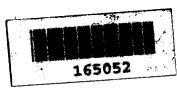
GORDON W. BROWN

# LEGAL ERMINOLOGY



# Legal Terminology

Gordon W. Brown, J.D.

Member of the Massachusetts Bar Professor of Law North Shore Community College Beverly, Massachusetts





#### Library of Congress Cataloging-in-Publication Data

Brown, Gordon W.

Legal terminology / Gordon W. Brown.

p. cm

ISBN 0-13-528407-4

1. Law-United States-Terms and phrases.

I. Title.

KF156.B725 1990

. . . . . . . .

349.73'014—dc20

89-38297

[347.30014]

CIP

Editorial/production supervision

and interior design: Janet M. DiBlasi

Cover design: Ben Santora

Manufacturing buyer: Mary Ann Gloriande



© 1990 by Prentice-Hall, Inc. A Division of Simon & Schuster Englewood Cliffs, New Jersey 07632

All rights reserved. No part of this book may be reproduced, in any form or by any means, without permission in writing from the publisher.

Printed in the United States of America 10 9 8 7 6 5 4 3 2 1

## ISBN 0-13-528407-4

Prentice-Hall International (UK) Limited, London
Prentice-Hall of Australia Pty. Limited, Sydney
Prentice-Hall Canada Inc., Toronto
Prentice-Hall Hispanoamericana, S.A., Mexico
Prentice-Hall of India Private Limited, New Delhi
Prentice-Hall of Japan, Inc., Tokyo
Simon & Schuster Asia Pte. Ltd., Singapore
Editora Prentice-Hall do Brasil, Ltda., Rio de Janeiro

This book is dedicated with love to my wife, \* Jane, and my children, Steven, Matthew, Deborah, Jennifer, Timothy, and David.

# **Preface**

Students who have an understanding of legal terminology are better able to excel not only in the study of law but also in many other fields. The mastery of legal terminology provides students with the ability to explore the law at a more sophisticated level. In addition, student interest in the law is captured and heightened by a study of the terms commonly used by professionals in the legal field.

Legal Terminology furnishes the basis for the study of more than 1,000 legal terms that are used in the areas of criminal law, torts, contracts, personal property, bailments, agency, litigation, wills, estates, trusts, real property, family law, negotiable instruments, and business organization. It places at one's disposal an ideal background for entering the legal secretarial, paralegal, court reporting, criminal justice, banking, insurance, or other fields in which a knowledge of legal terminology is useful.

The strength of Legal Terminology lies in its method of instruction. Students learn terminology in an interesting way by reading about the law in which the terms are used. Many examples are given to illustrate each legal concept. Students are provided with a wealth of assistance to help them learn the language of the law. Emphasis is placed on developing an understanding of legal terminology through the study of the law itself and using legal terminology in many different ways rather than relying solely on learning through rote memory. After completing the program, students will have at their command a legal vocabulary that is highly useful in any law-related field.

The book is written in an accurate, yet easy-to-understand style. Each chapter begins with a list of key terms to be studied in the chapter. The list of key terms is followed by a short text about the law, with each legal term printed in italics and defined the first time that it is introduced. A sequence of exercises follows in which students are given the opportunity to use legal terms in many different ways. They answer questions about the law, match legal terms with definitions, answer true-false questions about the law, and insert the terms in the proper place in the context of a story. Finally, for reinforcement, students complete a crossword puzzle containing the terms studied in the chapter.

xiv Preface

A glossary at the end of the book provides students with short definitions of more than 150 Latin terms and phrases, and an index of legal terms offers easy access to all of the legal terms in the book.

Instructors are given many helpful aids as well. The Instructors Manual and Key contains answers to all of the student activities in the text. Additional puzzles are included for those chapters which have none in the text, making available either a crossword or word search puzzle for each chapter.

#### **ACKNOWLEDGMENTS**

I am grateful to the following people for reviewing my manuscript: Jean Gonzalez, Cypress College; Carolyn Martin, Citrus Community College; and Charlene Morimoto, Los Angeles City College. Thanks, also, to Jennifer Rich, Elaine Jackson, and Tanya Deveau, North Shore Community College, for class testing my manuscript for several semesters.

Gordon W. Brown

# Contents

Part I Terms Used in Criminal Law	I
Chapter 1 Crimes and Parties Who Commit Them	1
Crimes Mala in Se and Mala Prohibita	2
Treason, Felonies, and Misdemeanors	2 2 3
Accomplices	3
Chapter 2 Larceny and Embezzlement	11
Larceny	12
Embezzlement	13
Larceny by False Pretenses	14
Bribery and Extortion	14
Chapter 3 Crimes Against the Person	19
Robbery	20
Mayhem	21
Assault and Battery Distinguished	21
Rape	22
Chapter 4 Homicide	27
Justifiable Homicide	28
Proximate Cause	28
Felonious Homicide	29

vi .	Contents
Chapter 5 Burglary, Arson, Receipt of Stolen Goods, and Forgery	37
Burglary	38
Arson	39
Receipt of Stolen Goods	40
Forgery	40
Chapter 6 Crimes Against Morality and Drug Abuse	45
Adultery and Fornication	46
Bigamy and Polygamy	46 46
Incest and Sodomy Miscegenation and Abortion Laws	47
Pornography	47
Drug Abuse	48
Part II Terms Used in Law of Torts	<i>53</i>
Ol . 7 T . 1 Tourfeener	53
Chapter 7 Torts and Tortfeasors	33
Elements of a Tort Action	54
Imputed Liability	54
Liability of Minors	55 55
Immunity from Tort Liability Joint Tortfeasors	56
Chapter 8 Intentional Torts	61
Assault and Battery	62
False Imprisonment	62
Infliction of Emotional Distress	62
Deceit	63 63
Defamation Malicious Prosecution	64
Trespass	65
Conversion	65
Chapter 9 Negligence	73
Elements of Negligence	74
Defenses to Negligence	75
Part III Terms Used in Law of Contracts	81
Chapter 10 Formation of Contracts	81
Contract Classifications	82

Contents	vii
Chapter 11 Contract Requirements	91
Consideration Contracts Required to Be in Writing Defective Agreements Illegality	92 92 93 94
Chapter 12 Assignment, Delegation, and Discharge	101
Assignment and Delegation Ending Contractual Obligations	102 102
Part IV Terms Used in Law of Personal Property and Agency	111
Chapter 13 Personal Property and Bailments	111
Sale of Goods Bailments	112 113
Chapter 14 Law of Agency	121
Relationships Distinguished Kinds of Agents Authority of Agents Vicarious Liability	122 122 122 123
Part V Terms Used in Practice and Procedure	131
Chapter 15 Beginning a Court Action	131
Criminal Action Civil Action Beginning the Suit Selecting the Court	132 132 132 132
Chapter 16 Service of Process and Attachments	141
Service of Process Attachments	142 142
Chapter 17 Defensive Pleadings	151
Demurrer Motions Defendant's Answer Counterclaim Cross Claim Cross Complaint	152 152 153 154 154 155

.

iii	Conter
iii	Conte

Bill of Particulars   162   Interrogatories   162   Depositions   163   Production of Documents and Things   164   Permission to Enter on Land   164   Physical and Mental Examinations   164   Requests for Admission   164   Requests for Admission   167   Pretrial Hearing   172   Selecting the Venire   173   Impanelling the Jury   173   Examination and Challenge of Jurors   174   Chapter 20   Steps in Trial   181   Plaintiff's Opening Statement   182   Plaintiff's Case in Chief   183   Defendant's Opening Statement   182   Defendant's Opening Statement   183   Defendant's Opening Statement   184   Defendant's Opening Statement   184   Defendant's Opening Statement   185   Defendant's Opening Statement   186   Defendant's Opening Statement   187   Defendant's Opening Statement   188   Defendant's Opening Statement   189   Defendant's Opening Statement   180	Chapter 18 Methods of Discovery	161
Interrogatories   168   Depositions   163   Production of Documents and Things   164   Permission to Enter on Land   164   Physical and Mental Examinations   164   Physical and Mental Examinations   164   Requests for Admission   164   Requests for Admission   164   The Pretrial Hearing   172   Pretrial Hearing   172   Impanelling the Jury   173   Impanelling the Jury   173   Impanelling the Jury   174   The Examination and Challenge of Jurors   174   The Plaintiff's Opening Statement   182   Plaintiff's Opening Statement   182   Defendant's Opening Statement   183   Defendant's Case in Chief   183   Defendant's Case in Chief   183   Requests for Instructions to Jury   183   Instructions to Jury   184   The Part VI Terms Used in Law of Wills and Estates   191   Parties to a Will   192   Statutory Requirements   192   Chapter 21   Wills and Testaments   191   Revocation   202   Revocation   203   Failure of Legacies and Devises   203   Chapter 23   Principal Clauses in a Will   211   Exordium Clause   212   Despositive Clauses   212   Despositive Clauses   212   Dispositive Clauses   212   Dispositive Clauses   212   Residuary Clause   213   Residuary Clause   213   Residuary Clause   214   Residuary Clause   215   Residuary Clause   215   Residuary Clause   215   Residuary Clause   215   Residuary Claus	Bill of Particulars	162
Depositions		
Production of Documents and Things	<del>-</del>	
Permission to Enter on Land         164           Physical and Mental Examinations         164           Requests for Admission         164           Chapter 19 Jury Trial         171           Pretrial Hearing         172           Selecting the Venire         172           Impanelling the Jury         173           Examination and Challenge of Jurors         174           Chapter 20 Steps in Trial         181           Plaintiff's Opening Statement         182           Plaintiff's Case in Chief         182           Defendant's Opening Statement         183           Bequests for Instructions to Jury         183           Instructions to Jury         183           Instructions to Jury         183           Instructions to Jury         183           Execution         183           Execution         184           Part VI Terms Used in Law of Wills and Estates         191           Chapter 21 Wills and Testaments         191           Parties to a will		164
Physical and Mental Examinations   164     Requests for Admission   164     Chapter 19   Jury Trial   171     Pretrial Hearing   172     Selecting the Venire   172     Impanelling the Jury   173     Examination and Challenge of Jurors   174     Chapter 20   Steps in Trial   181     Plaintiff's Opening Statement   182     Plaintiff's Case in Chief   182     Defendant's Opening Statement   183     Defendant's Opening Statement   183     Requests for Instructions to Jury   183     Requests for Instructions to Jury   183     Instructions to Jury   183     Instructions to Jury   183     Judgment or Decree   183     Judgment or Decree   184     Execution   184     Part VI Terms Used in Law of Wills and Estates   191     Chapter 21   Wills and Testaments   192     Statutory Requirements   192     Chapter 22   Revocation, Lapses, and Ademption   201     Revocation   202     Failure of Legacies and Devises   203     Chapter 23   Principal Clauses in a Will   211     Exordium Clause   212     Debts and Funeral Expenses   212     Dispositive Clauses   212     Dispositive Clauses   212     Residuary Clause   212     Resi		164
Requests for Admission   164		164
Pretrial Hearing   172		164
Selecting the Venire	Chapter 19 Jury Trial	171
Impanelling the Jury   173   Examination and Challenge of Jurors   174		
Examination and Challenge of Jurors   174		
Chapter 20   Steps in Trial   181		
Plaintiff's Opening Statement   182     Plaintiff's Case in Chief   182     Defendant's Opening Statement   183     Defendant's Case in Chief   183     Requests for Instructions to Jury   183     Final Arguments   183     Instructions to Jury   183     Verdict   183     Judgment or Decree   183     Execution   184      Part VI Terms Used in Law of Wills and Estates   191     Chapter 21   Wills and Testaments   191     Parties to a Will   192     Statutory Requirements   192     Chapter 22   Revocation   Lapses, and Ademption   201     Revocation   202     Failure of Legacies and Devises   203     Chapter 23   Principal Clauses in a Will   211     Exordium Clause   212     Debts and Funeral Expenses   212     Dispositive Clause   212     Residuary Clause   212     Ro Surety on Bond   213     Parties to instructions to Jury     Residuary Clause   212     Ro Surety on Bond   213     Parties to instructions to Jury     Revocation   202     Revocation   203     Revocation   204     Revocation   205     Revocation   207     Revocation   208     Revocation   209     Revocation   200     Revocation   201     Revocation   202     Revocation   203     Revocation   204     Revocation   205     Revocation   207     Revocation   208     Revocation   208     Revocation   208     Revocation   208     Revocation   209     Revocation   200     Revoc	Examination and Challenge of Jurors	174
Plaintiff's Case in Chief	Chapter 20 Steps in Trial	181
Plaintiff's Case in Chief	Plaintiff's Opening Statement	182
Defendant's Opening Statement		
Defendant's Case in Chief Requests for Instructions to Jury Final Arguments Instructions to Jury Verdict Judgment or Decree Execution  Chapter 21 Wills and Testaments Parties to a Will Statutory Requirements  Chapter 22 Revocation, Lapses, and Ademption Revocation Revocation Revocation Exercise and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  183 184  183 183 184  185 187 187 188 183 183 183 184 185 185 185 185 185 185 185 185 185 185		
Requests for Instructions to Jury Final Arguments Instructions to Jury Verdict Judgment or Decree Execution  Part VI Terms Used in Law of Wills and Estates  Parties to a Will Parties to a Will Statutory Requirements  Chapter 22 Revocation, Lapses, and Ademption  Revocation Revocation Revocation Exercise and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  183 183 183 184 183 184 185 185 183 184 185 185 185 185 185 185 185 185 185 185	• •	183
Final Arguments Instructions to Jury Verdict Judgment or Decree Execution  Part VI Terms Used in Law of Wills and Estates  Part vi Terms Used in Law of Wills and Estates  Parties to a Will Parties to a Will Parties to a Will Statutory Requirements  Parties to a Will Statutory Requi		183
Instructions to Jury Verdict Judgment or Decree Execution  Part VI Terms Used in Law of Wills and Estates  Parties to a Will Parties to a Will Parties to a Will Statutory Requirements  Chapter 22 Revocation, Lapses, and Ademption  Revocation Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  183 183 184 185 187 187 188 189 192 192 192 192 192 192 194 195 197 197 198 199 199 199 199 199 199 199 199 199		183
Verdiet Judgment or Decree Execution       183         Execution       183         Part VI Terms Used in Law of Wills and Estates       191         Chapter 21 Wills and Testaments       191         Parties to a Will Statutory Requirements       192         Chapter 22 Revocation, Lapses, and Ademption       201         Revocation Failure of Legacies and Devises       203         Chapter 23 Principal Clauses in a Will       211         Exordium Clause Debts and Funeral Expenses       212         Dispositive Clauses Esecutor, Guardian, and Trustee Executor, Guardian, and Trustee Output Debts and Trustee Surety on Bond       212         No Surety on Bond       213	•	183
Execution 184  Part VI Terms Used in Law of Wills and Estates 191  Chapter 21 Wills and Testaments 191  Parties to a Will 192 Statutory Requirements 192  Chapter 22 Revocation, Lapses, and Ademption 201  Revocation 202 Failure of Legacies and Devises 203  Chapter 23 Principal Clauses in a Will 211  Exordium Clause 212 Debts and Funeral Expenses 212 Dispositive Clauses 212 Residuary Clause 212 Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond 213		183
Execution 184  Part VI Terms Used in Law of Wills and Estates 191  Chapter 21 Wills and Testaments 191  Parties to a Will 192 Statutory Requirements 192  Chapter 22 Revocation, Lapses, and Ademption 201  Revocation 202 Failure of Legacies and Devises 203  Chapter 23 Principal Clauses in a Will 211  Exordium Clause 212 Debts and Funeral Expenses 212 Dispositive Clauses 212 Residuary Clause 212 Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond 213	Judgment or Decree	183
Chapter 21 Wills and Testaments  Parties to a Will 192 Statutory Requirements  Chapter 22 Revocation, Lapses, and Ademption  Revocation 202 Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause 212 Debts and Funeral Expenses 212 Dispositive Clauses 212 Residuary Clause 212 Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond  Chapter 21 Wills and Testaments  191  192  192  192  192  192  193  194  195  195  201  201  201  201  201  201  201  20	Execution	184
Parties to a Will 192 Statutory Requirements 192  Chapter 22 Revocation, Lapses, and Ademption 201  Revocation 202 Failure of Legacies and Devises 203  Chapter 23 Principal Clauses in a Will 211  Exordium Clause 212 Debts and Funeral Expenses 212 Dispositive Clauses 212 Residuary Clause 212 Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond 213	Part VI Terms Used in Law of Wills and Estates	191
Statutory Requirements  Chapter 22 Revocation, Lapses, and Ademption  Revocation Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  201  202 203  203  211  212 212 212 213	Chapter 21 Wills and Testaments	191
Statutory Requirements  Chapter 22 Revocation, Lapses, and Ademption  Revocation Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  201  202 203  203  211  212 212 212 213	Parties to a Will	192
Revocation Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  202 203  211  212 212 212 212 213		
Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  203  214  215  216  217  218  219  219  210  210  211  211	Chapter 22 Revocation, Lapses, and Ademption	201
Failure of Legacies and Devises  Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  203  214  215  216  217  218  219  219  210  210  211  211		202
Chapter 23 Principal Clauses in a Will  Exordium Clause Debts and Funeral Expenses Dispositive Clauses Residuary Clause Executor, Guardian, and Trustee No Surety on Bond  211		
Exordium Clause Debts and Funeral Expenses 212 Dispositive Clauses Residuary Clause Executor, Guardian, and Trustee No Surety on Bond 212	Failure of Legacies and Devises	203
Debts and Funeral Expenses 212 Dispositive Clauses 212 Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond 213	Chapter 23 Principal Clauses in a Will	211
Debts and Funeral Expenses 212 Dispositive Clauses 212 Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond 213	Exordium Clause	212
Dispositive Clauses Residuary Clause Executor, Guardian, and Trustee No Surety on Bond 212 212 213		212
Residuary Clause 212 Executor, Guardian, and Trustee 212 No Surety on Bond 213		212
Executor, Guardian, and Trustee 212 No Surety on Bond 213		212
No Surety on Bond 213		212
		213
	Powers Given to Fiduciaries	213

Tax Clause Testimonium Clause Attestation Clause Self-Proof Clause	213 213 213 214
Chapter 24 Disinheritance and Intestacy	221
Right to Waive Will Dower and Curtesy Pretermitted Children Intestacy	222 222 222 223
Chapter 25 Personal Representative of the Estate	231
Titles of Personal Representatives	232
Chapter 26 Settling an Estate	237
Petitioning the Court Fiduciary's Bond Letters Inventory Federal Estate Tax State Death Taxes Distribution and Accounting	238 238 238 238 239 239 239
Chapter 27 Trusts	245
Parties to a Trust Kinds of Trusts	246 246
Part VII Terms Used in Law of Real Property	255
Chapter 28 Estates in Real Property	255
Freehold Estates Leasehold Estates	256 257
Chapter 29 Co-Ownership of Real Property	263
Tenants in Common Joint Tenants Tenants by the Entirety Tenants in Partnership	264 264 264 265
Chapter 30 Acquisition of Title to Real Property	271
Original Grant Deed Inheritance Sale on Execution Mortgagee's Foreclosure Sale Tax Title	272 272 272 273 273 273
Adverse Possession	273

ix

Contents

x	Contents
Slow Action of Water	274
Chapter 31 Deeds	281
Requirements of a Valid Deed Types of Deeds	282 282
Chapter 32 Mortgages	289
Historical Background	290
Mortgage Theories	290
Mortgage Redemption	290
Mortgage Foreclosure	290
Transfer of Mortgaged Premises	291
Junior Mortgages ,	291
Deed of Trust	291
Chapter 33 Recording System	299
Purpose of a Title Search	300
Records That Are Examined	300
Title Search Procedure	301
Torrens System	303
Real Estate Closing	303
Chapter 34 Airspace and Water Rights	309
Airspace	310
Water Rights	310
Chapter 35 Easements, Restrictions, and Zoning Regulation	ns 317
Easements	318
Restrictions	318
Zoning Regulations	319
Chapter 36 Landlord and Tenant	325
Leasehold Estates	326
License	327
Lease	327
Tenant's Rights	327
Eviction	327
Tort Liability	328
Part VIII Terms Used in Family Law	335
Chapter 37 Marriage, Divorce, and Dissolution of Marriage	335
Prenuptual Contracts	336
Marriage Formalities	336

Contents	xi

Annulment of Marriage	336
Divorce or Dissolution of Marriage	337
Ç .	
Chapter 38 Divorce Procedure	345
Domicile and Residence	346
Foreign Divorce	346
Defenses to Divorce Actions	347
Alimony	348
Support and Custody of Children	348
Part IX Terms Used in Law of Negotiable Instruments	355
Chapter 39 Negotiable Instruments	355
Kinds of Negotiable Instruments Transfer of Negotiable Instruments	356 357
Part X Terms Used in Law of Business Organization	365
Chapter 40 Business Organization	365
Sole Proprietorship	366
Partnership	366
Corporation	366
Joint Venture	367
Franchise	367
Glossary of Latin Terms and Phrases	375
Index of Legal Terms	380

# Part I Terms Used in Criminal Law

# Chapter 1

# **Crimes and Parties Who Commit Them**

# **Key Terms**

crime
plaintiff
prosecute
defendant
malefactor
mens rea
penal laws
ex post facto
double jeopardy
mala in se
mala prohibita
common law
high treason
petit treason

treason
felony
misdemeanor
accomplice
principal in the first
degree
principal in the second
degree
aiding and abetting
constructively
accessory before the
fact
accessory after the fact

A crime is an offense against the public at large. It is a wrong against all of society, not merely against the individual victim alone. For that reason, the plaintiff—that is, the one who prosecutes (brings the action)—in a criminal case is always either the federal, state, or local government. The one against whom the action is brought is known as the defendant. A person found guilty of a crime is known as a malefactor.

A crime consists of either the commission or omission of an act punishable by a fine, imprisonment, or both. No act is criminal unless it is both prohibited and penalized by the law of the place where it is committed. In addition, to protect the innocent, the English common law required the act to be committed with a particular state of mind known as *mens rea*, which means criminal intent.

Laws that impose a penalty or punishment for a wrong against society are called penal laws. The U.S. Constitution prohibits Congress or any state from passing a law that is ex post facto (after the fact)—that is, one that holds a person criminally responsible for an act that was not a crime at the time of its commission. Similarly, the Fifth Amendment of the U.S. Constitution prevents people from being tried twice for the same offense, which is known as freedom from double jeopardy.

## CRIMES MALA IN SE AND MALA PROHIBITA

Crimes are divided into two classes: those that are wrong in and of themselves such as murder, rape, and robbery, and those that are not in themselves wrong but are criminal simply because they are prohibited by statute. The former are called crimes mala in se (wrongs in themselves) and require a wrongful or unlawful intent on the part of the perpetrator. The latter are called crimes mala prohibita (prohibited wrongs) and require no wrongful intent on the part of the perpetrator. All that is necessary is the doing of the act regardless of the intent of the actor. Under the common law—that is, the statutory and case law used in England and the American colonies before the American revolution, all crimes were mala in se.

To illustrate a crime mala prohibita, a 1906 state statute made it a crime to transport intoxicating liquor within the state without a license. A truck driver in the employ of a common carrier (which was bound to accept all packages offered to it for transportation and which had no right to compel a shipper to disclose the package's contents) was convicted of violating the statute when he transported an unmarked sugar barrel filled with liquor. Nothing about the appearance of the barrel caused suspicion as to its contents, and the truck driver was ignorant of the fact that it contained intoxicating liquor. The appellate court upheld the conviction, saying that the only fact to be determined is whether the defendant did the act. The court held that knowledge of the wrongdoing or wrongful intent was immaterial in the case of a crime mala prohibita. The court said that the legislature has the power to prohibit certain acts regardless of moral purity or ignorance.

# TREASON, FELONIES, AND MISDEMEANORS

Crimes are divided into three principal groups: treason, felonies, and misdemeanors.

## Treason

Treason was divided into high treason (acts against the king) and petit treason (acts against one's master or lord) under the common law of England. Such a division was never followed in this country, however. Instead, treason is defined in the U.S. Constitution as the levying of war against the United States or giving aid and comfort to the nation's enemies.

### Felonies and Misdemeanors

A *felony* is a major crime, although its exact definition differs from state to state. It is defined in some states as "punishment by hard labor," and in others as "an infamous crime" or a crime subject to "infamous punishment." A *misdemeanor*, conversely, is a less serious crime than a felony. Crimes that are not treason or felonies are classified as misdemeanors and call for a lighter penalty such as a fine or jail sentence in a place other than a state prison. Disturbing the peace and petty larceny are examples of misdemeanors.

#### **ACCOMPLICES**

Anyone who takes part with another in the commission of a crime is called an accomplice.

# Principal in the First Degree

A principal in the first degree is one who actually commits a felony either by his or her own hand or through an innocent agent. A principal in the first degree is the one who pulls the trigger or strikes the blow. One who intentionally places poison in a glass, for example, would be considered a principal in the first degree even though the glass containing the poison was delivered to the victim by an innocent third person.

## Principal in the Second Degree

A principal in the second degree is one who did not commit the act, but was actually or constructively present, aiding and abetting another in the commission of a felony. Aiding and abetting means participating in the crime by giving assistance or encouragement. One who is positioned outside as a lookout, for example, while his or her companions are inside committing burglary, would be considered as being constructively present—that is, made present by legal interpretation. In a Nevada case, a lookout stationed miles away sent a smoke signal to fellow robbers signaling that a stagecoach was coming. The court found the lookout guilty as a principal in the second degree, holding that the lookout was constructively present even though he was miles away from the scene of the crime.

At common law, and in most states today, a principal in the second degree is subject to the same punishment as that given to a principal in the first degree.

# Accessory before the Fact

An accessory before the fact is one who procures, counsels, or commands another to commit a felony, but who is not present when the felony is committed. Mere knowledge that a crime is going to be committed by another person is not enough to become an accessory before the fact to the crime that is subsequently committed by the other person, however. It must be shown that the accessory before the fact was active in inducing or bringing about the felony.

An accessory before the fact will be responsible for the natural and probable consequences that ensue from the crime that he or she induced, but not for a crime of a substantially different nature. Thus, if one person procures another to beat someone up, and the beating results in death, the one who procured the beating would be an accessory before the fact to the killing, because it is a natural and probable consequence of beating someone up. Conversely, in the situation in which

one person hires a man to beat up a woman, and he rapes her instead, the procurer would not be an accessory before the fact to the rape, because it is a crime of a substantially different nature than that which was ordered by the procurer.

Some states still follow the common law rule that an accessory before the fact cannot be tried in court until a principal is first convicted. Many states, however, now hold that an accessory before the fact may be tried without regard to the principal and may be found guilty even though the principal is acquitted.

In general, an accessory before the fact is subject to the same punishment as a principal.

# Accessory after the Fact

An accessory after the fact is one who receives, relieves, comforts, or assists another with knowledge that the other person has committed a felony. To be convicted of being an accessory after the fact, a felony must have been committed by another person, and the accessory after the fact must intend that that person avoid or escape detention, arrest, trial, or punishment.

At common law, a wife could not be held liable as an accessory after the fact under the theory that she was under her husband's coercion. Modern statutes have extended that exception, although for a different reason, to include close relatives as well. Rhode Island and Massachusetts, for example, do not allow a criminal's spouse, parent, grandparent, child, grandchild, brother, or sister to be convicted of being an accessory after the fact to the criminal.