

简明法学案例丛书(影印版)

briefcase on CRIMINAL LAW

刑法简明案例

(第二版)

(Second Edition)

朱利亚·菲昂达
迈克尔·J·布莱恩特
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本书导读

本书涵盖了刑法重要领域以及相关法律领域的重要案例,并对其要点及相关法律规定做了非常有价值的注解,便于读者理解相关内容,并提供思考的空间。

本书内容详实,对最近及有影响的上院判决均进行了细致的讨论。包括有关非故意的非预谋杀杀人罪的 Adomako 案件;有关激怒问题的 Morball 案件;有关酗酒问题的 Kingston 案件;有关盗窃罪的 Gomez 案件和有关强奸罪的 R v R 案件。此外,对于最近发生的典型案例,书中也进行了分析:有关侵犯他人身体罪的 Ireland and Burstow 案件;有关同意理论的 Brown v UK 案件;Preddy 案件以及随后的有关抵押欺诈的案件。

更重要的是,书中对每件案例所产生的理论争议及法院的判决缺陷问题均有所提示,为读者进一步思考留有余地。对案例中涉及的重要法规以及法规的变化方面,书中作了注解,并对 1997 年预防骚扰法、1996 年盗窃法(修正案)以及 1998 年刑事秩序法进行了重点讨论。

第一章讨论谋杀罪和意图部分,论述了杀人罪必须在一年零一日内由于被告人的非法行为导致活着的被害人的死亡。同时对谋杀罪的意图内容和形式进行了具体的分析,书中认为,谋杀罪犯意是杀人或导致严重身体伤害的意图,包括认识和预见,并且对推定的蓄意问题进行了阐述。第二章是故意的非预谋杀杀人罪,重点描述了激怒问题,其中涉及激怒的条件和判断的一般人标准以及激怒的适当性问题。随后简要讨论了减轻责任问题。第三章是非故意的非预谋杀杀人罪,包括严重疏忽问题以及忽略问题,并对二者进行了比较研究,对相关的学术争议进行了简单介绍。第四章是侵犯人身犯罪和有关同意的问题,主要讲述了侵犯他人身体罪、攻击罪、导致实际身体伤害的故意伤害罪以及导致严重身体伤害方面的问题,并分析了谋杀未遂问题和在此领域所涉及的被害人同意的理论问题。第五章是强奸罪和猥亵罪部分,主要讨论了强奸罪的构成要件、被害人同意问题;猥亵罪的犯罪行为 and 犯意方面的相关知识。第六章阐释盗窃罪,详细论述了据为己有问题、占用银行账户问题;并具体分析了财产的不同形式和“属于他人”的具体意思和权利要求。随后,对盗窃罪的犯意问题作了进一步的分析。第七章讨论了其他的侵犯财产罪,其中包括非法侵入住宅罪、抢劫罪、敲诈勒索罪、骗

取财产罪、骗取金钱利益罪、骗取服务罪、骗逃责任罪、逃账罪和刑事损害罪。对每一个犯罪的犯罪行为 and 犯意均作了具体详细的阐述。第八、九、十、十一、十二章是有关辩护理由方面的知识,涉及了正当防卫的形式和条件;事实错误和法律错误及要件;精神病和无意识行为的产生及相关法律问题;酗酒的形式及区别、醉酒与错误的理论、酒后之勇等问题;胁迫及紧急避险问题等。第十三章主要论述了因果关系的重要问题,书中详细地阐述了事实因果关系和法律因果关系的理论知识、新行为介入问题以及有关同时发生问题。第十四章是刑法理论中的共同犯罪问题,书中对帮助、教唆、诱使以及劝诱的概念进行了界定,并分析了在不相关犯罪现场出现的法律责任、派生的或参与的责任问题以及退出共同协议的时间性和合理性问题。第十五、十六、十七章是有关不完整罪的相关理论,论述了未遂、煽动和共谋的行为和犯意以及不可能性问题。对于共谋,书中还从制定法和普通法方面进行了较详细的论述,对共谋破坏公众道德和违反公众礼仪以及共谋欺诈等问题作了介绍。第十八章是有关不作为问题,书中详细阐述了不作为的义务来源,包括因特殊的关系导致的义务、责任推定的义务、合同确定的义务、先前危险行为导致的义务以及制定法上规定的义务等,并对作为和不作为问题作了系统的比较。第十九章是轻率的相关问题,主要分析了主观与客观的轻率的界定,以及 Caldwell 案件的判决缺陷和应用。

本书为读者了解复杂的最新刑法知识提供了简明扼要的案例及理论说明,具有很高的学术价值。本书的法规一览表、术语及索引的翻译由张亚军担任,不当之处敬请指正。

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