

CRIMINAL LAW TODAY

A circular inset image featuring a classical statue of Lady Justice, blindfolded and holding scales of justice, set against a blue sky with clouds.

sixth edition

FRANK SCHMALLEGER
DANIEL E. HALL

Criminal Law Today

SIXTH EDITION

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Composition: Integra Software Services Private, Ltd.
Printer/Binder: R. R. Donnelley/Owensville
Cover Printer: Lehigh/Phoenix Color Hagerstown
Text Font: Goudy Oldstyle Std 10.5/13.5

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Library of Congress Cataloging-in-Publication Data

Schmallegger, Frank, author.

Criminal law today / Frank Schmallegger, Ph.D., Distinguished Professor Emeritus, The University of North Carolina at Pembroke, Daniel E. Hall, J.D., Ed.D., Professor and Director of Criminal Justice, Professor of Political Science, and Affiliate Professor of Black World Studies, Miami University, and Visiting Professor of Law, Sun Yat-sen University, Guangzhou, China.—Sixth edition.

pages cm

ISBN 978-0-13-416373-4 (alk. paper)—ISBN 0-13-416373-7 (alk. paper)

1. Criminal law—United States. I. Hall, Daniel (Daniel E.), author. II. Title.

KF9219.S36 2017
345.73—dc23

2015036926

PEARSON

ISBN 10: 0-13-416373-7
ISBN 13: 978-0-13-416373-4

For Michelle Lallo, who could have
written this book—Frank Schmallegger

To Eva Joan Hall, the smallest Hall of all—Daddy

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Preface

Our purpose in writing this textbook has been to provide students with an appreciation for the fundamental nature of law, an overview of general legal principles, and a special understanding of the historical development of criminal law and its contemporary form and function in American society today. Stories from real life, engaging graphics, up-to-date examples and issues, and interactive media bring the law to life in this comprehensive, timely, and user-friendly introduction to criminal law. Key features include the following.

Capstone Cases in each chapter provide excerpts from actual court opinions illustrating important themes in the law. The cases offer significant insights into the everyday workings of American jurisprudence and demonstrate the logic behind appellate decisions. Court opinions, statutes, and other quoted materials have occasionally been redacted and edited slightly for clarity. Many case citations and references have been removed without the use of ellipses or other omission signifiers in order to keep the flow of reading uninterrupted.

Graphics such as full-color diagrams, illustrations, and other figures throughout the text reinforce key points and illustrate important, complex, and challenging concepts for easier understanding.

Criminal Law in the News boxes in each chapter highlight recent news stories/issues that illustrate the variety of legal perspectives found at federal, state, and local levels and make students aware of jurisdictional differences in the law.

Our approach has been strongly influenced by our belief that the law has always been, and remains, a vital policymaking tool. As a topic for study and discussion, the nature and life of the law is more important today than ever before. The law faces challenges as it continues to adapt to the needs of a complex and rapidly changing society. These challenges are highlighted in this text and serve to emphasize for readers the contemporary relevance of our ever-evolving American criminal law.

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New to the Sixth Edition

Chapter-Specific Changes

- In Chapter 1, stories and data were updated, recent federalism developments were added, and the discussion of common law was edited to be clearer. Throughout the text, Capstone Cases were moved closer to their textual references.
- In Chapter 2, as suggested by reviewers, the discussion of elements was refined to be clearer, as was the distinction between civil and criminal negligence.
- In Chapter 3, a new Capstone Case on *corpus delicti*, decided in 2013, was added, replacing *Smith v. Doe*, and the discussions of double jeopardy, *ex post facto*, and other constitutional matters were enlarged.
- In Chapter 4, the story of the Cannibal Cop in New York City was added to illustrate the line between thought and action for conspiracy and several edits were made including reductions in text length.
- In Chapter 5, discussion related to the shooting of a black teenager by a white police officer in Ferguson, Missouri, was added; the section on affirmative defenses was rewritten; and the discussion on the use of deadly force in self-defense was expanded.
- In Chapter 6, a new opening story featuring the horrific case of an insane mother who killed her children was added. Expanded discussions include recent cases to illustrate entrapment and insanity at the time of trial.
- In Chapter 7, a new opening story involving felony murder was added; a reduction in the size of the chapter (including the elimination of one Capstone Case) was made; discussion related to the causation and the death of James Brady was added; and a new Capstone Case, *Burrage v. United States* (2014), has been added.
- In Chapter 8, the Ariel Castro confinement and rape story from Ohio was added to open the chapter; a discussion of threat as a crime was added; a reordering of a couple of subjects was made as recommended by reviewers; the U.S. Supreme Court's 2015 *Whitfield* decision replaced a former Capstone Case; and a discussion of the recent movement at universities to require affirmative consent for sexual relations has been added.
- In Chapter 9, dated content was removed, recent large-scale computer crimes, such as the Target breach, are discussed; data was updated; and a new opening story to the section on arson was added.
- In Chapter 10, the discussion of witness and juror tampering was expanded. A new section on crimes against the honor and integrity of the United States—featuring the Supreme Court's 2012 decision in *Alvarez* as a new Capstone Case—was added.
- In Chapter 11, a new opening story featuring San Francisco's recently upheld nudity ordinance replaced the former opening story; and reviewer recommended reductions in content were made.
- In Chapter 12, the U.S. Supreme Court's decision in *Jungers* was added as a Capstone Case; data on terrorism and trafficking were updated; and references to recent legislative developments, some pending, in terrorism and trafficking were added.
- In Chapter 13, the story that gave rise to *Payne v. Tennessee* now opens the chapter; an expanded discussion of victims at law and factual victims, including public v. private prosecution, was added; crime data were updated, and a new chart comparing UCR and NCVS data was added.
- In Chapter 14, capital punishment data were updated to 2014, and recent Eighth Amendment decisions of the U.S. Supreme Court were added to the discussion of the death penalty.

Highlighted Features

Additional Case Applications

Additional Applications follow all of the Capstone Cases. Provided by Dr. John Forren of Miami University in Hamilton, Ohio, each Additional Application consists of a brief summary and holding of a case that relates to—and builds on—the issues addressed in the Capstone Case. Additional Applications appear where an important distinction in the application of the law will enhance students' understanding of the concept. The Additional Applications (1) delve deeply into the subject matter represented by Capstone Case opinions through the use of lower court cases and (2) attempt to grapple with issues and questions left unanswered by previous court decisions.

Additional Applications

Can courts retroactively apply a common law rule that defines a crime?

Rogers v. Tennessee, 532 U.S. 451 (2001)

The Case: During an altercation on May 6, 1994, Wilbert K. Rogers stabbed James Bowdery in the chest with a butcher knife, necessitating an emergency surgical procedure to repair Bowdery's heart. The stabbing victim survived the heart surgery; as a direct result of these events, though, Bowdery developed a condition known as cerebral hypoxia—which results from a loss of oxygen to the brain—and fell into a coma where he remained until his death 15 months later from a related kidney infection. Following Bowdery's death, Rogers was convicted by a Shelby County, Tennessee, trial court on second-degree murder charges. Rogers contested the charges on appeal, arguing that Tennessee's courts had long recognized a judicially created common law “year-and-a-day rule,” which provided that no defendant could be convicted of murder unless the victim had died by the defendant's act within 366 days of that act.

the law which had been expressed prior to the conduct at issue.” In this context, O'Connor reasoned, Rogers should have reasonably anticipated that the courts would rule Tennessee's one-year-and-a-day rule to be “an outdated relic” inappropriate for adherence in modern times.

In a spirited dissent, Justice Antonin Scalia (joined by three other members of the Court) voiced strong disagreement with the majority's conclusion that Rogers had “fair warning” that the common law rule in Tennessee was subject to retroactive rescission in his case. More fundamentally, Scalia attacked O'Connor's weighing of the relative fairness concerns in drawing a basic distinction between legislative and judicial changes in applicable criminal law principles. “Today's opinion,” Scalia wrote, “produces... a curious constitution that only a judge could love. One in which [by virtue of the *ex post facto* clause] the elected representatives of all the people cannot retroactively make murder what was not murder when the act was committed; but in which unelected judges can do precisely that. One in which the predictability of parliamentary lawmaking cannot validate the retroactive creation of crimes, but the predictability of judicial lawmaking can do so.”

Critical Thinking and Application Problems

At the end of each chapter, these problems based on real-life scenarios challenge students to think critically and apply their knowledge of the chapter material to real-life, contemporary legal problems.

CRITICAL THINKING AND APPLICATION PROBLEMS

The value of metals has been on the rise. Consequently, theft of metals, particularly copper and brass, has increased significantly. Thieves, who steal metals from homes, businesses, and automobiles, commonly sell their contraband to scrap metal dealers. Concerned about the growing metal theft business, the state legislature, with the governor's endorsement, enacts the following:

Section 1: Receiving Stolen Metals: Any person (or persons) who owns, operates, or is employed by a metal recycling business shall (1) make an inquiry into the source of all metals received, (2) photograph prospective sellers and the metals they offer for sale, (3) demand a copy of a photograph identification from the prospective seller, and (4) check the state stolen metals report to determine if the specific metals sold are registered as stolen and to determine if the prospective seller is a registered metals thief. If the metals appear on the report or the seller appears as a registered metals thief, the owner, operator, or employee shall not purchase the metals and shall report the offer of sale, and provide the photographs and other information collected under this section, to the appropriate local law enforcement agency within one hour. Violation of this section is a misdemeanor of the first degree. This section shall apply retroactively, to one year prior to its enactment.

Section 2: Registration as Metal Thief: To reduce theft and to prevent the sale of stolen metals, a state registry of metal thieves and stolen metals shall be established. Any person who is convicted in the state of stealing or receiving stolen metals or who is convicted of violating the Receiving Stolen Metals section above shall register with the Secretary of State. The Secretary of State shall establish and maintain a report of metal thieves, as well as a report of missing metals, which shall be made available to the

APPLYING THE CONCEPT

CAPSTONE CASE

Does the Eighth Amendment Bar the Admission of Victim Impact Evidence During the Penalty Phase of a Capital Trial?

Payne v. Tennessee,
501 U.S. 808 (1991)

CHIEF JUSTICE REHNQUIST delivered the opinion of the court.

In this case we reconsider our holdings in *Booth v. Maryland*, 482 U.S. 496 (1987), and *South Carolina v. Gathers*, 490 U.S. 805 (1989), that the Eighth Amendment bars the admission of victim impact evidence during the penalty phase of a capital trial.

THE CASE The petitioner, Pervis Tyrone Payne, was convicted by a jury on two counts of first-degree murder and one count of assault with intent to commit murder in the first degree. He was sentenced to death for each of the murders, and to 30 years in prison for the assault.

The victims of Payne's offenses were 28-year-old Charisse Christopher, her 2-year-old daughter Lacie, and her 3-year-old son Nicholas. The three lived together in an apartment in Millington, Tennessee, across the hall from Payne's girlfriend, Bobbie Thomas. On Saturday, June 27, 1987, Payne visited Thomas' apartment several times in expectation of her return from her mother's house in Arkansas, but found no one at home. On one visit, he left his overnight bag, containing clothes and other items for his weekend stay, in the hallway outside Thomas'

When the first police officer arrived at the scene, he immediately encountered Payne, who was leaving the apartment building, so covered with blood that he appeared to be "sweating blood." The officer confronted Payne, who responded, "I'm the complainant." When the officer asked, "What's going on up there?" Payne struck the officer with the overnight bag, dropped his tennis shoes, and fled.

Inside the apartment, the police encountered a horrifying scene. Blood covered the walls and floor throughout the unit. Charisse and her children were lying on the floor in the kitchen. Nicholas, despite several wounds inflicted by a butcher knife that completely penetrated through his body from front to back, was still breathing. Miraculously, he survived, but not until after undergoing seven hours of surgery and a transfusion of 1,700 cc's of blood—400 to 500 cc's more than his estimated normal blood volume. Charisse and Lacie were dead.

Charisse's body was found on the kitchen floor on her back, her legs fully extended. She had sustained 42 direct knife wounds and 42 defensive wounds on her arms and hands. The wounds were caused by 41 separate thrusts of a butcher knife. None of the 84 wounds inflicted by Payne were individually fatal; rather, the cause of death was most likely bleeding from all of the wounds.

Capstone Cases

The cases throughout the chapters have been updated and shortened. New cases include *Illinois v. Lara* and *People v. LaRosa* in Chapter 3, *Burrage v. United States* in Chapter 8, *United States v. Alvarez* in Chapter 10. Complete versions of the Capstone Cases, links to Web Extras and Legal Resources, a Guide to Reading Legal Citations, and topical learning modules can be accessed at www.pearsonhighered.com/careers.

Learning Objectives

The Learning Objectives at the beginning of each chapter have been shortened and rewritten in plain language to provide readers with a concise overview of what they can expect to learn from each chapter.

OBJECTIVES

After reading this chapter, you should be able to

- Describe the legal essence of criminal conduct.
- Explain *actus reus* and what constitutes a criminal act.
- Explain *mens rea* and the different types of intent.
- Describe strict liability offenses, and explain why some crimes are punished solely on the basis of strict liability.
- Summarize concurrence, and describe how concurrence relates to *mens rea* and *actus reus*.

Criminal Law in the News

All Criminal Law in the News boxes have been replaced with entirely new stories drawn from today's media. New story topics include the following:

- The corporate criminal liability of British Petroleum for the 2010 Gulf oil spill
- The activities of Westboro Baptist Church members who protest at military funerals
- A honeymooner who may have been tried twice for the death of his new wife
- Gun rights in the wake of infamous mass shootings
- The use of the defense of addiction in cases of shoplifting
- Abortion doctors who were charged with murder under Maryland law
- Faith-healing parents who were convicted in the death of their son after refusing medical treatment
- Online piracy charges against New Zealand multimillionaire Kim Dotcom (aka Megaupload)
- A federal appellate court's action in overturning California's Proposition 8, which banned same-sex marriages
- The story of Colleen LaRose ("Jihad Jane")
- The role of DNA testing in identifying wrongful convictions
- The political scandal involving former Illinois Democratic Governor Rod Blagojevich

CRIMINAL LAW IN THE NEWS

Politicians Who Violate the "Rule of Law" Get Tough Prison Sentences

The United States has always embraced the principle that no one, not even a powerful politician, can violate the law. George Washington, speaking about political power, advised, "never for a moment should it be left to irresponsible action." President Theodore Roosevelt added, "No man is above the law and no man is below it."

Today, enforcement of the "rule of law" appears to be stricter than ever, producing some eye-popping prison terms for convicted politicians. Former Illinois Democratic Gov. Rod Blagojevich was sentenced to 14 years in prison in 2011, more than twice the 6 ½-year term given to his predecessor, former Republican Gov. George Ryan, who was convicted on federal fraud and racketeering charges in 2006.

Blagojevich was all over the news for his most notable crime, trying to sell President Obama's former Senate seat, and he was unrepentant until almost the end. But was he twice as guilty as Ryan, whose administration quashed a probe into bribes paid to state officials for issuing illegal truck drivers' licenses that led to highway deaths? And was Ryan twice as guilty as former Democratic Gov. Otto Kerner of Illinois, who sat three years in prison in 1973 for



Former Illinois Democratic Gov. Rod Blagojevich, who was sentenced to 14 years in prison in 2011, for trying to sell President Obama's former Senate seat. What is the rule of law, and why is it important?
Tanden Murray/EPA/Newscom

Instructor Supplements

The following supplementary materials are available to support instructors' use of the main text:

- ***Instructor's Manual with Test Bank.*** Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank. TestGen. This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.
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- ***Alternate Versions eBooks.*** This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypearsonstore.com.
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STUDENT RESOURCES ONLINE

Complete versions of the Capstone Cases, links to Web Extras and Legal Resources, a Guide to Reading Legal Citations, and topical learning modules may be accessed by students and instructors at www.pearsonhighered.com/careersresources.

Acknowledgments

Criminal Law Today owes much to the efforts of many people. Members of the Advisory Panel, who reviewed drafts of this text as it developed and showered us with comments and suggestions, deserve special thanks. Advisory Panel members are listed on page iv.

Others who have contributed to this text and to whom we are very grateful are Keiser University's John J. Dolotowski, Miami University's John Forren for providing the Additional Applications features, Lance Parr of California's Grossmont College, and Mike Gray at Maryland's Eastern Shore Criminal Justice Academy. Thanks also to Morgan Peterson at California's Palomar College for assistance in tracking down thorny permissions issues. David Graff at Kent State University did an excellent job of Web content development, and we are in his debt.

This edition has benefited substantially from the suggestions and ideas provided by these reviewers: Lisa Cason, Columbia College; Jennifer Estis-Sumerel, Itawamba Community College; Daniel Hebert, Springfield Technical Community College; Barry Langford, Columbia College; Collin Lau, Chaminade University of Honolulu; William Mulkeen, Community College of Philadelphia; and Robert Stephens, Jr., University of Cumberlands.

Thanks also to Nina Amster at the American Law Institute for help in working through the process necessary to obtain permission to reprint selected portions of the Model Penal Code.

We are especially indebted to the fine folks at the Legal Information Institute at Cornell Law School (including codirectors Thomas R. Bruce and Peter W. Martin), which offers U.S. Supreme Court opinions under the auspices of the Court's electronic-dissemination Project Hermes.

Special thanks go to Alverne Ball and Abinaya Rajendran, Senior Project Managers at Integra Software Services Private, Ltd. for guiding this project from manuscript to book. Last but not least, we wish to thank the staff at Pearson who have made this book the quality product that it is. Many thanks to Gary Bauer, Lynda Cramer, Tara Horton, and Susan Hannahs, and many other staffers who have brought this book to fruition. Thank you, each and every one!

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Frank Schmalleger is the author of numerous articles and many books, including the widely used *Criminal Justice Today* (Pearson, 2015), *Criminology Today* (Pearson, 2017), and *Criminal Justice: A Brief Introduction* (Pearson, 2016). See his website at www.schmalleger.com.



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*Let reverence for the laws,
be breathed by every American mother,
to the lisping babe, that prattles on her lap;
let it be taught in schools, in seminaries, and in colleges;
let it be written in Primers, spelling books, and in Almanacs;
let it be preached from the pulpit, proclaimed in legislative halls,
and enforced in courts of justice.
And, in short, let it become the political religion of the nation;
and let the old and the young, the rich and the poor, the grave and
the gay,
of all sexes and tongues, and colors and conditions,
sacrifice unceasingly upon its altars.*

—ABRAHAM LINCOLN (1838)

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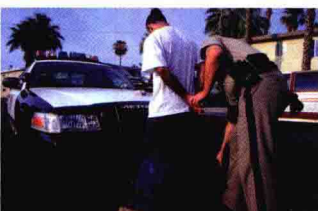
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