

11.2: Extortion, Robbery, and Receiving Stolen Property

Learning Objectives

1. Define the criminal act element required for extortion.
2. Define the criminal intent element required for extortion.
3. Identify a potential defense to extortion.
4. Define the attendant circumstances required for extortion.
5. Define the harm element required for extortion.
6. Analyze extortion grading.
7. Identify the differences between robbery, larceny, and extortion.
8. Analyze robbery grading.
9. Define the criminal act element required for receiving stolen property.
10. Define the criminal intent element required for receiving stolen property.
11. Identify a failure of proof or affirmative defense to receiving stolen property in some jurisdictions.
12. Define the attendant circumstances and harm element required for receiving stolen property.
13. Analyze receiving stolen property grading.

11.2.1 Extortion

All states and the federal government criminalize **extortion**, which is also called **blackmail**. K.S.A. § 21-3428, accessed March 18, 2011, kansasstatutes.lesterama.org/Chapter_21/Article_34/21-3428.html. As stated previously, the Model Penal Code criminalizes theft by extortion and grades it the same as all other nonforcible theft offenses (Model Penal Code § 223.4). Extortion is typically nonviolent, but the elements of extortion are very similar to **robbery**, which is considered a forcible theft offense. Robbery is discussed shortly.

Extortion has the elements of criminal act, criminal intent, attendant circumstances, causation, and harm, as is explored in [Section 11.2.1 "Extortion"](#).

11.2.2 Extortion Act

The **criminal act** element required for extortion is typically the theft of property accomplished by a **threat** to cause *future* harm to the victim, including the threat to inflict bodily injury, accuse anyone of committing a crime, or reveal a secret that would expose the victim to hatred, contempt, or ridicule. Ga. Code § 16-8-16, accessed March 11, 2011, law.onecle.com/georgia/16/16-8-16.html. The Model Penal Code criminalizes theft by extortion when the defendant obtains property of another by threatening to inflict bodily injury on anyone, commit any criminal offense, accuse anyone of a criminal offense, expose any secret tending to subject any person to hatred, contempt, or ridicule or impair his credit and business repute, take or withhold action as an official, bring about a strike or boycott, testify with respect to another's legal claim, or inflict any other harm that would not benefit the actor (Model Penal Code § 223.4). Note that some of these acts could be *legal*, as long as they are not performed with the unlawful intent to steal.

11.2.3 Example of Extortion Act

Rodney tells Lindsey that he will report her illegal drug trafficking to local law enforcement if she does not pay him fifteen thousand dollars. Rodney has probably committed the criminal act element required for extortion in most jurisdictions. Note that Rodney's threat to expose Lindsey's illegal activities is actually *desirable* behavior when performed with the intent to eliminate or reduce crime. However, under these circumstances, Rodney's act is most likely *criminal* because it is supported by the intent to steal fifteen thousand dollars from Lindsey.

11.2.4 Extortion Intent

The criminal intent element required for extortion is typically the **specific intent** or **purposely** to commit the criminal act and to unlawfully deprive the victim of property *permanently*. Connecticut Criminal Jury Instructions §§53a-119(5) and 53a-122(a) (1), accessed March 12, 2011, www.jud.ct.gov/ji/criminal/part9/9.1-11.htm. This intent requirement is similar to the criminal intent element required for larceny and false pretenses theft, as discussed in [Section 11](#). Some jurisdictions only require **general intent** or **knowingly** to perform the criminal act. Ariz. Rev. Stat. § 13-1804, law.onecle.com/arizona/criminal-code/13-1804.html.

11.2.5 Example of a Case Lacking Extortion Intent

Review the example with Rodney and Lindsey in [Section 11](#). Change the example and assume that Rodney asks Lindsey to loan him the fifteen thousand dollars so that he can make a balloon payment due on his mortgage. Lindsey refuses. Rodney thereafter threatens to expose Lindsey's drug trafficking if she doesn't loan him the money. In many jurisdictions, Rodney may not have the criminal intent element required for extortion. Although Rodney performed the criminal act of threatening to report Lindsey for a crime, he did so with the intent to *borrow* money from Lindsey. Thus Rodney did not act with the specific intent or purposely to permanently deprive Lindsey of property, which could operate as a **failure of proof** or **affirmative defense** to extortion in many jurisdictions.

11.2.6 Extortion Attendant Circumstance

Extortion is a form of theft, so it has the same **attendant circumstance** required in consolidated theft statutes—the property stolen belongs to *another*. In many jurisdictions, it is an **affirmative defense** to extortion that the property taken by threat to expose a secret or accuse anyone of a criminal offense is taken *honestly*, as compensation for property, or restitution or indemnification for harm done by the secret or crime. Ga. Code § 16-8-16, accessed March 11, 2011, law.onecle.com/georgia/16/16-8-16.html. The Model Penal Code provides an affirmative defense to extortion by threat of accusation of a criminal offense, exposure of a secret, or threat to take or withhold action as an official if the property obtained was “honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services” (Model Penal Code § 223.4).

11.2.7 Example of Extortion Affirmative Defense

Tara, a real estate broker, hires Trent to be a real estate sales agent in her small realty office. Tara decides she wants to get the property listing of a competitor by using Trent to obtain information. Tara tells Trent to pretend he is a buyer interested in the property. She asks him to make an appointment with the competitor, ask a lot of questions about the owner of the property, and thereafter bring Tara the information. Tara promises to pay Trent one thousand dollars for his time and effort. Trent spends several hours performing this task and thereafter demands his one thousand dollars payment. Tara tells Trent she is experiencing “tough times” and can't afford to pay him. Trent threatens to tell Tara's competitor what she is up to if she doesn't pay him the one thousand dollars. Trent has probably *not* committed extortion in many jurisdictions. Although Trent threatened to expose Tara's secret if she didn't pay him one thousand dollars, Trent *honestly* believed he was owed this money for a job he performed that was *directly related* to the secret. Thus in many jurisdictions, Trent has an **affirmative defense** that the money demanded was compensation for services and not the subject of unlawful theft by extortion.

11.2.8 Attendant Circumstance of Victim Consent

Extortion also requires the **attendant circumstance** of victim consent. With extortion, the victim consensually transfers the property based on **fear** inspired by the defendant's threat. Oklahoma Uniform Jury Instructions No. CR 5-34, accessed March 12, 2011, <http://www.okcca.net/online/oujis/oujisrvr.jsp?oc=OUJI-CR%205-34>.

11.2.9 Example of Attendant Circumstance of Victim Consent for Extortion

Review the example with Rodney and Lindsey in [Section 11](#). Assume that Lindsey grudgingly gives Rodney the fifteen thousand dollars so that he will not report her drug trafficking. In this example, Lindsey is *consensually* transferring the money to Rodney to prevent him from making good on his threat. Thus the attendant circumstance of victim **consent** based on **fear** is most likely present, and Rodney could be subject to prosecution for and conviction of extortion in most jurisdictions.

11.2.10 Extortion Causation

The criminal act must be the **factual** and **legal cause** of extortion harm, which is defined in [Section 11](#).

11.2.11 Extortion Harm

The defendant must **obtain** property belonging to another for the completed crime of extortion in most jurisdictions. Oklahoma Uniform Jury Instructions No. CR 5-34, accessed March 12, 2011, <http://www.okcca.net/online/oujis/oujisrvr.jsp?oc=OUJI-CR%205-34>. If the defendant commits the criminal act of threatening the victim with the appropriate criminal intent, but the victim does not actually transfer the property to the defendant, the defendant can only be charged with *attempted* extortion. Oklahoma

Uniform Jury Instructions No. CR 5-32, accessed March 12, 2011, <http://www.okcca.net/online/oujis/oujisrvr.jsp?oc=OUJI-CR%205-32>.

11.2.12 Example of a Case Lacking Extortion Harm

Review the example with Rodney and Lindsey in [Section 11](#). Assume that after Rodney threatens to report Lindsey's drug trafficking to local law enforcement, Lindsey calls local law enforcement, turns herself in for drug trafficking, and also reports Rodney for making the threat. In this case, because Rodney did not "obtain" property by threat, the crime of extortion is not complete, and *attempted* extortion would be the appropriate charge in most jurisdictions.

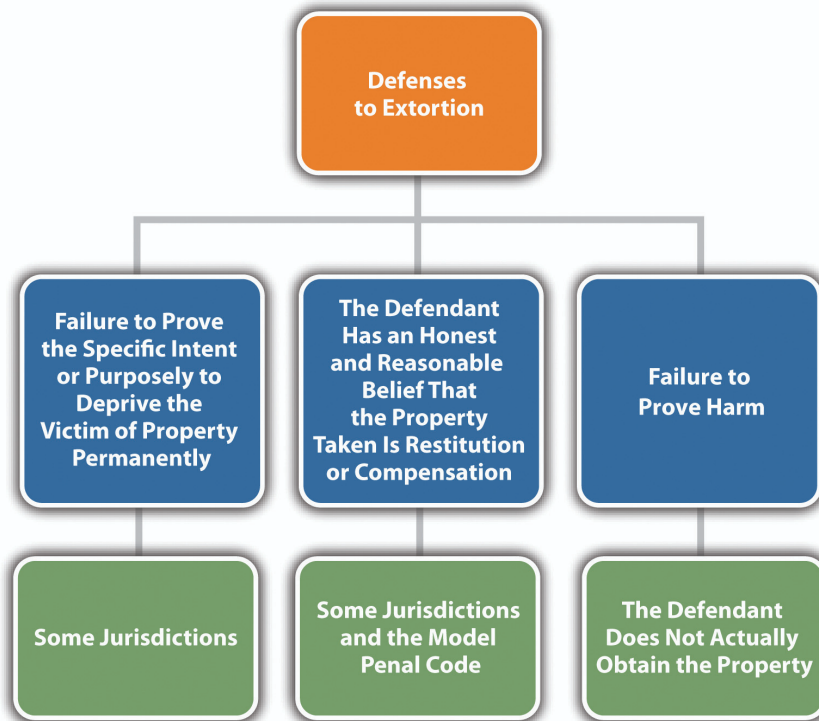


Figure 11.4 Diagram of Defenses to Extortion

11.2.13 Extortion Grading

Extortion is generally **graded** as a felony in most jurisdictions. Or. Rev. Stat. § 164.075, accessed March 12, 2011, <http://law.onecle.com/oregon/164-offenses-against-property/164.075.html>. As stated previously, the Model Penal Code grades extortion under its consolidated theft offense.

11.2.14 Robbery

Robbery was the first common-law theft crime. The criminalization of robbery was a natural progression from other common-law crimes against the person because robbery always involves force, violence, or threat and could pose a risk of injury or death to the robbery victim, defendant, or other innocent bystanders. Recall from Chapter 9 that robbery is generally a serious felony that is included in most felony murder statutes as a predicate felony for **first-degree** felony murder. When robbery does not result in death, it is typically graded more severely than theft under a consolidated theft statute. Robbery grading is discussed shortly.

The elements of robbery are very similar to the elements of **larceny** and **extortion**. For the purpose of brevity, only the elements of robbery that are distinguishable from larceny and extortion are analyzed in depth. Robbery has the elements of criminal act, attendant circumstances, criminal intent, causation, and harm, as is explored in [Section 11.2](#).

11.2.15 Robbery Act

It is the criminal act element that primarily distinguishes robbery from larceny and extortion. The **criminal act** element required for robbery is a taking of personal property by **force** or **threat** of force. Ind. Code § 35-42-5-1, accessed March 18, 2011, <http://law.onecle.com/indiana/35/35-42-5-1.html>. Force is generally physical force. The force can be slight, but it must be more than what is required to gain control over and move the property. *S.W. v. State*, 513 So. 2d 1088 (1987), accessed March 18, 2011,

http://scholar.google.com/scholar_case?case=8956843531832075141&q=robbery+%22slight+force%22&hl=en&as_sdt=2,5. Many jurisdictions require force *during* the taking, which includes the use of force to prevent the victim from reclaiming the property, or during escape. *State v. Handburgh*, 830 P.2d 641 (1992), accessed March 18, 2011, http://scholar.google.com/scholar_case?case=2186457002998894202&q=State+v.+Handburgh&hl=en&as_sdt=2,5. The Model Penal Code requires force or threat “in the course of committing a theft” and defines this as occurring in “an attempt to commit theft or in flight after the attempt or commission” (Model Penal Code § 222.1(1)). Threat for robbery is a threat to inflict *imminent* force. Ala. Code § 13A-8-43, accessed March 18, 2011, law.onecle.com/alabama/criminal-code/13A-8-43.html.

While larceny and extortion also require a taking, the defendant typically accomplishes the larceny taking by stealth, or a false representation of fact. In extortion, the defendant accomplishes the taking by a threat of *future* harm that may or may not involve force.

11.2.16 Example of Robbery Act

Review the example given in [Section 11](#) with Rodney and Lindsey. In this example, Rodney threatened to expose Lindsey’s drug trafficking if she didn’t pay him fifteen thousand dollars. Change the example so that Rodney tells Lindsey he will kill her if she doesn’t write him a check for fifteen thousand dollars. Rodney exemplifies his threat by pointing to a bulge in his front jacket pocket that appears to be a weapon. In this scenario, Rodney has most likely committed the criminal act element required for **robbery**, *not* **extortion**. Rodney’s threat is a threat of *immediate* force. Compare this threat to Rodney’s threat to expose Lindsey’s drug trafficking, which is a threat of *future* harm that relates to Lindsey’s *arrest* for a crime, rather than force.

11.2.17 Example of a Case Lacking Robbery Act

Peter, a jewelry thief, notices that Cheryl is wearing a diamond ring. Peter walks up to Cheryl and asks her if she wants him to read her palm. Cheryl shrugs her shoulders and says, “Sure! What have I got to lose?” While Peter does an elaborate palm reading, he surreptitiously slips Cheryl’s diamond ring off her finger and into his pocket. Peter has probably *not* committed the criminal act element required for robbery in this case. Although Peter used a certain amount of physical force to remove Cheryl’s ring, he did not use any force *beyond* what was required to gain control over Cheryl’s property and move it into his possession. Thus Peter has probably committed the criminal act element required for **larceny** theft, *not* **robbery**, and is subject to less severe sentencing for this lower-level offense.

11.2.18 Robbery Attendant Circumstances

Another difference between robbery and larceny or extortion is the **attendant circumstances** requirement(s). Robbery requires the same attendant circumstance required for both larceny and extortion—that the property taken belongs to another. It also has the same attendant circumstance as larceny—that the defendant accomplish the taking against the victim’s will and without consent. However, robbery has one additional attendant circumstance, which is that the property be taken **from the victim’s person or presence**. Cal. Penal Code § 211, accessed March 19, 2011, <http://codes.lp.findlaw.com/cacode/PEN/3/1/8/4/s211>. The property does not need to be in the actual physical possession of the victim, as long as it is under the victim’s *control*. *Jones v. State*, 652 So. 2d 346 (1995), accessed March 19, 2011, http://scholar.google.com/scholar_case?case=11856873917512077763&q=robbery+%22from+the+victim%27s+person%22&hl=en&as_sdt=2,5&as_ylo=2000. Thus if the victim could have prevented the taking if not for the force, violence, or threat posed by the defendant, this attendant circumstance is present. *Jones v. State*, 652 So. 2d 346 (1995), accessed March 19, 2011, http://scholar.google.com/scholar_case?case=11856873917512077763&q=robbery+%22from+the+victim%27s+person%22&hl=en&as_sdt=2,5&as_ylo=2000.

11.2.19 Example of Robbery Attendant Circumstances

Review the example given in [Section 11](#) with Rodney and Lindsey. In this example, Rodney tells Lindsey he will kill her if she doesn’t write him a check for fifteen thousand dollars. Change this example so that Rodney knows Lindsey has recently withdrawn fifteen thousand dollars in cash from the bank. Rodney demands the cash, tells Lindsey he will kill her if she doesn’t give it to him, and gestures toward a bulge in his front jacket pocket that appears to be a weapon. Lindsey tells Rodney, “The money is in my purse, but if you take it, you will be ruining my life!” and points to her purse, which is on the kitchen table a few feet away. Rodney walks over to the table, opens Lindsey’s purse, and removes a large envelope stuffed with bills. In this scenario, the attendant circumstances for robbery appear to be present. Rodney took the property of another without consent. Although the money was not on Lindsey’s person, it was in her **presence** and subject to her **control**. If Rodney had not threatened Lindsey’s life, she could have

prevented the taking. Thus Rodney has most likely committed robbery and is subject to prosecution for and conviction of this offense.

11.2.20 Robbery Intent

The criminal intent element required for robbery is the same as the criminal intent element required for larceny and extortion in many jurisdictions. The defendant must have the **specific intent** or **purposely** to commit the criminal act and to deprive the victim of the property *permanently*. *Metheny v. State*, 755 A.2d 1088 (2000), accessed March 19, 2011, http://scholar.google.com/scholar_case?case=10315203348655203542&q=robbery+%22deprive+permanently%22&hl=en&as_sdt=2,5. Some jurisdictions do not require the intent to permanently deprive the victim of property and include *temporary* takings in the robbery statute. Fla. Stat. Ann. § 812.13, accessed March 19, 2011, law.onecle.com/florida/crimes/812.13.html.

11.2.21 Example of Robbery Intent

Review the example with Rodney and Lindsey in [Section 11](#). In this example, Rodney demands a loan from Lindsey in the amount of fifteen thousand dollars and threatens to expose her drug trafficking activities if she doesn't comply. Change this example so that Rodney tells Lindsey to loan him fifteen thousand dollars or he will kill her, gesturing at a bulge in his front jacket pocket that appears to be a weapon. In a jurisdiction that requires the criminal intent to **permanently** deprive the victim of property for robbery, Rodney does not have the appropriate criminal intent. In a jurisdiction that allows for the intent to **temporarily** deprive the victim of property for robbery, Rodney has the appropriate criminal intent and may be charged with and convicted of this offense.

11.2.22 Robbery Causation and Harm

The criminal act supported by the criminal intent must be the **factual** and **legal cause** of the robbery **harm**, which is the same as the harm requirement for larceny and extortion: the property must be transferred to the defendant. Oklahoma Uniform Jury Instructions No. CR 4-141, accessed March 19, 2011, <http://www.okcca.net/online/oujis/oujisrvr.jsp?o=248>. In some jurisdictions, *no* transfer of property needs to take place, and the crime is complete when the defendant employs the force or threat with the appropriate criminal intent. *Williams v. State*, 91 S.W. 3d 54 (2002), accessed March 19, 2011, http://scholar.google.com/scholar_case?case=9518129765374420507&q=robbery+%22transfer+of+property%22&hl=en&as_sdt=2,5&as_ylo=2000.

11.2.23 Example of Robbery Harm

Review the example with Rodney and Lindsey in [Section 11](#). In this example, Rodney threatens to kill Lindsey if she does not give him fifteen thousand dollars out of her purse and gestures to a bulge in his front jacket pocket that appears to be a weapon. Change this example so that Lindsey leaps off of the couch and tackles Rodney after his threat. She reaches into his pocket and determines that Rodney's "gun" is a plastic water pistol. Rodney manages to get out from under Lindsey and escapes. If Rodney and Lindsey are in a jurisdiction that requires a transfer of property for the harm element of robbery, Rodney has probably only committed *attempted* robbery because Rodney did not get the chance to take the money out of Lindsey's purse. If Rodney and Lindsey are in a jurisdiction that does *not* require a transfer of property for the harm element of robbery, Rodney may be subject to prosecution for and conviction of this offense.

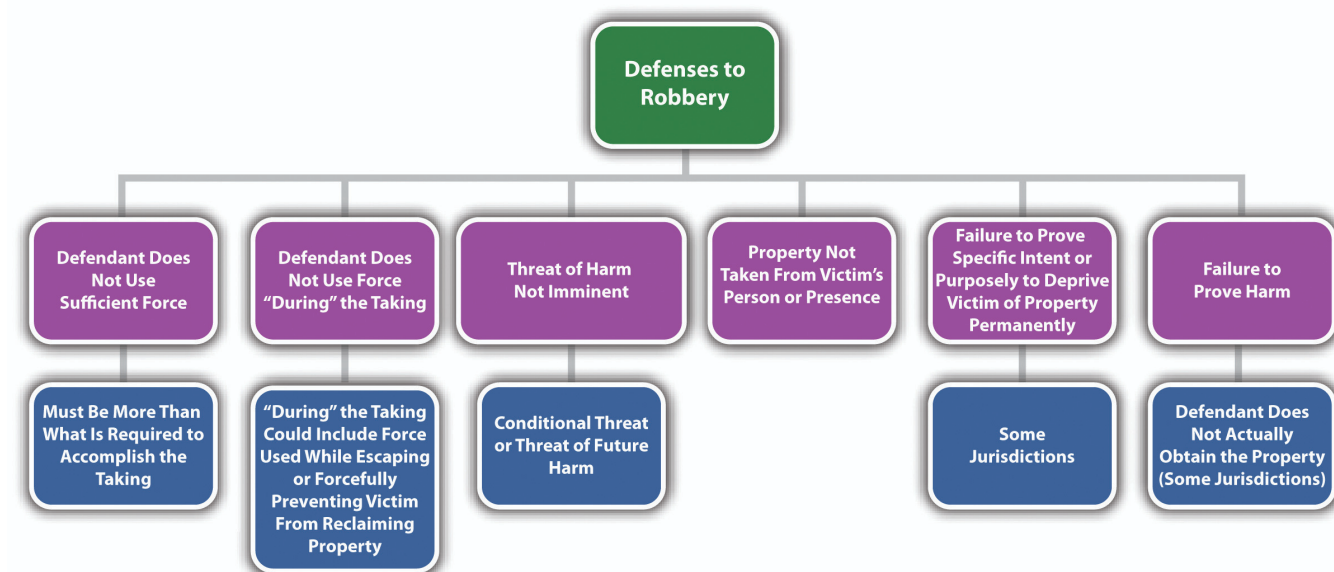


Figure 11.5 Diagram of Defenses to Robbery

11.2.24 Robbery Grading

As stated previously, robbery is generally **graded** as a serious felony that can serve as the predicate felony for first-degree felony murder. Cal. Penal Code § 189, accessed March 19, 2011, <http://law.onecle.com/california/penal/189.html>, and a strike in states that have three strikes statutes. Cal. Penal Code § 1192.7, accessed March 19, 2011, <http://law.onecle.com/california/penal/1192.7.html>. Robbery grading is aggravated by the use of a weapon or when the defendant inflicts serious bodily injury. Tex. Penal Code § 29.03, accessed March 12, 2011, law.onecle.com/texas/penal/29.03.00.html. The Model Penal Code grades robbery as a felony of the second degree, unless the actor attempts to kill anyone or purposely inflicts or attempts to inflict serious bodily injury, in which case it is graded as a felony of the first degree (Model Penal Code § 222.1(2)).

Table 11.2 Comparing Larceny, Extortion, and Robbery

Crime	Criminal Act	Criminal Intent	Attendant Circumstance	Harm
Larceny	Taking by stealth or false representation of fact	Specific or purposely to deprive the victim of property permanently*	Victim's property, lack of victim consent	Property transfer
Extortion	Taking by threat of future harm; not necessarily physical	Specific or purposely to deprive the victim of property permanently*	Victim's property; the victim consents based on fear	Property transfer
Robbery	Taking by force or threat of imminent force	Specific or purposely to deprive the victim of property permanently*	Victim's property, lack of victim consent, property is taken from the victim's person or presence	Property transfer**
*In some jurisdictions, the defendant can intend a temporary taking.				
**In some jurisdictions, the victim does not need to transfer the property to the defendant.				

11.2.25 Receiving Stolen Property

All jurisdictions criminalize **receiving stolen property**, to deter theft and to break up organized criminal enterprises that benefit from stealing and selling stolen goods. Receiving stolen property criminal statutes often are targeted at pawnbrokers or **fences** who regularly buy and sell property that is the subject of one of the theft crimes discussed in the preceding sections. As stated, the Model Penal Code includes receiving stolen property in its consolidated theft offense (Model Penal Code §§ 223.1, 223.6).

Receiving stolen property has the elements of criminal act, criminal intent, attendant circumstances, causation, and harm, as is explored in [Section 11.2.3 "Receiving Stolen Property"](#).

11.2.26 Receiving Stolen Property Act

The **criminal act** element required for receiving stolen property in many jurisdictions is receiving, retaining, disposing of, Ala. Code § 13A-8-16, accessed March 12, 2011, law.onecle.com/alabama/criminal-code/13A-8-16.html, selling, Cal. Penal Code § 496, accessed March 12, 2011, <http://law.onecle.com/california/penal/496.html>, trafficking in, Fla. Stat. Ann. § 812.019, accessed March 12, 2011, law.onecle.com/florida/crimes/812.019.html, buying, or aiding in concealment Mass. Gen. Laws ch. 266 § 60, <http://law.onecle.com/massachusetts/266/60.html>, of stolen personal property. The Model Penal Code defines the criminal act element as receiving, retaining, or disposing of stolen movable property (Model Penal Code § 223.6(1)). The criminal act does not generally require the defendant to be in actual **physical possession** of the property, as long as the defendant retains *control* over the item(s). Ga. Code § 16-8-7, accessed March 12, 2011, law.onecle.com/georgia/16/16-8-7.html. This would be a constructive possession. The Model Penal Code defines receiving as “acquiring possession, control or title, or lending on the security of the property” (Model Penal Code § 223.6(1)). Note that the criminal act element of receiving stolen property includes both **buying** and **selling**. Thus dealers that regularly purchase and then sell stolen items can be prosecuted for both of these acts under the same statute.

11.2.27 Example of Receiving Stolen Property Act

Chanel, a fence who deals in stolen designer perfume, arranges a sale between one of her thieves, Burt, and a regular customer, Sandra. Chanel directs Burt to drop off a shipment of one crate of the stolen perfume at Chanel’s storage facility and gives Burt the key. Chanel pays Burt five thousand dollars for the perfume delivery. Chanel thereafter accepts a payment of ten thousand dollars from Sandra and gives Sandra another key with instructions to pick up the perfume the next day after it has been delivered. Chanel could probably be charged with and convicted of receiving stolen property in most jurisdictions. Although Chanel did not ever acquire actual *possession* of the stolen designer perfume, Chanel had *control* over the property or constructive possession through her storage facility. Chanel’s acts of **buying** the perfume for five thousand dollars and then **selling** it for ten thousand dollars both would be criminalized under *one* statute in many jurisdictions. Thus Chanel could be prosecuted for *both* acts as separate charges of receiving stolen property.

11.2.28 Receiving Stolen Property Intent

The criminal intent element required for receiving stolen property has two parts. First, the defendant must have the intent to commit the criminal act, which could be **specific intent** or **purposely**, **general intent** or **knowingly**, **recklessly**, or **negligently** to either buy-receive or sell-dispose of stolen personal property, depending on the jurisdiction. This means that the defendant must have **actual knowledge** that the property is stolen, Mass. Gen. Laws ch. 266 § 60, accessed March 13, 2011, <http://law.onecle.com/massachusetts/266/60.html>, or the defendant must be aware or should be aware of a **risk** that the property is stolen. Ala. Code § 13A-8-16(a), accessed March 12, 2011, law.onecle.com/alabama/criminal-code/13A-8-16.html. The Model Penal Code requires the defendant to purposely commit the act *knowing* that the property is stolen or *believing* that the property has *probably* been stolen (Model Penal Code § 223.6(1)). The Model Penal Code also provides a **presumption** of knowledge or belief when the defendant is a **dealer**, which is defined as a “person in the business of buying or selling goods including a pawnbroker,” and has been found in possession or control of property stolen from two or more persons on more than one occasion, or has received stolen property in another transaction within the year preceding the transaction charged, or acquires the property for consideration far below its reasonable value (Model Penal Code § 223.6(2)). Many state statutes have a similar provision. Ala. Code § 13A-8-16, accessed March 13, 2011, law.onecle.com/alabama/criminal-code/13A-8-16.html.

The second aspect of criminal intent for receiving stolen property is the defendant’s **specific intent** or **purposeful** desire to deprive the victim of the property *permanently*, which is required in some jurisdictions. Hawaii Criminal Jury Instructions No. 10.00, 10.20, accessed March 13, 2011, <http://www.courts.state.hi.us/docs/docs4/crimjuryinstruct.pdf>. This creates a **failure of proof** or **affirmative defense** that the defendant received and retained the stolen property with the intent to *return* it to the true owner. Ga. Code § 16-8-7(a), accessed March 12, 2011, law.onecle.com/georgia/16/16-8-7.html. The Model Penal Code also provides a defense if “the property is received, retained, or disposed of with purpose to restore it to the owner” (Model Penal Code § 223.6(1)).

11.2.29 Example of Receiving Stolen Property Intent

Chip's iPod breaks, so he decides to go to the local electronics store and buy a new one. As he is approaching the store, Heather saunters over from a nearby alley and asks him if he wants to buy a brand new iPod for ten dollars. Suspicious of the price, Chip asks Heather to see the iPod. She hands it to him, and he notices that the box looks like it has been tampered with and a price tag removed. He shrugs, takes ten dollars out of his wallet, and hands it to Heather in exchange for the iPod. In jurisdictions that require **actual knowledge** that the property is stolen, Chip probably does not have the appropriate criminal intent for receiving stolen property because he did not know Heather and had no way of knowing if Heather was selling him stolen property. In jurisdictions that require **awareness of a risk** that the property is stolen, Chip may have the appropriate criminal intent because he knew the price was too low and noticed that the box had been tampered with to remove evidence of an actual price or vendor.

Change the example so that Chip is a pawnshop broker, and Heather brings the iPod into his shop to pawn for the price of ten dollars. In many jurisdictions, if Chip accepts the iPod to pawn, this creates a **presumption** of receiving stolen property criminal intent. Chip is considered a dealer, and in many jurisdictions, dealers who acquire property for consideration that they *know* is *far below* the reasonable value are subject to this type of presumption.

Change the example again so that Chip notices the following message written on the back of the iPod box: "This iPod is the property of Eugene Schumaker." Chip is Eugene Schumaker's friend, so he pays Heather the ten dollars to purchase the iPod so he can return it to Eugene. In many jurisdictions and under the Model Penal Code, Chip can use his intent to return the stolen property to its true owner as a **failure of proof** or **affirmative defense** to receiving stolen property.

11.2.30 Retaining Stolen Property

If **retaining** is the criminal act element described in the receiving stolen property statute, a defendant can still be convicted of receiving stolen property if he or she originally receives the property *without* the appropriate criminal intent, but later keeps the property *after* discovering it is stolen. Connecticut Criminal Jury Instructions §§53a-119(8) and 53a-122 through 53a-125b, accessed March 13, 2011, www.jud.ct.gov/ji/criminal/part9/9.1-15.htm.

11.2.31 Example of Retaining Stolen Property

Review the example with Chip and Heather in [Section 11](#). Change this example so that Chip is not a dealer and is offered the iPod for one hundred dollars, which is fairly close to its actual value. Chip purchases the iPod from Heather and thereafter drives home. When he gets home, he begins to open the box and notices the message stating that the iPod is the property of Eugene Schumaker. Chip thinks about it for a minute, continues to open the box, and then retains the iPod for the next six months. If Chip is in a state that defines the criminal act element for receiving stolen property as **retains**, then Chip most likely committed the criminal act with the appropriate criminal intent (knowledge that the property is stolen) and may be subject to prosecution for and conviction of this offense.

11.2.32 Receiving Stolen Property Attendant Circumstances

The property must be *stolen* for this crime, so the prosecution must prove the **attendant circumstances** that the property belongs to another and lack of victim consent.

11.2.33 Receiving Stolen Property Causation

The criminal act must be the **factual** and **legal cause** of receiving stolen property harm, which is defined in [Section 11](#).

11.2.34 Receiving Stolen Property Harm

The defendant must **buy**, **receive**, **retain**, **sell**, or **dispose of** stolen property for the completed crime of receiving stolen property in most jurisdictions. Ala. Code § 13A-8-16, accessed March 13, 2011, law.onecle.com/alabama/criminal-code/13A-8-16.html. If the defendant does not actually gain or transfer control of the property, only *attempted* receiving stolen property can be charged.

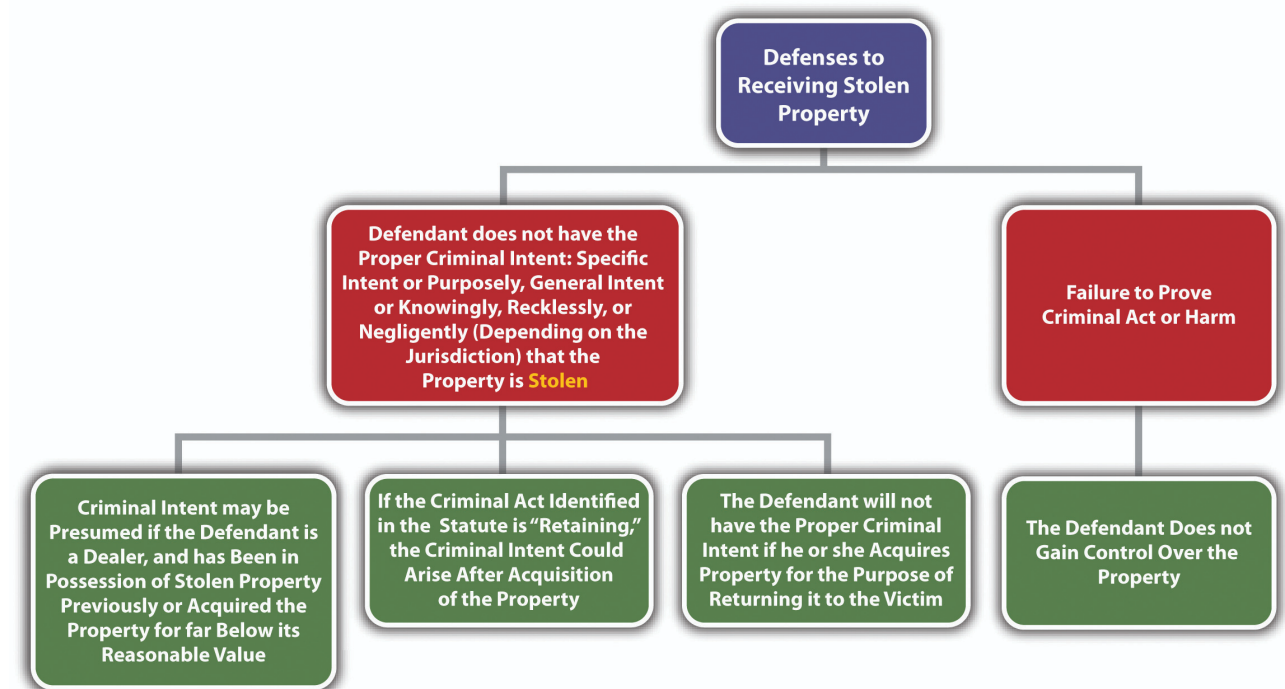
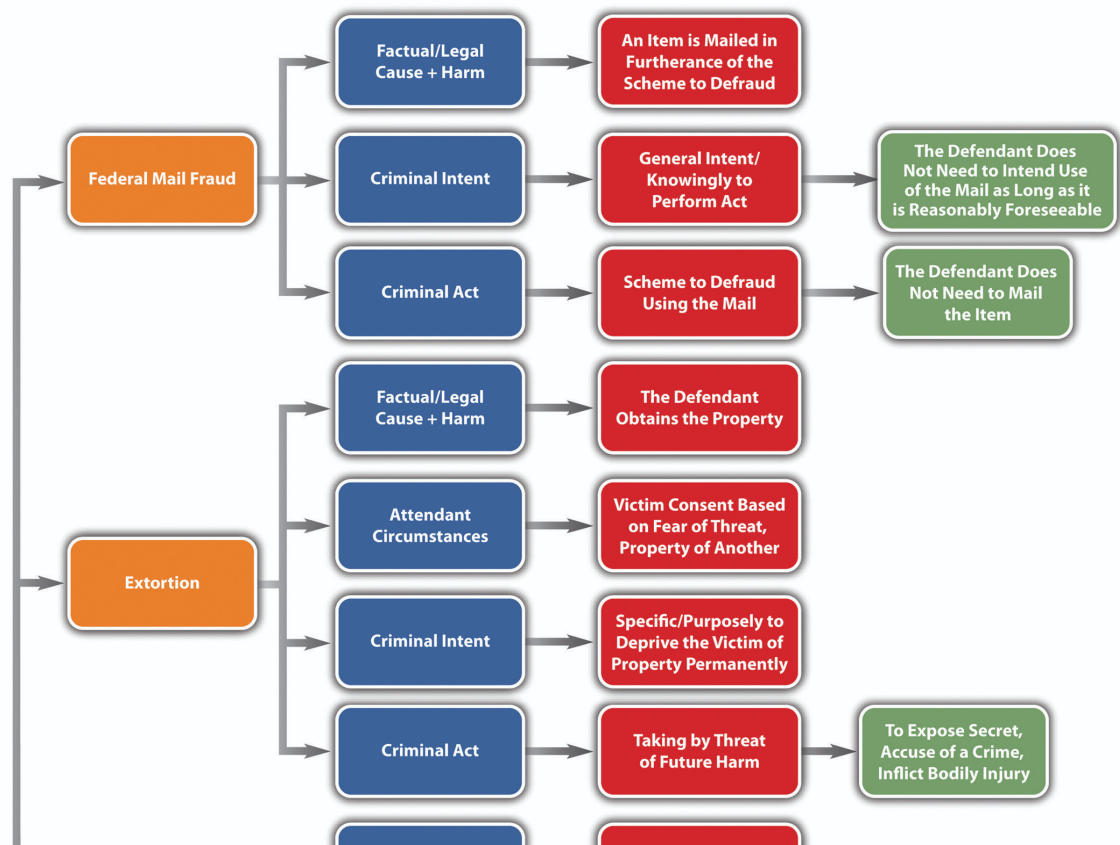


Figure 11.6 Diagram of Defenses to Receiving Stolen Property

11.2.35 Receiving Stolen Property Grading

Receiving stolen property is **graded** as a felony-misdemeanor Cal. Penal Code § 496, accessed March 13, 2011, <http://law.onecle.com/california/penal/496.html>, or as a misdemeanor if the stolen property is of low value and a felony if the stolen property is of high value. Ga. Code § 16-8-12, accessed March 13, 2011, law.onecle.com/georgia/16/16-8-12.html.



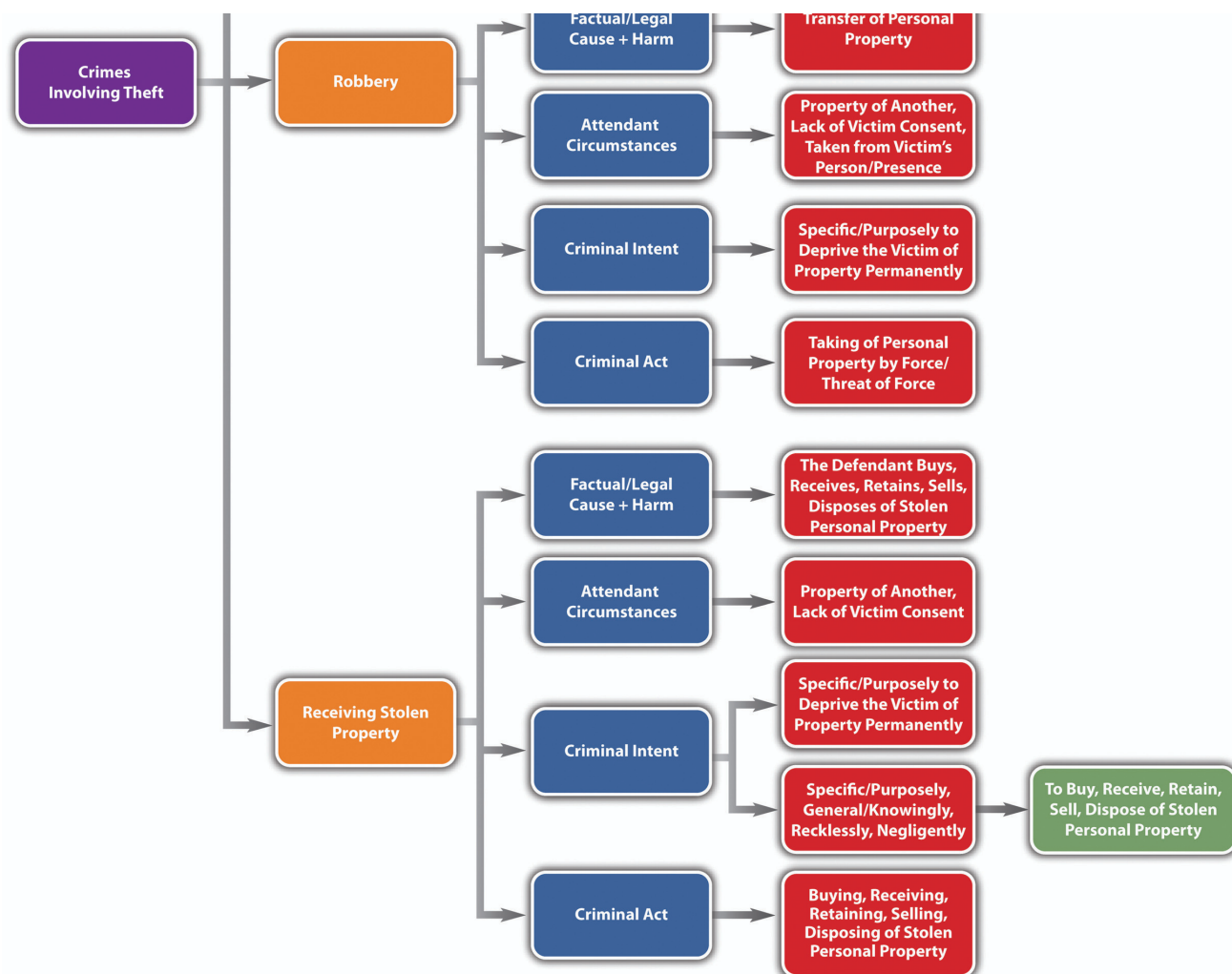


Figure 11.7 Diagram of Crimes Involving Theft

11.2.36 Exercises

- The criminal act element required for extortion is typically a theft of property accomplished by a threat to cause future harm to the victim.
- The criminal intent element required for extortion is typically the specific intent or purposely to unlawfully deprive the victim of property permanently. However, in some jurisdictions, it is the general intent or knowingly to perform the criminal act.
- In many jurisdictions, it is an affirmative defense to extortion that the property taken by threat to expose a secret or accuse anyone of a criminal offense is taken honestly, as compensation for property, or as restitution or indemnification for harm done by the secret or crime.
- The attendant circumstances of extortion are that the property belongs to another and that the victim consents to transferring the property to the defendant based on fear inspired by the defendant's threat.
- The harm element required for extortion is that the defendant obtains the property of another.
- Extortion is graded as a felony in most jurisdictions.
- Robbery requires a taking accomplished by force or threat of imminent force. Extortion requires a taking by threat of future harm that is not necessarily force, and larceny generally requires a taking by stealth or a false representation of fact. Robbery also requires the attendant circumstance that the property be taken from the victim's person or presence and is generally graded more severely than larceny or extortion.
- Robbery is typically graded as a serious felony, which is a strike in jurisdictions that have three strikes statutes, and a predicate felony for first-degree felony murder.
- The criminal act element required for receiving stolen property is typically buying-receiving, retaining, and selling-disposing of stolen personal property.

- The defendant must have the intent to commit the criminal act of receiving stolen property, which could be specific intent or purposely, general intent or knowingly, recklessly, or negligently to either buy-receive or sell-dispose of stolen personal property, depending on the jurisdiction. If “retain” is the criminal act element specified in the receiving stolen property statute, a defendant who obtains property without knowledge that it is stolen commits the offense if he or she thereafter keeps property after discovering that it is stolen. The defendant must also have the specific intent or purposeful desire to deprive the victim of the property permanently in some jurisdictions.
- A failure of proof or affirmative defense to receiving stolen property in some jurisdictions is that the defendant received and retained the stolen property with the intent to return it to the true owner.
- The attendant circumstances for receiving stolen property are that the property belongs to another and lack of victim consent. The harm element of receiving stolen property is that the defendant buy-receive, retain, or sell-dispose of stolen personal property.
- Receiving stolen property is graded as a felony-misdemeanor or a misdemeanor if the stolen property is of low value and a felony if the stolen property is of high value.

11.2.37 Exercises

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Review the example given in [Section 11](#) with Jeremy and Chuck. In this example, Chuck shows Jeremy a video he made of Jeremy reading a magazine instead of tuning up Chuck’s taxi. Chuck thereafter threatens to show this video to the district attorney if Jeremy does not pay him two hundred dollars. Has Chuck committed a crime in this scenario? If your answer is yes, which crime?
2. Read *State v. Robertson*, 531 S. E. 2d 490 (2000). In *Robertson*, the Court of Appeals of North Carolina reversed the defendant’s conviction for robbery of the victim’s purse. What was the basis of the court’s reversal of conviction? The case is available at this link: http://scholar.google.com/scholar_case?case=10266690205116389671&q=robbery+%22purse+snatching%22&hl=en&as_sdt=2,5&as_ylo=2000.
3. Read *People v. Pratt*, 656 N.W.2d 866 (2002). In *Pratt*, the defendant was convicted of receiving stolen property for taking and concealing his girlfriend’s vehicle. The defendant appealed, claiming that there was no evidence to indicate that he intended to permanently deprive his girlfriend of the vehicle, and thus it was not “**stolen**.” Did the Court of Appeals of Michigan uphold the defendant’s conviction? Why or why not? The case is available at this link: http://scholar.google.com/scholar_case?case=9260508991670862336&q=actual+knowledge+%22receiving+stolen+property%22&hl=en&as_sdt=2,5&as_ylo=2000.

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