

Entering its fifth decade, *Criminal Law: Cases and Materials* now appears in this tenth edition, with the full participation of new co-editor Professor Aya Gruber, of the University of Southern California. As always, the book aims to introduce students to the basic purposes, concepts, doctrines, and analytic techniques of the substantive criminal law. Our foundational premise is that the substantive criminal law is a statutory as well as a “common law” subject. Therefore, this book teaches lawyers-to-be to construe and apply express legislative rules of liability as well as to understand the fundamental concepts that are just as often *presupposed* in criminal codes. We expose students to alternative statutory formulations of offenses and defenses and enable students to become familiar with the influential Model Penal Code. This book emphasizes the crucial skills of element analysis, and illuminates the considerations of social policy and moral principle that inform the interpretation, application, and evaluation of criminal statutes.

Of course, this book participates in the classic pedagogic tradition of relying on appellate decisions in actual cases to explicate the doctrines and policy dilemmas of the criminal law. The book’s introduction explains just how these cases arise, what kinds of substantive criminal law 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. We continue to include some of the most venerable of the illustrative cases, but we also add very recent cases that capture newer developments in this constantly changing field of law.

Since its inception, however, this book has always been more than a collection of cases. It continues to interweave judicial opinions with statutory material, sociological accounts of crime, historical accounts of the development of the criminal law, and philosophical arguments about criminal justice. Thus, we continue 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.

But our commitment is also to pedagogical clarity, so we include throughout the book introductory and transitional material that provides straightforward explanations of the alternative rules applied in each doctrinal area. The notes that follow principal cases are organized and labeled by legal issue so that students’ thinking can be focused on the most pressing questions raised by the cases. And at key points in the text, we interweave problems and “Snapshot Review” exercises to help students develop the analytic skills emphasized throughout the book.

Chapter 1, “The Purposes and Limits of Punishment,” is again introduced in the Part I opener which covers the policy controversies over historically high incarceration rates, along with the causes and implications of fluctuating crime rates. It then proceeds to our traditional review of the classic philosophical and policy-based justifications for punishment, with important new empirical findings

about the efficacy of specific and general deterrence and incapacitation, as well as the disparate racial effects of new types of risk assessment tools used for the latter purpose. The chapter then proceeds to address Eighth Amendment proportionality, enriched by the important Supreme Court cases on the legality of life-without-possibility-of-parole sentences for juveniles. (As in previous editions, we place our discussion of proportionality limits on death sentences in this chapter, but refer back to it when we turn directly to capital murder in Chapter 7.) In light of heightened national concerns about mass incarceration, we present timely scholarly articulations of the case for prison abolition, along with updated material on in-prison criminal victimization of inmates as a rarely acknowledged form of punishment.

Chapter 2, “The Criminal Act,” continues its coverage of voluntary acts, possession, harm, omissions, status crimes, prospectivity, legality, and specificity. We have included an examination of prosecution of women for failing to protect their children from a violent partner even where they themselves were victims of intimate partner violence. We provide the crucial new case of *Grants Pass v. Johnson*, which drastically narrows the scope of the Supreme Court’s earlier holding in *Robinson v. California* on the constitutionality of status- or condition-based crimes. *Grant’s Pass* allows the states and cities to impose some criminal punishment on unhoused people engaged in what are arguably acts involving life necessities in public spaces. The new text and notes show how the case alters our understanding of the permissibility of punishing actions claimed to be involuntary and also has important implications for social policies addressing the problems of unhoused people. Finally, the notes following *Keeler v. Superior Court*, in the discussion of legality, now consider how the overruling of *Roe v. Wade* in *Dobbs v. Jackson Women’s Health Organization* may affect the law of homicide and feticide.

Chapter 3, “The Guilty Mind,” as always, explores the question of whether and when criminal liability depends on culpability. We add a historical gem of a case, *Commonwealth v. Mixer*, as a simple example of a public welfare offense conditioned on strict liability, before proceeding to the rich *People v. Dillard* case. The chapter then distinguishes different culpable mental states and trains students to construct the mental elements of statutory offenses. It uses a summary of the historical roots of the general/specific intent distinction to set up an examination of its continuing application to mistake in a minority of jurisdictions. In place of the archaic *Regina v. Prince*, we now feature the mid-century California case of *People v. Gory* and the late twentieth century federal case of *Simms v. District of Columbia*. The chapter then proceeds to contrast the Model Penal Code’s default rules approach, continuing to feature the New York case of *People v. Ryan*. Chapter 3 also introduces the new *Counterman v. Colorado* case in which the Supreme Court further elaborates its holding in *Elonis v. United States* on the mens rea for “true threat” crimes and the default rule approach in federal criminal law. This chapter concludes by examining the special problems of mistake of law and capacity for mens rea. On the latter issue, we add *State v. McFarland* to examine when voluntary intoxication can serve to negate a required mens rea, and then *State v. Joseph* and *State v. Ruffin* to do the same for mental impairment.

Chapter 4, “Causation,” poses the problem of why and how we assign causal responsibility for harmful results. It also analyzes the doctrinal structure of causation by exploring the nuances of causation-in-fact, proximate causation, direct causation,

and causation by omission. The most striking new development is *People v. Crumbley*, the notorious Michigan case of a teenage school shooter whose parents were themselves convicted of homicide for failing to intervene. The appellate court there upholds the parents' conviction on a causation theory of duty to prevent crime by a minor. The chapter expands treatment of the prosecution of *Michelle Carter*, convicted of manslaughter for inducing a young man's suicide remotely through text messages and calls, and discusses the recent spread of manslaughter prosecutions for inciting suicide. This contemporary material on proximate causation and omission obviates the use of *Stephenson v. State* as a principal case (it is, however, still discussed briefly in *United States v. Hamilton*).

Chapters 5 through 7 continue our comprehensive study of homicide law, but under a new frame. We have added a new Part III called "Crimes against the Person" to encompass the homicide chapters but also our chapter on Sexual Assault, which is now Chapter 8. The introduction to this new Part, featuring the case of *Hernandez v. United States*, now offers students a primer on the law of assault, valuable in its own right for understanding the elements of assault and battery, but also serving as a foundational predicate for both homicide and sexual assault and rape crimes. The compendium of illustrative homicide statutes can be found in Appendix C.

Chapter 5, "Intentional Homicide," continues to illustrate the concepts of intent and premeditation, along with historical material on when, at common law, "intent to injure" could suffice for this crime, adding the informative new case of *State v. Drakes*. As always, the chapter explores 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. It adds *State v. Dixon*, examining whether danger, like fear, can serve as a basis for reducing murder to manslaughter. Finally, it updates law and commentary exploring the so-called "gay panic" and "trans panic" defenses.

Chapter 6, "Unintentional Homicide," discusses involuntary manslaughter, extreme indifference murder, and felony murder. The section on felony murder continues to be informed by research on the historical and normative underpinnings of felony murder liability, reported in Guyora Binder's comprehensive study, *Felony Murder* (2012). This new edition further clarifies the varying criteria of culpability, causation, and dangerousness for felony murder. The chapter now adds the New York case of *People v. Hernandez*, illustrating a broad reading of felony murder applicability based on a proximate cause theory, in place of the Illinois case of *People v. Hickman*, now mooted by a statutory reform. In addition, we offer updated material on new criticisms of felony murder laws based on demographic disparities charging and liability, and recent reforms. This includes the influential *Commonwealth v. Brown* case from Massachusetts and California's and Minnesota's recent statutory limitations.

Chapter 7, "Capital Murder and the Death Penalty," by long tradition, focuses on the operation of capital murder statutes as sentencing schemes requiring a structured assessment of aggravating and mitigating factors. At a time when changes in public and political attitudes signal a sober national reassessment of capital punishment, we include updated empirical information on its incidence and on the demographics of defendants and victims.

Chapter 8, “Sexual Assault,” continues to take account of law reform efforts and scholarly research (in this rapidly changing field of law, including new commentary on sexual assault reform, history, and pedagogy). It also continues to offer a comparison and precise element analysis of the broad range of alternative definitions of sexual assault offenses. This new edition updates our narrative of the American Law Institute’s work in replacing the dated 1962 Model Penal Code sexual assault provisions by featuring and analyzing the new 2025 rules adopted by the ALI after vigorous debate. For ease of reference, this new edition now has an appendix of illustrative state sexual assault statutes (including the new MPC). The section on consent is now foregrounded by *State v. Barela*, which involves a statutory regime that defines rape as sex without consent, regardless of force. New case law in this edition also augments our discussion of incapacity and mens rea and particularly explores the changing treatment of voluntary intoxication.

Turning then to justification and excuse defenses, Chapter 9, “Defensive Force, Necessity, and Duress,” has been augmented by material on salient contemporary topics. A new entry is the interesting 2022 case of *Peyton v. United States* on the negligent use of excessive force in otherwise legitimate self-defense. The chapter adds new material on the battered spouse defense, incorporating evolving scholarship on the use and significance of expert evidence. We continue our treatment of such divisive legal developments as “Stand Your Ground” and “Make My Day” laws. In light of national controversies over police killings of civilians and racial justice, we have an expanded section on the divergent treatment of police violence in constitutional civil rights law and state homicide law. In particular, we include the new and controversial California statute that purports to limit justification claims by police. Finally, we offer a detailed section on the state of American law in regard to the power of and limitations on citizen’s arrest, including recent legislative curtailments motivated by the murder of Ahmaud Arbery in Georgia.

Chapter 10, “Mental Illness as a Defense,” continues its methodical treatment of the changes in the NGI defense over recent decades. Key additions include critical commentary about the possible discriminatory implications of the “deific decree” for NGI and discussion of Chronic Traumatic Encephalopathy (CTE) as a basis for a quasi-NGI defense. The chapter also considers recent decisions of the Supreme Court suggesting that the Constitution may not require any form of insanity defense, including *Kahler v. Kansas* (declining to require an excuse for incapacity to distinguish right from wrong). While giving freer rein to the states, these cases also address the relationship between the affirmative NGI defense and proof of capacity for required mens rea dealt with in Chapter 3.

Chapter 11, “Attempt,” as always, traces the historic development from the older defendant-friendly preparation vs. attempt rules to the now-dominant Model Penal Code substantial step test. On the perennially intriguing issue of abandonment, we now have an interesting new decision, *Tilotta v. United States*, elaborating the rationale for not accepting abandonment as a defense—here in the context of a bizarre police sting. As for the perennial puzzle of “impossible attempts,” the chapter distinguishes and applies four distinct tests for identifying which unsuccessful endeavors should be immunized from criminal liability: the Model Penal Code test; The Legal Impossibility test discussed in *Booth v. State*; the narrower Rational

Motivation test; and an “Obvious Futility” test also drawn from the Model Penal Code.

Chapter 12, “Complicity,” continues its approach of separately examining the actus reus and mens rea of complicity. Regarding so-called mere presence, we have a new case, *People v. Burgos*, which rules that adding the fact of gang affiliation to what is otherwise mere presence can suffice for complicity liability. The chapter offers a methodical scheme for sorting the varied permutations of relationships between principal and accomplice that lead to discrepant liability because of differing mental states, defenses, or statuses of the parties. Here again the *Dobbs v. Jackson Women’s Health Organization* case has new implications for criminal law, especially in terms of complicity liability of providers of information or services for abortions in newly banning states. As is our tradition, we close the chapter with a very succinct review of the principles of and tests for criminal liability of corporations or other collective enterprises.

Chapter 13, “Conspiracy,” now opens with another new historical gem, *Chapline v. State*, a century-old case (with interesting facts about political corruption in Arkansas) that illustrates how “concert of action” can sometimes serve as proof of agreement to establish conspiracy liability. *Chapline* thus serves as a predicate for the venerable *Griffin v. State* case from the same state, which we now place in its important context of 1960’s racial strife. The chapter then continues its comprehensive treatment of the elements, incidents, and limitations on conspiracy law. The new *Jones v. State* case from Indiana adds insight on “renunciation” of conspiratorial purpose. Finally, the *Dobbs* case also plays a role here in a note anticipating how banning states might try to prosecute medical or social service providers as co-co-conspirators with women seeking abortions.

The book’s closing Part on “Additional Offenses” covers crimes against two distinct sets of interests: property and administration of justice.

In Chapter 14, “Theft Offenses and Other Property Crimes,” after our succinct history of the common law roots of theft, and summary of the statutory stricture of modern theft and fraud law, we offer an updated review of the lively case law on theft-based white-collar crimes. This includes recent Supreme Court curtailment of the reach of the mail and wire fraud statutes that deal with commercial and political corruption. Then, after illustrative contemporary case law on some of the intriguing variations of robberies and burglaries, we offer a new section on the core components of the offense of trespass, the foundational crime against real property, but also one increasingly relied on by localities as a substitute for broader vagrancy and loitering laws, now subject to the constitutional limits explored in Chapter 2.

Chapter 15, “Perjury and False Statements,” now focuses just on these two crimes, to give students a succinct intellectual exercise on how the criminal law treats the courts and other agencies of justice as representing a distinct interest needing protection through the criminal law. We no longer cover the several crimes falling under the rubric of “obstruction of justice.” Despite the recent political salience of these laws, legislative and case law changes in recent decades have rendered them so unproductively complicated, often because of redundant or ill-coordinated amendments, that they no longer serve the purpose of a first-year textbook and are better treated in an advanced course.

Finally, we reiterate the deep motivation for this book. When government takes a person's life or liberty by condemning that person's actions, purposes, and character, we see the most powerful domestic manifestation of government power. 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 the new edition of this book continues to help our students meet that challenge.

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