

*OHLIN*

**CRIMINAL LAW**  
**Doctrine, Application,**  
**and Practice**



Wolters Kluwer

ASPEN CASEBOOK SERIES

---

# CRIMINAL LAW

## DOCTRINE, APPLICATION, AND PRACTICE

---



JENS DAVID OHLIN

*Associate Dean for Academic Affairs and Professor of Law  
Cornell Law School*



Wolters Kluwer

Copyright © 2016 CCH Incorporated.

Published by Wolters Kluwer in New York.

Wolters Kluwer Legal & Regulatory Solutions U.S. serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. ([www.WKLegaledu.com](http://www.WKLegaledu.com))

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at [www.WKLegaledu.com](http://www.WKLegaledu.com), or a written request may be faxed to our permissions department at 212-771-0803.

To contact Customer Service, e-mail [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.com), call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-6318-2

#### **Library of Congress Cataloging-in-Publication Data**

Names: Ohlin, Jens David, author.

Title: Criminal law: doctrine, application, and practice / Jens David Ohlin.

Description: New York: Wolters Kluwer, [2016] | Series: Aspen casebook series

Identifiers: LCCN 2015047276 | ISBN 9781454863182

Subjects: LCSH: Criminal law—United States. | LCGFT: Casebooks

Classification: LCC KF9219 .O35 2016 | DDC 345.73—dc23

LC record available at <http://lcn.loc.gov/2015047276>



SFI label applies to the text stock

# CasebookConnect.com

**REGISTER NOW to access the Study Center for:**

- Hundreds of practice questions
- Progress trackers to save you time
- Selections from popular study aids
- Tutorial videos

Combine this wealth of resources with an **enhanced ebook** and **outlining tool** and you will **SUCCEED** in law school

Use this unique code to connect your casebook today

**Go to [www.casebookconnect.com](http://www.casebookconnect.com)  
and redeem your access code  
to get started.**

PLEASE NOTE: Each access code can only be used once. This access code will expire one year after the discontinuation of the corresponding print title and must be redeemed before then. CCH reserves the right to discontinue this program at any time for any business reason. For further details, please see the Casebook Connect End User License Agreement.

PIN9111149080

290/1

---

# CRIMINAL LAW

---

## ***Editorial Advisors***

### **Erwin Chemerinsky**

*Dean and Distinguished Professor of Law  
Raymond Pryke Professor of First Amendment Law  
University of California, Irvine School of Law*

### **Richard A. Epstein**

*Laurence A. Tisch Professor of Law  
New York University School of Law  
Peter and Kirsten Bedford Senior Fellow  
The Hoover Institution  
Senior Lecturer in Law  
The University of Chicago*

### **Ronald J. Gilson**

*Charles J. Meyers Professor of Law and Business  
Stanford University  
Marc and Eva Stern Professor of Law and Business  
Columbia Law School*

### **James E. Krier**

*Earl Warren DeLano Professor of Law  
The University of Michigan Law School*

### **Richard K. Neumann, Jr.**

*Professor of Law  
Maurice A. Deane School of Law at Hofstra University*

### **Robert H. Sitkoff**

*John L. Gray Professor of Law  
Harvard Law School*

### **David Alan Sklansky**

*Stanley Morrison Professor of Law  
Stanford Law School  
Faculty Co-Director  
Stanford Criminal Justice Center*

## About Wolters Kluwer Legal & Regulatory Solutions U.S.

Wolters Kluwer Legal & Regulatory Solutions U.S. delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

Serving customers worldwide, its legal and regulatory solutions portfolio includes products under the Aspen Publishers, CCH Incorporated, Kluwer Law International, ftwilliam.com and MediRegs names. They are regarded as exceptional and trusted resources for general legal and practice-specific knowledge, compliance and risk management, dynamic workflow solutions, and expert commentary.

For George Fletcher,  
for rethinking criminal law

---

## PREFACE

---

I wrote this casebook not just to use as teaching materials for my own class, but also to provide professors and students everywhere with a set of crisp and flexible materials for the study of criminal law. The book is divided into 27 chapters, followed by an appendix with selections from the Model Penal Code. I deliberately wrote a larger number of shorter chapters so that each chapter would correspond to a single topic. The goal of the book is to help students learn the criminal law and to stimulate a wider discussion of it among students and scholars alike.

Each chapter is divided into three major sections. The A Section focuses on a doctrinal overview of the subject, presented without using secondary materials such as law review excerpts. The goal of this section is to give the reader a bird's-eye view of the chapter's topic. I find this is helpful so that readers have a sense of the outer scope of the topic before they delve into more particular investigations of each doctrine. In short, students need some context before they learn the particulars. Then, the B Section (labeled "Application") focuses on applying the doctrine to new and complex fact patterns. Readers are presented with appellate opinions, followed by notes and questions, which will help develop and hone an essential skill: applying the law to novel facts. Consequently, cases are selected with an eye towards this pedagogical goal. Instead of reprinting cases that merely announce the law, the chapter focuses on cases that present complicated and contested applications of the law. Many of the cases are new—from the past 15 years—though I have also kept many of the older canonical cases that are rightly regarded as classics of criminal law teaching. Finally, each chapter concludes with a brief section labeled "Practice and Policy" that asks students to consider some of the deeper implications, both practical and theoretical, of the material they have learned in each chapter.

Please note that I have followed several conventions while selecting and editing the cases in the book. First, internal citations within the cases are omitted without indication, in order to make the cases more readable. Second, deletions within cases are marked by ellipses ( . . . ) rather than asterisks ( \* \* \* ). Third, the ellipses at the beginning or end of a paragraph may indicate that sentences were deleted from the paragraph or that entire paragraphs were deleted. In other words, the reader should not assume that ellipses at the end of

a paragraph indicate that the deleted material was solely contained within that original paragraph. Finally, parallel citations were removed without indication.

Please feel free to send comments and suggestions for the second edition; your feedback is both welcomed and essential for future revisions.

Jens David Ohlin  
Cornell Law School  
Ithaca, New York  
December 2015

---

## ACKNOWLEDGMENTS

---

Many people were instrumental in bringing this casebook to fruition.

I first discussed the idea of doing this casebook with Deborah Van Patten and Carol McGeehan of Wolters Kluwer. Nicole Pinard, John Devins, and Kathy Langone were instrumental in helping me through the writing and editing process every step of the way, while Geoffrey Lokke assisted with permissions. I also wish to thank Joe Terry.

Several colleagues at Cornell Law School, including Steve Shiffirin, offered advice about writing a casebook. In particular, Kevin Clermont spent countless hours with me discussing law school teaching pedagogy in general as well as the structure and content of my proposed casebook. He graciously provided a detailed editing of my first draft chapter.

I am indebted to several criminal law colleagues who read and provided feedback on early drafts of the entire manuscript, including Sherry Colb, Geoffrey Corn, Rob Sloane, Sasha Greenawalt, and Tom McDonnell. Also, several anonymous reviewers for Wolters Kluwer provided suggestions that made their way into the final version of this casebook. Rachel Lerman provided valuable research assistance.

Most importantly, Nancy Ohlin encouraged me to embark on this ambitious project in the first place. She suggested some of the news items that eventually became problem cases in the casebook. She also spent many hours listening to me, ultimately helping me to distinguish between my best and worst ideas. This book never would have become a reality without her hard work and dedication to my career.

I would also like to thank the following copyright holders for granting permission to reproduce these materials in the text:

7NEWS / KMGH. Shannon Conley, photograph. Copyright © 2014 Scripps Media, Inc. All rights reserved. Reprinted with permission.  
American Law Institute. Model Penal Code (c) 1985 by the American Law Institute. Reproduced with permission. All rights reserved.

- Andersen, Odd / AFP / Getty Images. Anders Behring Breivik, photograph. Reprinted with permission.
- AP Images. David Sweat, photograph. Reprinted with permission.
- AP Images. Lindbergh baby with nurse, photograph. Reprinted with permission.
- Awad, Ammar / Reuters / Corbis. Sabbar Kashur, photograph. Reprinted with permission.
- Baumgarten, Ulrich / Getty Images. Biljana Plavsic, photograph. Reprinted with permission.
- Bloomberg / Getty Images. Henry Rayhons, photograph. Reprinted with permission.
- Boner, Bradley J. / Jackson Hole Daily. Greg Doda, photograph. Reprinted with permission.
- Brenda White, photograph. Courtesy of Facebook.
- Brooks, David / U-T San Diego / ZUMA Press. Kathy Rowe, photograph. Reprinted with permission.
- Brown, Frederic J. / AFP / Getty Images. Trayvon Martin rally in Los Angeles, photograph. Reprinted with permission.
- Brown, Paul Joseph / Seattle Post-Intelligencer. Chris Turgeon and Blaine Applin, photograph. Reprinted with permission.
- Bucci, Vince / Pool Agence France Press / AP Images. O.J. Simpson, photograph. Reprinted with permission.
- Burbank, Joe / Reuters / Orlando Sentinel / Pool / Corbis. George Zimmerman, photograph. Reprinted with permission.
- Colorado Judicial Department / AP Images. James Holmes' notebook, photograph. Reprinted with permission.
- Davis, Clarence / NY Daily News Archive / Getty Images. Bernhard Goetz, photograph. Reprinted with permission.
- DeCrow, Jason / AP Images. Sandy Hook Elementary School, photograph. Reprinted with permission.
- Dejak, Tony / AP Images. Michael Brelo, photograph. Reprinted with permission.
- Edmonds, Ron / AP Images. Reagan assassination attempt, photograph. Reprinted with permission.
- Einsel, Dave / Getty Images. Andrew Fastow, photograph. Reprinted with permission.
- Federal Bureau of Investigation. John Hickley, photograph. Courtesy of FBI Field Office Washington.
- Foto-Team Mueller / Reuters. Andreas Lubitz, photograph. Reprinted with permission.
- Gay, Eric / AP Images. Raffi Kodikian, photograph. Reprinted with permission.
- Huff, Kelly J. / Pool / Marietta Daily Journal / AP Images. Justin Ross Harris, photograph. Reprinted with permission.

- Hutmacher, Mike / Wichita Eagle / MCT / Getty Images. Scott Roeder, photograph. Reprinted with permission.
- Jasper Juinen / Reuters. Drazen Erdemovic entering trial chamber, photograph. Reprinted with permission.
- Juinen, Jasper / Reuters. Drazen Erdemovic puts on headphones, photograph. Reprinted with permission.
- Kimbler-Lago, Melanie / The Watertown Daily Times / AP Images. Nicole Vaisey and Stephen Howells, photograph. Reprinted with permission.
- Lane, Justin / EPA / Corbis. Bernie Madoff, photograph. Reprinted with permission.
- Lennon, Frank / Toronto Star / Getty Images. Kenneth Parks, photograph. Reprinted with permission.
- Merendino, Angelo / Getty Images. Ariel Castro, photograph. Reprinted with permission.
- Minnesota Department of Corrections. Curtis Wehmeyer, photograph. Courtesy of Minnesota Department of Corrections.
- Murphy, Mary / Pool / AFP / Getty Images. Daniel M. Biechele, photograph. Reprinted with permission.
- Platt, Spencer / Getty Images. Ross Ulbricht, photograph. Reprinted with permission.
- Pool / Getty Images. Jay McLaughlin, photograph. Reprinted with permission.
- Post, Jennie / The Dartmouth Staff. Paul Formella, photograph. Reprinted with permission.
- Ralston, Mark / AFP Photo. Arthur Miller, photograph. Reprinted with permission.
- Roessler, Boris / EPA. Frankfurt Police Department Vice President Wolfgang Daschner and Magnus Gäfgen, photographs. Reprinted with permission.
- Sangosti, R.J. / Pool / Getty Images. James Holmes, photograph. Reprinted with permission.
- Showalter, Aaron / New York Daily News. Dr. Oleg Davie, photograph. © Daily News, L.P. Reprinted with permission.
- St. Louis County Prosecutor's Office / Getty Images. Darren Wilson, photograph. Reprinted with permission.
- Stubbe, Glen / Minneapolis Star Tribune / zumapress.com / Alamy Live News. Waseca Police Captain Kris Markeson and Superintendent Tom Lee, photograph. Reprinted with permission.
- Sullivan, Justin / Getty Images. Richmond High School, photograph. Reprinted with permission.
- Turnbull, Bill / NY Daily News Archive via Getty Images. Colin Ferguson, photograph. Reprinted with permission.
- ZUMA Press / Alamy. Jack Kevorkian, photograph. Reprinted with permission.

---

# CRIMINAL LAW

---

---

## SUMMARY OF CONTENTS

---

<i>Table of Contents</i>	xiii
<i>Preface</i>	xxix
<i>Acknowledgments</i>	xxxix

### PART I

## **BASIC ELEMENTS OF CRIMINALITY**

---

CHAPTER 1	
<b>Introduction to the Criminal Process</b>	3

CHAPTER 2	
<b>Punishment</b>	21

CHAPTER 3	
<b>The Death Penalty</b>	51

CHAPTER 4	
<b>Fundamental Principles of Criminal Law</b>	85

CHAPTER 5	
<b>Act Requirement</b>	115

CHAPTER 6	
<b>Mental States</b>	137

CHAPTER 7	
<b>Mistakes</b>	171

CHAPTER 8	
<b>Causation</b>	191

### PART II

## **OFFENSES**

---

CHAPTER 9	
<b>Intentional Murder</b>	213

CHAPTER 10	
<b>Voluntary Manslaughter</b>	231
CHAPTER 11	
<b>Reckless Killings</b>	251
CHAPTER 12	
<b>Felony Murder</b>	279
CHAPTER 13	
<b>Negligent Homicide</b>	305
CHAPTER 14	
<b>Rape</b>	325
CHAPTER 15	
<b>Theft</b>	365
 PART III	
<b>INCHOATE OFFENSES</b>	391
 CHAPTER 16	
<b>Attempt</b>	393
CHAPTER 17	
<b>Inchoate Conspiracy</b>	423
CHAPTER 18	
<b>Solicitation</b>	449
 PART IV	
<b>MODES OF LIABILITY</b>	467
 CHAPTER 19	
<b>Accomplices</b>	469
CHAPTER 20	
<b>Conspiracy Liability</b>	507
CHAPTER 21	
<b>Corporate Crime</b>	533
 PART V	
<b>JUSTIFICATIONS &amp; EXCUSES</b>	567
 CHAPTER 22	
<b>Self-Defense</b>	569
CHAPTER 23	
<b>Defensive Force by Police Officers</b>	615

---

CHAPTER 24	
<b>Necessity</b>	639
CHAPTER 25	
<b>Duress</b>	671
CHAPTER 26	
<b>Intoxication</b>	705
CHAPTER 27	
<b>Insanity</b>	735
<i>Appendix: Model Penal Code</i>	783
<i>Table of Cases</i>	845
<i>Index</i>	851