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Criminal Law

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Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is mhschwartz@ualr.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students,

if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Michael Hunter Schwartz, Series Designer and Editor
Consultant, Institute for Law Teaching and Learning
Dean and Professor of Law, William H. Bowen School of Law,
University of Arkansas at Little Rock

Preface

There is a wonderful podcast series called “Serial,” which in its Season One debut featured a true criminal case involving the murder of a high school student. It provided for a riveting story, not only because it was true and involved life and death. The defendant in the case, Adnan Syed, was convicted of murdering his ex-high school girlfriend. Deciding whether the defendant is guilty or telling the truth in the case is beguiling. Realizing we might never know the truth is frustrating, at best, but makes us realize how a human system of justice will have built-in failures and frailties simply because it relies on humans for accuracy. It also points to the importance of criminal law and how the system is only as good as the attorneys and judges who create what many call justice.

This book is intended to provide law students with the knowledge, insights, and context needed to understand how the legal framework of the criminal justice system operates, from the granular elements of crimes, to the application of the elements in specific cases, to the interpretation of the law by judges, and to larger policy and ethical issues raised by this very human process.

One goal of this book is to provide guidance to students along the criminal law “highway,” a road that is not static, but undulating and dynamic at all times. Instead of a snapshot of rules and elements, the book attempts to create longer-term and better retention through the use of problems, background boxes, links, and other connections showing how things within the criminal justice system relate.

The four authors teach at different law schools, come from different parts of the country, and have diverse backgrounds. This helps bring multiple perspectives to the table and this book. We have been prosecutors and defense counsel, have observed the system close up, and hope to provide the understandings needed by you, the students, within this larger context.

We are cognizant of the fact that students need criminal law for the bar exam as well as for some practitioners, which is why there is a mix of policy and practice in the book. We also know that it is important to provide the big picture and foundational facts, so we included key points at the beginning of every chapter and an introductory problem of the type the chapter will raise. Thus, we offer the global, big-picture criminal justice issues, as well as the salient sequential details, such as the elements of important causes of action and what they mean.

The elements of crimes are also distinguishable by their source—historically, mostly through the common law, and today, mostly by statute. While statutes comprise

of the overwhelming majority of today's American criminal laws, most derivations can be traced to the common law, which is why it receives considerable emphasis here.

The authors also are aware that the criminal law is embedded in the mainstream culture. There are television shows, films, and seemingly daily reports on some aspect of the criminal justice system. Consequently, this course can be as much about un-learning assumptions and knowledge gleaned from the popular culture as it is about learning rules and how to apply them from scratch. To promote connections with the outside world, we have used many high profile cases to illustrate how the law is applied currently.

To help the learning process, we tried to create a scaffolding for each chapter. The chapters start with an outline of the contents, proceed to a summary of important points, then move to cases and explication of rules and principles, before ending in a brief quiz.

We hope you enjoy using this book as much as we have enjoyed writing it. If you have any comments on how we could improve it, we are more than happy to receive the feedback. If we can help students learn better, we will endeavor to do so.

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