CALIFORNIA CRIMINAL LAW:
Cases and Problems

Third Edition
LexisNexis Law School Publishing
Advisory Board

William Araiza
Professor of Law
Brooklyn Law School

Lenni B. Benson
Professor of Law & Associate Dean for Professional Development
New York Law School

Raj Bhala
Rice Distinguished Professor
University of Kansas, School of Law

Ruth Colker
Distinguished University Professor & Heck-Faust Memorial Chair in Constitutional Law
Ohio State University, Moritz College of Law

David Gamage
Assistant Professor of Law
UC Berkeley School of Law

Joan Heminway
College of Law Distinguished Professor of Law
University of Tennessee College of Law

Edward Imwinkelried
Edward L. Barrett, Jr. Professor of Law
UC Davis School of Law

David I. C. Thomson
LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law

Melissa Weresh
Director of Legal Writing and Professor of Law
Drake University Law School
CALIFORNIA CRIMINAL LAW:
Cases and Problems

Third Edition

Steven F. Shatz
Philip & Muriel Barnett Professor of Trial Advocacy
University of San Francisco School of Law
PREFACE

This third edition is the product of more than ten years of teaching with the casebook and almost forty years of teaching criminal law at the University of San Francisco (U.S.F.). I began teaching from California materials because I believed that there were advantages to be gained by focusing on the law of a single jurisdiction, and the success of the book, as measured by the reaction of the students, has borne out my expectations. The focus on a single state permits the examination of the various criminal law doctrines in the larger context of the state’s entire body of criminal law, allowing consideration of the relationship between doctrines — e.g., mens rea and insanity or “heat of passion” and self-defense — and the use of the same principle — e.g., the “reasonable person” test — for different purposes. Using a single state also facilitates the study of statutes, statutory interpretation and the interaction between the courts and the legislature. Perhaps most significantly, because criminal law tends to be relatively state-specific, the study of a single state’s law — “real” law rather than general or imagined law — is more engaging to students and leads to a more coherent understanding of the subject.

The book reflects my conviction that, while the Criminal Law course must expose students to the range of doctrines associated with substantive criminal law, the primary concern of the course, as a first year course, is to teach students how to read and understand cases and statutes and to construct legal arguments. Accordingly, the emphasis in the book is on cases and on problems. The cases are presented in relatively complete form, often including concurring and dissenting opinions, in order to give students examples of fully developed legal arguments. The 100 short problems presented in the book are all taken from real cases and ask the students to develop the appropriate legal arguments based on the cases they have read. Each chapter begins with an introduction, to give background to the cases and to outline the issues to be explored. Notes, which have been kept to a minimum, are generally used to extend the students’ analysis by asking them consider theoretical or policy issues raised by the cases or alternative approaches contained in the Model Penal Code or other sources.

Citations and footnotes have been eliminated from the judicial opinions without so specifying, and, where citations are included, they often are simplified, with page cites omitted. Numbered footnotes are from the original materials; lettered footnotes are mine.

I would again like to express my gratitude to Suzanne Mounts, a fellow Criminal Law professor at the U.S.F., and my good friend. Suzanne contributed greatly to the first edition of the book and has continued to provide me with materials and to act as a sounding board for my ideas. I also again want to thank Nina Rivkind, an appellate criminal defense attorney and lecturer at Berkeley Law (University of California) and my co-author on another casebook, who helped edit the first edition and who, as my wife, has offered unfailing support and encouragement in the production of this edition. Jessica Mohr, my research assistant, saved me countless hours by her thorough and careful answers to my various research questions. Finally, I want to acknowledge the generation of students at U.S.F., who, years ago, encouraged me to publish my teaching materials and the more recent students whose response to the first and second editions proved an invaluable guide to me in producing this third edition.

Steven F. Shatz

February, 2011
# Summary Table of Contents

## Part I
**Introduction To The Course**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>INTRODUCTION</td>
<td>3</td>
</tr>
</tbody>
</table>

## Part II
**Defining Culpable Conduct**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>ACT (ACTUS REUS)</td>
<td>91</td>
</tr>
<tr>
<td>3</td>
<td>MENTAL STATE (MENS REA)</td>
<td>121</td>
</tr>
<tr>
<td>4</td>
<td>THE DEFENSE CLAIM OF “REASONABLE MISTAKE”</td>
<td>163</td>
</tr>
<tr>
<td>5</td>
<td>HOMICIDE: INTENTIONAL KILLINGS</td>
<td>201</td>
</tr>
<tr>
<td>6</td>
<td>HOMICIDE: UNINTENTIONAL KILLINGS</td>
<td>241</td>
</tr>
<tr>
<td>7</td>
<td>HOMICIDE: KILLINGS IN THE COMMISSION OF ANOTHER CRIME</td>
<td>277</td>
</tr>
<tr>
<td>8</td>
<td>HOMICIDE: THIRD PARTY KILLINGS</td>
<td>339</td>
</tr>
<tr>
<td>9</td>
<td>PROPERTY CRIMES</td>
<td>359</td>
</tr>
<tr>
<td>10</td>
<td>INCHOATE CRIMES</td>
<td>433</td>
</tr>
<tr>
<td>11</td>
<td>CRIMES AGAINST THE GOVERNMENT</td>
<td>503</td>
</tr>
</tbody>
</table>

## Part III
**Affirmative Defenses**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>AFFIRMATIVE DEFENSES — CHOICE OF EVILS</td>
<td>531</td>
</tr>
<tr>
<td>13</td>
<td>AFFIRMATIVE DEFENSES — EXCUSES</td>
<td>593</td>
</tr>
</tbody>
</table>

## Part IV
**Vicarious Liability**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>ACCOMPLICE AND CORPORATE VICARIOUS LIABILITY</td>
<td>627</td>
</tr>
<tr>
<td>15</td>
<td>SCOPE OF VICARIOUS LIABILITY</td>
<td>671</td>
</tr>
</tbody>
</table>

## Part V
**The Death Penalty**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>THE DEATH PENALTY AND THE CONSTITUTION</td>
<td>707</td>
</tr>
</tbody>
</table>
# Table of Contents

## Part I Introduction To The Course

### Chapter 1 INTRODUCTION

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>THE PURPOSES OF THE CRIMINAL LAW</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>REGINA v. DUDLEY AND STEPHENS</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>LAWRENCE v. TEXAS</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>NOTE</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>UNITED STATES v. BERGMAN</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>NOTE</td>
<td>26</td>
</tr>
<tr>
<td>B.</td>
<td>THREE FUNDAMENTAL PRINCIPLES OF AMERICAN CRIMINAL LAW</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>PAPACHRISTOU v. CITY OF JACKSONVILLE</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>NOTE</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>PEOPLE v. SUPERIOR COURT (CASWELL)</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>PROBLEM</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>EWING v. CALIFORNIA</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>NOTE AND PROBLEMS</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>YICK WO v. HOPKINS</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>NOTE</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>MICHAEL M. v. SUPERIOR COURT</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>NOTE AND PROBLEM</td>
<td>62</td>
</tr>
<tr>
<td>C.</td>
<td>THE CRIMINAL CASE IN CALIFORNIA</td>
<td>62</td>
</tr>
<tr>
<td></td>
<td>PEOPLE v. ROBINSON</td>
<td>63</td>
</tr>
</tbody>
</table>

## Part II Defining Culpable Conduct

### Chapter 2 ACT (ACTUS REUS)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ROBINSON v. CALIFORNIA</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>POWELL v. TEXAS</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td>PROBLEM</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>IN RE DAVID W.</td>
<td>107</td>
</tr>
<tr>
<td></td>
<td>PROBLEM</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>PEOPLE v. NEWTON</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>PROBLEMS</td>
<td>113</td>
</tr>
<tr>
<td></td>
<td>PEOPLE v. HEITZMAN</td>
<td>114</td>
</tr>
<tr>
<td></td>
<td>NOTE AND PROBLEMS</td>
<td>118</td>
</tr>
</tbody>
</table>
Table of Contents

Chapter 3  MENTAL STATE (MENS REA)  .......... 121

PEOPLE v. HOOD  .................................. 122
NOTES ............................................. 126
PEOPLE v. WILLIAMS .............................. 128
NOTE AND PROBLEMS .............................. 137
PEOPLE v. WETMORE .............................. 138
NOTES ............................................. 142
PEOPLE v. REYES .................................. 144
PEOPLE v. SCOTT .................................. 148
PROBLEM .......................................... 152
IN RE JORGE M. .................................... 152
NOTE AND PROBLEM .............................. 161

Chapter 4  THE DEFENSE CLAIM OF “REASONABLE
MISTAKE” ...................................... 163

A. MISTAKE OF FACT: SEX CRIMES ..................... 163

PEOPLE v. HERNANDEZ ............................ 163
PEOPLE v. OLSEN .................................. 167
PEOPLE v. MAYBERRY .............................. 173
NOTE AND PROBLEMS .............................. 177
PEOPLE v. BARNES ................................ 179
NOTE AND PROBLEMS .............................. 186

B. MISTAKE OF LAW .................................... 187

PEOPLE v. GOODIN .................................. 187
PEOPLE v. SNYDER ................................. 189
NOTE AND PROBLEMS .............................. 195

Chapter 5  HOMICIDE: INTENTIONAL KILLINGS ......... 201

A. MURDER OR VOLUNTARY MANSLAUGHTER? .......... 201

PEOPLE v. BERRY .................................. 202
NOTES AND PROBLEMS ............................ 204
PEOPLE v. WU ....................................... 206
NOTES AND PROBLEMS ............................ 212
PEOPLE v. SAILLE .................................. 214
NOTES AND PROBLEM .............................. 219
IN RE CHRISTIAN S. ................................. 221
NOTE ............................................. 228

B. FIRST OR SECOND DEGREE MURDER? ................. 228

PEOPLE v. ANDERSON ................................ 228
NOTES ............................................. 234
PEOPLE v. WHARTON ............................... 235
NOTE AND PROBLEMS ............................. 239
Table of Contents

Chapter 6  HOMICIDE: UNINTENTIONAL KILLINGS ............ 241
A.  THE MENS REA OF UNINTENTIONAL HOMICIDES ............ 241
  PEOPLE v. WATSON ...................................... 242
  PROBLEM ............................................. 248
  PEOPLE v. TAYLOR ...................................... 248
  PROBLEM ............................................. 250
  PEOPLE v. KNOLLER ..................................... 250
  NOTE AND PROBLEMS .................................... 257
  WALKER v. SUPERIOR COURT ............................. 258
  NOTE ............................................. 264
B.  CAUSATION ............................................. 264
  PEOPLE v. ROBERTS ..................................... 265
  NOTE AND PROBLEMS .................................... 269
  PEOPLE v. ARMITAGE .................................... 271
  PROBLEMS ........................................... 274

Chapter 7  HOMICIDE: KILLINGS IN THE COMMISSION OF
  ANOTHER CRIME ........................................ 277
A.  FELONY-MURDER ......................................... 277
  PEOPLE v. DILLON ..................................... 278
  NOTES AND PROBLEM .................................... 291
  PEOPLE v. CHUN (Part I) ................................ 292
  PEOPLE v. FIELDS ..................................... 297
  PROBLEMS ............................................. 302
  PEOPLE v. WASHINGTON .................................. 303
  NOTE AND PROBLEM .................................... 307
  PEOPLE v. SEARS ...................................... 307
  PEOPLE v. PATTERSON .................................. 310
  NOTES AND PROBLEMS .................................... 317
  PEOPLE v. SMITH ...................................... 318
  PROBLEM ............................................. 321
  PEOPLE v. CHUN (Part II) ................................ 322
  PROBLEM ............................................. 329
B.  MISDEMEANOR-MANSLAUGHTER ............................... 329
  PEOPLE v. COX ........................................ 329
  NOTE ............................................. 333
  PEOPLE v. NIETO-BENITEZ ............................... 333

Chapter 8  HOMICIDE: THIRD PARTY KILLINGS .................... 339
  TAYLOR v. SUPERIOR COURT ................................ 339
  PROBLEM ............................................. 345
Table of Contents

PIZANO v. SUPERIOR COURT .................................................. 345
PROBLEM ................................................................. 349
IN RE JOE R ............................................................... 350
PROBLEMS .............................................................. 354
PEOPLE v. CONCHA .................................................... 355
PROBLEM ................................................................. 358

Chapter 9 PROPERTY CRIMES .............................................. 359

A. THEFT ............................................................... 360
PEOPLE v. BROWN ...................................................... 360
NOTE ................................................................. 362
PEOPLE v. DAVIS ...................................................... 362
PEOPLE v. TUFUNGA ................................................... 366
PROBLEMS .............................................................. 373
PEOPLE v. GREEN ...................................................... 374
NOTE ................................................................. 379
PEOPLE v. ASHLEY ...................................................... 380
PROBLEM ............................................................... 385
PEOPLE v. MOSES ...................................................... 386
NOTE ................................................................. 390
PEOPLE v. HAVS ......................................................... 391
NOTE AND PROBLEM .................................................... 392
PEOPLE v. WEBSTER ................................................... 393
PROBLEM ............................................................... 399
PEOPLE v. MUNGIA ..................................................... 399
PROBLEM ............................................................... 402
PEOPLE v. BEGGS ....................................................... 402
NOTES AND PROBLEMS ................................................ 404

B. BURGLARY .............................................................. 406
PEOPLE v. GAUZE ....................................................... 406
NOTES AND PROBLEM .................................................. 411
PEOPLE v. DAVIS ....................................................... 411
PEOPLE v. SPARKS ..................................................... 418
PROBLEM ............................................................... 424
PEOPLE v. KWOK ....................................................... 424
PROBLEM ............................................................... 429
PEOPLE v. SALEMME .................................................. 429

Chapter 10 INCHOATE CRIMES ............................................ 433

A. ATTEMPT .............................................................. 433
PEOPLE v. COLLIE ...................................................... 433
Table of Contents

PEOPLE v. SMITH .................................... 435
PEOPLE v. BERGER .................................. 445
PEOPLE v. STAPLES .................................. 447
NOTE AND PROBLEMS ............................... 452
PEOPLE v. SUPERIOR COURT (DECKER) ................. 453
PROBLEM .......................................... 460

B. SOLICITATION ...................................... 460
    PEOPLE v. GORDON ................................ 461
    PEOPLE v. RUBIN .................................. 464

C. CONSPIRACY ....................................... 470
    PEOPLE v. SWAIN ................................ 470
    NOTE ........................................... 474
    PEOPLE v. LAURIA ................................ 477
    LORENSON v. SUPERIOR COURT ..................... 484
    NOTES AND PROBLEM ............................. 489
    PEOPLE v. MAYERS ............................... 490
    NOTES AND PROBLEM ............................. 493

D. THE DEFENSE OF “IMPOSSIBILITY” ..................... 494
    PEOPLE v. ROJAS ................................ 495
    NOTE AND PROBLEM ............................. 497
    PEOPLE v. PEPPARS .............................. 498
    NOTE AND PROBLEM ............................. 501

Chapter 11 CRIMES AGAINST THE GOVERNMENT .......... 503
    PEOPLE v. PIC’L ................................ 503
    NOTE AND PROBLEMS ............................ 508
    CABE v. SUPERIOR COURT ........................ 509
    PEOPLE v. DARCY ................................ 514
    IN RE MANUEL G. ................................ 518
    PROBLEM ........................................ 523
    PEOPLE v. ROBLES ................................ 523
    PROBLEM ........................................ 526

Part III Affirmative Defenses .......................... 529

Chapter 12 AFFIRMATIVE DEFENSES — CHOICE OF EVILS ... 531

A. SELF-DEFENSE AND DEFENSE OF OTHERS .............. 531
    PEOPLE v. HECKER ................................ 532
    NOTE AND PROBLEMS ............................ 536
    PEOPLE v. HUMPHREY ............................. 537
    NOTES AND PROBLEM ............................ 547
    PEOPLE v. RANDLE .............................. 550
Table of Contents

PEOPLE v. CURTIS ..................................... 557

B. USE OF FORCE TO PREVENT CRIME OR APPREHEND CRIMINALS .................................. 561
PEOPLE v. CEBALLOS .................................. 561
NOTE ................................................................ 565
TENNESSEE v. GARNER .................................. 566
PROBLEM ............................................... 571

C. NECESSITY AND DURESS ............................. 572
PEOPLE v. LOVERCAMP .................................. 572
NOTE ................................................................ 577
PEOPLE v. PENA ......................................... 578
PROBLEM ............................................... 584
PEOPLE v. HEATH ...................................... 584
NOTES AND PROBLEMS ................................. 589

Chapter 13 AFFIRMATIVE DEFENSES — EXCUSES ........... 593

A. ENTRAPMENT AND DUE PROCESS .................. 593
PEOPLE v. BARRAZA .................................. 593
PROBLEM ............................................... 600
HAMPTON v. UNITED STATES .......................... 600
PROBLEMS ............................................. 606

B. INSANITY ............................................. 607
PEOPLE v. SKINNER .................................. 609
NOTE AND PROBLEM .................................. 616
JONES v. UNITED STATES ............................... 617
NOTE AND PROBLEM .................................. 622

Part IV Vicarious Liability ................................. 625

Chapter 14 ACCOMPlice AND CORPORATE VICARIOUS LIABILITY ............................. 627

A. ACCOMPlice LIABILITY ................................ 628
PEOPLE v. COLLINS .................................... 628
PEOPLE v. MCCOY ...................................... 629
PEOPLE v. BEEMAN .................................... 633
NOTE AND PROBLEMS ............................... 638
PEOPLE v. COOPER .................................... 640
PROBLEMS ............................................. 649
PEOPLE v. WILLIAMS .................................. 649
IN RE JOSEPH G. ........................................ 654
NOTES AND PROBLEM ................................. 660

xii
Table of Contents

B. CORPORATE VICARIOUS LIABILITY ........................................ 661
   GRANITE CONSTRUCTION CO. v. SUPERIOR COURT ................. 661
   NOTE ......................................................... 664
   SEA HORSE RANCH, INC. v. SUPERIOR COURT .................. 665
   NOTE ......................................................... 669

Chapter 15 SCOPE OF VICARIOUS LIABILITY .................... 671
   PEOPLE v. KAUFFMAN ........................................... 671
   NOTE .......................................................... 674
   PEOPLE v. CAVITT ............................................. 675
   PROBLEM ..................................................... 683
   PEOPLE v. LUPARELLO ........................................ 683
   NOTE AND PROBLEMS .......................................... 691
   PEOPLE v. MEDINA ........................................... 694
   PROBLEMS ................................................... 703

Part V The Death Penalty .............................. 705

Chapter 16 THE DEATH PENALTY AND THE CONSTITUTION  .... 707
   GREGG v. GEORGIA ............................................. 708
   NOTES .......................................................... 722
   PROBLEM ..................................................... 726
   LOCKETT v. OHIO .............................................. 726
   NOTES .......................................................... 733
   TISON v. ARIZONA ............................................. 734
   NOTE AND PROBLEMS .......................................... 745
   KENNEDY v. LOUISIANA ....................................... 746
   NOTE .......................................................... 766
   MCCLESKEY v. KEMP .......................................... 766
   NOTES .......................................................... 780

Table of Cases .................................................... TC-1

Index ............................................................. I-1