

Chapter 12

12.1 Self Check

What issues arise when the government or consumers try to prosecute corporations for white-collar crimes?

Laws have traditionally not provided for the criminal prosecution of corporations, only for individuals who work for corporations. However, this is changing.

12.2 Self Check

1. What is the difference between willfulness for a felony versus a misdemeanor tax evasion charge?

Since the tax laws are complex, confusing, and ever changing, a defendant must have the will to avoid paying taxes.

2. What are some common defenses against charges of tax evasion?

Common defenses are ignorance of the law; third-party liability, such as when an inept or dishonest accountant creates incorrect or misleading documents; and the cash hoard defense.

12.3 Self Check

When bringing charges of false advertising, what legally constitutes a representation or advertisement?

A representation or advertisement can be in either words or pictures, and it must be about a product or service.

12.4 Self Check

1. What are some schemes to defraud, and why has there been difficulty in defining a “scheme”?

Schemes involving traditional fraud deprive one of money or other tangible property through misrepresentations, including omissions, which are reasonably calculated to deceive. Schemes are difficult to determine because they are not defined in the federal statute.

2. What is the intangible rights doctrine, and how has the debate surrounding it been resolved?

This doctrine covers a type of prosecution under mail fraud that was primarily used to protect citizens from dishonest public officials. The U.S. Supreme Court tried to deny this in *McNally v. United States*, but Congress responded by superceding the court and making such fraud a crime.

12.5 Self Check

1. What is insider trading, and who qualifies as an “insider”?

Insider trading is a type of substantive fraud that involves the purchase and sale of securities based on material, nonpublic information. Insiders may be directors, officers, major shareholders, lower-level employees obtaining information because of their jobs, outside

professionals and advisors (e.g., accountants and lawyers), press, companies and firms of the above-mentioned individuals, and the families of these people.

2. What are common defenses against charges of security fraud?

Common defenses that individuals faced with such charges are:

- No knowledge
- Good faith
- Reliance on counsel

12.6 Self Check

For a felony conviction under the FDCA, one of two requirements must be satisfied. Name these.

Along with the elements needed for a misdemeanor conviction under the FDCA, one of the following two requirements must be satisfied:

- Intent
- Evidence of a prior FDCA violation

12.7 Self Check

1. How does price-fixing harm competition? Do vertical price-fixing and horizontal price-fixing affect it differently?

It can harm competition by forcing market prices to levels that other companies cannot sustain. Yes, different types of price-fixing can affect competitors in different ways.

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SELF CHECK ANSWER KEY

2. Why is an attempt to monopolize a crime?

Because, as with other attempted criminal charges, the defendant has reached a dangerous proximity to succeeding in the attempted crime. Criminal intent is present, as are the voluntary actions that would have made a monopoly occur if it had not been detected and stopped.