TABLE OF CONTENTS

Preface Acknowledgments	
PART I BASIC ELEMENTS OF CRIMINALITY	1
CHAPTER 1	
Introduction to the Criminal Process	3
A. Doctrine	3
1. Criminal Complaint and Investigation	3
2. Arrest	4
3. Indictment and Preliminary Hearings	5
4. Trial	5
5. Sentencing	6
6. Appeal	7
B. Application	7
1. The Presumption of Innocence and Reasonable Doubt	7
Owens v. State	8
Notes & Questions on the Presumption of Innocence	11
2. Jury Nullification	12
State v. Ragland	13
Notes & Questions on Jury Nullification	18
C. How to Read a Penal Statute	21
Material elements of the offense	21
Canons of interpretation	23

CHAPTER 2	
PUNISHMENT	25
A. Doctrine	25
1. Deterrence, Incapacitation, and Rehabi	litation 25
2. Retributivism or "Just Deserts"	26
3. Expressivism	27
B. Application	27
1. Deterrence	27
United States v. Brewer	27
Notes & Questions on Deterrence	31
2. Retributivism	35
United States v. Madoff	35
Notes & Questions on Retributivism	39
3. Shaming Penalties	41
United States v. Gementera	41
Notes & Questions on Shaming Penaltic	es 49
C. Practice & Policy	50
Appealing to emotion	50
№ The guilt paradox	51
Victim impact statements	51
Sentencing guidelines	52
Consistency in punishment	53
International crimes	53
Consecutive versus concurrent sentence	es 54
Mass incarceration	54
The case for abolition	55
CHAPTER 3	
THE DEATH PENALTY	59
A. Doctrine	59
1. Who Can Be Executed	59
2. Which Crimes Apply	60
3. Racial Disparities	60
4. Methods of Execution	60
B. Application	61
1. Mental Disability	61
Atkins v. Virginia	61
2. The Juvenile Death Penalty	65
Roper v. Simmons	65
Notes & Questions on Atkins and Rope	
3. Capital Punishment for Rape	71
Kennedy v. Louisiana	71

	Notes & Questions on Offense Restrictions	76
	4. Racial Disparities	78
	McCleskey v. Kemp	78
	5. Methods of Execution	83
	Glossip v. Gross	83
	Notes & Questions on Execution Methods	87
C.	Practice & Policy	89
	Bargaining in the shadow of death	89
	Return to guided discretion ∴	90
	Strategy in bifurcated trials	91
	∾ Ariel Castro case redux	92
СН	IAPTER 4	
Fι	UNDAMENTAL PRINCIPLES OF CRIMINAL LAW	93
A.	Doctrine	93
	1. The Written Statute Requirement	94
	2. Retroactivity	94
	3. Interpreting Statutes and the Common Law	95
	4. Vagueness	95
	5. The Rule of Lenity	95
В.	Application	96
	1. The Written Statute Requirement	96
	Street v. State	96
	Notes & Questions on Written Statutes	99
	2. Retroactivity	100
	Rogers v. Tennessee	101
	Notes & Questions on Retroactivity	105
	3. Statutory Construction and the Common Law	106
	Lewis v. Superior Court	107
	Notes & Questions on Statutory Construction	111
	4. Vagueness	111
	City of Chicago v. Morales	112
	Notes & Questions on Vagueness	116
	5. The Rule of Lenity	118
	Bell v. United States	118
	Notes & Questions on Lenity	119
C.	Practice & Policy	121
	○ Disorderly conduct	121
	Endangering the welfare of a child	122

CHA	PTER 5	
Act	REQUIREMENT	123
A. D	octrine	123
	Voluntary Acts	123
	Omissions	124
	Bystanders	125
	pplication	126
	Voluntary Acts	126
	State v. Utter	126
	Notes & Questions on Voluntariness	129
2.	. Omissions	133
	Commonwealth v. Pestinikas	133
	Notes & Questions on Omissions	136
3.	Bystanders	139
	State v. Davis	139
	Notes & Questions on Bystander Liability	142
C. P	ractice & Policy	144
C	The omission strategy	144
Co	Sleepwalking redux	145
CHA	PTER 6	
MEN	NTAL STATES	147
A. D	octrine	147
1.	Malice	149
2.	Acting Purposely	150
3.	Acting Knowingly	150
4.	. Recklessness and Negligence	151
5.	Strict Liability Offenses	152
	pplication	152
1.	Malice	152
	Young v. State	153
	Notes & Questions on Malice	156
2.	. Acting Purposely	157
	United States v. Bailey	157
	Notes & Questions on Purpose and Intent	161
3.	Knowledge and the Problem of "Willful Blindness"	163
	Rehaif v. United States	163
	United States v. Jewell	166
,	Notes & Questions on Willful Blindness	171
4.	Recklessness Versus Negligence	173
	State v. Olsen	173
	Notes & Questions on Recklessness and Negligence	175

5. Strict Liability	177
Staples v. United States	178
Notes & Questions on Strict Liability	185
C. Practice & Policy	187
№ Prosecutorial strategy	187
◆ Strategic charging	188
Mental states as sorting mechanisms	188
Mental states in foreign jurisdictions	189
CHAPTER 7	
MISTAKES	191
A. Doctrine	191
1. Mistakes of Fact	191
2. Mistakes of Law	192
B. Application	193
1. Mistakes of Fact	193
People v. Navarro	193
State v. Sexton	195
Notes & Questions on Mistakes of Fact	199
2. Mistakes of Law	202
People v. Weiss	203
People v. Marrero	207
Notes & Questions on Mistakes of Law	211
C. Practice & Policy	213
The dangers of relying on mistake arguments	214
Charging a jury on mistakes	214
№ Reasonableness redux	215
CHAPTER 8	
CAUSATION	217
A. Doctrine	217
1. Cause in Fact	217
2. Proximate Cause	218
B. Application	219
1. Cause in Fact	219
Oxendine v. State	219
People v. Jennings	223
Notes & Questions on But-For Causation	227
2. Proximate Cause	229
State v. Smith	229
Notes & Questions on Proximate Cause	234

C. Practice & Policy	239
Establishing causation at trial	239
Arguing proximate cause to a jury	240
▼ The Model Penal Code approach	240
PART II	
OFFENSES	241
CHAPTER 9	
Intentional Murder	243
A. Doctrine	243
1. Express Malice Murder	243
2. First-Degree or Aggravated Murder	244
3. Defining Premeditation and Deliberation	245
4. Prior Calculation and Design	245
B. Application	246
1. Express Malice Murder	246
Taylor v. State	246
Notes & Questions on Malice	247
2. Premeditation	248
State v. Guthrie	248
Notes & Questions on Premeditation and Deliberation	253
3. Prior Calculation and Design	254
State v. Walker	255
Notes & Questions on Prior Calculation & Design	259
C. Practice & Policy	260
Proving premeditation	260
W Hierarchy of blameworthiness	261
CHAPTER 10	
Voluntary Manslaughter	263
A. Doctrine	263
1. Provocation	263
2. Extreme Emotional Disturbance	264
B. Application	265
1. Provocation	265
Girouard v. State	265
State v. Castagna	270
Notes & Questions on Provocation	274
2. Extreme Emotional Disturbance	276
State v. White	277
Notes & Questions on Extreme Emotional Disturbance	284

C.	Practice & Policy	286
	Provocation as partial justification	286
	Provocation as partial excuse	286
	Arguing provocation to the jury	287
	Domestic violence and adultery	287
	◆ Abolishing provocation	288
СН	IAPTER 11	
Ri	ECKLESS KILLINGS	289
A.	Doctrine	289
	1. Involuntary Manslaughter	289
	2. Implied Malice and Extreme Indifference Murder	290
	3. Misdemeanor Manslaughter Rule	291
В.	Application	291
	1. Involuntary Manslaughter	291
	People v. Kolzow	291
	Notes & Questions on Involuntary Manslaughter	295
	2. Implied Malice and Extreme Indifference Murder	297
	People v. Knoller	298
	People v. Snyder	303
	Notes & Questions on Implied Malice and Depraved Indifference	307
	3. Misdemeanor Manslaughter Rule	309
	State v. Biechele	309
	Notes & Questions on Misdemeanor Manslaughter	315
C.	Practice & Policy	316
	™ Murder and mens rea	316
	Murder and sentencing	316
	№ Compromise verdicts	317
	№ New York courts respond	317
СН	IAPTER 12	
FE	ELONY MURDER	319
A.	Doctrine	319
	1. Independent Felony or "Merger" Limitation	320
	2. Inherently Dangerous Felony Limitation	321
	3. In Furtherance of the Felony Limitation	321
В.	Application	322
	1. Independent Felony or "Merger" Limitation	322
	Rose v. State	323
	Notes & Questions on the Merger Limitation	327
	2. Inherently Dangerous Felony Limitation	327
	State v. Stewart	327
	Notes & Ouestions on Inherent Dangerousness	331

3. In Furtherance of the Felony Limitation	333
People v. Hernandez	333
State v. Sophophone	338
Notes & Questions on "In Furtherance"	341
C. Practice & Policy	343
™ The Model Penal Code approach	344
Felony murder in the United States	345
Normative foundation	345
CHAPTER 13	
Negligent Homicide	349
A. Doctrine	349
1. Ordinary Negligence	349
2. Gross Negligence	350
B. Application	350
1. Ordinary Negligence	350
People v. Traughber	351
Notes & Questions on Ordinary Negligeno	
2. Gross Negligence	356
State v. Small	356
Notes & Questions on Gross Negligence	359
C. Practice & Policy	362
Model Penal Code approachThe in-between standard	362
	362 363
Subjective or objectiveCriminal prosecutions for medical negliger	
Criminal prosecutions for medical negliger	nice 505
CHAPTER 14	0.05
Rape	365
A. Doctrine	365
1. Force	366
2. Threats of Force	367
3. Consent	367
4. Rape by Fraud	368
5. Statutory Rape and Lack of Capacity	368
B. Application 1. Force	369
	369
State v. Jones Notes & Questions on Force	369 377
2. Threats of Force	379
Rusk v. State. 43 Md. App. 476 (1979)	379
1140N V. DIGILL, TO WILL, (ND), T/O [10/1/]	

		Rusk v. State, 289 Md. 230 (1981)	383
		Notes & Questions on Threats of Force	384
	3.	Consent and Mens Rea	385
		Commonwealth v. Lopez	385
		People v. Newton	390
		Notes & Questions on Consent and Mens Rea	392
	4.	Rape by Fraud	395
		Boro v. Superior Court	395
		Notes & Questions on Fraud	397
	5.	Statutory Rape and Legal Barriers to Consent	401
		State v. Hirschfelder	401
		Notes & Questions on Barriers to Consent	403
C.	Pr	actice & Policy	406
	(No	Affirmative consent	406
	(No	Campus judicial codes	408
	(No	The Model Penal Code responds	408
	(No	Prosecutorial strategy	409
O.I.	LAD	OTED 15	
		PTER 15	44.4
U	TH	er Offenses Against the Person	411
A.	Do	octrine	411
	1.	Physical Battery	412
	2.	Assault	413
	3.	Kidnapping	413
В.	Ap	pplication	414
	1.	Physical Battery	414
		People v. Peck	415
		Notes & Questions on Physical Battery	416
	2.	Assault	418
		State v. Birthmark	418
		State v. Boodoosingh	420
		Notes & Questions on Assault	422
	3.	Kidnapping	424
		Goolsby v. State	424
		Notes & Questions on Kidnapping	428
C.	Pr	actice & Policy	429
	(No	Anti-stalking statutes	429
	(No	Reasonable apprehension and vagueness	430
	(No	Custodial interference	431

CHAPTER 16	
THEFT & PROPERTY OFFENSES	433
A. Doctrine	433
1. Unlawful Taking	435
2. Fraud, Extortion, Blackmail, and Embezzlement	435
3. Property	436
4. Intent to Deprive	436
5. Robbery	437
6. Burglary and Arson	437
B. Application	439
1. Unlawful Taking	439
State v. Carswell	439
Notes & Questions on Takings	441
2. Fraud, Extortion, Blackmail, and Embezzlement	443
United States v. Villalobos	443
Notes & Questions on Fraud and Extortion	447
3. Property	449
Penley v. Commonwealth	449
Notes & Questions on Property	451
4. Intent to Deprive Permanently	452
Marsh v. Commonwealth	452
Notes & Questions on Intent to Deprive	455
C. Practice & Policy	457
Securities fraud	457
✓ Insider trading	459
PART III	
INCHOATE OFFENSES	461
CHAPTER 17	
Offenses Against the Administration of Justice	463
A. Doctrine	463
1. Obstruction of Justice	463
2. Perjury	464
3. Bribery and Corruption	465
4. Contempt of Court	466
B. Application	467
1. Obstruction of Justice	467
United States v. Aguilar	467
Notes & Questions on Obstruction of Justice	471

	2.	Perjury	474
		State v. Danielson	474
		Notes & Questions on Perjury	477
	3.	Bribery	478
		Skilling v. United States	478
		Notes & Questions on Bribery	484
	4.	Contempt of Court	485
		In re Jefferson	485
		Notes & Questions on Contempt of Court	488
C.	Pr	actice & Policy	489
	(No	Presidential obstruction of justice	489
	(No	Obstruction of Congress	491
CE	IAP	TER 18	
A	ГТІ	EMPT	495
A.	Do	octrine	495
	1.	Specific Intent or Purpose	495
	2.	Distinguishing Attempts from Mere Preparation	496
		Impossibility	497
		Abandonment	498
	5.	Merger	498
В.	Αŗ	pplication	499
	_	Specific Intent or Purpose	499
		People v. Gentry	499
		Notes & Questions on Specific Intent or Purpose	503
	2.	Distinguishing Attempts from Mere Preparation	506
		People v. Rizzo	506
		Notes & Questions on Dangerous Proximity	508
		State v. Reeves	509
		Notes & Questions on Substantial Step	515
	3.	Impossibility	517
		People v. Dlugash	517
		State v. Smith	520
		Notes & Questions on Impossibility	522
	4.	Abandonment	524
		Ross v. Mississippi	524
		Notes & Questions on Abandonment	526
C.	Pr	actice & Policy	528
		Punishing attempts: why and how much	529
		Assault and battery	530

	APTER 19 HOATE CONSPIRACY	E91
INC	HOATE CONSPIRACE	531
	Ooctrine	531
	l. Agreement to Commit Unlawful Act	531
2	2. Specific Intent or Purpose	532
3	3. The Overt Act Requirement	532
4	4. Renunciation	533
	5. Merger	534
B. A	Application	534
1	l. Agreement to Commit Unlawful Act	534
	State v. Pacheco	534
	Notes & Questions on Conspiratorial Agreements	539
2	2. Specific Intent or Purpose	541
	United States v. Valle	541
	Notes & Questions on Specific Intent or Purpose	545
3	3. Overt Act in Furtherance of the Conspiracy	546
	United States v. Shabani	546
	United States v. Abu Ghayth	548
	Notes & Questions on Overt Acts	550
4	4. Renunciation	552
	Commonwealth v. Nee	552
	Notes & Questions on Renunciation	555
C. I	Practice & Policy	556
C	№ Common law origins	556
	Conspiracy and international law	557
C	Distinguishing inchoate conspiracy from attempt	558
	APTER 20	
Soi	LICITATION	561
A. I	Ooctrine	561
1	. Distinguishing Solicitation from Conspiracy	562
2	2. Distinguishing Solicitation from Attempts	562
3	B. Merger and Renunciation	563
	Application	563
1	1. Distinguishing Solicitation from Conspiracy	563
	People v. Breton	564
	Notes & Questions on Solicitation Versus Conspiracy	567
2	2. Distinguishing Solicitation from Attempts	570
	People v. Superior Court (Decker)	570
	Notes & Questions on Solicitation Versus Attempts	576
C. I	Practice & Policy	577
	Undercover agents and defense arguments	577
	The inherent dangerousness of solicitations	577

PART IV MODES OF LIABILITY		
CHAPTER 21		
ACCOMPLICES	581	
A. Doctrine		
1. Assistance or Support	581 582	
2. Purpose Versus Knowledge	582	
3. Natural and Probable Consequences Doctrine	583	
4. Innocent Instrumentality Rule	584	
5. Defenses	584	
B. Application	585	
1. Assisting the Principal Perpetrator	585	
State v. V.T.	586	
Notes & Questions on the Act Requirement	589	
2. Purpose Versus Knowledge	592	
State v. Weeks	592	
Notes & Questions on Purpose Versus Knowledge	596	
3. The Natural and Probable Consequences Doctrine	601	
People v. Robinson	601	
Notes & Questions on Natural and Probable Consequences	604	
4. Innocent Instrumentality Rule	607	
Bailey v. Commonwealth	607	
Notes & Questions on Innocent Instrumentalities	611	
5. Defenses	612	
Standefer v. United States	612	
Notes & Questions on Defenses	616	
C. Practice & Policy	619	
Constitutional constraints on punishing accomplices	619	
∨ Victims as accomplices	620	
Purpose versus knowledge in human rights	621	
CHAPTER 22		
CONSPIRACY LIABILITY	623	
A. Doctrine	623	
1. Pinkerton Liability	623	
2. Scope of the Conspiracy	624	
3. Withdrawing from a Conspiracy	624	
B. Application	625	
1. Pinkerton Liability	625	

United States v. Alvarez	625	
Notes & Questions on Pinkerton Liability	630	
2. Scope of the Conspiracy	633	
People v. Bruno	634	
Kotteakos v. United States	635	
Notes & Questions on Conspiratorial Scope	640	
3. Withdrawal	642	
United States v. Schweihs	642	
Notes & Questions on Withdrawal	645	
C. Practice & Policy	645	
Conspiracy as procedure and substance	646	
™ Joint Criminal Enterprise	647	
CHAPTER 23		
CORPORATE CRIME	649	
A. Doctrine	649	
1. Prosecuting Corporations	649	
2. Punishing Corporations	650	
3. Prosecuting Corporate Officers	651	
B. Application	651	
1. Prosecuting Corporations	651	
State v. Far West Water & Sewer Inc.	651	
Notes & Questions on Corporate Liability	655	
2. Punishing Corporations	657	
Principles of Federal Prosecution of Business Organizations	658	
Notes & Questions on Corporate Punishment	672	
3. Prosecuting Corporate Officers	673	
United States v. Park	674	
Notes & Questions on Responsible Officers	677	
C. Practice & Policy	678	
State prosecutions	678	
Deferred prosecution agreements	679	
Waiving attorney-client privilege	680	
PART V		
JUSTIFICATIONS & EXCUSES	683	
CHAPTER 24		
Self-Defense	685	
A. Doctrine	685	
1. Imminent Threat		

	2.	Necessity and the Duty to Retreat	686
	3.	Reasonable Belief	687
	4.	Imperfect Self-Defense	688
В.	Ap	pplication	688
	1.	Imminence	688
		State v. Norman	689
		Notes & Questions on Imminence	697
	2.	Necessity and the Duty to Retreat	699
		United States v. Peterson	699
		People v. Riddle	704
		Notes & Questions on Duty to Retreat	709
	3.	Reasonable Belief	711
		People v. Goetz	711
		Notes & Questions on Reasonable Beliefs	718
	4.	Imperfect Self-Defense	721
		People v. Elmore	721
		Notes & Questions on Imperfect Self-Defense	725
C.	Pr	actice & Policy	728
	a	Stand Your Ground laws	728
	a	Procedural immunity	730
	a	Battered Nation Syndrome	731
	(No	Imminence in targeted killing	731
CE	IAP	TER 25	
D	EFE	ENSIVE FORCE BY POLICE OFFICERS	733
Α.	Do	octrine	733
	1.	Constitutional Limits	734
	2.	Civil Rights Violations	735
		State Statutes Governing Police Use of Force	736
В.		pplication	737
	-	Constitutional Limits	737
		Scott v. Harris	737
		Notes & Questions on Immediate Danger	742
	2.	Civil Rights Violations	744
		Report Regarding the Criminal Investigation into the Shooting	
		Death of Michael Brown by Ferguson, Missouri Police Officer	
		Darren Wilson	744
		Notes & Questions on Objective Reasonableness	753
C.	Pr	actice & Policy	755
		Abandoning pursuit	755
		Body cameras	756

CHAPTER 26

Necessity	
A. Doctrine	759
1. Utilitarian Balancing and "Choice of Evils"	759
2. Defense to Murder	761
3. Necessity and Prison Breaks	761
4. Necessity and Civil Disobedience	762
B. Application	762
1. Utilitarian Balancing and "Choice of Evils"	762
United States v. Ridner	762
Notes & Questions on Utilitarian Balancing	766
2. Defense to Murder	767
The Queen v. Dudley & Stephens	767
Notes & Questions on Necessity and Murder	772
3. Necessity and Prison Breaks	772
United States v. Bailey	773
Notes & Questions on Prison Breaks	778
4. Necessity and Civil Disobedience	779
United States v. Schoon	779
Notes & Questions on Civil Disobedience	784
C. Practice & Policy	785
Torture and terrorism	785
◆ Torture and human dignity	786
Hijacked airliners and human dignity	788
CHAPTER 27	
Duress	789
A. Doctrine	789
1. Threats That Vitiate Autonomy	789
2. The Severity of the Threat	790
3. Defense to Murder	791
4. Recklessness in Creating the Threat	791
B. Application	792
1. Threats That Vitiate Autonomy	792
Dixon v. United States	792
United States v. Contento-Pachon	795
Notes & Questions on Duress and Autonomy	798
2. The Severity of the Threat	799
Commonwealth v. DeMarco	799
Notes & Questions on Reasonable Firmness	805

	3. Defense to Murder	808
	People v. Anderson	808
	Notes & Questions on Duress and Murder	815
C.	Practice & Policy	818
	• Duress and atrocity	818
CE	HAPTER 28	
IN	TOXICATION	823
A.	Doctrine	823
	1. Negating Mens Rea	823
	2. Eliminating the Defense of Voluntary Intoxication	825
	3. Involuntary Intoxication	825
В.	Application	826
	1. Negating Mens Rea	826
	State v. Brown	827
	Notes & Questions on Negating Mens Rea	833
	2. Eliminating the Intoxication Defense	835
	Montana v. Egelhoff	835
	Notes & Questions on Eliminating the Defense	840
	3. Involuntary Intoxication	842
	People v. Garcia	842
	Notes & Questions on Involuntary Intoxication	848
C.	Practice & Policy	850
	⋄ Grand schemers	850
	The "separate offense" solution ■ The "separate offense" solution	851
	Strategic charging and trial decisions	851
CE	HAPTER 29	
In	ISANITY	853
A.	Doctrine	853
	1. The Cognitive Test	853
	2. The Irresistible Impulse Test	854
	3. The Model Penal Code Substantial Capacity Test	854
	4. The Definition of Wrongfulness	855
	5. Diminished Capacity	856
В.	Application	856
	1. The Cognitive Test	856
	Sanders v. State	856
	Notes & Questions on the Cognitive Test	863

2. Irresistible Impulse Test	863
Pollard v. United States	863
Notes & Questions on Irresistible Impulses	869
3. The Model Penal Code Substantial Capacity Test	871
United States v. Freeman	872
Notes & Questions on Substantial Capacity	876
4. The Definition of Wrongfulness	877
State v. Crenshaw	878
Notes & Questions on Wrongfulness	883
5. Diminished Capacity	884
Clark v. Arizona	885
Notes & Questions on Diminished Capacity	894
C. Practice & Policy	896
Separate insanity phase	896
○ Guilty but mentally ill (GBMI) plea	897
Refusing to plead insanity	898
The medical model to criminal insanity	898
Appendix: Model Penal Code	901
Table of Cases	963
Index	969