

ADMINISTRATION OF JUSTICE

WHITE COLLAR CRIME

EXAM STUDY GUIDE

1. The term "white collar crime" was first coined to describe a crime committed: by a person of respectability and high social status, while in the course of his occupation.
2. Modern definitions of white-collar crime instead focus on the criminal offense, regardless of the social status of the offender.
3. The following types of activities are some of the more frequent kinds of white-collar crimes committed:
Tax evasion - False advertising - Mail fraud - Securities fraud - Crimes against the Food and Drug Act - Monopolies and antitrust crimes
4. Tax evasion is the willful attempt to avoid paying legally due taxes.
5. White collar crime is a specific intent crime and is also referred to as tax fraud.
6. A person may commit this crime by evading payment of federal, state, or local taxes.
7. Evasion of paying federal taxes is the most commonly prosecuted tax offense because it is the most common form of tax evasion.
8. The three main elements the government must show to prove willful tax evasion is: the existence of a tax deficiency, proof the accused knew of the tax deficiency, and willfully failed to report their proper income.
9. A tax deficiency exists when the proper amount of tax to be paid is greater than the amount shown on a taxpayer's tax return.
10. In order to prove the existence of a tax deficiency, the government must show the defendant received income in addition to what was reported, the unreported income was taxable, the itemized deductions claimed on the return were knowingly inflated to reduce the amount tax owed.
11. One method the government can utilize to prove a tax deficiency is using direct evidence:
12. Using direct evidence involves examining and searching through the defendant's records for all taxable income, then comparing it to the tax return filed.
13. Although the use of direct evidence is the ideal way to prove a tax deficiency, it is often extremely difficult to obtain such evidence in criminal tax offense trials.
14. If a defendant intended to evade paying income taxes, they will aim to conceal the existence of any unreported income, by destroying records of it.
15. There are three main indirect methods of proving a tax deficiency. The first is the net worth method. The second is the cash expenditures method. The third method is the bank deposits method.
16. In the bank deposits method the prosecution merely examines the deposits made by the defendant into a personal bank account within the year that is in question.
17. Knowingly performing an affirmative act toward the evasion of taxes constitutes a felony. Some examples:
Filing false tax returns - Keeping a double set of books - Concealing assets - Lying to IRS agents
18. Willfulness, for tax evasion purposes, is the voluntary, intentional violation of a known legal duty regarding a taxpayer's knowledge they should have reported more income than actually reported on their tax return.
19. To satisfy the willfulness requirement necessary for a tax evasion conviction the government must show:
The law imposed a duty on the defendant - The defendant knew of this duty - The defendant voluntarily and intentionally violated that duty to properly report their income.
20. The Supreme Court has established that ignorance of the law is a defense when it comes to tax evasion.
21. Because tax evasion offenses require a specific intent the government's burden of proving willfulness is more difficult.
22. The Trademark Law Revision Act of 1988 allows any one who "is or is likely to be damaged" by a false advertisement to sue the advertiser.
23. Courts interpret this provision as protection of the rights of competitors.
24. The Trademark Law Revision Act of 1988, places liability on anyone who makes a false or misleading advertisement regarding their own goods, services, or commercial activities.
25. The act only imposes civil liability. Therefore, only plaintiffs can bring the legal action, not a city or state prosecutor.
26. The Federal Trade Commission Act makes it illegal for any person or business to create or cause to be created any false advertisement that: creates or causes to be created, any false advertisement deemed to be an unfair or deceptive act or practice that affects commerce.
27. State laws are different from Federal laws since they are mainly passed to protect consumers from being misled regarding products or services offered for sale.
28. Many states have employed a "capacity to deceive" test:
29. As long as the ad has the potential to deceive the public, a violation can be established.
30. Mail fraud is a form of fraud that uses a mail service to disseminate materials that deceive people.

31. To obtain a conviction for mail fraud, the government must establish four basic elements all beyond a reasonable doubt: there was a scheme to defraud someone, there was the required intent to defraud, the scheme to defraud involved using the U.S. Postal Service, or any private interstate commercial carrier, the use of the U.S. Postal Service was for the purpose of furtherance of that scheme
32. When the statutes were first enacted they were used only to prosecute "schemes" that consisted of defrauding someone of some tangible property or interest in property.
33. Schemes involving traditional mail fraud deprive someone of money or other tangible property through misrepresentations, including omissions, which are calculated to deceive the consumer.
34. Two examples of mail fraud are making a false loan application and fraudulent investment schemes.
35. This type of prosecution for mail fraud is primarily used to protect citizens from dishonest public officials.
36. The prosecution must prove that the use of mail was for the purpose, of executing or completing the scheme to defraud in order to support a conviction of mail fraud.
37. A defendant has two main defenses to a mail fraud charge; First is the good faith defense, which is merely a contention that there was no fraud intended. Second is the statute of limitations defense.
38. The statute of limitations is generally five years on a mail fraud charge, and ten years if it involves a financial institution.
39. Insider trading is a type of substantive fraud that involves the purchase and sale of securities based on material, nonpublic information.
40. Many different individuals have been classified as insiders: corporate directors and officers - major shareholders - lower level employees who may obtain information because of their jobs - companies and firms and even their families
41. Parking is another method of securities fraud.
42. Parking can be defined as any sale of securities that are purchased with the understanding that they will be repurchased by the seller at a later time.
43. Parking is a criminal violation in and of itself but, it is often part of a larger scheme to commit fraud.
44. Parking is used to: Manipulate the supply and demand of stock, which will affect its price. Circumvent margin rules and minimum net capital requirements
45. There are three common defenses to securities fraud: No knowledge of the law: The defendant can argue that he or she did not know that his or her actions were contrary to the laws. They acted in good faith: When the fraud entails a misstatement or omission: the defendant can claim that they had a good faith belief that the statement was true and accurate, or that the omission was not intentional or immaterial. They relied on attorney advice: The defendant may allege their actions were a result of a good faith reliance on the advice of an attorney.
46. The Sherman Act: the primary statute used to prosecute antitrust cases. Generally criminalizes unreasonable restraints on interstate commerce.
47. The Sherman Act: Makes every contract, or conspiracy that attempts to restrain the trade or commerce among States, or with foreign nations, illegal.
48. The Sherman Act Criminalizes monopolizing, attempting to monopolize, or conspiring to monopolize a market through unfair practices.
49. The Robinson - Patman Act: anyone involved in any sale of goods "at unreasonably low prices for the purpose of destroying competition or eliminating a competitor" may be subjected to criminal liability.
50. The Clayton Act: prohibits certain types of activities that harm competition. Exclusive dealing Arrangements and mergers damaging competition.
51. The Federal Trade Commission Act: mainly used to prosecute unfair and deceptive practices.
52. Price-fixing refers to an agreement formed in order to raise, lower, fix, or stabilize commodity prices entering interstate commerce.
53. Market Allocation Agreements involving market allocation are agreements made between competitors within a given market to divide up markets by territory, product line, or customers and to minimize competition
54. Boycotts as defined by the U.S. Supreme Court: involves "concerted refusals by traders to deal with other traders."
55. To monopolize means to obtain the joint acquisition and maintenance of the power to: control and dominate interstate trade and commerce in a commodity.