

11.4: End-of-Chapter Material

11.4.1 Summary

Crimes against property include theft, crimes connected to theft, and crimes that invade or damage property. Modern jurisdictions criminalize several forms of theft under consolidated theft statutes that grade theft primarily on the value of the property stolen. Larceny under a consolidated theft statute in many jurisdictions is the physical taking or gaining possession of a victim's personal property by control and asportation, or a false representation of fact, with the intent to keep the property. Embezzlement under a consolidated theft statute is the conversion of a victim's real or personal property entrusted to the defendant. False pretenses under a consolidated theft statute is the permanent transfer of ownership of real or personal property or services from the victim to the defendant, based on a false representation of fact. The theft of property of low value is typically a misdemeanor (petty theft), while the theft of property of high value (grand theft) is a felony, felony-misdemeanor, or a gross misdemeanor, depending on the circumstances and the jurisdiction. Federal mail fraud, a felony, is the knowing use of the mail to perpetrate a scheme to defraud.

Extortion is the purposeful theft of property by a threat of future harm such as bodily injury or exposure of the victim's crime or secret that subjects the victim to hatred, contempt, or ridicule. Extortion is typically graded as a felony. Robbery is the purposeful theft of property from the victim's person or presence by force or threat of imminent physical harm. Robbery is typically graded as a serious felony. Receiving stolen property is receiving, buying, selling, disposing of, or retaining stolen property with either knowledge or awareness that the property is stolen or knowledge or awareness of a risk that the property is stolen. Receiving stolen property is typically graded as a felony-misdemeanor or a misdemeanor if the property is of low value and a felony if the property is of significant value.

Burglary is either breaking and entering, entering, or remaining on another's property with the intent to commit a felony, any crime, grand theft, or petty theft once inside. In some jurisdictions, the defendant can burglarize his or her own property. Burglary is typically graded as a serious felony. Criminal trespass is a knowing unauthorized entry onto the property of another. Criminal trespass is typically graded as a less serious felony than burglary, or a misdemeanor if the trespass is into a place, rather than an occupied building or structure. Arson is knowingly burning or damaging by fire property described in the arson statute. Arson is typically graded as a serious felony. Criminal mischief is damaging, destroying, or interfering with property with specific intent or purposely, general intent or knowingly, recklessly, or negligently, depending on the jurisdiction and the degree of the offense. Criminal mischief is typically graded as a less serious felony than arson, a gross misdemeanor, or a misdemeanor.

11.4.2 YOU BE THE LEGAL TEXTBOOK AUTHOR

Read the statute, and then describe the elements of each of the following crimes. Check your answers using the answer key at the end of the chapter.

1. **Offenses against computer users:** Fla. Stat. Ann. § 815.06. The statute is available at this link: law.onecle.com/florida/crimes/815.06.html. Identify the criminal **act** (seven possible), criminal **intent**, **attendant circumstance**, and **harm**. How is this crime **graded**?
2. **Identity theft:** 18 Pa. C.S. § 4120. The statute is available at this link: law.onecle.com/pennsylvania/crimes-and-offenses/00.041.020.000.html. Identify the criminal **act** (two possible), **criminal intent**, **attendant circumstance**, and **harm**. How is this crime **graded**?
3. **Unlawful duplication of computer-related material in the first degree:** N.Y. Penal Law § 156.30. The statute is available at this link: http://law.onecle.com/new-york/penal/PEN0156.30_156.30.html. Identify the criminal **act** (three possible), **criminal intent**, **attendant circumstance**, and **harm**. How is this crime **graded**?

11.4.3 Cases of Interest

- *People v. Beaver*, 186 Cal. App. 4th 107 (2010), illustrates the complexity of prosecuting theft under a consolidated theft statute: http://scholar.google.com/scholar_case?case=12194560873043980150&q=false+pretenses+theft+of+a+service&hl=en&as_sdt=2,5&as_ylo=1999.
- *State v. Castillo*, Docket No. 29, 641 (NM: 2011), discusses the difference between a debit card and credit card for theft: http://scholar.google.com/scholar_case?case=8674118418557512209&q=State+v+Castillo+NM&hl=en&as_sdt=2,5&as_ylo=2010.
- *People v. Nowack*, 614 N.W.2d 78 (2000), discusses the criminal intent element required for arson: http://scholar.google.com/scholar_case?case=3668258956679541189&q=

[arson+%22specific+intent+crime%22&hl=en&as_sdt=2,5&as_ylo=2000.](#)

11.4.4 Articles of Interest

- Bernie Madoff case: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1661462
- Largest hedge fund insider trading case in US history: http://www.huffingtonpost.com/2011/03/22/raj-rajaratnam-jury-hears_n_839281.html
- Celebrity burglaries: www.nigerianbestforum.com/generaltopics/?p=50094
- Wildland arson: www.springerlink.com/content/h4w5015373m2v200

11.4.5 Websites of Interest

- Information on arson: www.ncjrs.gov/App/Topics/Topic.aspx?topicid=66
- Cybercrime: www.justice.gov/criminal/cybercrime/reporting.htm
- US DOJ identity theft information: <http://www.justice.gov/criminal/fraud/websites/idtheft.html>

11.4.6 Statistics of Interest

- Burglary: bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=321
- Identity theft: bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=42

11.4.7 Answers to Exercises

From [Section 11.1](#)

1. Linda has committed **larceny** because she **took** personal property belonging to another without consent and with what appears to be the intent to keep it permanently. Shoplifting is typically larceny. A bra is not a high-value item (even in an expensive department store), so Linda's larceny is probably petty, second-, or third-degree theft under a consolidated theft statute.
2. Ellen has committed **larceny** because she **took** personal property belonging to another without consent and with what appears to be the intent to keep it permanently. When Ellen put her hand over the Rolex watch, she gained **control** of it. When she slid it across the counter, this was sufficient **asportation** of the property because asportation for larceny can generally be any distance—no matter how slight. The Rolex is valued at ten thousand dollars, so Ellen's larceny is probably grand or first-degree theft under a consolidated theft statute.
3. The Minnesota Supreme Court reversed, holding that the lease deposits were held in trust and belonged to the *defendant*, not the lessees. The court also held that the prosecution failed to prove a relationship of **trust** and **confidence** between the defendant and the lessees, which is required in Minnesota for embezzlement theft under the consolidated theft statute.
4. The Court of Appeal of California modified the defendant's conviction under a consolidated theft statute. The court held that the defendant actually committed attempted **larceny by trick**, not false pretenses, because he was directed to purchase licensing agreements with the money, which put him in *possession* of it rather than *ownership*.
5. The US Court of Appeals for the Fifth Circuit reversed the defendant's conviction. The court held that the *defendant* did not have to use the mails or intend that the mails be used by another to be convicted of federal mail fraud. However, because all the mailings involved the defendant's *son*, who was acquitted of the arson and therefore not involved in a scheme to defraud the insurance company, the defendant's mail fraud conviction had no basis.

11.4.8 Answers to Exercises

From [Section 11.2](#)

1. Chuck has committed the crime of **attempted extortion**. Although Chuck threatened to expose Jeremy's crime of false pretenses with the intent to force Jeremy to pay him two hundred dollars, Jeremy did *not pay* Chuck. Thus the **harm** element of extortion is lacking, and Chuck's conduct is only attempted extortion.
2. The Court of Appeals of North Carolina reversed the defendant's robbery conviction because he *snatched* the purse, using only the force required to take it from the victim's possession. Thus the crime was most likely **larceny** rather than **robbery**.
3. The Court of Appeals of Michigan upheld the defendant's conviction. Although the court conceded that a theft by larceny requires the intent to *permanently* deprive the owner of personal property, the court held that the term "stolen" in the receiving stolen property statute encompasses more than larceny theft, and thus it includes *any taking* of personal property without permission of the owner.

11.4.9 Answers to Exercises

From [Section 11.3](#)

1. Burglary of a **dwelling** is graded higher than burglary of a structure or vehicle because it is likely that the owners of a dwelling might be inside and might employ protective actions that could lead to *injury* or *death*. Burglary at **nighttime** enhances the probability that the dwelling owners will be home and makes it more difficult to identify the defendant. This could also enhance the probability of injury or death and reduce the chances of conviction, which does not serve **deterrence**.
2. The Court of Appeal of Florida held that the evidence was *insufficient* to warrant the **necessity** jury instruction. Although a neighbor to the burglarized residence testified that the defendant rang her doorbell and asked to come in while looking around in a scared manner, and a guest at a party testified that the defendant was slapped by an individual claiming the defendant owed him money, the court held that this evidence did not establish the defendant's reasonable belief that he was at risk for immediate serious bodily injury.
3. The Court of Appeals of Texas dismissed the minor's judgment of adjudication because the middle school was not located in "the incorporated city limits," as was alleged in the State's petition for adjudication.

11.4.10 Answers to Law and Ethics Questions

1. Whether it is ethical to publish classified information depends on the **content** of the published material, and requires a balancing of the public's right to know and the safety risk posed by the publication. If the publication exposes government corruption or another topic that could lead to government reform *and* the risk of harm is minimal, then many would feel the exposure is of high value and ethical.
2. The First Amendment complicates the prosecution of WikiLeaks for simply publishing information provided by an informant. Without evidence that WikiLeaks *participated* or *assisted* the government informant, a prosecution of WikiLeaks is a prosecution for **speech**, and this requires a compelling government interest and a narrowly tailored statute. Of course the government has a strong interest in protecting those involved in national defense; however, government speech has traditionally been accorded the *highest* form of protection from censorship. An additional problem is the Constitution's prohibition against the enactment of **ex post facto** laws because it does not appear that there is a statute addressing WikiLeaks' behavior (government property cannot be copyrighted, trademarked, or patented, so there was no intellectual property infringement).

11.4.11 Answers to You Be the Legal Textbook Author

1. Criminal **act**: access, disrupt, damage, destroy, take, injure, introduce computer contaminant to any computer, computer system, or network. Criminal **intent**: general intent or knowingly. **Attendant circumstance**: without authorization. **Harm**: disruption, damage, destruction, or use of the computer to commit a scheme to defraud. **Grading**: a felony or a first-degree misdemeanor. Also provides a civil action for damages.
2. Criminal **act**: possess or use the identifying information of another person. Criminal **intent**: specific intent or purposely to further an unlawful purpose. **Attendant circumstance**: lack of victim consent. **Harm**: identifying information of another is possessed or used to further any unlawful purpose. **Grading**: a felony or misdemeanor, depending on the value of property obtained, the prior record of the defendant, and whether the unlawful purpose is a conspiracy or dependent abuse.
3. Criminal **act**: copy, reproduce, or duplicate any computer data or program. Criminal **intent**: general intent or knowingly to deprive the owner of property valued in excess of \$2,500, **or** specific intent or purposely to commit or attempt to commit any felony. **Attendant circumstance**: with no right to do so. **Harm**: computer data or program is copied, reproduced, or duplicated. **Grading**: felony.

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