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3

# CRIMINAL LAW

Nicola Padfield

third  
edition



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BUTTERWORTHS CORE TEXT SERIES

# Criminal Law

Third Edition

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## Preface to the third edition

Our ambition is to produce a new edition every two years. Even this seems barely enough: for example, since the manuscript for this third edition was submitted, the Law Commission has published (on 30 July 2002) its important report on *Fraud* (Law Com No 276). The Law Commission now concludes that a general fraud offence would improve the criminal law (see the discussion at para 11.41). The Commission recommends that the eight offences of deception created by the Theft Acts 1968-96 should be repealed, and that the common law crime of conspiracy to defraud should be abolished. In their place, it recommends the creation of two new statutory offences – one of fraud and one of obtaining services dishonestly. It seems that there may be important changes ahead. Indeed, the Government seems to be committed to codifying the criminal law as a ‘long-term modernisation objective’ (see para 7.16 of the White Paper, *Justice for All*, also published in July 2002). Such is the nature of studying law: you can only take a snapshot at one particular moment in time. This book seeks to present and discuss the criminal law as it is in July 2002.

Other major changes lie ahead on the international front: the International Criminal Court Act 2001 gives effect to the Rome Statute on the International Criminal Court, which will sit in The Hague exercising jurisdiction over ‘the most serious crimes of international concern’: genocide, crimes against humanity, and war crimes. However, for the moment, since this book concentrates on ‘core law’, the decision has been taken to ignore these developments, and indeed the Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001. Perhaps we will have to reconsider what constitutes ‘core’ criminal law in future editions.

# Preface to the first edition

This book forms one of the first to be published in Butterworths' Core Text Series. The idea for the series sprang originally from Butterworths themselves and from Nick Johnson, now Director of the Legal Practice Course at Oxford. Butterworths wanted to produce a series of books which provided value for money, were brief, but which did not oversimplify the subject matter. Law can be made simple, but not without intellectual dishonesty. The challenge to the authors in this series has been to write at several levels simultaneously, to strip their subject to its core while continuing to point out the intellectual challenges and difficulties within it.

It is a 'core' law series in several senses:

- (i) the books are short
- (ii) they seek to identify the fundamental principles of the subject
- (iii) they concentrate on the most important, key topics within the subject.

This book therefore seeks to provide a different sort of criminal law textbook. The criminal law needs to be reduced to its core for a number of reasons. Parliament is in the habit of adding more and more offences to the statute book, and the core is in danger of being lost from sight. The subject is notoriously unclear, with appellate decisions regularly shifting the already unsteady foundations of criminal liability. The book investigates the core of criminal law by looking at various central concepts and offences. The main target audience is the student who is largely working on her own. I have sought to cover the subject in standard textbook fashion, but also to graft into it the elements of a case book: substantial statute and case law quotation should enable the student to

get to the heart and core of the subject, and references to academic analyses and to law reform proposals are intended to point the student in the direction of the many challenges and difficulties of the subject. Doubtless many readers will take issue with the choice of material: given the constraints imposed by the need to produce a short book, much has been omitted, and much is doubtless dealt with more briefly than will satisfy the purist.

The style of the book is deliberately brief and core-like. Certain abbreviations have been routinely used in order to save space and for ease of presentation. Where cases have been summarised, the text is slightly indented for ease of reference. Sometimes after the name of the deciding court (HL, CA etc), a judge's name is mentioned. This is because he (almost never she) gave the main or only judgment or speech. If a judge's name appears later in the summary, it is because I have chosen to highlight what was said by one judge in particular. I make no apology for frequent references to individual judges: it is after all the judges who are making and interpreting the law. The student may well find the large amount of knowledge she is required to digest easier to learn once she has 'got to know' judges individually: the subject comes alive when you are able to think, 'Aha, Lord Goff again', or 'I'm not surprised that Lord Mustill held that, given his views in ...'. It also impresses examiners if a candidate can say, 'as Lord Diplock said in *Caldwell* ...', rather than the prosaic 'as the House of Lords said in *Caldwell*' or the rather feeble 'as *Caldwell* decided'. An examiner is more likely to give a candidate the benefit of the doubt when he is not sure if something has been understood, if the candidate has made it very clear elsewhere that she had an accurate understanding.

The choice of subjects is not entirely arbitrary: the books within the series all cover the syllabus of the external London LLB course. However, I have chosen to add chapters on sexual offences, public order, and environmental offences simply to help illustrate difficulties in identifying the fundamental 'core' of the subject.

The additional reading at the end of each chapter is necessarily highly selective. Within the text there are also references to some of the leading textbooks: Smith and Hogan, Glanville Williams, Ashworth and Allen. Students who have access to law reports and periodicals will be well rewarded if they keep up-to-date by browsing through new cases and

articles as they appear. The main criminal law journal remains the *Criminal Law Review*: students are well advised to read Professor Sir John Smith's monthly commentaries on recent cases: he provides excellent reviews of the key issues as well as pointers towards possible reforms and improvements. If, as a student, you can follow these arguments, you will know you are doing fine! As well, periodicals such as the *Cambridge Law Journal*, the *Modern Law Review*, the *Law Quarterly Review* and the *Journal of Criminal Law* regularly publish short commentaries on key cases. The practitioners short monthly newsletter *Archbold News* also gives up-to-date information. Another technique for understanding the criminal law: take this book and read it in the public gallery of your local Crown Court or Magistrates' Court: then you will not forget the impact and importance of the subject as it affects people's lives.

It is hoped that the Core Text Series will be a success – a useful aid to study. Work has already started on the next edition of this book. Please send comments and criticisms of this edition to the author.

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I should like to express my thanks to the other contributors to this series and to the team at Butterworths who have worked energetically to maintain the series so successfully. Meanwhile, whilst delighted that the series has been well received by students, may I repeat my request, as set out in the first Preface, for comments and criticisms.

*July 2002*

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# Table of abbreviations

Throughout this book, a number of abbreviations are used to save space and to make the text more concise:

CA	Court of Appeal (Criminal Division)
CAA	Criminal Attempts Act
CC	Crown Court
CCCR	Court of Crown Cases Reserved
CDA	Crime and Disorder Act
CJA	Criminal Justice Act
CJPOA	Criminal Justice and Public Order Act
CLA	Criminal Law Act
CLB	Criminal Law Bill
CLRC	Criminal Law Revision Committee
CMAC	Courts Martial Appeals Court
CYP A	Children and Young Persons Act
D	Defendant
DC	Divisional Court (of the Queen's Bench Division of the High Court)
DCC	Draft Criminal Code
HL	House of Lords
LCJ	Lord Chief Justice
LJ	Lord Justice
MC	Magistrates' court
OAPA	Offences against the Person Acts
P	Prosecution
RTA	Road Traffic Act
SOA	Sexual Offences Act
SO(A)A	Sexual Offences (Amendment) Act
TA	Theft Act
T(A)A	Theft (Amendment) Act 1996
V	Victim

A number of leading textbooks are also referred to in the text:

Allen	<i>Allen's Textbook of Criminal Law</i> (5th edition, 1999)
PCL	<i>Ashworth's Principles of Criminal Law</i> (3rd edition, 1999)
S & H	<i>Smith and Hogan's Criminal Law</i> (10th edition, 2002)
TCL	<i>Glanville Williams' Textbook on Criminal Law</i> (2nd edition, 1983)

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