

# CONTEMPORARY Criminal Law

SIXTH EDITION

CONCEPTS, CASES,  
AND CONTROVERSIES

MATTHEW LIPPMAN

LIPPMAN

CONTEMPORARY Criminal Law  
SIXTH EDITION

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# Contemporary Criminal Law

6th Edition

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# Contemporary Criminal Law

## Concepts, Cases, and Controversies

6th Edition

Matthew Lippman

*University of Illinois at Chicago*



Los Angeles | London | New Delhi  
Singapore | Washington DC | Melbourne





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Thousand Oaks, California 91320  
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SAGE Publications Ltd.  
1 Oliver's Yard  
55 City Road  
London, EC1Y 1SP  
United Kingdom

SAGE Publications India Pvt. Ltd.  
B 1/I 1 Mohan Cooperative Industrial Area  
Mathura Road, New Delhi 110 044  
India

SAGE Publications Asia-Pacific Pte. Ltd.  
18 Cross Street #10-10/11/12  
China Square Central  
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Printed in Canada

Library of Congress Cataloging-in-Publication Data

Name: Lippman, Matthew Ross, 1948- author.

Title: Contemporary criminal law : concepts, cases, and controversies / Matthew Lippman, University of Illinois at Chicago.

Description: 6th edition. | Thousand Oaks, California : SAGE Publications, Inc., 2022. | Includes bibliographical references and index.

Identifiers: LCCN 2021045898 | ISBN 9781071812990 (paperback) | ISBN 9781071862087 (loose-leaf) | 9781071812976 (epub)

Subjects: LCSH: Criminal law--United States. | LCGFT: Casebooks (Law)

Classification: LCC KF9219 .O85 2022 | DDC 345.73--dc23/eng/20211006  
LC record available at <https://lccn.loc.gov/2021045898>

22 23 24 25 26 10 9 8 7 6 5 4 3 2 1

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# PREFACE

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This book reflects the insights and ideas developed over the course of more than 30 years of teaching criminal law and criminal procedure to undergraduate criminal justice students. The volume combines the concepts and learning tools found in undergraduate texts with the types of challenging cases and issues that are characteristic of law school casebooks. Each chapter incorporates several features:

- **Essays.** Essays introduce and summarize the chapters and topics.
- **Cases.** Edited cases are accompanied by “Questions for Discussion.”
- **Case Notes.** Following the edited case decisions, “Cases and Comments” and “You Decide” review exercises are provided. In the “You Decide” sections, actual cases are discussed, and readers are asked to act as judges.
- **The Model Penal Code and Discussion Boxes.** In these sections, selected statutes and the provisions of the Model Penal Code are reprinted and analyzed. Discussion boxes and graphs supplement the coverage in most chapters.
- **Learning Tools.** Learning tools summarize and reinforce the material. These include introductory vignettes, chapter outlines, the test your knowledge and criminal law in the news features, questions for discussion following each case, legal equations, chapter review questions, and legal terminology lists.

The book provides a contemporary perspective on criminal law that encourages students to actively read and analyze the text. I hope that at the conclusion of the course, students will have mastered the substance of criminal law and have developed the ability to understand and to creatively apply legal rules. My aspiration is that students come to appreciate that criminal law is dynamic and evolutionary and is not merely a static and mechanical set of rules.

## THE CASE METHOD

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One of my aims is to provide a book that students find interesting and instructors consider educationally valuable. I have found that undergraduates enjoy and easily absorb material taught through the case method. In my experience, learning is encouraged when students are presented with concrete factual situations that illustrate legal rules. The case method also lends itself to an interactive educational environment in which students engage in role-playing or apply legal precedents to novel factual scenarios. The case method has the additional benefit of assisting students to refine their skills in critical reading and analysis and in logical thinking.

The cases in the text are organized to enhance learning and comprehension. The decisions have been edited to emphasize the core components of the judgments, and technicalities have been kept to a minimum. Each case is divided into **Facts, Issue, Reasoning, and Holding**. I strongly believe in the educational value of factual analysis and have included a fairly full description of the facts. The textbook highlights the following:

- **Classic Cases.** The book includes various classic cases that are fundamental to the study of criminal law as well as cases that provide a clear statement of the law.
- **Contemporary Cases.** I have incorporated contemporary cases that reflect our increasingly diverse and urbanized society. This includes cases that address the issues of drugs, gangs, stalking, terrorism, cybercrime, white-collar crime, cultural diversity, and animal rights. Attention is also devoted to gender, race, domestic violence, and hate crimes.
- **Legal Issues.** The vast majority of the decisions have been selected to raise important and provocative legal issues. For instance, students are asked to consider whether the law should be expanded to provide that a vicious verbal attack constitutes adequate provocation for voluntary manslaughter.
- **Facts.** In other instances, the cases illustrate the challenge of applying legal rules. For example, decisions present the difficulty of distinguishing between various grades of homicide and the complexity of determining whether an act constitutes a criminal attempt.
- **Public Policy.** I have found that among the most engaging aspects of teaching criminal law are the questions of public policy, law, and morality that arise in various cases. The book constantly encourages students to reflect on the impact and social context of legal rules and raises issues throughout, such as whether we are justified in taking a life to preserve several other lives under the law of necessity.

## CHAPTER ORGANIZATION

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Each chapter is introduced by a **vignette**. This is preceded by the **Test Your Knowledge** feature, which is intended to interest students in the material and to help students focus on the important points. The **Introduction** to the chapter then provides an overview of the discussion.

The cases are introduced by **essays**. These discussions clearly present the development and elements of the relevant defense, concept, or crime and also include material on public policy considerations. Learning objectives are included to highlight what students should know. Each case is introduced by a **question** that directs students to the relevant issue.

At the conclusion of the case, **Questions for Discussion** ask students to summarize and analyze the facts and legal rule. These questions, in many instances, are followed by **Cases and Comments** that expand on the issues raised by the edited case in the textbook. There is also a

feature titled **You Decide** that provides students with the opportunity to respond to the facts of an actual case.

The essays are often accompanied by an analysis of the **Model Penal Code**. This provides students with an appreciation of the diverse approaches to criminal statutes. The discussion of each defense or crime concludes with a **legal equation** that clearly presents the elements of the defense or crime.

The chapters close with a **Chapter Summary** that outlines the important points. This is followed by **Chapter Review Questions** and **Legal Terminology**. A **Glossary** appears at the end of the book.

Most of the chapters also include **Crime in the News**. This is a brief discussion of legal developments and cases that students have likely encountered in the media. The purpose is to highlight contemporary issues and debates and to encourage students to consider the impact of the media in shaping our perceptions. Several chapters also include **Crime on the Streets**, which employs graphs to illustrate the frequency of various criminal offenses or other pertinent information. This is intended to give students a sense of the extent of crime in the United States and to connect the study of criminal law to the field of criminal justice.

## ORGANIZATION OF THE TEXT

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The textbook provides broad coverage. This enables instructors to select from a range of alternative topics. You will also find that subjects are included that are not typically addressed. The discussion of rape, for instance, includes “withdrawal of consent” and “rape shield statutes.” Expanded coverage is provided on topics such as sentencing, homicide, white-collar crime, and terrorism.

The textbook begins with the nature, purpose, and constitutional context of criminal law as well as sentencing and then covers the basic elements of criminal responsibility and offenses. The next parts of the textbook discuss crimes against the person and crimes against property and business. The book concludes with discussions of crimes against public morality and crimes against the state.

- ***The Nature, Purpose, and Constitutional Context of Criminal Law.*** Chapter 1 discusses the nature, purpose, and function of criminal law. Chapter 2 covers the constitutional limits on criminal law, including due process, equal protection, freedom of speech, and the right to privacy. Chapter 3 provides an overview of punishment and sentencing and discusses the Eighth Amendment prohibition on cruel and unusual punishment.
- ***Principles of Criminal Responsibility.*** This part covers the foundation elements of a crime. Chapter 4 discusses criminal acts, and Chapter 5 is concerned with criminal intent, concurrence, and causation.
- ***Parties, Vicarious Liability, and Inchoate Crimes.*** The third part of the textbook discusses the scope of criminal responsibility. Chapter 6 discusses parties to crime and

vicarious liability. Chapter 7 covers the inchoate crimes of attempt, conspiracy, and solicitation.

- ***Criminal Defenses.*** The fourth part of the text discusses defenses to criminal liability. Chapter 8 outlines justifications, and Chapter 9 encompasses excuses.
- ***Crimes Against the Person.*** The fifth part focuses on crimes against the person. Chapter 10 provides a lengthy treatment of homicide. Chapter 11 is concerned with criminal sexual conduct, assault and battery, kidnapping, and false imprisonment.
- ***Crimes Against Habitation and Property, and White-Collar Crime.*** Chapter 12 covers burglary, trespass, arson, and mischief. These crimes against property were originally conceived as protecting the safety and security of the home. Chapter 13 centers on other crimes against property, including larceny, embezzlement, identity theft, and carjacking. Chapter 14 provides an overview of white-collar crime, commercial offenses that are designed to illegally enhance an individual's income or corporate profits. This chapter covers a range of topics, including environmental crimes, securities fraud, mail and wire fraud, and public corruption.
- ***Crimes Against Public Order, Morality, and the State.*** Chapter 15 focuses on crimes against public order and morality that threaten the order and stability of the community. The chapter covers a number of topics including disorderly conduct, riot, vagrancy, and efforts to combat homelessness, gangs, and prostitution. Chapter 16 discusses crimes against the state, stressing counterterrorism.

## NEW TO THE SIXTH EDITION

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In writing the sixth edition I have drawn on my experience in teaching the text. The changes to the book were adopted following a thorough review of contemporary court decisions and developments. I focused my efforts on sharpening topics that caused students particular problems in previous editions. The standard was whether a modification assisted in teaching and learning. The primary changes to the text include the following:

- ***Cases.*** New cases have been added that illuminate important concepts. This includes decisions on constitutional rights, criminal acts, attempt, necessity, consent, age, intoxication, stalking, kidnapping, arson, the unhoused, identity theft, and terrorism. Several cases from the fifth edition have been edited to highlight important aspects of the decision.
- ***New Material.*** Chapters have been updated to maintain the contemporary content and theme of the book and to clarify concepts discussed in the book. The text references a number of recent U.S. Supreme Court decisions and other legal

developments of interest. There are a number of additions to the Cases and Comments feature.

- ***You Decide.*** Most chapters include a new “You Decide” feature. These problems clarify concepts, illustrate the complexity of legal analysis, and enhance the interactive character of the text.
- ***Crime in the News.*** Several chapters have new or updated “Crime in the News” features.
- ***Reorganization.*** The book has undergone some reorganization to streamline the text.

# ACKNOWLEDGMENTS

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I am hopeful that the textbook conveys my passion and enthusiasm for the teaching of criminal law and contributes to the teaching and learning of this most fascinating and vital topic. The book has been the product of the efforts and commitment of countless individuals who deserve much of the credit.

The people at SAGE Publishing are among the most skilled professionals that an author is likely to encounter. An author is fortunate to publish with SAGE, a company that is committed to quality books. Sponsoring Editor Jessica Miller provided intelligent suggestions and expert direction. Content Development Editor Darcy Scelsi is responsible for supervising the construction of the online version of the book. Senior Project Editor Tracy Buyan once again proved to be a superb professional and supervised the preparation of the lengthy manuscript and was responsible for monitoring a myriad of details associated with publication of the text. A special thanks as well to Acquisitions Editor Joshua Perigo. I would also like to thank all the expert professionals at SAGE in production and design, and in marketing and sales, who contributed their talent. The text was immensely improved by the meticulous and intelligent copyediting and expertise of Copy Editor Melinda Masson. The book could not have been produced without Melinda's extraordinary efforts.

I must mention colleagues at the University of Illinois at Chicago: Greg Matoesian, Dennis Judd, John Hagedorn, Lisa Frohmann, Evan McKenzie, the late Gordon Misner, Beth Richie, Laurie Schaffner, the late Gene Scaramella, Ana Petrovic, Louis Robles, Dave Williams, Dean Bette Bottoms, Dagmar Lorenz, Amie Schuck, Peter Ibarra, and Dennis Rosenbaum, who first proposed that I write this textbook. A great debt of gratitude, of course, is owed to my students, who constantly provide new and creative insights.

I am fortunate to have loyal friends who have provided inspiration and encouragement. These include my dear friends Wayne Kerstetter, Deborah Allen-Baber, and Agata Fijalkowski, as well as Nan Kamen-Judd, Sharon Savinski, Mindie Lazarus-Black, Bill Black, Donna Dorney, the late Leanne Lobravico, Jess Maghan, Sean McConville, Oneida Mascarenas, Sheldon Rosing, Maeve Barrett Burke, Bryan Burke, Bill Lane, Annamarie Pastore, the late Kerry Petersen, Robin Wagner, Donna Dorney, Ken Janda, Kris Clark, Wendy Chamberlin, Jennifer Woodard, Tom Morante, and Marianne Splitter. I also must thank the late Ralph Semsker and Isadora Semsker and their family. Dr. Mary Hallberg has been an important person in my life, and the late Lidia Janus remains my true north, love, and source of inspiration.

I have two members of my family living in Chicago. My sister, Dr. Jessica Lippman, and niece, Professor Amelia Barrett, remain a source of encouragement and generous assistance. Finally, the book is dedicated to my late parents, Mr. and Mrs. S. G. Lippman, who provided me with a love of learning. My late father, S. G. Lippman, practiced law for 70 years in the service of

the most vulnerable members of society. He believed that law was the highest calling and never turned away a person in need. Law, for him, was a passionate calling to pursue justice and an endless source of discussion, debate, and fascination.

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# 1

## THE NATURE, PURPOSE, AND FUNCTION OF CRIMINAL LAW

### TEST YOUR KNOWLEDGE: TRUE/FALSE

1. The only difference in the enforcement of criminal and civil law is that violation of a criminal law may result in imprisonment.
2. Criminal law defines what is punished, and criminal procedure sets forth the rules on how crimes are investigated and prosecuted.
3. The only difference between felonies and misdemeanors is that felonies result in incarceration.
4. The best source to consult to find a comprehensive and relatively easy statement of the criminal law in a state is the criminal code rather than the decisions of the state supreme court.

*Check your answers at the end of the chapter on page 20.*

### Can Police Officers Be Subjected to Prosecution in Both State and Federal Court?

As the videotape begins, it shows that [Rodney] King rose from the ground and charged toward Officer Powell. Powell took a step and used his baton to strike King on the side of his head. King fell to the ground. From the 18th to the 30th second on the videotape, King attempted to rise, but Powell and [Officer] Wind each struck him with their batons to prevent him from doing so. From the 35th to the 51st second, Powell administered repeated blows to King's lower extremities; one of the blows fractured King's leg. At the 55th second, Powell struck King on the chest, and King rolled over and lay prone. At that point, the officers stepped back and observed King for about 10 seconds. . . . At one-minute-five-seconds (1:05) on the videotape, [Officer] Briseno, in the District Court's words,

“stomped” on King’s upper back or neck. King’s body writhed in response. At 1:07, Powell and Wind again began to strike King with a series of baton blows, and Wind kicked him in the upper thoracic or cervical area six times until 1:26. At about 1:29, King put his hands behind his back and was handcuffed. (*Koon v. United States*, 518 U.S. 81 [1996])

## INTRODUCTION

Criminal law is the foundation of the criminal justice system. The law defines the conduct that may lead to an arrest by the police, trial before the courts, and incarceration in prison. When we think about criminal law, we typically focus on offenses such as rape, robbery, and murder. States, however, condemn a range of acts in their criminal codes, some of which may surprise you. In Alabama, it is a criminal offense to promote or engage in a wrestling match with a bear or to train a bear to fight in such a match.<sup>1</sup> A Florida law states that it is unlawful to possess “any ignited tobacco product” in an elevator.<sup>2</sup> Rhode Island declares that an individual shall be imprisoned for seven years who voluntarily engages in a duel with a dangerous weapon or who challenges an individual to a duel.<sup>3</sup> In Wyoming, you can be arrested for skiing while being impaired by alcohol<sup>4</sup> or for opening and failing to close a gate in a fence that “crosses a private road or river.”<sup>5</sup> You can find criminal laws on the books in various states punishing activities such as playing dominos on Sunday, feeding an alcoholic beverage to a moose, cursing on a miniature golf course, making love in a car, or performing a wedding ceremony when either the bride or groom is drunk.<sup>6</sup> In Louisiana, you risk being sentenced to 10 years in prison for stealing an alligator, whether dead or alive, valued at \$1,000.<sup>7</sup>

## THE NATURE OF CRIMINAL LAW

Are there common characteristics of acts that are labeled as crimes? How do we define a **crime**? The easy answer is that a crime is whatever the law declares to be a criminal offense and punishes with a penalty. The difficulty with this approach is that not all criminal convictions result in a fine or imprisonment. Rather than punishing a **defendant**, the judge may merely warn them not to repeat the criminal act. Most commentators stress that the important feature of a crime is that it is an act that is officially condemned by the community and carries a sense of shame and humiliation. Professor Henry M. Hart Jr. defines crime as “conduct which, if . . . shown to have taken place,” will result in the “formal and solemn pronouncement of the moral condemnation of the community.”<sup>8</sup>

The central point of Professor Hart’s definition is that a crime is subject to formal condemnation by a judge and jury representing the people in a court of law. This distinguishes a crime from acts most people would find objectionable that typically are not subject to state prosecution and official punishment. We might, for instance, criticize someone who cheats on their spouse, but we generally leave the solution to the *individuals involved*. Other matters are left to

*institutions* to settle; schools generally discipline students who cheat or disrupt classes, but this rarely results in a criminal charge. Professional baseball, basketball, and football leagues have their own private procedures for disciplining players. Most states leave the decision whether to recycle trash to the *individual* and look to *peer pressure* to enforce this obligation.

## CRIMINAL AND CIVIL LAW

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How does criminal law differ from **civil law**? Civil law is that branch of the law that protects the individual rather than the public interest. A legal action for a civil wrong is brought by an individual rather than by a state prosecutor. You may sue a mechanic who breaches a contract to repair your car or bring an action against a landlord who fails to adequately heat your apartment. The injury is primarily to you as an individual, and there is relatively little harm to society. A mechanic who intentionally misleads and harms a number of innocent consumers, however, may be charged with criminal fraud.

Civil and criminal actions are characterized by different legal procedures. For instance, conviction of a crime requires the high standard of proof beyond a reasonable doubt, although responsibility for a civil wrong is established by the much lower standard of proof by a preponderance of the evidence or roughly 51% certainty. The high standard of proof in criminal cases reflects the fact that a criminal conviction may result in a loss of liberty and significant damage to an individual's reputation and standing in the community.<sup>9</sup>

The famous 18th-century English jurist William Blackstone summarizes the distinction between civil and criminal law by observing that civil injuries are “an infringement . . . of the civil rights which belong to individuals. . . . [P]ublic wrongs, or crimes . . . are a breach and violation of the public rights and duties, due to the whole community . . . in its social aggregate capacity.” Blackstone illustrates this difference by pointing out that society has little interest in whether someone sues a neighbor or emerges victorious in a land dispute. On the other hand, society has a substantial investment in the arrest, prosecution, and conviction of individuals responsible for espionage, murder, and robbery.<sup>10</sup>

The difference between a civil and criminal action is not always clear, particularly with regard to an action for a **tort**, which is an injury to a person or to their property. Consider the drunken driver who runs a red light and hits your car. The driver may be sued in tort for negligently damaging you and your property as well as criminally prosecuted for reckless driving. The purpose of the civil action is to compensate you with money for the damage to your car and for the physical and emotional injuries you have suffered. In contrast, the criminal action punishes the driver for endangering society. Civil liability is based on a preponderance of the evidence standard, while a criminal conviction carries a possible loss of liberty and is based on the higher standard of guilt beyond a reasonable doubt. You may recall that former football star O. J. Simpson was acquitted of murdering Nicole Brown Simpson and Ron Goldman but was later found guilty of wrongful death in a civil court and ordered to compensate the victims' families in the amount of \$33.5 million.

The distinction between criminal and civil law proved immensely significant for Kansas inmate Leroy Hendricks. Hendricks was about to be released after serving 10 years in prison for

molesting two 13-year-old boys. This was only the latest episode in Hendricks's almost 30-year history of indecent exposure and molestation of young children. Hendricks freely conceded that when not confined, the only way to control his sexual urge was to "die."

Upon learning that Hendricks was about to be released, Kansas authorities invoked the Sexually Violent Predator Act of 1994, which authorized the institutional confinement of individuals who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence." Following a hearing, a jury found Hendricks to be a "sexual predator." The U.S. Supreme Court ruled that Hendricks's continued commitment was a civil rather than criminal penalty, and that Hendricks was not being unconstitutionally punished twice for the same criminal act of molestation. The Court explained that the purpose of the commitment procedure was to detain and to treat Hendricks in order to prevent him from harming others in the future rather than to punish him.<sup>11</sup> Do you think that the decision of the U.S. Supreme Court makes sense?

## THE PURPOSE OF CRIMINAL LAW

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We have seen that criminal law primarily protects the interests of society, and civil law protects the interests of the individual. The primary purpose or function of criminal law is to help maintain social order and stability. The Texas Criminal Code proclaims that the purpose of criminal law is to "establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate."<sup>12</sup> The New York Criminal Code sets out the basic purposes of criminal law as follows<sup>13</sup>:

- *Harm.* To prohibit conduct that unjustifiably or inexcusably causes or threatens substantial harm to individuals as well as to society
- *Warning.* To warn people both of conduct that is subject to criminal punishment and of the severity of the punishment
- *Definition.* To define the act and intent that is required for each offense
- *Seriousness.* To distinguish between serious and minor offenses and to assign the appropriate punishments
- *Punishment.* To impose punishments that satisfy the demands for revenge, rehabilitation, and deterrence of future crimes
- *Victims.* To ensure that the victim, the victim's family, and the community interests are represented at trial and in imposing punishments

The next step is to understand the characteristics of a criminal act.

## THE PRINCIPLES OF CRIMINAL LAW

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The study of **substantive criminal law** involves an analysis of the definition of specific crimes (specific part) and of the general principles that apply to all crimes (general part), such as the defense of insanity. In our study, we will first review the general part of criminal law and then look at specific offenses. Substantive criminal law is distinguished from **criminal procedure**. Criminal procedure involves a study of the legal standards governing the detection, investigation, and prosecution of crime and includes areas such as interrogations, search and seizure, wiretapping, and the trial process. Criminal procedure is concerned with “how the law is enforced”; criminal law involves “what law is enforced.”

Professors Jerome Hall<sup>14</sup> and Wayne R. LaFare<sup>15</sup> identify the basic principles that compose the general part of the criminal law. Think of the general part of the criminal law as the building blocks that are used to construct specific offenses such as rape, murder, and robbery.

- *Criminal Act*. A crime involves an act or failure to act. You cannot be punished for bad thoughts. A criminal act is called *actus reus*.
- *Criminal Intent*. A crime requires a criminal intent or *mens rea*. Criminal punishment is ordinarily directed at individuals who intentionally, knowingly, recklessly, or negligently harm other individuals or property.
- *Concurrence*. The criminal act and criminal intent must coexist or accompany one another.
- *Causation*. The defendant’s act must cause the harm required for criminal guilt, death in the case of homicide, and the burning of a home or other structure in the case of arson.
- *Responsibility*. Individuals must receive reasonable notice of the acts that are criminal so as to make a decision to obey or to violate the law. In other words, the required criminal act and criminal intent must be clearly stated in a statute. This concept is captured by the Latin phrase *nullum crimen sine lege, nulla poena sine lege* (no crime without law, no punishment without law).
- *Defenses*. Criminal guilt is not imposed on an individual who is able to demonstrate that their criminal act is justified (benefits society) or excused (the individual suffered from a disability that prevented them from forming a criminal intent).

We now turn to a specific part of the criminal law to understand the various types of acts that are punished as crimes.