



# Criminal Law

Joel Samaha

third edition

# *Criminal Law*

---

Third Edition

*Joel Samaha*

University of Minnesota

WEST PUBLISHING CO.

St. Paul • New York • Los Angeles • San Francisco

Copyeditor: Cheryl Drivdahl  
Composition: Carlisle Communications  
Cover Art: Stephen Flanagan, "Law & Order", (detail), acrylic on canvas,  
66" × 72", 1987, courtesy of Littlejohn-Smith Gallery,  
New York.

COPYRIGHT ©1983, 1987, 1990 By WEST PUBLISHING COMPANY  
50 W. Kellogg Boulevard  
P.O. Box 64526  
St. Paul, MN 55164-1003

All rights reserved

Printed in the United States of America

97 96 95 94 93 92 91 90                      8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Samaha, Joel.

Criminal law / Joel Samaha. — 3rd ed.

p.      cm.

Includes index.

ISBN 0-314-56394-6

1. Criminal law—United States—Cases.      I. Title.

KF9218.S26      1990

345.73—dc20

[347.305]



89-33626  
CIP

# *Criminal Law*

---

Third Edition

***For Adam and Lucas***

---

# Preface

---

Twenty years ago, when I started teaching criminal law to undergraduate liberal arts students, criminal justice professionals, and law students, I decided to take the broad approach to the topic. That approach I adopted in the first two editions to *Criminal Law*. The success of both editions has convinced me to continue that approach. Writing the third edition provided me the opportunity to incorporate new scholarship, new cases, and suggestions both from undergraduate, graduate, and law students at the University of Minnesota and from instructors around the country who have used the second edition of *Criminal Law*. Despite changes, the third edition retains all that I consider central to teaching criminal law.

Criminal law examines the ordinary phenomena of life in extraordinary circumstances. The basic principles of criminal liability—the physical and mental elements in crime, the relationship between them, and when appropriate the harmful result—all look at the most basic activities and relationships in human society: bodily movements, mental activity, cause and effect. Similarly, the doctrines of criminal law bring into bold relief incomplete action, teamwork, justification, and excuse. Ordinary activities and relationships under ordinary circumstances go largely, if not totally, unnoticed. Who pays attention to a moving arm, the intention to move it, the relationship between the moving arm and the intent that prompted it? Who pays attention to the consequences of such action? Or to the reasons why the actor moved the arm?

Under ordinary circumstances, no one wonders about the answers to these questions, no one even asks them. When an arm hurts, however, its movement—at least to its possessor—takes on great significance. The person whose arm hurts will contemplate before moving, will wonder whether the results of moving it justify or excuse doing so. So, too, in criminal law, when a moving arm strikes a blow at another person, the movement and all that surrounds it take on moral and legal significance. The blow, the mental state associated with it, and the harm it caused, as well as the possible justification or excuse for moving the arm that struck the blow, determine whether the person was “wrong” in the moral sense, or committed a crime, or both. The principles of *actus reus*, *mens rea*, concurrence, and causation, as well as the defenses of justification and excuse, address ordinary phenomena and relationships when they constitute violations of the criminal law.

Teamwork, another feature of organized society, can work for good or bad. Individuals in groups can accomplish what alone they may never even attempt, or what alone they can never accomplish to the same degree. Society encourages and rewards teamwork for individual and social good. The criminal law deals with teamwork for criminal purposes. Crimes that individuals never attempt alone they not only embark upon but often make worse when they join with or prod others. The law of accomplices and vicarious liability deals with teamwork in crime.

This third edition of *Criminal Law* retains what I consider central to the subject of criminal law. It stresses general principles and doctrines, not rules applicable to a single jurisdiction. Criminal law's diversity according to place and its changes over time require students to concentrate on basic principles that apply widely over space and time. This book also invites students to participate actively in learning rather than to absorb information passively. It emphasizes that reasonable minds can interpret and apply the general principles and doctrines of criminal law differently. Hence, the text not only explains the principles and doctrines but also presents various formulations and applications among the jurisdictions. This approach demonstrates to students that criminal law offers no single "right" or "wrong" application of principles and doctrines, no uniform interpretation of rules.

Cases highlight and illustrate the general principles and doctrines in real-life situations. They demonstrate how courts arrive at different decisions, according to how they interpret and apply the principles and doctrines to particular facts. By seeing criminal law in action, students can think about, formulate, and apply the principles themselves. I require students to act both as legislators and as judges, first formulating their own statutes and then applying them to cases. In my criminal law class discussions and examinations, students must demonstrate that they understand the principles and doctrines by writing rules, explaining how the rules accord with the principles and doctrines, and then applying the rules to real or hypothetical cases. Stressing the general principles and doctrines variously formulated and applied remains fundamental in this text.

Changes in *Criminal Law* enhance this approach. The third edition reflects new developments that call for **reinterpreting and applying the general principles and doctrines of criminal law**. In the second edition, I took into account the importance of family violence and corporate crime in elaborating the subject of criminal law. In the third edition, I have added text and cases that demonstrate how legislatures and courts have adapted the general principles and doctrines of criminal law to respond to date rape, the battered-woman syndrome, gang activities, computer crime, and other recent social problems. These new developments clearly demonstrate the viability of the ancient principles and doctrines of criminal law in the face of challenging modern problems.

I have edited the **cases**, many of them new in this edition, to suit the needs of undergraduates and other nonlaw students. The cases remain distinct from the text, which stands on its own as an unbroken narrative. Each case follows immediately after the main point in the text that it elucidates. Instructors can either omit the cases entirely, or use them as



examples of the text's main points. A case question introduces each case to focus attention on the point the case addresses. The case excerpt names the crime charged and, if known, the sentence the defendant received. The excerpt uses the exact language from the reported case to set out the facts of the case, the court's decision, and the arguments to support the decision. A case discussion follows the excerpted facts, decision, and opinion. The case discussion should provoke students to think about the principles, doctrines, and rules that the case addresses, to assess the court's decision and arguments, and where appropriate to propose alternative decisions and arguments to the court's.

In this edition, **chapters have been rearranged**. The new arrangement combines into chapters 1 through 7 the whole of the general part of criminal law: the overarching principles; the principles of criminal liability; and the doctrines that can, but do not always, apply to all crimes, or classes of crimes. Chapter 1 introduces the nature and historical origins of modern criminal law. It expands on the earlier editions' treatments of the common-law origins of American criminal law, and revises the existing material where appropriate. Chapter 2 now includes the overarching principles of criminal law: legality, punishment, and proportionality. In both earlier editions, these principles appeared piecemeal as they applied to special topics. In this edition, I have collected them into one place, expanding on each so that students will have a good basic understanding of the principles that apply to the whole of criminal law. Then follow the general principles of criminal liability in chapter 3: *actus reus*, *mens rea*, concurrence, and causation. Chapters 4 and 5 focus on the main doctrines of criminal law: the parties to crime (accomplices, accessories, and vicarious liability) and the inchoate crimes (attempt, conspiracy, and solicitation). Chapters 6 and 7 elucidate the defenses of justification and excuse, respectively. The remaining chapters examine the special part of the criminal law: the rules that apply the general principles and doctrines to specific offenses. Chapters 8 and 9 analyze the crimes against *persons*; chapter 10, the crimes against *habitation*; chapter 11, the crimes against *property*; and chapter 12, the crimes against public morals and order. Roughly, chapters 8 through 12 range from the most serious felonies against persons in chapter 8 to the minor misdemeanors in chapter 12.

The logic of the arrangement is to treat the general materials first, then to discuss the specific crimes to which those general principles and doctrines apply. The special part moves from the most serious to the least serious offenses embodied in the criminal law. However, the chapters in the text all stand alone. Instructors can teach them in any order to fit varying logic. They can treat specific crimes first, then read the general part to put the particular crimes within the context of general principles and doctrines. They can move from the least serious crimes to the most serious within the chapters that treat the individual offenses. Furthermore, they can cover the doctrines of complicity and the incomplete crimes before or after the defenses, depending on how they organize their courses. I have found that the arrangement established in this text works well, but I have utilized the others described here with equal effectiveness. The text's flexibility allows for any arrangement that suits individual instructors' needs.



In *Criminal Law*, second edition, the relevant sections of the Model Penal Code were distributed throughout the text. In *Criminal Law*, third edition, in order to improve readability I have placed all relevant Model Penal Code sections into an Appendix. These sections are summarized and referenced in the text.

**Chapter outlines, main points, and key terms** make the basic topics, the important points, and the key terms clear to students. My students tell me that they find these useful both as an introduction to what to look for and as a review after reading the chapter. A list of **review and discussion questions** provides another aid to learning the main points in the chapter. The **suggested readings** guide students to deeper and broader issues and topics related to the material in each chapter. I have tried to include works that students can easily find in most libraries, that will provoke them to think about the major points, and that will stimulate their interest in reading and learning more about criminal law. A completely revised **test bank** and **instructor's manual** accompany this edition.

I want to acknowledge those who have read and commented on this edition and earlier editions: Jerry Dowling; Richard Gwen; Robert Harvie; Julius Koefoed; James Maddex; Leon Manning; William Michalek; William Pelkey; Gregory Russell; Susette Talarico; James Todd; Donald Wallace; and Wayne Wolff. The text's improvement owes much to them, and I appreciate their suggestions. I would also like to acknowledge the following people from West Publishing Company who worked hard to see this book through all of its stages: Terry Casey, text designer; Kristen McCarthy, promotion manager; Poh Lin Khoo, production assistant; John Och, senior graphic arts specialist; and Mary Schiller, acquiring editor.

Finally, listening to my students' questions about the book and seeing their reactions to it have improved this edition as well. I am happy to record my debt both to other instructors and to my students. I also accept, as my own, the book's shortcomings—shortcomings that seem all the more painful in a subject I have loved to teach, think, learn, read, and write about since 1958 when I took criminal law as a freshman law student at Northwestern University Law School.

Joel Samaha  
University of Minnesota

# *Chapter One*

## ***The Nature and Origins of Criminal Law***

---

### CHAPTER OUTLINE

- I. Introduction
- II. The Definition of Criminal Law
  - A. Rational Criminal Law and the Model Penal Code
  - B. The General and Special Parts of Criminal Law
- III. Sources of Criminal Law
  - A. The Common-Law Origins of Criminal Law
  - B. Criminal Codes
  - C. Common-Law Crimes and Modern Criminal Law
- IV. Classifying and Grading Crimes
  - A. Crime and Social Harm
  - B. Crime, Tort, and Nonlegal Responses to Social Harms
  - C. Felony, Misdemeanor, and Violation
  - D. Wrongs *Mala in Se* and *Mala Prohibita*
  - E. Criminal Law or Criminal Laws?
- V. Perspectives and Theories of Criminal Law
  - A. The Legal Perspective
  - B. Political Perspectives
  - C. The Irrational Forces Perspective
  - D. The Historical Perspective
  - E. The Ethical Core Theory
- VI. Summary

# Contents

---

Table of Cases xv

Preface xix

## ***Chapter One The Nature and Origins of Criminal Law 1***

Introduction 2

The Definition of Criminal Law 4

Rational Criminal Law and the Model Penal Code 4

The General and Special Parts of Criminal Law 5

Sources of Criminal Law 8

The Common-Law Origins of Criminal Law 8

Criminal Codes 9

Common-Law Crimes and Modern Criminal Law 11

Classifying and Grading Crimes 19

Crime and Social Harm 19

Crime, Tort, and Nonlegal Responses to Social Harms 20

Felony, Misdemeanor, and Violation 25

Wrongs Mala in Se and Mala Prohibita 25

Criminal Law or Criminal Laws? 26

Perspectives and Theories of Criminal Law 26

The Legal Perspective 27

Political Perspectives 27

The Irrational Forces Perspective 30

The Historical Perspective 30

The Ethical Core Theory 32

Summary 33

## ***Chapter Two The General Principles of Criminal Law 38***

Introduction 40

The Principle of Legality 41

The Ex Post Facto Prohibition 41

Void for Vagueness 42

Equal Protection of the Laws	45
The Right to Privacy	48
The Principle of Punishment	52
The Purposes of Punishment	52
Retribution	55
Prevention	57
Trends in Punishment	61
Proportionality	62
Summary	68

### ***Chapter Three The General Principles of Criminal Liability 74***

Introduction	76
<i>Actus Reus</i>	77
Status	77
Thoughts	79
Voluntariness	80
Verbal Acts	83
Omission	83
Possession	90
Summary	93
<i>Mens Rea</i>	93
Determining <i>Mens Rea</i>	94
Defining <i>Mens Rea</i>	94
Knowing	97
Subjective and Objective Standards	98
Recklessness	98
Negligence	100
Strict Liability, or Liability without Fault	105
Concurrence	107
Causation	108
Grading Offenses According to <i>Mens Rea</i>	115
Summary	116

### ***Chapter Four Parties to Crime: The Doctrine of Complicity 120***

Introduction	122
Parties to Crime	122
<i>Actus Reus</i> of Parties before and during Crime	123

<i>Mens Rea</i> of Parties before and during Crime	127
Complicity following Crime	130
Vicarious Liability	134
Business Crime	135
Business Crime and the Law	135
Vicarious Liability and Business Crime	136
Vicarious Corporate Liability for Real Crime	144
Vicarious Individual Liability for Corporate Crime	144
Summary	150

## ***Chapter Five Uncompleted Crimes: Attempt, Solicitation, and Conspiracy***

### ***154***

Introduction	156
Attempt	156
Rationale of Attempt Law	159
Material Elements in Attempt	159
<i>Mens Rea</i>	159
<i>Actus Reus</i> —The Distinction between Preparation and Attempt	161
Legal and Factual Impossibility	165
Renunciation	168
Summary	172
Conspiracy	172
Material Elements in Conspiracy	173
<i>Actus Reus</i> —The Agreement	173
<i>Mens Rea</i>	176
The Agreement's Objective	177
Parties to Conspiracy	178
Summary	181
Solicitation	183
Material Elements in Solicitation	183
<i>Actus Reus</i>	183
Objective	184
<i>Mens Rea</i>	184
Solicitation by Law Enforcement Officers	184
Summary	187

## ***Chapter Six Defenses to Criminal Liability: Justifications 192***

Introduction	194
Self-Defense	196
Elements	202
Unprovoked Attacks	202
Necessity	203
Imminent Danger	203
Honest and/or Reasonable Belief in Danger	203
Proportionality or Reasonable Force	204
The Retreat Doctrine	207
Defense of Others	208
General Principle of Necessity	208
The Use of Force in Executing Public Duties	214
Resisting Unlawful Arrest	219
Defense of Homes and Property	222
Consent	225
Summary	228

## ***Chapter Seven Defenses to Criminal Liability: Excuses 232***

Introduction	234
Duress	234
Intoxication	241
Mistake	246
Age	250
Entrapment	255
Insanity	259
M'Naghten Rule, or Right-Wrong Test	260
Criticisms and Defense	266
Irresistible Impulse	267
Substantial Capacity or Model Penal Code Test	268
Burden of Proof	272
Diminished Capacity and Responsibility	273
Syndromes	276
Premenstrual Syndrome	277
Posttraumatic Stress Syndrome—the Vietnam Vet Defense	277
Summary	279



## **Chapter Eight Crimes against Persons I: Criminal Homicide 284**

- Introduction 286
- The *Actus Reus* of Criminal Homicide 287
  - The Beginning of Life 287
  - The End of Life 291
- Causing Another's Death 294
- The *Mens Rea* in Criminal Homicide 295
- Types and Degrees of Criminal Homicide 295
  - Murder 295
    - First-Degree Murder 296
    - Second-Degree Murder 305
    - Corporate Murder 308
    - Summary 311
  - Manslaughter 312
    - Voluntary Manslaughter 312
    - Involuntary Manslaughter 320
    - Negligent Homicide 324
- Summary 329

## **Chapter Nine Crimes against Persons II: Criminal Sexual Conduct, and Others 334**

- Introduction 336
- Criminal Sexual Conduct 336
  - History of Rape 337
  - The *Actus Reus* of Rape and Criminal Sexual Conduct 342
  - The *Mens Rea* of Rape 348
  - Statutory Rape 351
  - Criminal Sexual Conduct with Children 352
  - Marital Rape 354
  - Criminal Sexual Conduct Statutes 357
  - Grading Rape 358
  - Summary 358
- Battery 359
  - The *Actus Reus* of Battery 359
  - The *Mens Rea* of Battery 359
  - The Harm in Battery 360

Assault	362
Threatened Battery Assault	362
The Harm in Assault	365
False Imprisonment	369
Kidnapping	369
The Origins and Harshness of Kidnapping Statutes	369
The Material Elements of Kidnapping	370
Grading Kidnapping	371
Summary	373

## ***Chapter Ten Crimes against Habitation: Burglary and Arson 378***

Introduction	380
Burglary	380
Material Elements of Burglary	386
Burglary <i>Actus Reus</i>	387
Breaking	387
Entering	387
Dwelling Requirement	392
Meaning of Another	395
Nighttime Requirement	398
Burglary <i>Mens Rea</i>	398
Grading Burglary	400
Rationale of Burglary Law	401
Proposed Reforms to Burglary Law	402
Arson	403
History and Rationale	403
Burning: The Arson <i>Actus Reus</i>	403
Arson <i>Mens Rea</i>	406
Property in Arson	407
Summary	408
Summary	409

## ***Chapter Eleven Crimes against Property 412***

Introduction	414
History of Theft	414
Larceny	416
Larceny <i>Actus Reus</i>	416
Taking	416
Carrying Away	416
Wrongful Taking	416
Meaning of Property	421
Value of Property	424

Larceny <i>Mens Rea</i>	425
Summary	426
Embezzlement	426
False Pretenses	427
Material Elements in False Pretenses	427
Rationale of False Pretenses Statutes	427
False Pretenses Distinguished from Larceny	428
Consolidated Theft Statutes	432
Receiving Stolen Property	433
Forgery and Uttering	441
Forgery	441
Uttering	444
Robbery and Extortion	444
Robbery	444
Threatened Force	445
Degrees of Robbery	448
Statutory Extortion: Blackmail	448
Summary	451

## **Chapter Twelve Crimes against Public Order and Morals 454**

Introduction	456
Disorderly Conduct	458
Fighting, Threats, Violence, and Noisemaking	458
Coarse and Indecent Language and Gestures	463
Fighting Words	465
Altercations with Police	465
Threats	473
Rioting and Other Group Disorderly Conduct	475
Fomenting Group Hatred	476
Disorderly Conduct <i>Mens Rea</i>	476
Vagrancy	477
Personal Condition—the Vagrancy <i>Actus Reus</i>	477
Purposes of Modern Vagrancy Law	478
Criminal Policy and Vagrancy	483
Reform in Vagrancy Law: Suspicious Loitering and Aggressive Panhandling	484
Public Morals Offenses	490
Fornication and Illicit Cohabitation	491
Prostitution and Related Offenses	492
Solicitation and Promotion of Prostitution	494
Sodomy and Related Offenses	496
Summary	501
Appendix	507
Glossary	573
Index	577