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*Fourth
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CRIMINAL LAW

Cases and Materials

Fourth Edition

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PREFACE

The aim of this fourth edition of Criminal Law is 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 primarily a statutory rather than a “common law” subject. Training students in the skills of understanding and applying statutory standards of liability requires understanding 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 by explaining 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.

But, like previous editions, 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 familiarizes students 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 context in which inequality based on race, gender and poverty plays an important role.

Above all, this book is designed not merely to stimulate interest in the fascinating and controversial subject of the criminal law, but 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. We have extended this expository approach into the notes following principal cases, which are now organized and labeled by legal issue so that students may find quick answers to their most pressing questions. We have also included more problems and exercises to help students master the analytic skills emphasized throughout the book.

Users of previous editions will find that this one continues to build upon the basic organizational and pedagogical approach established in the third edition.

The Introduction has added discussions of three crucial new Supreme Court cases on burden-of-proof, *Montana v. Egelhoff*, *U.S. v. Almendarez-Torres* and *U.S. v. Jones*.

Chapter 1, on the purposes and limits of punishment, continues to focus on the policy controversy over rising incarceration rates, but adds a new focus on the causes and implications of the recent drop in crime rates, including recent debates over the role of social norms in deterring crime. The section on the federal sentencing guidelines now includes the “Rodney King case,” *U.S. v. Koon*.

Chapter 2, “The Criminal Act,” continues its coverage of voluntary acts, omissions, status crimes, legality, prospectivity and specificity. It now includes the recent Supreme Court case on gang-loitering ordinances, *Chicago v. Morales*.

In Chapter 3, “The Guilty Mind,” we have streamlined the treatment of mistake, and added new historical material on the concepts of “general” and “specific” intent, as well as more exercises on element analysis. We now cover recent theoretical debates about the role of motive and character in culpability, and have added two important cases on the capacity to form *mens rea*: *People v. Hendershott* and *Montana v. Egelhoff*.

Chapter 4, on causation, now includes discussions of two recent controversial cases, the accidental poisoning of a baby by a New York hospital staff, and a Florida woman who demanded to be taken off life support after being shot and paralyzed by her elderly mother.

Chapter 5, “Intentional Homicide,” continues to explore the moral dilemmas posed by the problem of mitigating murder liability based on emotional distress in a society riven by cultural diversity and gender inequality.

Chapter 6, “Unintentional Homicide,” includes a newly comprehensive survey and explanation of the often poorly understood law of

felony murder. We have added the historically important case of *People v. Moran* on “merger.”

Chapter 7, on capital murder, continues to treat this as a substantive offense rather than an issue in constitutional law. We have added the important new federal death penalty case of *U.S. v. Jones*.

Chapter 8, on necessary force, lesser evils, and duress, includes new historical material on the emergence of America’s distinctive approach to the duty to retreat in self-defense law. A continued focus on the controversy over self-defense by battered women now includes the important new Florida case of *People v. Weiland*. The coverage of duress has been substantially reorganized to provide a sharper focus on gang scenarios, and now includes the recent cases of *State v. Crawford*, *Williams v. State* and *State v. Hunter*.

A substantially new Chapter 9, on insanity, has an enhanced focus on the newer cognitive tests, illustrated by the “deific decree” case of *People v. Serravo*. The chapter now covers the notorious case of the subway killer Andrew Goldstein and new research on psychopathy.

Chapter 10, “Attempt,” continues its focus on the *actus reus* of attempting, and is little changed.

Chapter 11, “Complicity,” includes a simplified explanation of the problem of *mens rea* standards for accomplice liability, and material on new statutory approaches to criminal facilitation, such as the federal gun laws.

Chapter 12, “Conspiracy,” includes new material on the Oklahoma City and World Trade Center bombing cases.

Chapter 13, on corporate criminal liability, includes a new emphasis on the consequences of corporate liability, with new material on the Federal Sentencing Guidelines. The coverage of corporate culpability has been updated with the important new case of *U.S. v. Ladish Malting Company*.

Chapter 14, “Theft Offenses,” includes a more systematic account of the development of distinct theft offenses, and the reasons for their subsequent consolidation in most jurisdictions. It also now includes a fascinating new mail fraud case involving a shady sports agent, and an important new case on the murky lines between bribery, extortion, and campaign fundraising.

Chapter 15, on rape and sexual assault, has been completely revised and considerably expanded to take account of the explosion of law reform efforts and scholarly research in this rapidly changing field of law. It includes new material on the historical development of rape law and new statistics on rape commission, reporting, and prosecution. The chapter has been reorganized and now provides a comparison and precise element analysis of the broad range of alternative definitions of sexual assault offenses. It also includes new material on rape by fraud and rape by extortion. Some of the many new cases include *Brown v. State*

(Wisconsin), *People v. Dorsey* (New York), *People v. Jansson* (Michigan), *State v. Smith* (Connecticut), *In re M.T.S.* (New Jersey), *State v. Moorman* (North Carolina), *Boro v. People* (California), *State v. Dutton* (Minnesota), *Commonwealth v. Mlinarich* (Pennsylvania), *Commonwealth v. Fischer* (Pennsylvania), *Davis v. State* (Georgia), and *U.S. v. Packineau*.

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.

Robert Weisberg
Guyora Binder

March 2000

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