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PO Box 990  
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-0698-1

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

Kaplan, John, 1929-1989.

Criminal law : cases and materials / John Kaplan, Robert Weisberg, Guyora

Binder. — 7th ed.

p. cm. — (Aspen casebook series)

Includes index.

ISBN 978-1-4548-0698-1

1. Criminal law—United States—Cases. I. Weisberg, Robert, 1946-  
II. Binder, Guyora. III. Title.

KF9219.K35 2012

345.73—dc23

2012013012



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*In memory of John Kaplan, 1929–1989*

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## PREFACE

As is the tradition for this book, as it approaches its thirtieth year, *Criminal Law: Cases and Materials* aims to introduce students to the basic purposes, concepts, doctrines, and analytic techniques of the substantive criminal law. Our foundational premise is that the substantive criminal law is a statutory as well as a “common law” subject. While the substantive criminal law, like other basic law courses, introduces students to the art of common law reasoning, this book not only teaches lawyers-to-be to construe and apply express legislative rules of liability but also to understand the fundamental concepts that are just as often *presupposed* in criminal codes. We expose students to alternative statutory formulations of offenses and defenses, and enable students to become familiar with the influential Model Penal Code. This book emphasizes the crucial skills of element analysis, and illuminates the considerations of social policy and moral principle that inform the interpretation, application, and evaluation of criminal statutes.

Of course, this book participates in the classic pedagogic tradition of relying on appellate decisions in actual cases to explicate the doctrines and policy dilemmas of the criminal law. The book’s introduction explains just how these cases arise, what kinds of substantive criminal law issues come up on appeal, what sources of law appellate courts bring to bear on these issues, and what methods of reasoning and argument the courts use to resolve them. We continue to include some of the most venerable of the illustrative cases, but we also have added very recent cases that capture newer developments in this constantly changing field of law.

Since its inception, however, this book has always been more than a collection of cases. It continues to interweave judicial opinions with statutory material, sociological accounts of crime, historical accounts of the development of the criminal law, and philosophical arguments about criminal justice. Thus, we continue our commitment to place the substantive criminal law in a realistic social setting in which inequality—whether based on race, gender, or poverty—plays an undeniable role.

But our commitment is also to pedagogical clarity, so we include throughout the book introductory and transitional material that provides straightforward explanations of the alternative rules applied in each doctrinal area. The notes that follow principal cases are organized and labeled by legal issue so that students’ thinking can be focused on the most pressing questions

raised by the cases. And at key points in the text, we interweave problems and exercises to help students master the analytic skills emphasized throughout the book.

Chapter 1, on the purposes and limits of punishment, continues to focus on the policy controversy over historically high incarceration rates, along with the causes and implications of fluctuating crime rates. It includes a newly unified treatment of Eighth Amendment proportionality, occasioned by the important new Supreme Court case of *Graham v. Florida*. Because this case draws together the Supreme Court's previously distinct analyses of prison sentences and death sentences, we have moved our discussion of proportionality limits on death sentences from Chapter 7 to Chapter 1. We have added material not only on *Graham* but also on the recent death penalty case of *Kennedy v. Louisiana*.

Chapter 2, "The Criminal Act," continues its coverage of voluntary acts, possession, harm, omissions, status crimes, prospectivity, legality, and specificity. The section on omissions now offers the child-neglect-manslaughter case of *Jones v. United States* as a principal case, and also adds the Oregon case of *State v. Baker-Krofft* as a new note case on punishing harmless omissions. We have expanded the treatment of possession with a principal case on possession of computer files, *State v. Barger*, and also added a note case on constructive possession, the Oregon case of *State v. Casey*. Finally, the section on legality has been reorganized for greater clarity.

Chapter 3, "The Guilty Mind," continues to explore the question of whether and when criminal liability depends on culpability. It distinguishes different culpable mental states and trains students to construct the mental elements of statutory offenses. Finally, it examines the special problems of mistake of law and capacity for *mens rea*. We have added the striking new case of *Shelton v. Secretary, Department of Corrections*, on Florida's controversial strict liability drug laws.

Chapter 4, on causation, continues to pose the problem of why and how we assign causal responsibility for harmful results. It also analyzes the doctrinal structure of causation by exploring the nuances of causation-in-fact, proximate causation, direct causation, and causation by omission.

Chapter 5, "Intentional Homicide," continues to illustrate the concepts of intent and premeditation. It explores the moral dilemmas posed by the problem of whether and how emotional distress can mitigate murder liability in a society riven by controversies over cultural diversity and gender inequality.

Chapter 6, "Unintentional Homicide," distinguishes involuntary manslaughter, extreme indifference murder, and felony murder. It adds the Utah case of *State v. Killpack* on homicide in the course of child abuse. The section on felony murder is informed by research on the historical and normative underpinnings of felony murder liability, reported in Guyora Binder's new book *Felony Murder* (2012).

The newly streamlined Chapter 7, on capital murder, now narrows its focus to the operation of capital murder statutes as sentencing schemes requiring a structured assessment of aggravating and mitigating factors.

Chapter 8, on necessary force, lesser evils, and duress, adds the new note case of *State v. Harvill*, on duress by a police provocateur.

Chapter 9, on insanity, continues its enhanced focus on the newer cognitive tests. It adds new material on post-traumatic stress disorder claims arising from wars in Iraq and Afghanistan.

Chapter 10, "Attempt," adds the new California case of *People v. Stone* on transferred intent in attempt cases.

Chapter 11, "Complicity," continues its approach of separately examining the *actus reus* and *mens rea* of complicity. It adds the note cases of *State v. Bowman* and *Commonwealth v. Harris* on the culpability required for complicity in crimes of strict liability. This chapter includes a brief treatment of the criminal liability of corporations.

Chapter 12, "Conspiracy," includes the new case of *United States v. Rigas*, on the scope of conspiracy.

Chapter 13, "Rape," continues to take account of law reform efforts and scholarly research in this rapidly changing field of law; it also continues to offer a comparison and precise element analysis of the broad range of alternative definitions of sexual assault offenses.

Chapter 14, "Theft Offenses," continues to include lively case law on theft-based white collar crimes, including mail fraud and bribery. It adds the important new case arising from the prosecution of Jeffrey Skilling for honest services fraud. In addition, it adds three new note cases on robbery, *Spencer v. State*, *United States v. Gordon*, *People v. Grant*; and the important New Hampshire case of *State v. Macmillan* on burglary.

Chapter 15, "Perjury, False Statements, and Obstruction of Justice," continues to focus on federal criminal law. In recent decades, federal prosecutors have increasingly and controversially used their investigatory powers to incriminate suspects in these collateral crimes. This practice poses some of the same fundamental questions about law enforcement discretion raised by the vagrancy, possession, attempt, and conspiracy offenses explored in earlier chapters. We have added the new false statements case of *United States v. Moore*.

The point at which government takes a person's life or liberty and justifies it by denouncing that person's actions, purposes, and character is the law's most powerful manifestation. The criminal law therefore poses the most important challenge to our responsibility as citizens to understand, to evaluate, and to improve the law that is enforced in our name. We hope this new book helps our students meet that challenge.

*Guyora Binder*  
*Robert Weisberg*

May 2012



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## ACKNOWLEDGMENTS

For their excellent research assistance, we thank Michael Court, Daniel Corbett, Samuel Dolinger, Mark Myott, Charles Proctor, and Michael Stewart.

The editors also would like to acknowledge the permission of the authors, publishers, and copyright holders of the following publications for permission to reproduce excerpts herein:

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Some citations have been edited from cases for the sake of smoother reading. Footnotes in cases and other quoted materials have generally been eliminated without indication. Those that were not edited, however, have been renumbered to run consecutively with the editors' footnotes. References to the Model Penal Code, unless otherwise indicated, are to American Law Institute, Model Penal Code and Commentaries (1985).

# CRIMINAL LAW

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