

# Table of Contents

<b>Chapter One: The Purposes of Criminal Law</b>	<b>1</b>
<b>A. When Is Punishment Justified?</b>	<b>1</b>
1. Retribution	2
2. Utilitarianism	3
<i>General Deterrence</i>	3
<i>Individual (or Specific) Deterrence</i>	3
<i>Incapacitation</i>	3
<i>Rehabilitation</i>	3
3. Applying the Theories of Punishment: <i>Dudley and Stephens</i>	4
Exhibit 1.1 Newspaper Article About the Shipwrecked Crew	6
<i>The Queen v. Dudley and Stephens</i>	7
4. Applying the Theories of Punishment: Marijuana Prohibition	12
<i>State v. Hoseman</i>	15
<b>B. Punishment in the United States</b>	<b>20</b>
1. Mass Incarceration	20
2. Punishment as a Form of Social Control	21
<i>Nash v. State</i>	23
3. The Prison Abolition Movement	28
Exhibit 1.2 Photo of Summer 2020 Black Lives Matter Protest	30
4. Racial Disparities in Criminal Enforcement	30
<i>Alexander, The New Jim Crow</i>	31
<i>Forman, Racial Critiques of Mass Incarceration: Beyond the New Jim Crow</i>	36
<b>C. A First-Hand Account of Incarceration</b>	<b>40</b>
<i>Sanchez, In Spite of Prison</i>	41
<b>Chapter Summary</b>	<b>50</b>
<b>Applying the Concepts</b>	<b>51</b>
<b>Criminal Law in Practice</b>	<b>52</b>

<b>Chapter Two: Sources and Components of the Criminal Law</b>	<b>53</b>
<b>A. Sources of Criminal Law</b>	<b>53</b>
1. The Common Law	55
2. The Model Penal Code	56
3. Other Sources	57
4. The Role of Courts in Interpreting Statutes	58
<b>B. Elements of Crimes: An Overview</b>	<b>59</b>
1. Act ( <i>Actus Reus</i> ) Elements	60
<i>Robinson v. California</i>	62
2. Mental State ( <i>Mens Rea</i> ) Elements	66
<i>Intent</i>	67
<i>Purpose</i>	67
<i>Knowledge</i>	68
<i>Recklessness</i>	68
<i>Negligence</i>	69
<i>Strict Liability</i>	70
<i>Mens Rea and Statutory Interpretation</i>	71
3. Causation (Results Elements)	72
4. Attendant Circumstances Elements	73
5. Affirmative Defenses	74
<b>C. The Criminal Case Process: A Brief Overview</b>	<b>74</b>
1. The Investigation	75
2. The Charging Decision	76
Exhibit 2.1 Example of an Information From the Federal Prosecution of Singer Lauryn Hill	78
3. Bail and Pretrial Release	79
4. Plea Bargaining	80
5. The Trial	81
<i>Proof Beyond a Reasonable Doubt</i>	81
<i>The Jury's Role and Jury Instructions</i>	82
Exhibit 2.2 Jury Instruction on Reasonable Doubt from a 2016 California Criminal Trial	83
6. Sentencing	84
7. Criminal Appeals	85
<b>Chapter Summary</b>	<b>86</b>
<b>Applying the Concepts</b>	<b>87</b>
<b>Criminal Law in Practice</b>	<b>88</b>

<b>Chapter Three: Property Offenses</b>	<b>91</b>
<b>A. Theft Crimes</b>	<b>91</b>
1. Larceny	92
<i>Trespassory</i>	92
<i>Taking and Carrying Away</i>	93
<i>Personal Property of Another</i>	93
<i>Intent to Permanently Deprive</i>	94
<b><i>Commonwealth v. Liebenow</i></b>	<b>95</b>
<b><i>Marsh v. Commonwealth</i></b>	<b>100</b>
2. Robbery	104
<i>Force or Fear</i>	104
<b><i>Lear v. State</i></b>	<b>105</b>
<i>From the Victim's Person or Immediate Presence</i>	107
3. Embezzlement and False Pretenses	108
<i>Embezzlement</i>	109
<b><i>State v. Lough</i></b>	<b>111</b>
<i>False Pretenses</i>	114
<b><i>People v. Phebus</i></b>	<b>116</b>
4. Consolidated Theft Statutes	118
5. Extortion	120
<i>Extortion by Threatened Violence</i>	120
<b><i>United States v. Zhou</i></b>	<b>121</b>
<i>Extortion by Wrongful Threats (Blackmail)</i>	126
<b><i>People v. Bollaert</i></b>	<b>128</b>
<i>Extortion Under Color of Official Right</i>	134
<b>B. Burglary</b>	<b>135</b>
<i>Breaking</i>	136
<i>Entering</i>	136
<i>Dwelling of Another</i>	137
<i>At Night</i>	137
<i>With the Intent to Commit a Felony Therein</i>	138
<b><i>In re T.J.E.</i></b>	<b>140</b>
Exhibit 3.1 Example of Jury Instructions for the Crime of Burglary from a California Trial	143
<b>C. Arson</b>	<b>144</b>
<i>Malicious</i>	145
<i>Burning</i>	145
<i>Dwelling of Another</i>	146

<b>Chapter Summary</b>	<b>147</b>
<b>Applying the Concepts</b>	<b>148</b>
<b>Criminal Law in Practice</b>	<b>150</b>
<b>Chapter Four: Drug Offenses</b>	<b>153</b>
<b>A. Race, Drug Prohibition, and the War on Drugs</b>	<b>154</b>
Exhibit 4.1 George H.W. Bush Displays Bag of Crack in 1989 Oval Office Speech	155
<b>B. Possession</b>	<b>156</b>
1. Actual Possession	157
<i>State v. Fries</i>	157
2. Constructive Possession	163
<i>Rivas v. United States</i>	165
3. Proof of Knowledge and the Willful Blindness Doctrine	172
<i>United States v. Louis</i>	173
<i>Willful Blindness</i>	178
<i>United States v. Heredia</i>	180
<b>C. Possession with the Intent to Distribute</b>	<b>188</b>
<i>United States v. Hunt</i>	190
<i>United States v. Washington</i>	194
<b>Chapter Summary</b>	<b>199</b>
<b>Applying the Concepts</b>	<b>200</b>
<b>Criminal Law in Practice</b>	<b>201</b>
<b>Chapter Five: Homicide Offenses</b>	<b>203</b>
<b>A. An Overview of Degrees of Homicide</b>	<b>203</b>
Exhibit 5.1 Homicides by Offense	206
<b>B. Intentional Killings</b>	<b>206</b>
1. First-Degree Murder That Is Willful, Deliberate, and Premeditated	206
<i>People v. Boatman</i>	208
2. Transferred Intent	217
<b>C. Murder with the Intent to Inflict Grievous Bodily Injury</b>	<b>218</b>
<b>D. Heat of Passion Killings: Reducing Murder to Voluntary Manslaughter</b>	<b>219</b>
1. The Elements of Heat of Passion: Overview	219

2. Adequate Provocation	220
<i>People v. Beltran</i>	221
<i>People v. Pouncey</i>	228
3. Cooling Off Time	232
<b>E. Accidental Killings</b>	<b>234</b>
1. Depraved Heart Murder	235
<i>People v. Roe</i>	236
2. Involuntary (Reckless) Manslaughter	242
<i>State v. Janklow</i>	244
Exhibit 5.2 William Janklow (center) Leaving the Courthouse After the Jury's Guilty Verdict	247
<i>Brasse v. State</i>	248
3. Negligent Homicide	252
<i>People v. Cabrera</i>	253
<b>F. Felony Murder</b>	<b>258</b>
1. In the Perpetration of a Felony ( <i>Res Gestae</i> )	260
<i>People v. Wilkins</i>	262
<i>King v. Commonwealth</i>	266
<i>Liability for Killings by Non-Felons</i>	269
2. Grading Felony Murder, Enumerated Felonies, and the Inherently Dangerous Felony Limitation	270
<i>First-Degree Felony Murder and Enumerated Felonies</i>	271
<i>Second-Degree Felony Murder and the Inherently Dangerous     Felony Rule</i>	272
3. Independent Felony Rule	274
4. Misdemeanor Manslaughter	274
<b>G. Causation</b>	<b>275</b>
1. But-For Causation	275
2. Proximate Causation	276
<i>Lewis v. State</i>	279
<b>H. Homicide by Omission</b>	<b>282</b>
<b>Chapter Summary</b>	<b>284</b>
<b>Applying the Concepts</b>	<b>286</b>
<b>Criminal Law in Practice</b>	<b>287</b>

<b>Chapter Six: Sex Offenses</b>	<b>289</b>
<b>A. Rape</b>	<b>290</b>
1. Force, Threat of Force, and Resistance	292
<i>State v. Jones</i>	293
<i>The Force Requirement and Incapacity to Consent</i>	302
2. <i>Mens Rea</i> and Consent	303
<i>Commonwealth v. Lopez</i>	305
<i>State v. Asaad</i>	311
<b>B. Statutory Rape</b>	<b>316</b>
<i>Garnett v. State</i>	317
<b>C. Child Pornography</b>	<b>327</b>
<i>In re S.K.</i>	328
<b>Chapter Summary</b>	<b>339</b>
<b>Applying the Concepts</b>	<b>340</b>
<b>Criminal Law in Practice</b>	<b>341</b>
<b>Chapter Seven: Attempts</b>	<b>343</b>
<b>A. <i>Mens Rea</i>: Intent</b>	<b>343</b>
<b>B. <i>Actus Reus</i></b>	<b>345</b>
1. Dangerous Proximity to Success	346
<i>People v. Rizzo</i>	347
<i>People v. Acosta</i>	350
2. Substantial Step	354
<i>United States v. Jackson</i>	355
<i>United States v. Gladish</i>	360
<b>C. “Impossible” Attempts</b>	<b>363</b>
<i>State v. McElroy</i>	364
<i>Legal Impossibility</i>	366
<b>D. Abandonment (Renunciation)</b>	<b>367</b>
<i>State v. Riley</i>	368
<b>Chapter Summary</b>	<b>374</b>
<b>Applying the Concepts</b>	<b>374</b>
<b>Criminal Law in Practice</b>	<b>376</b>

<b>Chapter Eight: Accomplice Liability</b>	<b>379</b>
A. Proof That a Crime Was Committed	379
B. <i>Mens Rea</i> : Intent	380
<i>Hicks v. United States</i>	382
<i>Intent and Legitimate Retail Sales and Services</i>	384
C. <i>Actus Reus</i> : Assistance	385
<i>In re Wilson</i>	386
<i>State v. Wilson</i>	389
D. The Withdrawal Defense	391
E. Applying Accomplice Liability to Compound Offenses	392
<i>Rosemond v. United States</i>	393
F. The Natural and Probable Consequences Doctrine	401
<i>People v. Montes</i>	402
<b>Chapter Summary</b>	<b>405</b>
<b>Applying the Concepts</b>	<b>406</b>
<b>Criminal Law in Practice</b>	<b>408</b>
<b>Chapter Nine: Conspiracy</b>	<b>411</b>
A. Overview and Elements of the Offense	411
<i>United States v. Brown</i>	414
<i>The Two or More Parties Requirement: Unilateral versus Bilateral Approach</i>	418
<i>Wharton's Rule</i>	418
B. Multiparty and Ongoing Conspiracies	420
<i>United States v. Ulbricht</i>	422
<i>The Significance of the Single versus Multiple Conspiracies Question</i>	431
C. Vicarious Liability for Conspirators: The <i>Pinkerton</i> Rule	432
<i>State v. Walton</i>	433
<b>Chapter Summary</b>	<b>437</b>
<b>Applying the Concepts</b>	<b>439</b>
<b>Criminal Law in Practice</b>	<b>440</b>

<b>Chapter Ten: Revisiting the Elements of Crimes and Interpreting Criminal Statutes</b>	<b>443</b>
<b>A. Act (<i>Actus Reus</i>)</b>	<b>444</b>
1. Revisiting <i>Actus Reus</i>	444
2. Interpreting Criminal Statutes in Light of Voluntary Act Principles	446
<i>State v. Barnes</i>	447
<b>B. Mental State (<i>Mens Rea</i>)</b>	<b>454</b>
1. Revisiting Mental States	454
<i>Intent</i>	455
<i>Purpose</i>	457
<i>Knowledge</i>	458
<i>Recklessness</i>	459
<i>Negligence</i>	460
<i>Strict Liability</i>	460
2. <i>Mens Rea</i> and Mistake of Fact	461
3. <i>Mens Rea</i> and Statutory Interpretation	463
<i>Elonis v. United States</i>	466
<b>C. Revisiting Causation and Attendant Circumstances</b>	<b>475</b>
<b>Chapter Summary</b>	<b>476</b>
<b>Applying the Concepts</b>	<b>477</b>
<b>Criminal Law in Practice</b>	<b>478</b>
<b>Chapter Eleven: Affirmative Defenses</b>	<b>479</b>
<b>A. Self-Defense, Defense of Others, and Defense of Property</b>	<b>480</b>
1. Self-Defense	480
<i>Reasonable Belief</i>	481
<i>Imminent Threat</i>	481
<i>Unlawful Force</i>	485
<i>Deadly Force</i>	485
Exhibit 11.1 Bernhard Goetz in New York Supreme Court	486
<i>People v. Goetz</i>	486
<i>Imperfect Self-Defense</i>	494
<i>The Initial Aggressor Rule</i>	494
<i>Duty to Retreat?</i>	495

2. Defense of Others	497
3. Defense of Property and Dwellings	497
<i>Defense of Personal Property</i>	497
<i>Defense of a Dwelling</i>	498
<b>B. Duress</b>	<b>498</b>
<i>State v. Toscano</i>	<b>500</b>
<b>C. Necessity</b>	<b>506</b>
<i>Allen v. State</i>	<b>507</b>
<b>D. Insanity</b>	<b>511</b>
1. The <i>M’Naghten</i> Test	513
Exhibit 11.2 Modern Insanity Doctrine Dates to <i>M’Naghten’s Case</i>	514
2. The Irresistible Impulse Test	514
3. The Model Penal Code Test	515
4. The Current State of the Law	516
<i>State v. Worlock</i>	<b>517</b>
Exhibit 11.3 Ronald Reagan Waves Just Before Being Shot by John Hinckley	523
<b>E. Intoxication</b>	<b>524</b>
<i>State v. Jama</i>	<b>525</b>
<b>F. Entrapment</b>	<b>529</b>
<i>United States v. Russell</i>	<b>529</b>
<b>G. Ignorance of the Law Is No Excuse and the Public Authority Defense</b>	<b>539</b>
1. Ignorance of the Law Is No Excuse (Mistake of Law)	539
2. Public Authority Defense	541
<i>United States v. Burt</i>	<b>542</b>
<b>Chapter Summary</b>	<b>545</b>
<b>Applying the Concepts</b>	<b>546</b>
<b>Criminal Law in Practice</b>	<b>548</b>
<b>Table of Cases</b>	<b>549</b>
<b>Index</b>	<b>553</b>