
PREFACE

The aim of this sixth edition of *Criminal Law* is, of course, to introduce students to the basic purposes, concepts, doctrines, and analytic techniques of the substantive criminal law. The fundamental premise of the book is that the substantive criminal law is a statutory as well as a “common law” subject. While the substantive criminal law, like other basic law courses, exposes students to the arts of common law reasoning, training students in applying statutory standards of liability requires them to understand the basic structure of liability, the fundamental concepts that are as often presupposed as defined in criminal codes, the crucial skills of element analysis, and the considerations of social policy and moral principle that inform the interpretation, application, and evaluation of criminal statutes.

Like most criminal law texts, this book relies first on appellate decisions in actual cases to explicate the doctrines and policy dilemmas of the substantive criminal law. It begins with an introduction that prepares students to read these decisions; the introduction explains how these cases arise, what kinds of substantive issues come up on appeal, what sources of law appellate courts bring to bear on these issues, and what methods of reasoning and argument the courts use to resolve them. While we have continued to include historically significant cases, we have also made a special effort in this edition to include very recent cases illustrating developments in this constantly changing field of law.

Like previous editions, however, this book is not merely a collection of cases. Because criminal law is a statutory subject, this book exposes students to alternative statutory formulations of offenses and defenses, and enables students to become familiar with the influential Model Penal Code. We have continued to interweave cases with journalistic and sociological accounts of crime, historical accounts of the development of the criminal law, and philosophical arguments about criminal justice. We have also continued our commitment to place the substantive criminal law in a realistic social setting in which inequality—whether based on race, gender, or poverty—plays an undeniable role.

Above all, this book is designed not merely to stimulate interest in the fascinating and controversial subject of the criminal law but also to explain that subject clearly. We have continued to include throughout the book introductory and transitional material that provides straightforward explanations of the alternative rules applied in each doctrinal area. Notes following principal cases are organized and labeled by legal issue so that students may find quick

answers to their most pressing questions. Where appropriate, we supply problems and exercises to help students master the analytic skills emphasized throughout the book.

Colleagues who have taught from our previous editions will find that this one continues to build upon the book's traditional organizational and pedagogical approach. However, we note here a few major changes. The most obvious are the introduction of a new chapter on perjury and other offenses against the administration of justice; and the elimination of a separate chapter on corporate criminal liability.

Chapter 1, on the purposes and limits of punishment, continues to focus on the policy controversy over historically high incarceration rates, along with the causes and implications of fluctuating crime rates. It adds new material on the deterrent impact of increasing sanction severity. The incapacitation section adds a discussion of *Kansas v. Hendricks* on preventive detention, and new material on the history of incapacitation. It also provides a revamped section on guideline sentencing with thorough coverage of the effect of *Blakely v. Washington* and *United States v. Booker*, the Supreme Court's recent dramatic decisions that treat mandatory sentencing enhancements as offense elements requiring jury determination.

Chapter 2, "The Criminal Act," continues its coverage of voluntary acts, possession, omissions, status crimes, prospectivity, legality, and specificity, but it contains two major enhancements. The chapter adds a new section on the "harm principle" — the requirement of harm or risk as a distinct component of the criminal act — focusing on the Supreme Court's decision in *Lawrence v. Texas*. The chapter also adds new cases on the shifting contours of constructive possession.

Chapter 3, "The Guilty Mind," continues to explore the question of whether and when criminal liability depends on culpability. It distinguishes different culpable mental states and trains students to construct the mental elements of statutory offenses. Finally, it examines the special problems of mistake of law and capacity for *mens rea*.

Chapter 4, on causation, adds philosophical material on the moral relevance of actual harm to deserved punishment. It also adds new material on causation in fact, contrasting the rigorous requirement of a necessary condition prevailing in criminal law with a more inclusive tort law standard that assigns causal responsibility for hypothetically necessary conditions.

Chapter 5, "Intentional Homicide," offers additional background material on the important cases of *Francis v. Franklin* and *United States v. Watson*; it continues to explore the moral dilemmas posed by the problem of whether and how emotional distress can mitigate murder liability in a society riven by controversies over cultural diversity and gender inequality.

Chapter 6, "Unintentional Homicide," adds the New York case of *People v. Suarez*, addressing the distinction between extreme indifference murder and reckless manslaughter. The section on felony murder includes a major new case, *People v. Cavitt*, on accomplice liability for felony murder, and also includes a new discussion of the historical origins of felony murder liability.

Chapter 7, on capital murder, adds a new section explaining the Eighth Amendment limits on death-eligible defendants established by *Atkins v. Virginia* and the new case of *Roper v. Simmons*. It also adds the new case of *Kansas v. Marsh* on the state's power to define how aggravating and mitigating circumstances are to be weighed.

Chapter 8, on necessary force, lesser evils, and duress, adds the new note cases of *State v. Pickle* on duress in the context of domestic abuse, and *Dixon v. United States* on the burden of proof for duress in federal cases.

Chapter 9, on insanity, continues its enhanced focus on the newer cognitive tests. It adds *Clark v. Arizona*, the new Supreme Court case illustrating the limited due process constraints on the insanity defense (including a holding that permits eliminating the defense altogether).

Chapter 10, “Attempt,” adds the new cases of *United States v. Resendiz-Ponce* on the independent requirement of alleging a specific act, and *People v. Superior Court*, on the relationship between solicitation and attempt offenses.

Chapter 11, “Complicity,” returns to the theme of hypothetically necessary conditions in examining the actus reus of complicity. It also offers a simplified analysis of the mens rea of complicity. Finally, it now incorporates a streamlined treatment of the criminal liability of corporations (which is no longer the subject of a separate chapter).

Chapter 12, “Conspiracy,” includes new notes on the *Jose Padilla* prosecution and other applications of conspiracy law in terrorism cases.

“Rape,” now appearing as Chapter 13, continues to take account of law reform efforts and scholarly research in this rapidly changing field of law; it also continues to offer a comparison and precise element analysis of the broad range of alternative definitions of sexual assault offenses. It adds a new unit on the problem of prison rape.

Chapter 14, “Theft Offenses,” continues to include lively case law on theft-based white collar crimes, including mail fraud and bribery. It adds the important new second circuit case, *United States v. Rybicki*, clarifying the required risk of misappropriation for federal fraud offenses.

Chapter 15, “Perjury, False Statements, and Obstruction of Justice,” focuses on federal criminal law. In recent decades, federal prosecutors have increasingly and controversially used their investigatory powers to incriminate suspects in these collateral crimes. This practice poses some of the same fundamental questions about law enforcement discretion raised by the vagrancy, possession, attempt, and conspiracy offenses explored in earlier chapters. We have included many of the basic cases familiar to teachers of white-collar crime courses: *Bronston v. United States*, and the Clinton impeachment on the elements of perjury; *Brogan v. United States* on false statement liability; and *United States v. Aguilar*, *United States v. Cueto*, and the *Arthur Andersen* case on obstruction of justice.

The point at which government takes a person’s life or liberty and justifies it by denouncing that person’s actions, purposes, and character is the law’s most powerful manifestation. The criminal law therefore poses the most important challenge to our responsibility as citizens to understand, to evaluate, and to improve the law that is enforced in our name. We hope this new book helps our students meet that challenge.

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