

Text and Materials

Clarkson and Keating: Criminal Law

Eighth Edition

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CLARKSON AND KEATING CRIMINAL LAW: TEXT AND MATERIALS

EIGHTH EDITION

By

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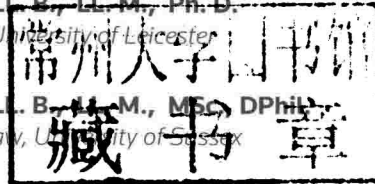
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PREFACE

The aim of this book is to examine the main principles and rules of the criminal law and to expose the theoretical bases upon which they are founded.

The criminal law is the backdrop to the operation of the whole criminal justice system. It informs the way in which victims, the public, the police and other law enforcement agencies, the CPS and judges and other court personnel react and operate. It is, therefore, inextricably linked to issues of criminal procedure, criminology, moral philosophy and penology. Fletcher has stated that “the criminal law should express the way we live”. It is a reflection of community values aimed at isolating the blameworthy who are deserving of punishment. Equally, it is a means of social control; it attempts to uphold, as well as reflect, these community values; it sets a standard, albeit at times a minimal one, of necessary compliance. In short, it is a set of moral commandments that are backed up by the legal threat of punishment. It thus follows that whether sanctions are imposed on the basis of desert or on utilitarian grounds, the rules of the criminal law and the punishment of offenders are the two sides of the same coin. A whole range of substantive issues—such as, whether “recklessness” should include “inadvertence”, whether one can justify the existence of offences of “strict liability”, how the boundaries of the law of “attempt” and “accessorial” crime should be drawn, and so on—are, in reality, issues relating to the justification of punishment in such cases. A true appreciation of the substantive criminal law must thus involve some understanding of the rationale of punishment and why conduct is criminalised—and it is in this context that we have sought to present the main rules of the law.

Like many other works in this field, this is a book on the actual rules of the criminal law. We have attempted to provide a full analysis of these main rules on the topics covered. But, in doing this, we have attempted the more ambitious task of using the law to extract, and develop, some fundamental ideas underlying the law. We have explored, in the context of punishment, such issues as: the relationship between blame and harm, the criteria for identifying the blameworthy, the structure of offences in relation to each other and whether such structure fairly represents the differing wrongdoing involved, and the role of the general defences. In short, we have attempted to subject the criminal law to the beginnings of a philosophical analysis that can throw some light on the substantive rules.

The criminal law changes with great rapidity and, therefore, substantial updating has taken place for the 8th edition. In particular, the changes to the law on self-defence brought about by the Crime and Courts Act 2013, the impact of decisions such as *Hughes* on causation, *Gnango* on participation and transferred malice, *Sadique* and *Pace* on inchoate offences, *R. v B*, *McNally* and *Assange* on consent and *Clinton* on loss of control are considered. It has also been possible to add a new section on restorative justice to Ch.1 and hate crime to Ch.7. Coverage is also given to new reform proposals such as the Law Commission Papers on Fitness to Plead and Insanity and Automatism, and to scholarly commentary published since the 7th edition on the full range of substantive issues.

We have been anxious to ensure that this book is accessible to, and easily digestible by, undergraduate and other students concerned with criminal law. We have approached our task, and

included appropriate materials, with this concern very much in mind. We have tried to cover the range of competing views and present them in a discursive manner allowing the reader to make choices—while not being afraid to state our own preferences.

By now the format of this book should be familiar. It is neither a straight “textbook”, nor a “cases and materials” book. Instead, we have tried to combine what we regard as the best features of both such styles—a book with the flow and coherence of a textbook thus providing the reader with guidance and direction, but one that also enables a substantial amount of original material from a diversity of sources to be absorbed.

We are very grateful to our publishers for their help and patience during the preparation of this book.

This is the first edition of the book written without one of the two original authors, Chris Clarkson. It has been a novel experience but we very much hope that his trust in us to carry the book forward is proved justified with this edition. This is also the last edition of this book with which Heather Keating will be involved. She leaves the book in Sally’s most capable hands and is delighted that two new authors have joined for this edition, each bringing new expertise to the book. As ever, Heather Keating would like to express her thanks to her children for the support they have shown during the writing of this book. She dedicates her share of the book to them and also to her co-author, Chris, without whom this book would not have been written.

Sally Kyd Cunningham would like to thank her son for tolerating her preoccupation with work, her parents for their support, her co-authors for their good-natured co-operation, and Dr Steven Cammiss for his helpful suggestions. It has been a privilege and a pleasure to work with Heather on three editions of the book, and Sally is very proud to take forward, with the assistance of Tracey and Mark, the established name of Clarkson and Keating. Her share of this edition is dedicated to her former colleague and mentor, and continuing leisure-time-rich friend, Chris Clarkson.

Tracey Elliott would like to thank Chris Clarkson, Heather Keating and Sally Kyd Cunningham for inviting her to join the Clarkson and Keating writing team, her co-authors for their helpful comments, and Professor Janet Ulph for her willingness to look at, and comment upon, drafts relating to some of the knottier aspects of property law. It has been a real pleasure to work on this edition of the book. On a personal note, she would like to thank her parents for their support, and her daughters for tolerating the general decline in household tidiness whilst she has been working on this edition. Her share of this edition is dedicated to her former colleague, Chris Clarkson, whose presence in the School of Law at Leicester is much missed.

Mark Austin Walters would also like to thank Heather and Sally for asking him to join the authorship of Clarkson and Keating; a book that he has fond memories of using over ten years ago when completing his LL.B. In particular, he would like to personally express gratitude to Heather for her generous support and advice during the drafting of parts of this new edition. Mark would also like to thank his husband for putting up with his late night writing habits and to his parents for their continuous encouragement and support.

This book has been written with reference to the law as it stood on April 1, 2014, although it has been possible to incorporate some subsequent changes to the law.

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