



*John C. Klotter Justice Administration Legal Series*

# CRIMINAL LAW

Tenth Edition



Joycelyn M. Pollock

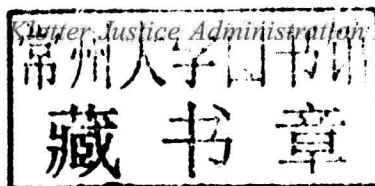
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10th Edition

Joycelyn M. Pollock

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# Sample Case Citations

*Gideon v. Wainwright*, 372 U.S. 335 (1963). This case is located in volume 372 of the *United States Reports*, beginning on page 335. It was decided in 1963.

*Gideon v. Wainwright*, 83 S. Ct. 792 (1963). *Gideon v. Wainwright* is published in volume 83 of the *Supreme Court Reporter*, beginning on page 792.

*Gideon v. Wainwright*, 9 L. Ed. 2d 799 (1963). *Gideon v. Wainwright* is also published in volume 9 of *Supreme Court Reports, Lawyers' Edition*, Second Series, beginning on page 799.

*Phillips v. Perry*, 106 F.3d 1420 (9th Cir. 1997). This case is located in volume 106 of *Federal Reports*, Third Series, beginning on page 1420. It was decided by the Ninth Circuit Court of Appeals in 1997.

*Brockway v. Shepherd*, 942 F. Supp. 1012 (M.D. Pa. 1997). This case is located in volume 942 of *Federal Supplement*, beginning on page 1012. It was decided in 1997 by the Federal District Court for the Middle District of Pennsylvania.

# Preface

I was deeply honored to be asked to take over John Klotter's *Criminal Law*. I have used the book in teaching and believe it to be an excellent resource. It combines the best features of a traditional law casebook with those of a textbook, in that it explains the law, but also offers the student a chance to read cases. One of the best features of a casebook is that students learn how to identify the issues and holdings from court decisions. Hopefully, this will help students learn how to find these elements themselves. Note that federal crimes are still discussed separately in Chapters 12 and 13. Because students seem to have trouble grasping the different jurisdictional issues in federal jurisprudence, moving all federal cases to their own chapters make it more clear how federal laws are created and enforced.

In this edition the following changes have been made:

- Chapters 8 and 9 have been consolidated into one chapter covering all forms of theft and deception.
- The last two chapters, covering federal crimes, were also consolidated (now Chapter 13) so that federal crimes are now discussed in two chapters instead of three.
- The following cases have been added: *McDonald v. City of Chicago* (2010), *Dean v. U.S.* (2009); *Graham v. Florida* (2010), *Tison v. Arizona* (1987); *Washington et al. v. Glucksberg et al.* (1997); *Norris v. Morgan* (2010); *Pruneyard Shopping Center v. Robins* (1980); *Brown v. Entertainment Merchants Assoc.* (2011); *Skilling v. U.S.* (2010), *U.S. v. Williams* (2008); *Holder v. Humanitarian Law Project* (2010).
- News boxes or expanded discussions have been added on violent video games, virtual child pornography, honest services fraud, insider trading investigations, First Amendment challenges to the Patriot Act, and other current legal news.

I want to thank Mickey Braswell and the staff at Lexis/Nexis for giving me the opportunity to make the changes to John Klotter's text that I think will help ensure its continued success. I also appreciate, as always, their incredible assistance in its preparation. Of course, I also thank John Klotter for producing a well-researched, comprehensive, well-written text; it is a pleasure and honor to be associated with it.

As always, I want to thank Eric and Greg for putting up with me.

**Joycelyn M. Pollock**

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- **Case Studies** Apply what is on the page to the world beyond with the help of topic-specific case studies, each designed to turn theory into practice and followed by three interactive scenario-based questions that allow for immediate feedback.

# Table of Contents

Sample Case Citation	xi
Preface	xiii
Online Instructor and Student Resources	xv

## PART I

Chapter 1	
Defining Crime	3

Section	
1.1 Introduction	5
1.2 Definitions of Crime and Criminal Law	5
1.3 The Purpose of Criminal Law	6
1.4 Common Law Crimes	8
1.5 Statutory Crimes	10
1.6 Constitutional Challenges	15
1.7 Construction of Criminal Law Statutes	26
1.8 Classification of Crimes	26
1.9 Distinction between Crimes and Torts	28
1.10 Burden of Proof—Prosecution	28
1.11 Burden of Proof—Defendant	30
1.12 Summary	31
Review Questions	32

Chapter 2	
Principles of Criminal Liability	35

Section	
2.1 Introduction	37
2.2 Parties to the Crime	38
2.3 Criminal Act Requirements	46
2.4 Criminal Omission	49
2.5 Criminal State of Mind— <i>Mens Rea</i>	55
2.6 Causation	61
2.7 Concurrence—Criminal Act and State of Mind	64



2.8	Attendant Circumstances	65
2.9	Strict Liability	65
2.10	Vicarious Liability	67
2.11	Lesser Included Offenses	69
2.12	Summary	69
	Review Questions	71
 Chapter 3		
Capacity and Defenses		73
 Section		
3.1	Introduction	75
3.2	Infancy or Immaturity	75
3.3	Mental Impairment or Insanity	78
3.4	Duress or Compulsion	91
3.5	Necessity (Choice of Evils)	97
3.6	Self-Defense	101
3.7	Entrapment	108
3.8	Ignorance or Mistake	115
3.9	Alibi	118
3.10	Time Limitations (Statute of Limitations)	120
3.11	Other Defenses	122
3.12	Summary	124
	Review Questions	125
 Chapter 4		
Preparatory Activity Offenses		127
 Section		
4.1	Introduction	129
4.2	Attempt	129
4.3	Criminal Solicitation	140
4.4	Conspiracy	143
4.5	Summary	150
	Review Questions	151
 Chapter 5		
Offenses against Persons—Excluding Sex Offenses		153
 Section		
5.1	Introduction	155
5.2	Homicide	156
5.3	Murder	161
5.4	Voluntary Manslaughter	171
5.5	Involuntary Manslaughter	179
5.6	Suicide and Assisted Suicide	185
5.7	Assault and Battery	188

5.8	Kidnapping and Related Offenses	195
5.9	Hate Crimes (Bias Crimes)	203
5.10	Summary	207
	Review Questions	208
Chapter 6		
Offenses against Persons—Sex Related		211
Section		
6.1	Introduction	213
6.2	Rape	214
6.3	Sodomy and Related Crimes	229
6.4	Sexual Abuse and Child Molestation	232
6.5	Lewdness (Indecent Exposure)	238
6.6	Other Sex-Related Offenses against the Person	242
6.7	Summary	247
	Review Questions	249
Chapter 7		
Offenses against Property—Destruction and Intrusion Offenses		251
Section		
7.1	Introduction	253
7.2	Arson	253
7.3	Malicious Mischief (Criminal Mischief)	260
7.4	Trespass (Criminal Trespass)	265
7.5	Breaking and Entering	270
7.6	Burglary	271
7.7	Causing or Risking Catastrophe	279
7.8	Summary	281
	Review Questions	282
Chapter 8		
Offenses Involving Theft and Deception		283
Section		
8.1	Introduction	285
8.2	Larceny	286
8.3	Robbery	292
8.4	Embezzlement	301
8.5	Obtaining Property by False Pretenses	305
8.6	Extortion	310
8.7	Receiving Stolen Property	315
8.8	Other Crimes Involving Theft	319
8.9	Forgery and Related Offenses	324

8.10	False Advertising	334
8.11	Commercial Bribery	338
8.12	Miscellaneous Business Offenses	341
8.13	Summary	342
	Review Questions	345
 Chapter 9		
Offenses Involving Morality and Decency		347
 Section		
9.1	Introduction	349
9.2	Adultery and Fornication	349
9.3	Prostitution-Related Offenses	353
9.4	Offenses Related to Obscenity	360
9.5	Bigamy, Polygamy, and Incest	370
9.6	Other Offenses within the Family	380
9.7	Abortion	386
9.8	Summary	395
	Review Questions	396
 Chapter 10		
Offenses against Public Peace		399
 Section		
10.1	Introduction	401
10.2	Riot and Related Offenses	401
10.3	Disorderly Conduct	405
10.4	Vagrancy and Loitering	411
10.5	Drunkenness	416
10.6	Drug Laws	420
10.7	Wiretapping and Eavesdropping	432
10.8	State Counterterrorism Laws	437
10.9	Other Offenses against the Public Peace	440
10.10	Summary	446
	Review Questions	447
 Chapter 11		
Offenses against Justice Administration		449
 Section		
11.1	Introduction	451
11.2	Perjury and Related Offenses	451
11.3	Bribery and Related Offenses	456
11.4	Obstructing Justice	462
11.5	Escape	468
11.6	Resisting Arrest	473

11.7	Evading Arrest	477
11.8	Other Offenses against Justice Administration	478
11.9	Summary	482
	Review Questions	483

## Chapter 12

United States Criminal Code: Offenses against Persons and Property	485
--	-----

### Section

12.1	Introduction	487
12.2	Principles of Criminal Liability and Capacities and Defenses	490
12.3	Preparatory Activity Offenses	496
12.4	Offenses against Persons	503
12.5	Offenses against Property	513
12.6	Offenses of Theft and Deception	517
12.7	Summary	537
	Review Questions	538

## Chapter 13

United States Criminal Code: Other Offenses	539
---	-----

### Section

13.1	Introduction	541
13.2	Offenses against Morality	541
13.3	Offenses against Public Peace	552
13.4	Offenses Related to Terrorism	565
13.5	Offenses against Justice Administration	570
13.6	Regulatory Crimes	580
13.7	Summary	597
	Review Questions	598

## PART II

<b>Judicial Decisions</b>	<b>601</b>
---------------------------	------------

Part II: Table of Cases	603
Cases	605

## PART III

<b>Glossary and Table of Cases</b>	<b>769</b>
------------------------------------	------------

Glossary	771
Index of Cases	785
Index	809

# PART I



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# Defining Crime

1

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## Chapter Outline

### Section

- 1.1 Introduction
- 1.2 Definitions of Crime and Criminal Law
- 1.3 The Purpose of Criminal Law
- 1.4 Common Law Crimes
- 1.5 Statutory Crimes
- 1.6 Constitutional Challenges
- 1.7 Construction of Criminal Law Statutes
- 1.8 Classification of Crimes
- 1.9 Distinction between Crimes and Torts
- 1.10 Burden of Proof—Prosecution
- 1.11 Burden of Proof—Defendant
- 1.12 Summary

### Cases

Constitutional Challenge (Vagueness): *City of Chicago v. Morales*, 527 U.S. 41 (1999)

Constitutional Challenge (Second Amendment): *McDonald v. City of Chicago*, 561 U.S. \_\_ (2010)



## KEY TERMS AND CONCEPTS

burden of proof	<i>mala in se</i>
Bill of Rights	<i>mala prohibita</i>
common law	misdemeanor
crime	paternalistic laws
criminal law	police power
due process	procedural/substantive criminal law
ex post facto laws	social contract
felony	statutory law

## § 1.1 Introduction

Why are some acts defined as crimes and punished? Who has the power to define crime? In this first chapter, we discuss

- the definition of crime and criminal law,
- the purpose, objective, and sources of criminal law, and
- the limitations placed upon those who make and enforce such laws.

We will also discuss the approach taken in interpreting criminal laws and the **burden of proof** (the responsibility of the prosecution to prove the various elements of the crime charged).

## § 1.2 Definitions of Crime and Criminal Law

What is a “crime?” Blackstone, a famous English jurist, defined **crime** as “an act committed or omitted in violation of public law, either forbidding or commanding it.”<sup>1</sup> In a broad sense, the word “crime” includes every violation of law, including treason, felonies, and misdemeanors.<sup>2</sup> In its narrow sense, it does not include petty offenses that were triable without a jury at common law.<sup>3</sup> Among the many other definitions are these:

<sup>1</sup> 4 Blackstone, Commentaries 15.

<sup>2</sup> Schick v. United States, 195 U.S. 65, 24 S. Ct. 826, 49 L. Ed. 99 (1904).

<sup>3</sup> Callan v. Wilson, 127 U.S. 540, 8 S. Ct. 1301, 32 L. Ed. 223 (1888).