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CRIMINAL LAW
Case Studies and Controversies

*Third
Edition*



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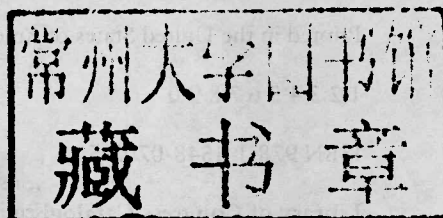
ASPEN CASEBOOK SERIES

CRIMINAL LAW

Case Studies & Controversies

Third Edition

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To Sarah, Sam, Mandy, Mac, Harry, and Atticus

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Preface

Criminal law is different from your other first year courses in several ways, and *Criminal Law: Case Studies & Controversies, Third Edition* is correspondingly different from typical law school coursebooks.

The most obvious special feature of criminal law is its form. The “legality principle,” as it is called, which prefers prior written liability rules, applies primarily to criminal rather than civil law for reasons discussed in Section 2. Since the 1960s, two-thirds of the states have adopted comprehensive modern criminal codes. To the extent that court opinions continue to play a role in criminal law, it is most often to interpret ambiguous provisions of codes rather than to make or alter the liability rules as earlier courts commonly did. For these reasons, criminal law typically is the course by which statutory reading and interpretation are taught in the first year of law school.

A second unique feature of criminal law arises from the fact that even laypersons have deeply felt intuitions of justice. A criminal law that seeks to influence conduct must at least take account of these feelings when setting its rules and planning its influence. To ensure that the course addresses this aspect of criminal law, the coursebook includes a series of case studies, each of which gives not only the abstract details that judges and lawyers might find important but also tells the full story of the case leading up to the offense in a way that is likely to trigger people’s intuitions of justice.

A final feature of modern criminal law is its tendency toward conceptual cohesiveness and theoretical consistency. Modern American criminal codes are typically built on several interacting base principles. Understanding those underlying principles and how they are expressed through criminal law doctrine is necessary for effective lawyering in criminal law more than in many other areas of law. Accordingly, the coursebook examines not only the doctrinal rules and their major variations but also the underlying principles that drive them.

Section Template. The sections of the coursebook commonly follow a template of sorts:

Principal Case. The coursebook gives two or three pages of factual detail about the people and events leading up to the offense. (A “liability scale” at the conclusion of each case asks you to provide your own intuitive judgement about what punishment, if any, the offender deserves. The scale is aimed at putting your own analytic wheels in motion.)

The Law. The relevant statutes as they existed in the jurisdiction at the time of the offense are then presented. Where the criminal code is incomplete, as is often the case in non-modern code jurisdictions, the statutes are supplemented with one-paragraph summaries of the controlling cases that provide the legal rule

missing from the statutes. Criminal law is constitutionally within the power of the states rather than the federal government. There are 52 American criminal codes. The coursebook's Principal Cases are drawn from a wide number of jurisdictions, including Alaska, Arizona, California, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New York, Tennessee, Texas, Washington, Wisconsin, Wyoming, and the federal system, as well as Israel. By the end of the course you will have a familiarity with the standard American criminal law rule as well as its major variations.

Overview Notes. Following the Principal Case and its relevant law is a treatise-like presentation of the law in that subject area, and its underlying theory. These Notes are meant to present the basics as efficiently as possible.¹ They put the Principal Case's legal rules into the larger legal picture. The Notes often will begin with a Hypothetical that will then be analyzed throughout the following text. It is worth mastering, not just reading, the Notes, for they will be central in your studying for the course.

Core Case Opinion. The treatise-like Notes commonly are a more efficient means of conveying information than reading a collection of cases, typical in other coursebooks, but cases remain important even in criminal law. And case reading remains an important lawyering skill. Each Section contains a Core Case Opinion that has special historical, theoretical, or doctrinal significance in the subject area.

Problem Cases. Following the Overview Notes and Core Case Opinion are a series of Problem Cases by which you can check your comprehension of the Overview material and that your instructor may use as a vehicle to raise additional issues. If you develop confidence in your liability analysis of all the Principal, Hypothetical, and Problem cases, you will have mastered the central elements of the course. These cases are numbered consecutively throughout the coursebook to make it easy for you to keep track of them.

Discussion Issue. Each Section ends with a Discussion Issue, usually the most important controversy in the topic area. Excerpts from the legal literature discussing each side of the issue appear in Appendix A.

Appendix A: Discussion Materials & Advanced Issues—In addition to the Discussion Issue Materials, Appendix A contains materials, such as Notes and Problem Cases, on a variety of advanced issues that your instructor may wish to cover.

Appendix B: Model Penal Code—This appendix reproduces Parts I and II of the Model Penal Code, which serves as the foundation for the majority of American criminal codes and therefore is a useful point of comparison to the statutes appearing after each Principal Case. Have a great time with these materials! Criminal law is a wonderful and special subject that has the potential to tell us much about law, our society, and ourselves.

Paul H. Robinson

December 2011

1. The paragraph headings in the Notes Section signal the paragraph's importance in relation to other paragraphs. In descending order of superiority the heading formats are: **HEADING**, **Heading**, *Heading*, *Heading*.

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* N.B. — The facts recounted in the principle case stories are true as best as we can determine from our research of court documents, newspaper articles, personal interviews, and other available sources. In places, we have added what we think are reasonable speculations about a person's motivation or state of mind as it appears from the person's conduct and circumstances.

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