

# Substantive Criminal Law

---

## Cases, Comments and Comparative Materials

**Luis E. Chiesa**

PROFESSOR OF LAW, VICE DEAN FOR ACADEMIC AFFAIRS, AND  
DIRECTOR OF THE BUFFALO CRIMINAL LAW CENTER,  
SUNY BUFFALO LAW SCHOOL



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2014  
Luis E. Chiesa  
All Rights Reserved

ISBN 978-1-61163-528-7  
LCCN 2014937538

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

*To Karla, for selflessly allowing me to follow my passion for criminal law from the warm beaches of Puerto Rico to the cold and snowy shores of Lake Erie.*



# Contents

---

Table of Cases	xxi
Preface	xxvii
Acknowledgments	xxix

## Part One · The Nature and Purposes of Criminal Law

<b>Chapter 1 · The Nature of Punishment</b>	3
§ 1.01 Distinguishing Punishment from Civil Sanctions: In General	3
<i>Kennedy v. Mendoza Martínez</i>	3
Notes and Questions	7
§ 1.02 Distinguishing Punishment from Civil Sanctions: Model Penal Code	8
Model Penal Code Section 1.04. Classes of Crime. Violations.	8
Notes and Questions	8
§ 1.03 Distinguishing Punishment from Civil Sanctions: Recent Developments	9
<i>Smith v. Doe</i>	9
Notes and Questions	13
§ 1.04. Distinguishing Punishment from Civil Sanctions: Comparative Perspectives	14
Judgment of the Spanish Constitutional Court 32/1987	14
Notes and Questions	15
§ 1.05 Distinguishing Punishment from Civil Sanctions: Scholarly Debates	16
H.L.A. Hart, <i>Punishment and Responsibility</i>	16
Joel Feinberg, <i>The Expressive Function of Punishment</i>	16
Leo Zaibert, <i>Punishment and Retribution</i>	17
Notes and Questions	18
<b>Chapter 2 · Purposes of Punishment</b>	21
§ 2.01 Purposes of Punishment: In General	21
<i>United States v. Irey</i>	21
Notes and Questions	27
§ 2.02 Purposes of Punishment: Model Penal Code	29
Model Penal Code (First Draft) Section 1.02(2). Purposes.	29
Notes and Questions	29
§ 2.03 Purposes of Punishment: Comparative Perspectives	30
Günther Jakobs, <i>Derecho Penal: Parte General</i>	30
Notes and Questions	31
§ 2.04 Purposes of Punishment: Scholarly Debates	32
Dan Kahan, <i>What Do Alternative Sanctions Mean?</i>	32

Michael Moore, <i>Closet Retributivism</i>	33
Victor Tadros, <i>The Ends of Harm: The Moral Foundations of Criminal Law</i>	34
Paul H. Robinson, <i>The Ongoing Revolution in Punishment Theory: Doing Justice as Controlling Crime</i>	36
Christopher Slobogin & Lauren Brinkley Rubinstein, <i>Putting Desert in Its Place</i>	40
Notes and Questions	43
<b>Part Two · Limits on the State's Power to Punish</b>	
<b>Chapter 3 · Principle of Legality</b>	47
§ 3.01 Principle of Legality: In General	47
John Calvin Jeffries, Jr., <i>Legality, Vagueness and the Construction of Criminal Statutes</i>	47
Notes and Questions	49
§ 3.02 Principle of Legality: Abolition of Common Law Crimes	50
<i>State v. Soto</i>	50
Notes and Questions	52
§ 3.03 Principle of Legality: Prohibition of Retroactive Punishment	53
<i>Stogner v. California</i>	53
Notes and Questions	57
§ 3.04 Principle of Legality: Prohibition of Vagueness	59
<i>Rose v. Locke</i>	59
Notes and Questions	63
§ 3.05 Principle of Legality: Prohibition of Retroactive Interpretation of Statutes and the Rule of Lenity	65
<i>McBoyle v. United States</i>	65
<i>Rogers v. Tennessee</i>	66
<i>People v. Cornett</i>	72
Notes and Questions	74
§ 3.06 Principle of Legality: Model Penal Code	75
Model Penal Code Section 1.02. Purposes; Principles of Construction	75
<i>State v. Lukas</i>	76
Notes and Questions	76
§ 3.07 Principle of Legality: Comparative Perspectives	77
Judgment of the Spanish Constitutional Court 62/1982	77
Notes and Questions	77
§ 3.08 Principle of Legality: Scholarly Debates	79
Paul H. Robinson, <i>Fair Notice and Fair Adjudication: Two Kinds of Legality</i>	79
John Calvin Jeffries, Jr., <i>Legality, Vagueness and the Construction of Criminal Statutes</i>	82
Notes and Questions	83
<b>Chapter 4 · Proportionality</b>	85
§ 4.01 Proportionality: Non-Capital Cases Involving Adult Defendants	85
<i>Harmelin v. Michigan</i>	85
Notes and Questions	92

§ 4.02 Proportionality: Death Penalty	97
<i>Kennedy v. Louisiana</i>	97
Notes and Questions	102
§ 4.03 Proportionality: Immature Defendants	104
<i>Miller v. Alabama</i>	104
Notes and Questions	107
§ 4.04 Proportionality: Alternative Approaches under State Constitutions	109
<i>State v. Lewis</i>	109
<i>Bult v. Leaply</i>	112
Notes and Questions	115
§ 4.05 Proportionality: Model Penal Code	116
Model Penal Code: Sentencing	116
Notes and Questions	116
§ 4.06 Proportionality: Comparative Perspectives	117
STS 68/1994	117
Notes and Questions	118
§ 4.07 Proportionality: Scholarly Debates	118
John Stinneford, <i>Rethinking Proportionality under the Cruel and Unusual Punishments Clause</i>	118
William W. Berry III, <i>Separating Retribution from Proportionality: A Response to Stinneford</i>	121
Notes and Questions	122
<b>Chapter 5 · Constitutional Limits on Criminalization Decisions</b>	125
§ 5.01 Criminalization Decisions: Liberty Interests Protected by Substantive Due Process	125
<i>Lawrence v. Texas</i>	125
Notes and Questions	131
§ 5.02 Criminalization Decisions: Freedom of Speech	136
<i>R.A.V. v. City of St. Paul</i>	136
Notes and Questions	138
§ 5.03 Criminalization Decisions: Model Penal Code	139
Louis B. Schwartz, <i>Morals Offenses and the Model Penal Code</i>	139
Notes and Questions	141
§ 5.04 Criminalization Decisions: Comparative Perspectives	141
Argentine National Constitution, Article 19	141
Arriola Case	141
German Penal Code § 130 — Public Incitement	142
Notes and Questions	142
§ 5.05 Criminalization Decisions: Scholarly Debates	143
Bernard E. Harcourt, <i>The Collapse of the Harm Principle</i>	143
Eric Blumenson & Eva Nilssen, <i>Liberty Lost: The Moral Case for Marijuana Law Reform</i>	144
Notes and Questions	147
<b>Part Three · The Elements of Punishable Crimes I — The Offense</b>	
<b>Chapter 6 · Conduct: Action, Omission &amp; Possession</b>	153
§ 6.01 Conduct: The Voluntary Act Requirement	153

<i>State v. Newman</i>	153
Notes and Questions	158
§ 6.02 Conduct: Omissions	161
<i>West v. Commonwealth</i>	161
Notes and Questions	163
§ 6.03 Conduct: Possessions	167
<i>Florida v. Adkins</i>	167
Notes and Questions	171
§ 6.04 Conduct: Model Penal Code	172
§ 2.01. Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act.	172
Notes and Questions	172
§ 6.05 Conduct: Comparative Perspectives	173
Jesús María Silva Sánchez, <i>Criminal Omissions: Some Relevant         Distinctions</i>	173
Notes and Questions	175
§ 6.06 Conduct: Scholarly Debates	175
Joshua Dressler, <i>Some Thoughts (Mostly Negative) about         Bad Samaritan Laws</i>	175
David Hyman, <i>Rescue Without Law: An Empirical Perspective on the         Duty to Rescue</i>	178
Ken Levy, <i>Killing, Letting Die, and the Case for (Mildly) Punishing         Bad Samaritanism</i>	180
Notes and Questions	181
<b>Chapter 7 · Causation</b>	183
§ 7.01 Causation: Actual Causation	183
<i>State v. Muro</i>	183
Notes and Questions	186
§ 7.02 Causation: Legal (Proximate) Causation	189
<i>People v. Acosta</i>	189
Notes and Questions	194
§ 7.03 Causation: Third Party Conduct as an Intervening Cause	196
<i>State v. García</i>	196
<i>Commonwealth v. Moyer</i>	200
Notes and Questions	201
§ 7.04 Causation: Victim Conduct as an Intervening Cause	203
<i>State v. Murray</i>	203
Notes and Questions	206
§ 7.05 Causation: Model Penal Code	210
§ 2.03. Causal Relationship Between Conduct and Result; Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result.	210
Notes and Questions	211
§ 7.06 Causation: Comparative Perspectives	212
Claus Roxin, <i>The Controversy over Cases in Which an Actor             Consents to Being Endangered by Someone Else's Conduct</i>	212
Notes and Questions	214
§ 7.07 Causation: Scholarly Debates	215



Vera Bergelson, <i>Victims and Perpetrators: An Argument for Comparative Liability in the Criminal Law</i>	215
Kenneth Simons, <i>The Relevance of Victim Conduct in Tort and Criminal Law</i>	219
Notes and Questions	221
<b>Chapter 8 · Subjective Offense Elements</b>	223
§ 8.01 Subjective Offense Elements ( <i>Mens Rea</i> ): Common Law	223
<i>Morissette v. United States</i>	223
Notes and Questions	227
§ 8.02 Subjective Offense Elements ( <i>Mens Rea</i> ): Purpose and Knowledge under the Model Penal Code	231
Model Penal Code § 2.02. General Requirements of Culpability.	231
<i>Vermont v. Jackowski</i>	231
Notes and Questions	233
§ 8.03 Subjective Offense Elements ( <i>Mens Rea</i> ): Recklessness under the Model Penal Code	239
Model Penal Code § 2.02. General Requirements of Culpability.	239
<i>In re D.G., Juvenile</i>	239
<i>State v. Loeffel</i>	240
<i>People v. Hall</i>	241
Notes and Questions	247
§ 8.04 Subjective Offense Elements ( <i>Mens Rea</i> ): Negligence under the Model Penal Code	248
Model Penal Code § 2.02. General Requirements of Culpability.	248
<i>State v. Strescino</i>	248
Notes and Questions	249
§ 8.05 Subjective Offense Elements ( <i>Mens Rea</i> ): Comparative Perspectives	249
Eugenio Raúl Zaffaroni, Alejandro Alagia & Alejandro Slokar, <i>Derecho Penal: Parte General</i>	249
Notes and Questions	250
§ 8.06 Subjective Offense Elements ( <i>Mens Rea</i> ): Scholarly Debates	251
Larry Alexander, <i>Insufficient Concern: A Unified Conception of Criminal Liability</i>	251
George Fletcher, <i>The Fault of Not Knowing</i>	254
Notes and Questions	255
<b>Chapter 9 · Negating Subjective Offense Elements</b>	257
§ 9.01 Negating Subjective Offense Elements ( <i>Mens Rea</i> ): Common Law Approach to Mistake of Fact	257
Louisiana Revised Statutes 14–16	257
<i>Busby v. State</i>	257
<i>Granger v. State</i>	258
<i>People v. Russell</i>	261
Notes and Questions	264
§ 9.02 Negating Subjective Offense Elements ( <i>Mens Rea</i> ): Model Penal Code Approach to Mistake of Fact	267
Model Penal Code § 2.04. Ignorance or Mistake.	267
<i>State v. Sexton</i>	267

Notes and Questions	273
§ 9.03 Negating Subjective Offense Elements ( <i>Mens Rea</i> ): Common Law Approach to Voluntary Intoxication	274
<i>People v. Hood</i>	274
Notes and Questions	277
§ 9.04 Negating Subjective Offense Elements ( <i>Mens Rea</i> ): Model Penal Code Approach to Voluntary Intoxication	279
<i>State v. Cameron</i>	279
Notes and Questions	283
§ 9.05 Negating Subjective Offense Elements ( <i>Mens Rea</i> ): Comparative Perspectives	283
Judgment of the Sixth Criminal Tribunal of Santiago, Chile (2007)	283
Notes and Questions	284
§ 9.06 Negating Subjective Offense Elements ( <i>Mens Rea</i> ): Scholarly Debates	285
Kyron Huigens, <i>Fletcher's Rethinking: A Memoir</i>	285
Susan Estrich, <i>Rape</i>	287
Notes and Questions	288
<b>Chapter 10 · Complicity</b>	291
§ 10.01 Complicity: Common Law Distinction between Principals and Accessories and Its Abrogation	291
<i>Potts v. Florida</i>	291
Notes and Questions	293
§ 10.02 Complicity: Objective Elements ( <i>Actus Reus</i> )	295
<i>State v. Vaillancourt</i>	295
<i>Porter v. State</i>	296
Notes and Questions	299
§ 10.03 Complicity: Subjective Elements ( <i>Mens Rea</i> ) with Regard to the Conduct Element of the Offense	302
<i>People v. Beeman</i>	302
<i>Backun v. United States</i>	307
<i>United States v. Peoni</i>	309
Notes and Questions	309
§ 10.04 Complicity: Subjective Elements ( <i>Mens Rea</i> ) with Regard to the Result and Circumstance Elements of the Offense	313
<i>Méndez v. State</i>	313
Notes and Questions	314
§ 10.05 Complicity: Model Penal Code	316
Model Penal Code § 2.06. Liability for Conduct of Another; Complicity	316
<i>Commonwealth v. Roebuck</i>	317
Notes and Questions	320
§ 10.06 Complicity: Comparative Perspectives	322
Spanish Penal Code: On persons criminally responsible for felonies and misdemeanors	322
Notes and Questions	322
§ 10.07 Complicity: Scholarly Debates	325
Joshua Dressler, <i>Rethinking Complicity Law: Trivial Complicity as a Lesser Offense?</i>	325

R.A. Duff, <i>Is Accomplice Liability Superfluous?</i>	327
Notes and Questions	329
<b>Chapter 11 • Attempts</b>	331
§ 11.01 Attempts: Conduct Element — Common Law Approaches	331
<i>State v. Duke</i>	331
<i>People v. Rizzo</i>	333
Notes and Questions	334
§ 11.02 Attempts: Conduct Element — Model Penal Code Approach	339
<i>People v. Scott</i>	339
<i>United States v. Jackson</i>	342
Notes and Questions	348
§ 11.03 Attempts: Subjective Offense Element ( <i>Mens Rea</i> ) — Common Law	351
<i>Stennet v. State</i>	351
<i>People v. Thomas</i>	352
Notes and Questions	355
§ 11.04 Attempts: Subjective Offense Element ( <i>Mens Rea</i> ) — Model Penal Code	356
Model Penal Code § 5.01. Criminal Attempt.	356
<i>State v. Nuñez</i>	356
Notes and Questions	358
§ 11.05 Attempts: Impossible Attempts — Common Law	359
<i>People v. Thousand</i>	359
Notes and Questions	364
§ 11.06 Attempts: Impossible Attempts — Model Penal Code	365
<i>People v. Thousand</i>	365
Notes and Questions	368
§ 11.06 Attempts: Comparative Perspectives	370
Günther Jakobs, <i>Derecho Penal Parte General</i>	370
Hans Heinrich Jescheck & Thomas Weigend, <i>Tratado de Derecho Penal Parte General</i>	370
Francisco Muñoz Conde & Mercedes García Arán, <i>Derecho Penal Parte General</i>	370
Notes and Questions	371
§ 11.06 Attempts: Scholarly Debates	371
Sanford Kadish, <i>Foreword: Criminal Law and the Luck of the Draw</i>	371
Guyora Binder, <i>Victims and the Significance of Causing Harm</i>	375
Notes and Questions	379
<b>Chapter 12 • Conspiracy</b>	381
§ 12.01 Conspiracy: In General	381
<i>Krulewitch v. United States</i>	381
Notes and Questions	386
§ 12.02 Conspiracy: Conduct Elements	387
<i>United States v. Shabani</i>	387
<i>People v. Persinger</i>	388
<i>People v. Foster</i>	390
Notes and Questions	392
§ 12.03 Conspiracy: Subjective Elements	395

<i>People v. Lauria</i>	395
<i>State v. Gunnison</i>	400
Notes and Questions	401
§ 12.04 Conspiracy: Accessorial Liability	402
<i>Pinkerton v. United States</i>	402
<i>People v. McGee</i>	404
Notes and Questions	405
§ 12.05 Conspiracy: Model Penal Code	406
<i>Minnesota v. St. Christopher</i>	406
Notes and Questions	409
§ 12.06 Conspiracy: Comparative Perspectives	410
Sergio Politoff, <i>La Conspiración Para Cometer Delitos Previstos en la Ley Sobre Tráfico de Estupefacientes</i>	410
Spanish Penal Code — Article 17	410
Notes and Questions	410
§ 12.07 Conspiracy: Scholarly Debates	411
Phillip E. Johnson, <i>The Unnecessary Crime of Conspiracy</i>	411
Neal Kumar Katyal, <i>Conspiracy Theory</i>	413
Notes and Questions	416
<b>Chapter 13 · Corporate Criminal Liability</b>	419
§ 13.01 Corporate Criminal Liability: Common Law	419
<i>United States v. Basic Construction Co.</i>	419
<i>Vaughan and Sons, Inc. v. State</i>	420
Notes and Questions	425
§ 13.02 Corporate Criminal Liability: Model Penal Code	426
Model Penal Code § 2.07. Liability of Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf.	426
<i>State v. Community Alternatives Missouri, Inc.</i>	427
Notes and Questions	431
§ 13.03 Corporate Criminal Liability: Comparative Perspectives	432
Thomas Weigend, <i>Societas Delinquere Non Potest</i>	432
Notes and Questions	436
§ 13.04 Corporate Criminal Liability: Scholarly Debates	437
Albert Alschuler, <i>Two Ways to Think about the Punishment of Corporations</i>	437
Sara Sun Beale, <i>A Response to the Critics of Corporate Criminal Liability</i>	441
Notes and Questions	444
<b>Part Four · The Elements of Punishable Crimes II — Absence of Justification</b>	
<b>Chapter 14 · Lesser Evils</b>	449
§ 14.01 Necessity: Distinguishing Necessity from Duress	449
<i>Hunt v. Florida</i>	449
Notes and Questions	451
§ 14.02 Necessity: Triggering Conditions — The Imminence of the Threat	452
<i>Commonwealth v. Leno</i>	452

Notes and Questions	454
§ 14.03 Necessity: Limiting Conditions — The Necessity of Causing Harm	454
<i>Stodghill v. State</i>	454
Notes and Questions	456
§ 14.04 Necessity: Limiting Conditions — Proportionality	457
<i>People v. Unger</i>	457
<i>Commonwealth v. Hutchins</i>	461
<i>The Queen v. Dudley and Stephens</i>	465
Notes and Questions	468
§ 14.05 Necessity: The Problem of Civil Disobedience	471
<i>United States v. Schoon</i>	471
Notes and Questions	474
§ 14.06 Necessity: Model Penal Code	475
Model Penal Code § 3.02. Justification Generally: Choice of Evils.	475
Notes and Questions	475
§ 14.07 Necessity: Comparative Perspectives	476
Aviation Security Case	476
Notes and Questions	480
§ 14.08 Necessity: Scholarly Debates	481
Kimberly Kessler Ferzan, <i>Torture Necessity and the Union of</i>	
<i>Law and Philosophy</i>	481
Larry Alexander, <i>Deontology at the Threshold</i>	483
Notes and Questions	489
<b>Chapter 15 · Defensive Force Justifications</b>	491
§ 15.01 Defensive Force: Imminent Wrongful Aggression	491
<i>State v. Norman</i>	491
Notes and Questions	498
§ 15.02 Defensive Force: The Necessity of Using Force and the	
Retreat Doctrine	501
<i>Richards v. State</i>	501
Notes and Questions	503
§ 15.03 Defensive Force: The Proportionality of the Force Used and	
Defense of Property and Habitation	506
<i>People v. Ceballos</i>	506
Notes and Questions	508
§ 15.04 Defensive Force: The Reasonableness of the Belief That	
Force Is Necessary	509
<i>People v. Goetz</i>	509
Notes and Questions	514
§ 15.05 Defensive Force: Model Penal Code	515
Model Penal Code § 3.04. Use of Force in Self-Protection.	515
Model Penal Code § 3.05. Use of Force for the Protection of	
Other Persons.	516
Model Penal Code § 3.06. Use of Force for Protection of Property.	516
Model Penal Code § 3.11. Definitions.	517
Notes and Questions	517
§ 15.06 Defensive Force: Comparative Perspectives	519

B. Sharon Byrd, <i>Till Death do Us Part: A Comparative Law Approach to Justifying Lethal Self-Defense by Battered Women</i>	519
Notes and Questions	523
§ 15.07 Defensive Force: Scholarly Debates	525
George P. Fletcher, <i>Domination in the Theory of Justification and Excuse</i>	525
Richard A. Rosen, <i>On Self-Defense, Imminence and Women who Kill their Batterers</i>	528
Notes and Questions	533
<b>Chapter 16 · Law Enforcement Authority</b>	537
§ 16.01 Law Enforcement Authority: Common Law Approach and Constitutional Limitations	537
<i>Tennessee v. Garner</i>	537
Notes and Questions	543
§ 16.02 Law Enforcement Authority: Model Penal Code	546
Model Penal Code § 3.07. Use of Force in Law Enforcement	546
Notes and Questions	547
§ 16.03 Law Enforcement Authority: Comparative Perspectives	548
Spanish Supreme Court	548
<i>Case Montero Aranguren v. Venezuela</i>	548
Notes and Questions	549
§ 16.04 Law Enforcement Authority: Scholarly Debates	549
Rachel A. Harmon, <i>When Is Police Violence Justified?</i>	549
Notes and Questions	556
<b>Part Five · The Elements of Punishable Crimes III — Absence of Excuse</b>	
<b>Chapter 17 · Duress</b>	561
§ 17.01 Duress: Human v. Natural Threats	561
<i>United States v. Hayes</i>	561
Notes and Questions	565
§ 17.02 Duress: Imminent vs. Non-Imminent Threats	566
<i>Anguish v. State</i>	566
<i>United States v. Contento-Pachón</i>	568
Notes and Questions	572
§ 17.03 Duress: May Coercion Excuse Homicide?	573
<i>People v. Anderson</i>	573
Notes and Questions	576
§ 17.04 Duress: Model Penal Code	577
Model Penal Code § 2.09	577
<i>Commonwealth v. Markman</i>	577
<i>State v. Toscano</i>	581
Notes and Questions	586
§ 17.05 Duress: Comparative Perspectives	589
<i>Prosecutor v. Drazen Erdemovic</i>	589
Notes and Questions	598
§ 17.06 Duress: Scholarly Debates	599
Luis E. Chiesa, <i>Duress, Demanding Heroism and Proportionality</i>	599

Thomas Weigend, <i>Kill or Be Killed: Another Look at Erdemovic</i>	601
Notes and Questions	605
<b>Chapter 18 · Insanity</b>	607
§ 18.01 Insanity: The M’Naghten Test	607
<i>Maas v. Territory</i>	607
Notes and Questions	610
§ 18.02 Insanity: Dissatisfaction with M’Naghten and the Rise of the Irresistible Impulse Test	614
<i>Smith v. United States</i>	614
Notes and Questions	616
§ 18.03 Insanity: Model Penal Code — Combining the M’Naghten and the Irresistible Impulse Test	617
<i>Blake v. United States</i>	617
Notes and Questions	619
§ 18.04 Insanity: Comparative Perspectives	621
Diego Manuel Luzón Peña, <i>Lecciones de Derecho Penal:</i> <i>Parte General</i>	621
Hans Heinrich Jescheck & Thomas Weigend, <i>Lehrbuch des</i> <i>Strafrechts. Allgemeiner Teil</i>	622
Eugenio Raúl Zaffaroni, Alejandro Slokar & Alejandro Alagia, <i>Derecho Penal: Parte General</i>	622
Notes and Questions	623
§ 18.05 Insanity: Scholarly Debates	624
Stephen Morse, <i>Rationality and Responsibility</i>	624
Christopher Slobogin, <i>An End to Insanity: Recasting the Role of</i> <i>Mental Disability in Criminal Cases</i>	628
Notes and Questions	631
<b>Chapter 19 · Mistake of Law</b>	635
§ 19.01 Mistake of Law: <i>Ignorantia Legis, Neminem Excusat</i>	635
<i>Hoover v. State</i>	635
Notes and Questions	636
§ 19.02 Mistake of Law: Negating (Some) <i>Mens Rea</i>	637
<i>Cheek v. United States</i>	637
Notes and Questions	642
§ 19.03 Mistake of Law: Due Process and Mistake of Law	643
<i>Lambert v. California</i>	643
Notes and Questions	645
§ 19.04 Mistake of Law: Model Penal Code	646
<i>Haggren v. State</i>	646
Notes and Questions	648
§ 19.05 Mistake of Law: Comparative Perspectives	653
German Penal Code	653
Helmut Frister, <i>Derecho Penal: Parte General</i>	653
Notes and Questions	654
§ 19.06 Mistake of Law: Scholarly Debates	655
Dan Kahan, <i>Ignorance of the Law Is an Excuse — But Only</i> <i>for the Virtuous</i>	655
Notes and Questions	660

## Part Six · Specific Offenses

<b>Chapter 20 · Homicide</b>	663
§ 20.01 Murder	663
<i>Hern v. State</i>	663
<i>Simpkins v. State</i>	665
Notes and Questions	669
§ 20.02 Felony Murder	674
<i>People v. Stamp</i>	674
Notes and Questions	676
§ 20.03 Voluntary Manslaughter	682
<i>State v. Gounagias</i>	682
Notes and Questions	686
§ 20.06 Involuntary Manslaughter	688
<i>Cook v. State</i>	688
Notes and Questions	691
§ 20.07 Homicide: Model Penal Code	692
Model Penal Code § 210	692
<i>People v. Casassa</i>	693
Notes and Questions	697
§ 20.08 Homicide: Comparative Perspectives	698
George P. Fletcher, <i>Rethinking Criminal Law</i>	698
Notes and Questions	701
§ 20.09 Homicide: Scholarly Debates	702
Kevin Cole, <i>Killing during Crime: Toward a Discriminating</i>	
<i>Theory of Strict Liability</i>	702
Guyora Binder, <i>The Culpability of Felony Murder</i>	705
Notes and Questions	709
<b>Chapter 21 · Rape</b>	711
§ 21.01 Rape: Objective Elements of the Offense — Force vs. Non-Consent	711
<i>United States v. Webster</i>	711
<i>State in the Interest of M.T.S.</i>	714
Notes and Questions	724
§ 21.02 Rape: Objective Elements of the Offense — Consent and Rape by Fraud	726
<i>Suliveres v. Commonwealth</i>	726
Notes and Questions	728
§ 21.03 Rape: Objective Elements of the Offense — Consent and Threats/Abuse of Authority	730
<i>State v. Thompson</i>	730
Notes and Questions	733
§ 21.04 Rape: Subjective Elements of the Offense — Mistake of Fact	735
<i>Commonwealth v. López</i>	735
Notes and Questions	738
§ 21.04 Rape: Model Penal Code	740
Model Penal Code § 213	740
Notes and Questions	742
§ 21.04 Rape: Comparative Perspectives	745



<i>M.C. v. Bulgaria</i>	745
Notes and Questions	747
§ 21.04 Rape: Scholarly Debates	750
Susan Estrich, <i>Rape</i>	750
Stephen Schulhofer, <i>Taking Sexual Autonomy Seriously: Rape         Law and Beyond</i>	753
Notes and Questions	755
Index	757



# Table of Cases

---

- A (Children), Re, [2000] EWCA Civ 254 (22 September 2000), 469
- Acosta, People v.**, 284 Cal.Rptr. 117 (1991), 189
- Adkins, Florida v., 96 So.3d 412 (2012), 167
- Akayesu, Prosecutor v., Judgment, No. ICTR-96-4-T (ICTR Trial Chamber Sept. 2, 1998), 310
- Allen v. State, 98 Nev. 354 (1982), 687
- Altson, State v., 709 A.2d 310 (N.J. 1998), 350
- Anderson, People v.**, 122 Cal.Rptr.2d 587 (2002), 573
- Anguish v. State**, 991 S.W.2d 883 (Tex. Ct. App. 1999), 566
- Atencio, Commonwealth v., 189 N.E.2d 323 (1963), 208
- Atkins v. Virginia, 536 U.S. 394 (2002), 107
- B. (A Minor) v. Director of Public Prosecutions, 1 All E.R. 833 (2000), 266, 284
- B.H., State v., 870 A.2d 273 (N.J. 2005), 588
- Backun v. State**, 112 F.2d 635 (4th Cir. 1940), 307
- Balles, State v., 47 N.J. 331 (1996), 724
- Barber v. Superior Court, 147 Cal.App.3d 1006 (1983), 165
- Basic Construction Co., United States v.**, 711 F.2d 570 (4th Cir. 1980), 419
- Beardsley, People v., 150 Mich. 206 (1907), 163
- Beeman, People v.**, 35 Cal.3d 547 (1984), 302
- Bins, Commonwealth v., 465 Mass. 348 (2013), 687
- Blake v. United States**, 407 F.2d 908 (5th Cir. 1969), 617
- Booker, United States v., 543 U.S. 220 (2005), 325
- Boro v. Superior Court, 163 Cal.App.3d 1224 (Cal. Ct. App. 1985), 730
- Bouie v. City of Columbia, 378 U.S. 347 (1964), 75
- Bowell v. State, 728 P.2d 1220 (Alaska Ct. App. 1986), 315
- Boyles v. State, 175 N.W.2d 277 (Wis. 1970), 338
- Brown v. Commonwealth, 975 S.W.2d 922 (Ky. 1998), 673
- Brown, People v., 883 P.2d 949 (Cal. 1994), 724
- Bruno, United States v., 105 F.2d 921 (2nd Cir. 1939), 394
- Bryan v. United States, 524 U.S. 184 (1998), 642
- Bult v. Leaply**, 507 N.W.2d 325 (S.D. 1993), 112
- Burnley v. State, 201 Miss. 234 (1947), 264
- Busby v. State**, 89 Tex.Crim. 213 (Tex. Crim. App. 1921), 257
- Calder v. Bull, 3 U.S. 386 (1798), 57
- Cameron, State v.**, 104 N.J. 42 (1986), 279
- Campbell, People v., 124 Mich.App. 333 (1982), 208
- Carnell v. Texas, 529 U.S. 513 (2000), 58
- Casassa, People v.**, 49 N.Y.2d 668 (1980), 693
- Ceballos, People v.**, 12 Cal.3d 470 (1974), 506
- Cheek v. United States**, 498 U.S. 192 (1991), 637

- Christman, *State v.*, 160 Wash.App. 741 (2011), 194
- Colling v. Youngblood, 497 U.S. 37 (1990), 58
- Community Alternatives Missouri, Inc., State v.**, 267 S.W.3d 735 (Mo. Ct. App. 2010), 427
- Contento-Pachón, United States v.**, 723 F.2d 691 (9th Cir. 1984), 568
- Cook v. State**, 702 A.2d 971 (Md. Ct. Spec. App. 1997), 688
- Corchado, *State v.*, 453 A.2d 427 (Conn. 1982), 505
- Cornett, People v.**, 53 Cal.4th 1261 (2012), 72
- Cox v. State of Louisiana, 379 U.S. 559 (1965), 652
- Cox v. State, 305 Ark. 244 (1991), 188
- Crensha, *State v.*, 659 P.2d 488 (Wash. 1983), 611
- Cruzan v. Director, 497 U.S. 261 (1990), 165
- Decina, *People v.*, 157 N.Y.S.2d 558 (1956), 159
- Dlugash, *People v.*, 395 N.Y.S.2d 419 (1977), 369
- Duke, State v.**, 709 S.2d 580 (Fla. Dist. Ct. App. 1998), 331
- Egelhoff, *Montana v.*, 518 U.S. 37 (1996), 283
- Ewing v. California, 538 U.S. 11 (2003), 93
- Ex Parte Howell, 431 So.2d 1328 (Ala. 1983), 315
- ex rel. Kuntz, *State v.*, 298 Mont. 146 (2000), 163
- Flores, *People v.*, 176 Cal. App.4d 1171 (2009), 59
- Flores, *State v.*, 418 N.W.2d 150 (Minn. 1988), 669
- Foster, People v.**, 99 Ill.2d 48 (1983), 390
- Frey v. State, 708 So.2d 918 (Fla. 1998), 229
- Garcia, State v.**, 616 N.W.2d 594 (Iowa 2000), 196
- Garner, Tennessee v.**, 471 U.S. 1 (1985), 537
- Garnett v. State, 332 Md. 571 (1993), 265, 740
- Glucksberg, *Washington v.*, 521 U.S. 702 (1997), 165
- Goetz, People v.**, 68 N.Y.2d 96 (1986), 509
- Gordon, *Commonwealth v.*, 422 Mass. 816 (1996), 679
- Gounagias, State v.**, 153 P. 9 (Wash. 1915), 682
- Granger v. State**, 3 S.W.3d 36 (Tex. Crim. App. 1999), 258
- Grimaud, *United States v.*, 220 U.S. 506 (1911), 79
- Grimes v. State, 293 Ga. 559 (2013), 679
- Guest, *State v.*, 583 P.2d 836 (Alaska 1978), 265, 740
- Gunnison, State v.**, 127 Ariz. 110 (1980), 400
- Guthrie, *State v.*, 461 S.E.2d 163 (W. Va. 1995), 670
- Haggren v. State**, 829 P.2d 842 (Alaska 1992), 646
- Hailes v. State, 15 Tex.App. 93 (1883), 264
- Hall, People v.**, 999 P.2d 207 (Colo. 2000), 241
- Harmelin v. Michigan**, 501 U.S. 957 (1991), 85
- Hayes, United States v.**, 70 M.J. 454 (C.A.A.F. 2012), 561
- Hendricks, *Kansas v.*, 521 U.S. 346 (1997), 13
- Heredia, *United States v.*, 483 F.3d 913 (9th Cir. 2007), 237
- Hern v. State**, 97 Nev. 529 (1981), 663
- Higgins, *State v.*, 265 Conn. 35 (2003), 234
- Holmes, *U.S. v.*, 26 F.Cas. 360 (1842), 469
- Hood, People v.**, 1 Cal.3d 444 (1969), 274
- Hoover v. State**, 59 Ala. 57 (1877), 635
- Hunt v. Florida**, 753 So.2d 609 (Fla. Dist. Ct. App. 2000), 449
- Hutchins, Commonwealth v.**, 410 Mass. 726 (1991), 461
- Ianelli v. United States, 420 U.S. 770 (1975), 386
- In re. D.G., Juvenile**, 2003 WL 25746107 (Vt. Jan. 2003), 239

- Interstate Circuit v. United States, 306 U.S. 208 (1939), 393
- Irey, **United States v.**, 612 F.3d 1160 (2010), 21
- Jackowski, **Vermont v.**, 181 Vt. 73 (2006), 231
- Jackson, **United States v.**, 560 F.2d 112 (2nd Cir. 1977), 342
- Jenkins v. State, 110 Nev. 865 (1994), 265
- Johnson v. State, 38 So. 182 (Ala. 1904), 302
- Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006), 160
- Kelly, **State v.**, 97 N.J. 178 (1984), 499
- Kennedy v. **Louisiana**, 554 U.S. 407 (2008), 97
- Kennedy v. **Mendoza Martinez**, 372 U.S. 144 (1963), 3
- Kenofsky, **United States v.**, 243 U.S. 440 (1917), 302
- Kevorkian, **People v.**, 527 N.W.2d 714 (Mich. 1994), 207
- Kibbe, **People v.**, 35 N.Y.2d 407 (1974), 194
- Kotteakos v. **United States**, 328 U.S. 750 (1946), 392
- Krulewitch v. **United States**, 336 U.S. 440 (1949), 381
- Lambert v. **California**, 355 U.S. 225 (1957), 643
- Latraverse, **State v.**, 443 A.2d 890 (R.I. 1982), 338
- Lauria, **People v.**, 251 Cal.App.2d 471 (1967), 395
- Lawrence v. **Texas**, 539 U.S. 558 (2003), 125
- Leland v. **Oregon**, 343 U.S. 790 (1952), 610
- Leno, **Commonwealth v.**, 415 Mass. 835 (1993), 452
- Lewis, **State v.**, 447 S.E.2d 570 (W. Va. 1994), 109
- Loeffel, **State v.**, 300 P.3d 336 (Utah 2013), 240
- López, **Commonwealth v.**, 433 Mass. 722 (2001), 735
- Lowery, **People v.**, 178 Ill.2d 462 (Ill. 1997), 681
- Lukas, **State v.**, 2012-240, — N.H. — (N.H. Sup. Ct., March 13, 2013), 76
- Luparello, **People v.**, 231 Cal.Rptr. 832 (1986), 311, 406
- Lyons, **United States v.**, 731 F.2d 243 (5th Cir. 1984), 620
- M’Naughten, 8 Eng.Rep. 718 (1843), 610
- Maas v. **Territory**, 63 P. 960 (Okla. 1901), 607
- Mally, **State v.**, 366 P.2d 868 (Mont. 1961), 163
- Malone, **State v.**, 635 A.2d 596 (N.J. 1993), 386
- Markman, **Commonwealth v.**, 916 A.2d 586 (Pa. 2007), 577
- Marrero, **People v.**, 69 N.Y.2d 382 (1987), 648
- Martin v. **State**, 17 So.2d 427 (1944), 159
- Martin, **State v.**, 573 A.2d 1359 (N.J. 1990), 211
- Mathes, **United States v.**, 151 F.3d 251 (5th Cir. 1998), 643
- McAlevy v. **Commonwealth**, 44 Va.App. 318 (2004), 302
- McBoyle v. **United States**, 283 U.S. 25 (1931), 65
- McCoy, **People v.**, 24 P.3d 1210 (Cal. 2001), 321
- McFadden, **State v.**, 320 N.W.2d 608 (Iowa 1982), 209
- McGee, **People v.**, 49 N.Y.2d 48 (1979), 404
- Méndez v. **State**, 575 S.W.2d 36 (Tex. Crim. App. 1979), 313, 320
- Miller v. **Alabama**, 132 S.Ct. 2455 (2012), 104
- Miller v. **State**, 955 P.2d 892 (Wyo. 1998), 392
- Miller, **People v.**, 2 Cal.2d 527 (1935), 337
- Milnarich, **Commonwealth v.**, 498 A.2d 395 (Pa. 1985), 742
- Moore v. **Lowe**, 180 S.E. 1 (W. Va. 1935), 321
- Morales, **City of Chicago v.**, 527 U.S. 41 (1999), 64
- Morgan v. **District of Columbia**, 476 A.2d 1128 (D.C. 1984), 265

- Morisette v. United States**, 342 U.S. 246 (1952), 223
- Moyer, Commonwealth v.**, 648 A.2d 42 (Pa. Super. Ct. 1994), 200
- Muro, State v.**, 296 Neb. 703 (2005), 183
- Murray, State v.**, 343 Or. 48 (2007), 203
- Nations, State v.**, 676 S.W.2d 282 (Mo. Ct. App. 1984), 236
- Newman, State v.**, 353 Or. 632 (2013), 153, 172
- Noren, State v.**, 371 N.W.2d 381 (Wis. Ct. App. 1985), 680
- Norman, State v.**, 324 N.C. 253 (1989), 491
- Nuñez, State v.**, 159 Ariz. 594 (Ariz. Ct. App. 1989), 356
- Padilla v. Kentucky**, 130 Sup. Ct. 1473 (2010), 7
- Palsgraf v. Long Island R. Co.**, 248 N.Y. 339 (1928), 194
- Papchristou v. City of Jacksonville**, 405 U.S. 156 (1972), 63
- Peoni, United States v.**, 100 F.2d 401 (2nd Cir. 1938), 309
- Pérez v. State**, 111 N.M. 160 (1990), 284
- Persinger, People v.**, 49 Ill.App.3d 116 (1977), 388
- Peterson, United States v.**, 483 F.2d 1222 (D.C. 1973), 505
- Petrie, United States v.**, 302 F.3d 1280 (11th Cir. 2002), 642
- Pinkerton v. United States**, 328 U.S. 640 (1946), 402, 410
- Pope v. State**, 396 A.2d 1054 (Md. 1979), 163
- Porter v. State**, 580 So.2d 823 (Ala. Crim. App. 1990), 296
- Potts v. Florida**, 420 So.2d 900 (Fla. 1982), 291
- Powell v. Texas**, 392 U.S. 514 (1968), 160
- Prosecutor v. Drazen Erdemovic**, Case No.IT-96-22-A, Judgment on Appeal, P 10 (Oct. 7, 1977), 589
- Pueblo v. Colón Soto**, 109 D.P.R. 545 (1980), 251
- Pueblo v. Sustache**, 176 D.P.R. 250 (2009), 300
- R v. Eagleton**, 6 Cox C.C. 559 (Ct. Crim. Law 1855), 335
- R. v. Prince**, 2 L.R.C.C.R. 154 (1875), 266
- Ravin v. State**, 537 P.2d 494 (Alaska 1975), 148
- Regina v. Burgess**, 2 All E.R. 769 (C.A. 1991), 158
- Regina v. Cunningham**, 2 QB 396 (1957), 228
- Reynolds v. State**, 664 P.2d 621 (Alaska Ct. App. 1991), 739
- Richards v. State**, 39 So.3d 431 (Fla. Dist. Ct. App. 2010), 501
- Rizzo, People v.**, 158 N.E. 888 (N.Y. 1927), 333
- Robertson v. Commonwealth**, 82 S.W.3d 832 (Ky. 2002), 211
- Robinson v. California**, 370 U.S. 660 (1962), 160
- Roebuck, Commonwealth v.**, 612 Pa. 642 (2011), 317
- Rogers v. Tennessee**, 532 U.S. 451 (2001), 66, 84
- Root, Commonwealth v.**, 430 Pa. 571 (1961), 209
- Roper v. Simmons**, 543 U.S. 551 (2005), 108
- Rose v. Locke**, 432 U.S. 48 (1975), 59, 78
- Rouse v. Commonwealth**, 303 S.W.2d 265 (Ky. 1957), 302
- Russell, People v.**, 51 Cal.Rptr.3d 263 (Cal. Dist. Ct. App. 2006), 261
- Schaefer, People v.**, 473 Mich. 418 (2005), 202
- Schoon, United States v.**, 971 F.2d 193 (9th Cir. 1991), 471
- Scott v. Harris**, 550 U.S. 372 (2007), 544
- Scott, People v.**, 318 Ill.App.3d 46 (2000), 339
- Sexton, State v.**, 160 N.J. 93 (1999), 267
- Shabani, United States v.**, 513 U.S. 10 (1994), 387
- Simpkins v. State**, 596 A.2d 655 (Md. Ct. Spec. App. 1991), 665
- Smith v. Doe**, 583 U.S. 84 (2003), 9
- Smith v. United States**, 36 F.2d 548 (D.C. 1929), 614
- Smith, State v.**, 409 N.E.2d 1199 (Ind. Ct. App. 1980), 339
- Solem v. Helm**, 463 U.S. 277 (1983), 92

- Soto, State v.**, 378 N.W.2d 625 (Minn. 1985), 50
- Sowry, State v.**, 803 N.E.2d 867 (Ohio Ct. App. 2004), 160
- Spate, State v.**, 176 Conn. 227 (1978), 194
- St. Christopher, Minnesota v.**, 305 Minn. 226 (1975), 406
- Stamp, People v.**, 82 Cal.Rptr. 598 (Cal. Ct. App. 1969), 674
- Staples, People v.**, 85 Cal.Rptr. 589 (Cal. Dist. Ct. App. 1970), 337
- Stasio, State v.**, 396 A.2d 1129 (N.J. 1979), 230
- State in the Interest of M.T.S.**, 609 A.2d 1266 (N.J. 1992), 714
- Stennet v. State**, 546 So.2d 95 (Ala. Crim. App. 1990), 351
- Stephenson v. State**, 205 Ind. 141 (1932), 207
- Stodghill v. State**, 892 So.2d 236 (Miss. 2005), 454
- Stogner v. California**, 539 U.S. 607 (2003), 53
- Strescino, State v.**, 106 N.H. 554 (1965), 248
- Suliveres v. Commonwealth**, 449 Mass.112 (2007), 726
- Swann v. United States**, 548 A.2d 928 (D.C. 1994), 515
- Tally, Judge, State ex rel, Attorney General v.**, 15. So. 722 (Ala. 1894), 300
- Terry v. Ohio**, 392 U.S. 1 (1968), 546
- The Queen v. Dudley & Stephens**, 14 Queens Bench Division 273 (1884), 465, 565
- Thomas, People v.**, 729 P.2d 972 (Colo. 1986), 352
- Thompson, State v.**, 243 Mont. 28 (1990), 730
- Thousand, People v.**, 241 Mich. App. 102 (2000), 359
- Thousand, People v.**, 465 Mich. 149 (2001), 365
- Tierney, People v.**, 703 N.W.2d 204 (Mich. Ct. App. 2005), 687
- Tippit v. State**, 266 Ind. 517 (1977), 310
- Toscano, State v.**, 378 A.2d 755 (N.J. 1977), 581
- Unger, People v.**, 66 Ill.2d 333 (1977), 457
- Vaillancourt, State v.**, 122 NH.1153 (1982), 295
- Vaughan and Sons, Inc. v. State**, 737 S.W.2d 805 (Tex. Crim. App. 1987), 420
- Webster, United States v.**, 37 M.J. 670 (1993), 711
- Weiland v. State**, 732 So.2d 1044 (Fla. 1999), 503
- West v. Commonwealth**, 935 S.W.2d 315 (Ky. Ct. App. 1996), 161
- Wheeler, People v.**, 772 P.2d 101 (Colo. 1989), 315
- White v. State**, 185 N.E. 64 (Ohio Ct. App. 1933), 266
- Wilcox v. Jeffrey**, 1 All E.R. 464 (1951), 299
- Williquette, State v.**, 385 N.W.2d 145 (Wis. 1986), 166
- Wilson Bey v. U.S.**, 903 A.2d 818 (D.C. 2006), 312
- Windham v. Mississippi**, 602 So.2d 798 (Miss. 1992), 673
- Yarber, People v.**, 153 Cal.Rptr. 975 (Cal. Ct. App. 1979), 315
- Yarnell, Commonwealth ex rel Thompson v.**, 313 Pa. 244 (1933), 264





# Preface

---

This casebook differs from others in three obvious ways. First, given that the American Law Institute’s Model Penal Code (MPC) has heavily influenced criminal law in the United States, each chapter contains one or more sections titled “Model Penal Code” that discuss the Code’s approach to the chapter’s topic. This sets the book apart, as many casebooks seldom highlight the MPC approach to a given criminal law doctrine in a separate section that clearly distinguishes it from the common law approach. As I have learned from teaching criminal law for many years, this sows a good deal of confusion amongst students, for professors—and bar examiners—expect them to neatly distinguish between MPC and common law doctrines, but the casebooks haphazardly combine discussion of both approaches in a rather unintuitive manner.

Another unique feature of this text is that—contrary to the prevailing trend in criminal law casebooks—the scholarly materials discussed in the text are not sprinkled throughout the different chapter sections. Instead, each chapter contains a section titled “Scholarly Debates” that discusses academic writings that illustrate the philosophical underpinnings of the doctrines discussed in the chapter. This is useful for both students and instructors.

Regarding students, it allows them to focus on learning the doctrines of criminal law before engaging with the scholarly writings on the subject. Understanding the basic doctrines of criminal law is a daunting task for even the most accomplished student. There is no need to make it more difficult by requiring them to engage with theoretical scholarly discussions while they are trying to master the basic rules. By making the “Scholarly Debates” section the last section of each chapter, this casebook introduces the student to the philosophical discussions after she has (hopefully!) learned the basic concepts. Although this makes much pedagogical sense, available criminal law casebooks do not follow this quite intuitive approach.

From the instructor’s perspective, having a separate “Scholarly Debates” section allows for the flexibility of deciding not to assign this more philosophically laden section as required reading. Many professors approach criminal law from a theoretical perspective. For those who do, they will find discussion of rich philosophical materials in this section. Nevertheless, other professors downplay the philosophical underpinnings of criminal law. The way in which this casebook is structured allows such instructors to easily and painlessly skip the philosophical readings. In contrast, the vast majority of casebooks sprinkle philosophical discussions throughout all of the book’s sections, making it very hard for instructors to eschew unwanted references to such debates.

The most distinctive aspect of this casebook is that each chapter includes a section titled “Comparative Perspectives” that discusses European and Latin American approaches to the doctrines discussed in the chapter. After years of teaching comparative criminal law both in the United States and Latin America, I have learned that comparative teaching materials can be profitably used in domestic criminal law courses. In my experience,

use of such materials fosters both a better understanding of domestic criminal law and encourages students and professors to think about alternative ways of approaching basic concepts of criminal theory. I have translated the vast majority of the comparative materials included in these sections, as most have not been published in English. As a result, each “Comparative Perspective” section may include excerpts from foreign cases, statutes and scholarly writings, including materials from Germany, Spain, Argentina and Puerto Rico. Given that these materials are otherwise unavailable in English, the readings in this section should also prove useful as source material for scholarly research.

As with the “Scholarly Debates” section, the comparative materials are included in a separate section and only after the American approach to the black letter law has been discussed. Therefore, the student is ready to engage in comparative analysis once she reaches the “Comparative Perspectives” section. Furthermore, the instructor may omit the section if she is so inclined. This kind of flexibility is difficult to find, as the (infrequent) references to comparative criminal law in textbooks are usually sprinkled throughout the text as opposed to included in a separate section.

# Acknowledgments

---

This book would not have come to fruition without the able help of my research assistants Barbara Santisteban (Pace Law School), Anastasia Larios (Pace Law School), Trishe Ball (SUNY Buffalo Law School) and J.T. Hammons (SUNY Buffalo Law School). Professors Ernesto Chiesa and Oscar Miranda Miller's comments on various drafts of the casebook helped make the text considerably better than it was when they first laid hands on it. Finally, the text was dramatically improved by the feedback I received from my students when I assigned a draft version of the casebook in my Fall 2013 criminal law class at SUNY Buffalo Law School.