

# Criminal Law



# Criminal Law

---

## Cases and Materials

FOURTH EDITION

**Stephen A. Saltzburg**

PROFESSOR OF LAW  
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

**John L. Diamond**

PROFESSOR OF LAW  
UNIVERSITY OF CALIFORNIA  
HASTINGS COLLEGE OF THE LAW

**Kit Kinports**

POLISHER DISTINGUISHED FACULTY SCHOLAR AND  
PROFESSOR OF LAW  
PENNSYLVANIA STATE UNIVERSITY  
DICKINSON SCHOOL OF LAW

**Thomas H. Morawetz**

TAPPING REEVE PROFESSOR OF LAW AND ETHICS  
UNIVERSITY OF CONNECTICUT SCHOOL OF LAW

**Rory K. Little**

JOSEPH W. COTCHETT PROFESSOR OF LAW  
UNIVERSITY OF CALIFORNIA  
HASTINGS COLLEGE OF THE LAW



CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2017  
Carolina Academic Press, LLC  
All Rights Reserved

ISBN 978-1-53100-418-7  
eISBN 978-1-53100-419-4  
Looseleaf ISBN 978-1-53100-517-7  
LCCN 2017942690

Carolina Academic Press, LLC  
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

In gratitude to our families and our students.



# Summary of Contents

---

Table of Contents	xi
Preface	xxi
<b>Chapter 1 · The Nature and Structure of Criminal Law</b>	3
[A] The Core and Periphery of Criminal Law	3
[B] The Functional and Procedural Bases of Criminal Law	22
[C] Specificity and Discretion in Criminal Law	49
[D] Structuring the Study of Criminal Law	62
<b>Chapter 2 · Punishment</b>	67
[A] Punishment and Blame	67
[B] General Justifications of Punishment	68
[C] Methods of Punishment	79
[D] Severity of Punishment	93
<b>Chapter 3 · The Act Requirement</b>	125
[A] Voluntary Acts	125
[B] Omissions	133
[C] Possession	143
[D] Status Crimes	150
<b>Chapter 4 · Mens Rea</b>	159
[A] Introduction	159
[B] Levels of Culpability	164
[C] Defenses Based on Mens Rea	187
<b>Chapter 5 · “Strict Liability” and Public Welfare Offenses;     Vicarious and Corporate Liability</b>	227
[A] “Public Welfare” Crimes and Vicarious Liability	228
[B] Corporate, and Corporate Officer, Liability	245
<b>Chapter 6 · Homicide</b>	261
[A] Introduction	261
[B] Intentional Homicide	270

[C] Unintentional Homicide	313
[D] Felony Murder	339
[E] The Death Penalty	375
<b>Chapter 7 · Rape</b>	435
[A] Statutory Rape	435
[B] Forcible Rape	447
<b>Chapter 8 · Theft</b>	533
[A] Introduction	533
[B] Larceny	534
[C] Embezzlement	590
[D] False Pretenses	601
[E] Theft: Consolidation of the Property Acquisition Offenses	622
<b>Chapter 9 · Aggravated Property Crimes</b>	627
[A] Robbery	627
[B] Extortion	638
[C] Bribery	666
[D] Burglary	683
<b>Chapter 10 · Causation</b>	695
[A] When Is Causation an Issue?	695
[B] Determining the Limits of Causation	707
[C] Changing Conceptions of Responsibility	727
<b>Chapter 11 · Attempt and Solicitation</b>	735
[A] Attempt	736
[B] Solicitation	774
<b>Chapter 12 · Accomplice Liability</b>	783
[A] Introduction	783
[B] Actus Reus: The Extent of Participation Necessary	787
[C] Mens Rea: The State of Mind Necessary	796
[D] Withdrawal of Aid as a Defense	811
[E] Accessory After the Fact and Obstruction of Justice	815
<b>Chapter 13 · Conspiracy</b>	825
[A] The Breadth and Elements of Conspiracy	825
[B] The Scope of Conspiracy Liability	853
[C] Modern Applications of Conspiracy Law	870
<b>Chapter 14 · Justification</b>	883
[A] Introduction	883
[B] Self-Defense	884



[C] Other Uses of Defensive Force	923
[D] Necessity	943
<b>Chapter 15 · Excuse</b>	969
[A] Duress	969
[B] Entrapment	986
[C] Insanity	1018
<b>Chapter 16 · Philosophical Foundations of Criminal Law</b>	1075
[A] Explaining Prohibitory Rules and Responsibility	1075
[B] Moral Consensus Theories and Classical Liberalism	1076
[C] Critical Jurisprudence	1084
[D] Summary	1092
<b>Appendix A · Model Penal Code</b>	1093
<b>Appendix B · Federal Sentencing Guidelines Tables</b>	1203
<b>Table of Cases</b>	1205
<b>Index</b>	1239



# Contents

---

Preface	xxi
<b>Chapter 1 · The Nature and Structure of Criminal Law</b>	<b>3</b>
[A] The Core and Periphery of Criminal Law	3
[1] The Familiarity of Criminal Law	3
[2] The Capacity to Obey	3
<i>The Queen v. Dudley &amp; Stephens</i>	4
[3] The Use and Abuse of Freedom	9
JOHN STUART MILL, ON LIBERTY (1859)	9
JOEL FEINBERG, HARM TO OTHERS (1984)	10
[4] Controversial Crimes	12
[a] Unprotected Sex as Assault	13
<i>State v. Stark</i>	13
[b] Prenatal Delivery of Drugs	16
<i>Johnson v. State</i>	16
<i>Johnson v. State</i>	17
[c] General Discussion	19
[i] Moral and Psychological Flux	19
[A] Prostitution	19
[B] Homosexuality	20
[C] Suicide	21
[D] Addiction	21
[ii] Changes in Technology	22
[B] The Functional and Procedural Bases of Criminal Law	22
[1] The Function of Criminal Law	22
[2] Procedural Aspects of Criminal Law	23
[a] The State as Plaintiff: Civil Versus Criminal Liability	23
Henry M. Hart, Jr., <i>The Aims of the Criminal Law</i> ,	
23 LAW & CONTEMP. PROBS. 401 (1958)	24
Abraham S. Goldstein, <i>White-Collar Crime and Civil</i>	
<i>Sanctions</i> , 101 YALE L.J. 1895 (1992)	26
[b] Constitutional Safeguards	29
[c] Standard of Proof	31
[d] The Claims and Rights of Victims	36
[e] Due Process and Fair Warning	39

	<i>Keeler v. Superior Court</i>	40
[C]	Specificity and Discretion in Criminal Law	49
	[1] From Common Law to Statute	49
	<i>Shaw v. Director of Public Prosecutions</i>	50
	[2] Points of Discretion	54
	[a] Police Discretion	55
	[b] Prosecutorial Discretion	55
	[c] Plea Bargaining	57
	Roland Acevedo, Note, <i>Is a Ban on Plea Bargaining an Ethical Abuse of Discretion?</i> , 64 <i>FORDHAM L. REV.</i> 987 (1995)	57
	Peter Arenella, <i>Rethinking The Functions of Criminal Procedure: The Warren and Burger Courts' Competing Ideologies</i> , 72 <i>GEO. L.J.</i> 185 (1983)	57
	<i>Scott v. United States</i>	59
[D]	Structuring the Study of Criminal Law	62
	[1] Basic Elements	62
	[a] Acts	62
	[b] States of Mind	63
	[2] A Basic Model of Liability and Its Permutations	64
	[a] The Basic Model	64
	[b] Causation	64
	[c] Attempt	64
	[d] Accomplice Liability	65
	[e] Conspiracy	65
	[3] Defenses	65
	<b>Chapter 2 · Punishment</b>	67
	[A] Punishment and Blame	67
	[B] General Justifications of Punishment	68
	[1] Retribution	71
	IMMANUEL KANT, FROM THE METAPHYSICAL ELEMENTS OF JUSTICE (1797)	71
	JEFFRIE MURPHY, RETRIBUTION, JUSTICE AND THERAPY (1979)	72
	[2] The Antinomy between Retributivism and Utilitarianism	77
[C]	Methods of Punishment	79
	[1] Incarceration	79
	[a] The Invention of Prisons	79
	[b] The Critique of Prisons	81
	[c] Prisons through Psychoanalytic Eyes: Rehabilitation and Respect for Persons	83
	[d] Realizing Deterrence	85
	[2] Alternative Sentencing	87
	[3] Capital Punishment	89

	WALTER BERNS, FOR CAPITAL PUNISHMENT (1979)	89
	CHARLES L. BLACK, JR., CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE (1974)	90
[D]	Severity of Punishment	93
	[1] On Sentencing	93
	<i>United States v. Bergman</i>	94
	[2] Sentencing Discretion	100
	[a] The Traditional Approach to Sentencing: Before Guidelines	100
	Franklin Zimring, <i>Making the Punishment Fit the Crime: A Consumer's Guide to Sentencing Reform</i> , HASTINGS CENTER REPORT, Dec. 1976	101
	Marvin Frankel, <i>Criminal Sentences: Law without Order</i> (1973)	102
	[b] Sentencing Guidelines and Beyond	103
	[c] Sentencing under the Model Penal Code and Its Proposed Revisions	109
	[3] Proportionality	112
	<i>Solem v. Helm</i>	112
	<b>Chapter 3 · The Act Requirement</b>	125
	[A] Voluntary Acts	125
	WAYNE R. LAFAVE, CRIMINAL LAW (5th ed. 2010)	125
	Model Penal Code § 2.01	126
	<i>Sleepwalker Acquitted in Mother-in-Law Slaying</i> , SAN FRANCISCO EXAMINER, May 28, 1988, at 1	127
	<i>State v. Tippetts</i>	127
	[B] Omissions	133
	<i>Jones v. United States</i>	133
	[C] Possession	143
	<i>Wheeler v. United States</i>	143
	<i>People v. Ireland</i>	146
	[D] Status Crimes	150
	<i>Robinson v. California</i>	150
	<b>Chapter 4 · Mens Rea</b>	159
	[A] Introduction	159
	Model Penal Code § 2.02	161
	[B] Levels of Culpability	164
	[1] The Common Law: General Versus Specific Intent	164
	<i>State v. Peery</i>	164
	[2] The Model Penal Code	173
	<i>United States v. Villegas</i>	173
	RICHARD M. THOMPSON II, CONG. RESEARCH SERV., 7-5700, MENS REA REFORM: A BRIEF OVERVIEW (2016)	184
	[C] Defenses Based on Mens Rea	187

[1]	Mistake of Fact	187
	<i>Gordon v. State</i>	187
[2]	Mistake of Law	190
	<i>People v. Wendt</i>	190
	<i>United States v. Barker</i>	200
	<i>Lambert v. California</i>	211
[3]	Intoxication	217
	<i>United States v. Williams</i>	217
<b>Chapter 5 · “Strict Liability” and Public Welfare Offenses; Vicarious and Corporate Liability</b>		227
[A]	“Public Welfare” Crimes and Vicarious Liability	228
	<i>Commonwealth v. Koczwar</i>	228
	<i>United States v. Freed</i>	234
[B]	Corporate, and Corporate Officer, Liability	245
[1]	Corporate Liability	245
	<i>United States v. Deak &amp; Co. of California, Inc.</i>	246
	<i>State v. Adjustment Department Credit Bureau, Inc.</i>	247
[2]	Corporate Officer Liability	254
	<i>United States v. Park</i>	254
<b>Chapter 6 · Homicide</b>		261
[A]	Introduction	261
	Francis B. Sayre, <i>Mens Rea</i> , 45 HARV. L. REV. 974 (1932)	261
	Model Penal Code § 210.2 Comment	262
	Pennsylvania Consolidated Statutes	263
	California Penal Code	264
	New York Penal Law	266
	Model Penal Code	269
[B]	Intentional Homicide	270
[1]	Distinguishing First- and Second-Degree Murder: Premeditation	270
	<i>Commonwealth v. Carroll</i>	270
	<i>People v. Anderson</i>	275
[2]	Voluntary Manslaughter: Heat of Passion	287
	<i>Maher v. People</i>	287
	<i>State v. Thornton</i>	288
[C]	Unintentional Homicide	313
[1]	Second-Degree Murder: Depraved Heart/Extreme Indifference	313
	<i>Commonwealth v. Malone</i>	313
	<i>People v. Knoller</i>	315
[2]	Involuntary Manslaughter: Criminal Negligence/Recklessness	325
	<i>Commonwealth v. Welansky</i>	325
	<i>Commonwealth v. Feinberg</i>	327
[D]	Felony Murder	339
[1]	The Policy Issues Surrounding Felony Murder	339

	Nelson E. Roth & Scott E. Sundby, <i>The Felony-Murder Rule: A Doctrine at Constitutional Crossroads</i> , 70 CORNELL L. REV. 446 (1985)	339
	David Crump & Susan W. Crump, <i>In Defense of the Felony Murder Doctrine</i> , 8 HARV. J.L. & PUB. POL'Y 359 (1985)	342
[2]	Limitations on the Felony Murder Doctrine	347
	[a] Inherently Dangerous Felonies	347
	<i>People v. Howard</i>	347
	[b] The Merger Exception	356
	<i>Rose v. State</i>	356
	[c] The Agency Doctrine	365
	<i>Commonwealth v. Tejada</i>	365
[E]	The Death Penalty	375
	[1] The Policy Considerations Underlying the Death Penalty	375
	<i>Glossip v. Gross</i>	376
	<i>McCleskey v. Kemp</i>	394
	[2] The Constitutionality of the Death Penalty and Capital Sentencing Procedures	406
	<i>Lockett v. Ohio</i>	418
<b>Chapter 7 · Rape</b>		435
[A]	Statutory Rape	435
	<i>People v. Hernandez</i>	435
	<i>Garnett v. State</i>	438
[B]	Forcible Rape	447
	[1] Perspectives	447
	THE VIOLENCE AGAINST WOMEN ACT OF 1991, S. REP. NO. 197, 102d Cong., 1st Sess. (1991)	447
	THE WHITE HOUSE COUNCIL ON WOMEN AND GIRLS, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION (2014)	449
	Nancy S. Erickson & Nadine Taub, <i>Final Report: "Sex Bias in the Teaching of Criminal Law"</i> , 42 RUTGERS L. REV. 309 (1990)	450
	SUSAN ESTRICH, <i>REAL RAPE</i> (1987)	451
	LORENNE M.G. CLARK & DEBRA J. LEWIS, <i>RAPE: THE PRICE OF COERCIVE SEXUALITY</i> (1977)	453
	Angela P. Harris, <i>Race and Essentialism in Feminist Legal Theory</i> , 42 STAN. L. REV. 581 (1990)	454
	I. Bennett Capers, <i>Real Rape Too</i> , 99 CALIF. L. REV. 1259 (2011)	455
	Margo Kaplan, <i>Rape Beyond Crime</i> , 66 DUKE L.J. 1045 (2017)	456
	RICHARD A. POSNER, <i>SEX AND REASON</i> (1992)	458

	Katharine K. Baker, <i>Once a Rapist? Motivational Evidence and Relevancy in Rape Law</i> , 110 HARV. L. REV. 563 (1997)	459
[2]	Mens Rea	461
	<i>Director of Public Prosecutions v. Morgan</i>	461
	<i>Reynolds v. State</i>	467
[3]	Actus Reus	483
	<i>State v. Rusk</i>	483
	<i>Commonwealth v. Berkowitz</i>	494
[4]	Marital Rape	522
	<i>People v. M.D.</i>	522
<b>Chapter 8 · Theft</b>		533
[A]	Introduction	533
[B]	Larceny	534
[1]	The History and Elements of Larceny and the Type of Property That Can Be Stolen	534
	<i>Lund v. Commonwealth</i>	534
	<i>Oxford v. Moss</i>	548
	California Penal Code §§ 499c, 502	549
[2]	Property “of Another”	555
	<i>Henry v. State</i>	555
[3]	The Asportation and Caption Requirements	559
	<i>State v. Carswell</i>	559
[4]	Extensions of Larceny	563
[a]	Lost or Mislaid Property	563
	<i>Brooks v. State</i>	563
	Model Penal Code § 223.5	566
[b]	Mistaken Delivery	571
	<i>United States v. Rogers</i>	571
[c]	Larceny by Trick	576
	<i>State v. Robington</i>	576
[5]	The Specific Intent to Deprive Another of Property Permanently	578
	<i>People v. Kunkin</i>	578
	<i>Mason v. State</i>	587
[C]	Embezzlement	590
	<i>People v. Talbot</i>	590
[D]	False Pretenses	601
	<i>Chaplin v. United States</i>	601
	<i>United States v. Skilling</i>	610
[E]	Theft: Consolidation of the Property Acquisition Offenses	622
	Model Penal Code § 223.1	622
	California Penal Code § 484	622



<b>Chapter 9 · Aggravated Property Crimes</b>	627
[A] Robbery	627
<i>State v. Mejia</i>	627
[B] Extortion	638
<i>State v. Harrington</i>	638
<i>United States v. Jackson</i>	650
<i>McCormick v. United States</i>	658
[C] Bribery	666
<i>McDonnell v. United States</i>	666
[D] Burglary	683
<i>People v. Gauze</i>	683
<b>Chapter 10 · Causation</b>	695
[A] When Is Causation an Issue?	695
[1] Culpability and “But-For” Causation	695
GLANVILLE WILLIAMS, TEXTBOOK OF CRIMINAL LAW	
(2d ed. 1983)	696
[2] Intervening Actors and Events	698
<i>People v. Kibbe</i>	698
[3] Causation in the Model Penal Code	702
Model Penal Code § 2.03	702
[B] Determining the Limits of Causation	707
[1] Introduction	707
[2] Acts of Third Parties	708
[a] Expected or Planned Acts of Third Parties	708
[b] Coincidental Acts of Third Parties	709
<i>Commonwealth v. Rementer</i>	709
[3] Acts of Victims	713
[a] Suicidal Acts of Victims	713
<i>Rex v. Beech</i>	713
<i>Stephenson v. State</i>	714
<i>State v. Bauer</i>	718
[b] Other Self-Destructive Acts of Victims	720
<i>Shirah v. State</i>	720
[4] Complementary and Concurrent Acts	723
<i>Commonwealth v. Root</i>	723
[C] Changing Conceptions of Responsibility	727
DANIEL DENNETT, ELBOW ROOM: THE VARIETIES OF	
FREE WILL WORTH WANTING (1984)	730
<b>Chapter 11 · Attempt and Solicitation</b>	735
Introduction: The Challenge of Inchoate Offenses	735
[A] Attempt	736
[1] Issues in Attempt	736
[2] The Elements of Attempt	739

	<i>United States v. Jackson</i>	740
[3]	Abandonment as a Defense to Attempt	752
	<i>People v. Staples</i>	752
[4]	Legal and Factual Impossibility	757
	<i>People v. Dlugash</i>	758
	<i>People v. Thousand</i>	761
[B]	Solicitation	774
	<i>State v. Schleifer</i>	774
	<i>People v. Quentin</i>	776
	Model Penal Code § 5.02	777
<b>Chapter 12 · Accomplice Liability</b>		783
[A]	Introduction	783
	WAYNE R. LAFAVE, CRIMINAL LAW (5th ed. 2010)	783
[B]	Actus Reus: The Extent of Participation Necessary	787
	<i>United States v. Buttorff</i>	787
	<i>Wilcox v. Jeffery</i>	789
[C]	Mens Rea: The State of Mind Necessary	796
	<i>State v. Gladstone</i>	797
	<i>Rosemond v. United States</i>	804
[D]	Withdrawal of Aid as a Defense	811
	<i>Commonwealth v. Huber</i>	811
[E]	Accessory After the Fact and Obstruction of Justice	815
	The Starr Report: The Official Report of the Independent Counsel’s Investigation of the President (1999)	818
<b>Chapter 13 · Conspiracy</b>		825
[A]	The Breadth and Elements of Conspiracy	825
	[1] Elements, Justifications, Advantages, and Sentencing	825
	[2] Actus Reus: Agreement	830
	<i>State v. Allan</i>	830
	[3] The Requisite Mens Rea — “Purpose” or “Knowledge”?	840
	<i>People v. Lauria</i>	840
	[4] Overt Acts	850
[B]	The Scope of Conspiracy Liability	853
	[1] The <i>Pinkerton</i> Doctrine	853
	<i>Pinkerton v. United States</i>	853
	[2] The Structure of Conspiracies: Single versus Multiple Conspiracies, and “Chains” versus “Wheels”	858
	<i>Kotteakos v. United States</i>	862
	[3] Withdrawal, Renunciation, and the Duration of the Conspiracy	865
	<i>People v. Sisselman</i>	867
[C]	Modern Applications of Conspiracy Law	870
	[1] Conspiracy Charges in Post 9/11 Terrorism Cases	870

[2] The RICO Statute: A Complicated Conspiracy Approach to Prosecuting Organized Crime	872
<i>United States v. Horak</i>	872
<b>Chapter 14 · Justification</b>	883
[A] Introduction	883
[B] Self-Defense	884
<i>People v. Goetz</i>	884
<i>State v. Norman</i>	898
<i>People v. Tomlins</i>	919
[C] Other Uses of Defensive Force	923
[1] Defense of Home and Property	923
<i>State v. Anderson</i>	923
[2] Law Enforcement	931
<i>Plumhoff v. Rickard</i>	931
[D] Necessity	943
<i>State v. Reese</i>	943
<i>United States v. Maxwell</i>	957
<b>Chapter 15 · Excuse</b>	969
[A] Duress	969
<i>State v. Scott</i>	969
[B] Entrapment	986
<i>United States v. Russell</i>	986
<i>Jacobson v. United States</i>	998
[C] Insanity	1018
[1] The Scope of the Insanity Defense	1018
<i>Daniel M'Naghten's Case</i>	1018
[2] The Current State of the Law	1035
<i>Clark v. Arizona</i>	1035
[3] The Effect of an Insanity Acquittal	1063
<i>Jones v. United States</i>	1063
<b>Chapter 16 · Philosophical Foundations of Criminal Law</b>	1075
[A] Explaining Prohibitory Rules and Responsibility	1075
[B] Moral Consensus Theories and Classical Liberalism	1076
[1] Criminal Law and the Enforcement of Morality	1076
PATRICK DEVLIN, <i>THE ENFORCEMENT OF MORALS</i> (1958)	1076
[2] Criticizing Legal Moralism	1079
H.L.A. Hart, <i>Immorality and Treason</i> , <i>THE LISTENER</i> , July 30, 1959, at 162	1079
[3] Liberal Justifications of Criminal Law	1082
[C] Critical Jurisprudence	1084
[1] Critical Legal Studies	1084

	Robert W. Gordon, <i>Critical Legal Histories</i> , 36 STAN. L. REV. 57 (1984)	1084
[2]	Feminist Theory Victoria Nourse, <i>Law's Constitution: A Relational Critique</i> , 17 WIS. WOMEN'S L.J. 23 (2002)	1087 1088
[3]	Critical Race Theory MARI MATSUDA, CHARLES LAWRENCE, RICHARD DELGADO & KIMBERLE CRENSHAW, WORDS THAT WOUND (1993)	1090 1090
[D]	Summary	1092
	<b>Appendix A · Model Penal Code</b>	1093
	<b>Appendix B · Federal Sentencing Guidelines Tables</b>	1203
	<b>Table of Cases</b>	1205
	<b>Index</b>	1239

# Preface

---

---

This casebook is our attempt to freshen and vivify the study of criminal law in several ways. We use theoretical perspectives and questions as a framework for prompting students to reflect on the general purposes of law and government. In doing so, we hope to acquaint them with a spectrum of controversial and stimulating contemporary approaches, from liberalism to critical theory. At the same time, the book is unusually rich and varied in its presentation of substantive material. These features allow unprecedented flexibility in tailoring an introductory course in criminal law to your interests and those of your students.

We bring a variety of insights and points of view to criminal law. In addition to our backgrounds in criminal law, our publications and teaching experiences extend to many related areas, such as criminal procedure, trial advocacy, analytical jurisprudence, feminist theory, critical legal studies, and evidence. Insights from all these areas are pervasive throughout this book.

While most casebooks focus primarily on homicide as the illustrative crime, this book offers an exciting menu of opportunities to teach substantive criminal law in different ways. In addition to its comprehensive coverage of homicide, it also features a long section on rape that draws extensively on new scholarship about current controversies. Our treatment of property crimes includes stimulating chapters on theft and other “advanced” property crimes.

The book also provides the reader an opportunity to consider in depth the theoretical and practical issues posed in cases involving white-collar crimes. Several chapters and sections of chapters ask students to focus on the increasing interaction between civil and criminal law. (This is particularly relevant since most students will not end up practicing criminal law.) The interaction is explored in such questions as: When is a breach of contract criminal false pretenses? When is a negotiating threat extortion? When is a company’s contribution a bribe? When does misuse of a computer or trade information constitute criminal theft?

Moreover, this book introduces students to a variety of theoretical perspectives in a clear and accessible way. Throughout the book, we explain and employ such perspectives as moralism, liberalism, economics and law, critical legal theory, feminist theory, and critical race theory, and we focus attention on their practical implications.

The first chapter asks students to consider controversial applications of criminal law and invites them to formulate the purposes and boundaries of criminal law. It

also offers a brief introduction to different ways of looking at the criminal sanction's origins and justifications. Chapter 2 provides an array of perspectives on punishment that differs markedly in scope and depth from the treatments available in other casebooks. It includes materials on the history, the psychology, and the economics of punishment—with comprehensive coverage of capital punishment, the pros and cons of incarceration, alternative sentencing, the Federal Sentencing Guidelines, and the proposed revisions to the Model Penal Code's sentencing provisions.

The substantive and doctrinal chapters that follow incorporate the perspectives of the introductory chapters. Finally, Chapter 16 describes a variety of theoretical perspectives in greater depth. Depending on time constraints and preference, the instructor can use this chapter in the introductory weeks or as background to enrich discussion of substantive topics throughout the course.

The cases are selected to excite students and provoke their interest. Many raise questions about such contemporary concerns as civil rights, issues affecting women and people of color, economic rights and relations, and public policy. In many instances, the cases stress evolving and controversial questions concerning the role of law and politics. Other cases touch on political scandals from Watergate to Irangate to the Clinton impeachment hearings.

Some of the cases directly implicate the interests of students. They involve, for example, defendants who used university computers without authorization, stole examination questions, or referred police informants to campus drug dealers.

The book is designed to provide an unprecedented range of options. The theoretical and substantive materials are presented in such a manner that the instructor can choose the coverage most appropriate for his or her class and can vary and tailor the format from year to year.

---

We are greatly indebted to our student research assistants for their exemplary, imaginative, and significant contributions to all phases of the creation of this casebook. We wish to express our gratitude to the following individuals: at the University of California, Hastings College of the Law, Bret C. Birdsong, Michael A. Cox, Benjamin P. Fay, David J. Huffaker, Stefan P. Kennedy, Geoffrey H. Simon, Lucia M. Walters, and Kathryn P. Wilke; at the University of Connecticut School of Law, Christopher Kelland, James Scrimgeour, and Kevin Shay; at George Washington University Law School, Elisa D'Andrea and Rubin M. Sinins; at the University of Illinois College of Law, Orete Jonas, Bates McIntyre, Mike McMorrow, Michael Schafler, Aylon Schulte, Dawn Weber, and Mary Beth Welch.

In addition, this book could not have been published without the extraordinary help of Terri MacFarlane Hovde of the staff of the University of Illinois College of Law; and Stephen R. Lothrop, supervisor of faculty support, and Margaret G. Arnold of the library staff at the University of California, Hastings College of the Law. We would also like to thank Dean Jack Friedenthal and Dean Michael Young for providing equipment, resources, and support for both the first and second editions.

For the second edition, we are additionally very indebted for the helpful suggestions of Professors Kate Bloch, Evan Tsen Lee, and Rory K. Little of the University of California, Hastings College of the Law; the excellent research assistance of Paul J. Myslin; the very generous assistance of librarians John Borden, Charles Marcus, Vincent Moyer, Jenni Parrish, and Linda Weir of the University of California, Hastings College of the Law, and the exceptional assistance of Stephen R. Lothrop, Beverly Taylor, and Barbara Topchov of Faculty Support at the University of California, Hastings College of the Law.

For the third edition, we are grateful for the very able research assistance of Michael Cummings, Dennis Griffin, and Meredith Long of the University of Connecticut School of Law, and Edward Ahn, Todd Daloz, and Morgan Weibel of the University of California, Hastings College of the Law, and for the very helpful assistance of Divina Morgan of Faculty Support at the University of California, Hastings College of the Law.

For the fourth edition, we are grateful for the industrious and imaginative research assistance of Martha Adams, Benjamin Cantor, Stephanie O'Loughlin, and Michael Rondon of the University of Connecticut School of Law, and Amy Dunitz, Arash Razavi, Matthew Reneris, Anthony Rodregous, Philip Tacason, and Karim Troost of the University of California, Hastings College of the Law, and for the very helpful assistance of Divina Morgan of Faculty Support at the University of California, Hastings College of the Law.

