts of conspiring against the United States in the wake of the 2001 terrorist attacks. The fact that he failed to warn the U.S. government about his knowledge of planned attacks against the country constituted overt acts upon which the conspiracy charges were based.

**Law in Action**

**Conspiracy and the Oklahoma City Bombing**

On April 19, 1995, there was a tragic bombing of a large federal building in Oklahoma City, Oklahoma. Many employees, as well as children in a day-care center located in the building, were killed.

In addition to federal and state prosecutions of the individuals who allegedly committed the bombing, the federal government also prosecuted an individual who did not actually take part that day in the bombing. He was convicted of conspiracy to transport explosives across state lines and of failing to inform authorities about this illegal activity.

A federal law called misprision of felony makes it a felony, punishable by up to three years in prison, for a person with knowledge of the actual commission of a felony that violates federal law to actively conceal this information (i.e., that he knew about the planned bombing) from law enforcement or judicial officers. What are the benefits of having a law that punishes actively concealing information about the commission of a felony that violates federal law? What obstacles might the government face in prosecuting the violation of such a law? Do you think such a law should exist? Explain.