

Criminal Law

Concepts and Practice

THIRD EDITION

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Dedicated To:

Cheryl L. Segal

Molly, Alexandra, and Grace

To the memory of my wise and warm Uncle, Eugene Taslitz

To Cindy, Christina, James, and Catherine

And of course to all of our students.

PREFACE

Crime, and the law related to the prosecution of offenders, is one of the most widely covered and discussed topics in society today. Media coverage is pervasive of both crimes and the prosecutions that result from them, ranging from the innumerable fictional programs devoted to every conceivable aspect of the criminal justice system to YouTube videos showing actual criminal trials. Daily newspapers and local news shows devote substantial coverage to local crimes, while the seemingly endless parade of celebrity run-ins with the law, some as trivial as a traffic ticket while others involving charges of murder, are fodder for breathless coverage in tabloids and weekly magazines. The criminal law is perhaps the most widely followed area in the legal landscape, and crime touches all segments of society.

While the media is quick to label a person as guilty or innocent, the process of determining actual guilt is far more complex. The role of the criminal lawyer, both the prosecutor and the defense attorney, is far different from what is portrayed in television shows or movies, and the law of crimes involves many difficult conceptual and policy issues. One important question in the application of the criminal law is whether the government targets certain groups for a disproportionate level of enforcement, or does not take into consideration the particular circumstances of the defendant's race, gender, sexual orientation, social status, or economic situation in deciding whether conduct constitutes a crime. The criminal law cannot be divorced from the social setting in which it occurs, and media stereotypes can feed perceptions of criminality that are not otherwise supported.

The starting point for any criminal prosecution is determining whether to bring criminal charges and what crime a person will then be charged with, which in turn requires that statutes be reviewed to see if the conduct at issue comes within the parameters of what the legislature has determined to be a criminal offense. Today, the criminal law is, first and foremost, a creature of the legislature, but it is based on a long history of judicial interpretation, known as the common law. The interplay between statutes and the common law gives rise to many difficult interpretive issues in determining the scope of criminal liability.

In addition to the statutes, and perhaps more importantly, the prosecution and defense of criminal charges involves something very important: *evidence*. Whether one believes that the punishment for an offense should be more or less harsh, or whether certain conduct should or should not be subject to a sanction imposed by the government, a particular criminal case requires that each side gather and

interpret information that can be presented in court to determine whether the defendant is guilty of a crime. A statute indicates what the legislature has determined, in advance, will constitute a crime. It is the application of that provision to the proof that each side will offer for its position that determines whether a person will be found guilty of a crime. In fact, most criminal prosecutions end well in advance of a trial, by an agreement known as a plea bargain. Even that determination, however, requires that the government, through its investigatory agencies and prosecutorial units, and the defendant, working with a lawyer, ascertain what evidence is available before deciding whether to enter into the agreement.

Quite simply, the criminal law is about a process by which evidence is gathered, organized, analyzed, and, if necessary, presented to a trier of fact to determine whether a defendant has committed a crime. While evidence can be a term of art related to a complex set of rules for use in a trial, its broader meaning is intended here. Evidence can be anything, from a statement or scream to a computer-generated model, that assists in explaining what happened in a course of events. In a criminal case, a key piece of evidence can be a person's statement to a police officer, a strand of hair that allows for DNA testing, or a document describing an apparently ordinary business transaction. Whatever the evidence is, it must be fit within the framework of a criminal statute to determine whether there is enough information to determine whether or not a crime occurred, and if so, who is responsible for it.

The focus of this book is on both sides of the criminal law equation: the *principles* of the law of crimes and the *proof* of the criminal violation. The determination of whether a person is guilty of a crime is the key question in every case, and an issue in all prosecutions is whether there is sufficient evidence to convict a person of a crime charged. What constitutes the type of evidence that will be important to that determination, and whether there is enough evidence to meet the requirements of the statutory definition of a crime, is the primary focus of the lawyers on both sides.

This casebook consists of cases, problems, case studies, and supplemental notes that concentrate primarily on how a particular crime can be proven, the defenses available to that crime, and the tools that are available to lawyers to assist in the process of prosecuting and defending a case. The materials consider the theoretical underpinnings of the criminal law to give a clearer understanding of why the law adopts a particular approach to conduct. It places criminal law in a real setting, one with issues of race and gender.

Lawyers are trained to represent clients, whether the client be society or an individual defendant, and use their abilities to interpret statutes and organize evidence to evaluate how to best represent the client's interests. The casebook is a means to develop those skills in the context of one area of the law, but the reader

would be mistaken to view the criminal law as a hermetically-sealed set of legal rules that have no effect on other areas. Lawyers deal with evidence in every area of legal practice, ranging from estate planning to corporate law to real estate finance. Even if a lawyer never represents a client in a criminal case, principles from the criminal law have an impact on how a lawyer and client will (and should) act.

Some of the problems in the casebook are drawn from the facts of actual cases, although in many instances changes have been made to make them more useful tools for analyzing the law and how it might be applied using different legal principles. Below is a list of the problems that are based on actual cases for readers who may wish to see how a court dealt with an issue:

- Chapter 1** Problem 1: *United States v. Holmes*, 26 F.Cas. 360 (E.D. Pa. 1842).
- Chapter 2** Problem 4: *United States v. Hevelock*, 619 F.3d 1091 (9th Cir. 2010), 664 F.3d 1284 (9th Cir. 2012)(en banc).
- Problem 5: *Belay v. District of Columbia*, 860 A.2d 365 (D.C. 2004).
- Problem 6: *State v. Wells*, 965 So. 2d 834 (Fla. Dist. Ct. App. 2007).
- Chapter 4** Problem 9: *United States v. X-Citement Video*, 513 U.S. 64 (1993).
- Problem 12: *Loftus v. District of Columbia*, 51 A.3d 1285 (D.C. 2012).
- Chapter 5** Problem 14: *Bullock v. State*, 775 A.2d 1043 (Del. 2001).
- Problem 15: *People v. Harding*, 506 N.W.2d 482 (Mich. 1993).
- Chapter 6:** Problem 17: *State v. Gerbasio*, 2008 WL 2415083 (N.J. Super Ct. App. Div. 2008).
- Problem 18: *United States v. DeJohn*, 368 F.3d 533 (6th Cir. 2004).
- Chapter 8** Problem 25: *Commonwealth v. Thomas*, 656 A.2d 514 (Pa. Super. Ct. 1995).
- Problem 26: *State v. Elliott*, 411 A.2d 3 (Conn. 1979).

- Problem 27: *People v. Carter*, 2005 WL 3500873 (Mich. Ct. App. 2005).
- Problem 29: *King v. Commonwealth*, 368 S.E.2d 704 (Va. App. 1988).
- Chapter 9** Case Study Four: *Lewis v. Wilkinson*, 307 F.3d 413 (6th Cir. 2002).
- Chapter 10** Problem 32: *People v. Dadon*, 640 N.Y.S.2d 425 (N.Y. Crim. Ct. 1996).
- Problem 34: *People v. Kelly*, 2012 WL 3965150 (Cal. Ct. App. 2012)
- Problem 35: *State v. Long*, 830 So. 2d 552 (La. Ct. App. 2002).
- Problem 36: *State v. Office of the Public Defender*, 285 P.3d 622 (N.M. 2012)
- Chapter 11** Problem 37: *Collier v. State*, 846 N.E.2d 340 (Ind. Ct. App. 2006).
- Problem 38: *State v. Mayteko*, 53 S.W.3d 666 (Tenn. 2001).
- Problem 40: *People v. Acosta*, 609 N.E.2d 518 (N.Y. 1992).
- Chapter 14** Problem 47: *People v. Genoa*, 470 N.W.2d 447 (Mich. Ct. App. 1991).
- Chapter 15** Problem 48: *State v. Gardner*, 397 A.2d 1372 (Del. 1979).
- Problem 49: HAW. REV. STAT. § 703-309(1) and *State v. Dowling*, 263 P.3d 116 (Haw. Ct. App. 2011)
- Chapter 16** Problem 51: *Hair v. State*, 17 So. 3d 804 (2009).
- Problem 52: *State v. Norman*, 378 S.E.2d 8 (N.C. 1989).
- Problem 54: *Commonwealth v. Haddock*, 704 N.E.2d 537 (Mass. App. Ct. 1999).
- Problem 55: *State v. Weddell*, 43 P.3d 987 (Nev. 2002).

- Chapter 17** Problem 56: *United States v. Heatwole*, <<http://f11.findlaw.com/news.findlaw.com/wp/docs/crim/usheatwole102003cmp.pdf>>.
- Chapter 18** Problem 58: *Roberts v. State*, 2010 WL 3934598 (Tex.App. 2010).
- Chapter 19** Problem 59: *United States v. Layton*, 855 F.2d 1388 (9th Cir. 1988).
- Problem 60: *State v. Phipps*, 883 S.W.2d 138 (Tenn. Crim App. 1994).

The authors' goal in putting together this casebook was to focus on the staples of criminal cases: issues related to how the government goes about proving a crime, the process of statutory interpretation, and the elements of criminal defenses. To that end, we have chosen cases and problems with an eye toward their usefulness in teaching about how the evidence of a crime, or lack thereof, affects the application of the criminal law. Moreover, we chose, by and large, current cases that reflect the approach of courts today. While some "old favorites" familiar to all law students are in the casebook, we opted largely for cases decided since 2000 because they are illustrative of how judges approach cases today and push the law into new areas.

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