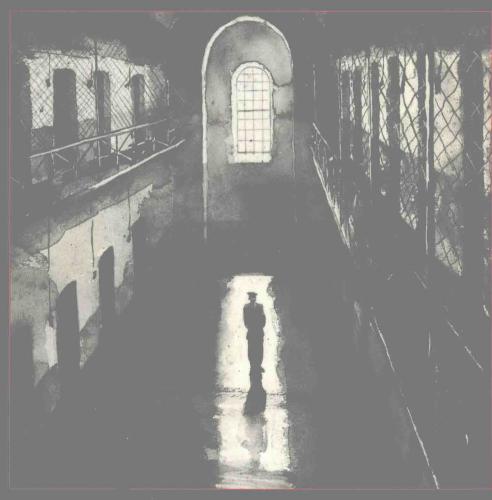
C.M.V. CLARKSON and H.M. KEATING

Criminal Law: Text and Materials

SECOND EDITION





Sweet & Maxwell

CRIMINAL LAW: TEXT AND MATERIALS

Second Edition

by

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PREFACE

The aim of this book is to examine the main principles and rules of the criminal law and to expose the theoretical bases upon which they are founded.

The criminal law is inextricably linked to issues of moral philosophy, criminology and the punishment of offenders. Fletcher has stated that "the criminal law should express the way we live." It is a reflection of community values aimed at isolating the blameworthy who are deserving of punishment. Equally, it is a means of social control; it attempts to uphold, as well as reflect, these community values; it sets a standard, albeit at times a minimal one, of necessary compliance. In short, it is a set of moral commandments that are backed up by the legal threat of punishment. It thus follows that whether sanctions are imposed on the basis of desert or on utilitarian grounds, the rules of the criminal law and the punishment of offenders are the two sides of the same coin. A whole range of substantive issues-such as, whether "recklessness" should include "inadvertence," whether one can justify the existence of offences of "strict liability," how the boundaries of the law of "attempt" and "accessorial" crime should be drawn, and so on-are, in reality, issues relating to the justification of punishment in such cases. A true appreciation of the substantive criminal law must thus involve some understanding of the rationale of punishment and why conduct is criminalised—and it is in this context that we have sought to present the main rules of the law.

Like most other works in this field, this is a book on the actual rules of the criminal law. We have attempted to provide a full analysis of these main rules on the topics covered. But, in doing this, we have attempted the more ambitious task of using the law to extract, and develop, some fundamental ideas underlying the law. We have tried to explore, in the context of punishment, such issues as: the relationship between blame and harm, the criteria for identifying the blameworthy, the structure of offences in relation to each other and the role of the general defences. In short, we have attempted to subject the criminal law to the beginnings of a philosophical analysis that can throw some light on the substantive rules. We have also attempted to unite some of the common themes and, in our concluding chapter, have formulated some tentative proposals for a general theory of criminal liability.

The criminal law changes with great rapidity and therefore this book has been substantially rewritten and updated for the second edition. This is particularly the case for those sections of the book dealing with intention, murder, manslaughter, causing death by reckless driving, the mens rea of attempt, aiding and abetting, self-defence, duress and necessity.

However, it is in two other respects that this book differs mostly from

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the first edition. First, the amount of sociological or criminological material has been significantly increased. All the major offences have now been introduced in their social context. This has not been done at the expense of the substantive rules—but in the hope of rendering those rules more easily explicable. Secondly, this second edition includes a chapter on the major property offences. The omission of such offences from the first edition was the major criticism in the reviews of that edition—and persuaded us that, having clearly established in that first edition what the object of the book was and how it differed from other books in the field, such property offences should be included in this edition. Also, our publishers were generously prepared to be more indulgent with their word limit in this second edition-meaning that property offences could be included but without any sacrifice to the basic discursive, "in context" style adopted throughout. Indeed, this chapter has now become central to the coherence of the book and we now readily and happily concede that an examination of the underlying rationale and purposes of this area of law is crucial for an understanding of the criminal law as a whole.

We have been anxious to ensure that this book be accessible to, and easily digestible by, undergraduate and other students concerned with criminal law. We have approached our task, and included appropriate materials, with this concern very much in mind. We have tried to cover the range of competing views and present them in a discursive manner allowing the reader to make choices—while not being afraid to state our own preferences.

A brief word about the format of this book is necessary. It is neither a straight "textbook," nor a "cases and materials" book. Instead, we have tried to combine what we regard as the best features of both such styles—a book with the flow and coherence of a textbook thus providing the reader with guidance and direction, but one that also enables a substantial amount of original material from a diversity of sources to be absorbed.

We are very grateful to our publishers for their kindness, help and patience during the preparation of this book. We are also especially grateful to Mark Entwisle for agreeing to paint the picture appearing on the cover of this book.

Chris Clarkson would like to thank David Smith and Malik Ali for their help with research. But most of all, his thanks go to his wife, Barbara, for all her help with proof-reading and for the love, support and understanding shown throughout this project. His share of this book is dedicated to her and to his children, Cathy and Nicky.

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