



Third Edition

THE GLANNON GUIDE TO CRIMINAL LAW

Learning Criminal Law Through
Multiple-Choice Questions and Analysis

Laurie L. Levenson



Wolters Kluwer
Law & Business



30807826

The Glannon Guide to Criminal Law

Learning Criminal Law
Through Multiple-Choice
Questions and Analysis

Third Edition

Laurie L. Levenson

Professor of Law

David W. Burcham Chair in Ethical Advocacy

Loyola Law School



Wolters Kluwer

Law & Business

Copyright © 2012 CCH Incorporated.
Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with
CCH, Aspen Publishers, and Kluwer Law International products.
(www.wolterskluwerlb.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.wolterskluwerlb.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,
call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer Law & Business
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 978-1-4548-0834-3

Library of Congress Cataloging-in-Publication Data

Levenson, Laurie L., 1956-

The Glannon guide to criminal law : learning criminal law through multiple-choice questions and
analysis / Laurie L. Levenson. — 3rd ed.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-4548-0834-3 (alk. paper)

1. Criminal law — United States — Examinations, questions, etc. I. Title.

KF9219.85.L477 2012

345.730076—dc23

2011049548



30807826

The Glannon Guide to Criminal Law

EDITORIAL ADVISORS

Vicki Been

Elihu Root Professor of Law
New York University School of Law

Erwin Chemerinsky

Dean and Distinguished Professor of 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
Hofstra University School of Law

Robert H. Sitkoff

John L. Gray Professor of Law
Harvard Law School

David Alan Sklansky

Professor of Law
University of California at Berkeley School of Law

Kent D. Syverud

Dean and Ethan A. H. Shepley University Professor
Washington University School of Law

Elizabeth Warren

Leo Gottlieb Professor of Law
Harvard Law School

About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading global provider of intelligent information and digital solutions for legal and business professionals in key specialty areas, and respected educational resources for professors and law students. Wolters Kluwer Law & Business connects legal and business professionals as well as those in the education market with timely, specialized authoritative content and information-enabled solutions to support success through productivity, accuracy and mobility.

Serving customers worldwide, Wolters Kluwer Law & Business products include those under the Aspen Publishers, CCH, Kluwer Law International, Loislaw, Best Case, ftwilliam.com and MediRegs family of products.

CCH products have been a trusted resource since 1913, and are highly regarded resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

Aspen Publishers products provide essential information to attorneys, business professionals and law students. Written by preeminent authorities, the product line offers analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

Kluwer Law International products provide the global business community with reliable international legal information in English. Legal practitioners, corporate counsel and business executives around the world rely on Kluwer Law journals, looseleaves, books, and electronic products for comprehensive information in many areas of international legal practice.

Loislaw is a comprehensive online legal research product providing legal content to law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

Best Case Solutions is the leading bankruptcy software product to the bankruptcy industry. It provides software and workflow tools to flawlessly streamline petition preparation and the electronic filing process, while timely incorporating ever-changing court requirements.

ftwilliam.com offers employee benefits professionals the highest quality plan documents (retirement, welfare and non-qualified) and government forms (5500/PBGC, 1099 and IRS) software at highly competitive prices.

MediRegs products provide integrated health care compliance content and software solutions for professionals in healthcare, higher education and life sciences, including professionals in accounting, law and consulting.

Wolters Kluwer Law & Business, a division of Wolters Kluwer, is headquartered in New York. Wolters Kluwer is a market-leading global information services company focused on professionals.

I dedicate this book to my children, Solly, Havi, and Daniela, and to my infinitely patient husband, Douglas Mirell.

Acknowledgments

I am extremely grateful to my research assistants, Shira Moses and Amanda Sherman, for their assistance in reviewing chapters of this manuscript. I greatly appreciate all of the administrative assistance of Byllie Richardson, as well as the ongoing support of the William M. Rains Foundation. Without their backing, this project would not have been possible.

I also owe a special debt of gratitude to the many reviewers of this book and to my many colleagues who have given me input, particularly Professors Samuel Pillsbury, Gerald Uelmen, and David Crump. Their suggestions and insights have been invaluable.

Finally, many thanks to all of the wonderful people at Aspen Publishers, particularly its publisher, Carol McGeehan, and editors Lynn Churchill, Christine Hannan, and Dana Wilson. As always, you set the standard for professionalism.

The Glannon Guide to Criminal Law

Contents

<i>Acknowledgments</i>	<i>xi</i>
1. A Very Short Introduction	1
2. Nature of Criminal Law	3
3. Elements of a Crime	17
4. Strict Liability Crimes	41
5. Mistake of Fact	51
6. Mistake of Law	71
7. Causation	91
8. Homicide—An Overview	117
9. Homicide—Murder	131
10. Manslaughter	157
11. Felony Murder and Misdemeanor Manslaughter (Unlawful Act Doctrine)	179
12. Attempt	203
13. Solicitation and Other Inchoate Offenses	233
14. Accomplice Liability	251
15. Conspiracy	279
16. Introduction to Defenses, Self-defense, and Defense of Another	309
17. Defense of Property, Law Enforcement Defenses, and Necessity	337
18. Duress	359

19. Insanity	375
20. Intoxication, Infancy, and Entrapment	397
21. Rape.....	413
22. Theft Crimes	429
23. Other Crimes Against Person and Property.....	445
24. Sentencing and the Death Penalty.....	457
25. Closing Closers	469
<i>Index</i>	501

A Very Short Introduction



*There are few better measures of the concern a society has
for its individual members and its own well being than the way
it handles criminals.*



Criminal law is one of the most important classes you will take in law school. For some students, it is important because they want to become prosecutors, defense lawyers, or judges. However, a course in criminal law is also important for those students who see their futures in civil practice. Especially in today's society, it is not unusual for clients from all walks of life to have problems that implicate the criminal justice system. For example, a simple business transaction may trigger questions regarding fraud, or a family law case can raise issues regarding criminal abuse. In the final analysis, criminal law is important because it teaches you how to read statutes, interpret them in light of hundreds of years of common law, and argue their application in light of today's policy concerns.

This book provides a short, clear, efficient review of basic topics in criminal law, organized around the format of multiple-choice questions. In each chapter, the individual sections explain fundamental principles of a topic—such as mens rea, homicide, or defenses—and illustrate them with a series of multiple-choice questions. After each question, I explain which answer is correct, and why the wrong answers are incorrect. These short explanations allow me to discuss the black-letter rules in the context of the questions. Hopefully, this format will engage you in the study process, so you'll develop a stronger understanding of the basics of criminal law. This process will also help you at the time of your criminal law exam, regardless of whether your professor relies on multiple-choice or essay questions.

When working with this book, keep in mind that the individual criminal laws of jurisdictions may differ. However, in a basic law school course on criminal law, your professor's focus is on the general concepts of the law and how they operate. Therefore, the goal of this book is to assist you in learning these principles and knowing how to apply them in analyzing a fact pattern. In that regard, multiple-choice questions are not that different from essay questions. Both of these types of questions require you to understand a fact pattern and to analyze it using correct legal principles.

I have tried to make my multiple-choice questions as fair as possible in that they have only one correct answer. However, ambiguities inevitably arise. Therefore, it is important that you learn to analyze questions for the "best possible answer." Your professor's exam is sure to have ambiguities as well. The more comfortable you feel with analyzing multiple-choice questions, the better you will do even if there are ambiguities on the exam.

This book is designed to follow the order of topics ordinarily covered by criminal law professors. Of course, your professor may choose a different path. If he or she does, feel free to review the chapters in a different order than they are presented. Each chapter is self-sufficient. You should be able to understand the concepts of that chapter and integrate them to your overall understanding of the course.

In using this book, you have a choice. You can either read the introductory material and then attempt the multiple-choice questions, or you may try your hand at the multiple-choice questions (the answers are listed at the back of the chapter under **Levenson's Picks**) and then use the introductory material, in conjunction with the explanations after the questions, to learn the material. Either way, the questions will keep you honest by helping you focus on what you do and do not understand about the criminal law topic being discussed.

I welcome your comments on how this book worked for you. I hope it will be the one learning aid that helps you both master the material and learn how to take an exam so that you can display your mastery. Please let me know your thoughts. I can be reached at Laurie.Levenson@lls.edu.

2

Nature of Criminal Law



Without shared ideas on politics, morals, and ethics, no society can exist . . .
—from Lord Patrick Devlin, *The Enforcement of Morals*



CHAPTER OVERVIEW

- A. Criminal law versus tort law
 - B. Criminal law versus criminal procedure
 - C. Common law and statutory law
 - D. Purposes of punishment
 - E. Legality and overcriminalizing
 - F. The Closer: Proportionality and purposes of punishment
-  Levenson's Picks

Criminal law is the study of offenses against society. A defendant who is convicted of a crime must make amends to society, as well as to his individual victim. Criminal laws are frequently designed to enforce the moral standards of society. While American criminal law is now governed primarily by statutory law, English common law forms the basis of much of our statutory law. The operation of criminal law, under either statutes or common law, is tied to its theoretical underpinnings—why do we punish?

A. Criminal law versus tort law

In law school, you will study both tort law and criminal law. At first glance, the topics may seem very similar. Both address what happens when a person harms

another person. Both use similar terms, such as “recklessness,” to describe the defendant’s mental state when the harmful action is taken. However, there are key differences between criminal law and tort law. It is important to keep these differences in mind when studying criminal law.

First, a crime is an offense against the entire community, not just the victim who is directly hurt by the defendant’s actions. For example, if a defendant hits a victim, the victim may sue the defendant for the tort of battery. However, the state or other governmental authority may also charge the defendant with the crime of assault because the defendant has violated society’s code of conduct. Society, as well as the individual victim, has an interest in ensuring that the defendant is punished for his actions.

Second, if the defendant is found liable, the consequences of committing a tort are ordinarily that the defendant must compensate the victim for his injuries or loss by paying damages. However, in criminal prosecutions, the consequences are often more severe than monetary payments. The standard punishment for violating a criminal law is incarceration. A criminal defendant may also be ordered to pay a fine or restitution to the victim.

Third, violations of the criminal laws carry a stigma not ordinarily shared by being labeled a “tortfeasor.” A criminal is marked as an individual who has violated the laws of society and should be morally condemned by others in the community.

The additional consequences of being convicted of a crime create differences in the meaning of terms that may also be used in your tort class. For example, criminal negligence is different from the negligence required for torts. Criminal negligence requires more than mere carelessness—it requires the type of carelessness for which society is willing to label the defendant a “criminal.”

Finally, the labels affixed to someone who has been held responsible for harm are different under the criminal and tort systems. Under tort law, a defendant who has been found responsible for harm is “liable” for damages. Under criminal law, a guilty defendant is “culpable” for the crime.

In analyzing the question that follows, consider these differences between criminal and tort law in deciding which answer describes the defendant’s culpability.

QUESTION 1. Don’t drink and drive. Eric was thrilled that he had just finished his first law school examination. He went out and celebrated with his friends. After several beers, Eric headed home to tell his parents the good news. Unfortunately, he hit Lynn’s car on his drive home and totaled it. Eric’s actions may make him

- A. culpable of the tort of destroying Lynn’s car, but not guilty of a crime because Lynn was not hurt.

- B. liable for destroying Lynn's car, but not guilty of a crime because Lynn was not hurt.
- C. subject to imprisonment for the tort of destroying Lynn's car.
- D. liable for damages for destroying Lynn's car and subject to imprisonment for the crime of drunk driving.

ANALYSIS. Don't be fooled by A. Although Eric may certainly be responsible for destroying Lynn's car, his tort responsibility would make him "liable" for damages. Moreover, if the criminal law prohibited drunk driving, it would not matter that Lynn was not hurt. Eric would also be culpable of the crime of drunk driving.

How about B? B sounds appealing because it used the right term, *liable*, to describe Eric's responsibility in tort for destroying Lynn's car. However, it is still wrong because it does not take into account that Eric's single act may cause both a civil and criminal cause of action.

C is just plain wrong because torts do not subject a defendant to imprisonment, no matter how bad they may be. At worst, and as discussed in more detail in your torts class, an intentional tort may subject the defendant to punitive damages. However, imprisonment is a punishment reserved for the criminal justice system.

D takes the prize. It accurately reflects that one harmful act may subject a defendant to both a tort lawsuit, and prosecution and punishment for a criminal offense.

B. Criminal law versus criminal procedure

The study of criminal law focuses on the substantive law that defines what crimes are and what defenses there are to those crimes. Criminal procedure is a separate area of the law that examines the procedures by which a criminal case goes through the criminal justice system. Police investigative techniques and the handling of cases in the courtroom ordinarily are explored in a separate criminal procedure course. However, a basic understanding of the criminal justice system is important to comprehending criminal law.

There are many key participants in the criminal justice system. The police investigate cases. In doing so, they have considerable discretion in deciding whom to apprehend. Prosecutors decide which defendants they will charge and what charges they will bring against them. Prosecutors may seek formal charges either through the grand jury process or by filing a complaint. If the grand jury issues charges, the formal filing is called an indictment. If prosecutors file a complaint, a preliminary hearing is ordinarily held to determine if there is sufficient evidence (known as probable cause) to require the defendant to stand trial.

Most criminal cases are resolved by plea bargains. However, if a case proceeds to trial, the defendant is entitled to have a jury decide his guilt. In most states, a unanimous jury verdict is required. However, the U.S. Constitution only requires that a substantial majority of the jurors support the verdict. *Apodaca v. Oregon*, 406 U.S. 404 (1972). With the consent of the prosecution, the defendant may waive a jury trial and have the court decide the case.

In a criminal case, the burden of proof is on the prosecution to prove each element of a crime, including intent, beyond a reasonable doubt. *Patterson v. New York*, 432 U.S. 197 (1997). “[T]he presumption of innocence—that bedrock ‘axiomatic and elementary’ principle whose ‘enforcement lies at the foundation of our criminal law’—the Due Process Clause of the United States Constitution requires the prosecutor to persuade the factfinder beyond a reasonable doubt of every fact necessary to constitute the crime charged.” *In re Winship*, 397 U.S. 353 (1970). However, the burden of proof to prove an affirmative defense may be placed on the defendant without violating due process. *Leland v. Oregon*, 343 U.S. 790 (1952). As discussed in Chapters 16 to 20, typical affirmative defenses are insanity, self-defense, duress, necessity, intoxication, and entrapment.

Jurors have the inherent power to disregard the law and render a verdict contrary to it. This is referred to as *jury nullification*. Although jurors have this power, defendants are not entitled in most jurisdictions to a jury instruction advising jurors of their power to nullify. *United States v. Dougherty*, 473 F.2d 1113 (D.C. Cir. 1972).

If a jury returns a guilty verdict, the trial court has the power to overturn that verdict and enter an acquittal based upon insufficiency of the evidence. The trial court may also grant a new trial based upon procedural or evidentiary errors at trial. The most common errors relate to incorrect jury instructions. Jury instructions are the means by which the court advises the jurors of the requirements of the law related to the criminal charges in the case. They are, in essence, the “black-letter” criminal law.

The defendant may also appeal a guilty verdict. The appellate court reviews a case for legal errors. It does not have the power to reassess a witness’s credibility. In determining whether there was sufficient evidence to convict the defendant, the appellate court must construe all inferences and make all credibility findings in favor of the government. It is only when no rational jury could have found the defendant guilty on the evidence presented that the appellate court may vacate or overturn a jury’s verdict. *Jackson v. Virginia*, 443 U.S. 307 (1979).

The appellate court also reviews the trial to determine if the jury was properly instructed on the applicable law. If the jury was incorrectly instructed, the defendant is entitled to a new trial with proper instructions. For example, if the jury is given the wrong elements for a crime or incorrectly instructed that the defendant must prove he didn’t intend to commit an offense, the defendant’s conviction is likely to be reversed. Likewise, if the court has incorrectly