

JUMPSTART CRIMINAL LAW

*Reading and Understanding
Criminal Law Cases and Statutes*

JOHN M. BURKOFF



Wolters Kluwer
Law & Business



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Criminal Law Cases and Statutes

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*Dedicated with love to Nancy, Amy & Sean,
David & Emmy, Emma, Molly, Hannah, and Cyrus.*

Preface

The primary purpose of this concise *Jumpstart Criminal Law* book is to give students in Criminal Law courses the background and contextual material they need to help them be successful in that course, and to have a better handle on the material—cases and statutes—that is being studied. A secondary purpose of *Jumpstart Criminal Law*, however, is simply to demystify this subject matter. To that end, you don't need to be taking a Criminal Law course to learn something very important from *Jumpstart Criminal Law* about the nature of criminal prosecutions, criminal defense, and criminal trials in United States courts.

Law students are directed to read and analyze judicial opinions in Criminal Law courses, focusing in particular upon those courts' application of statutory language in determining whether or not a crime has been committed. But learning Criminal Law, simply by reading judicial opinions and statutes, challenges even the most capable and conscientious first-year law students. *Jumpstart Criminal Law* helps to make this study of Criminal Law less confusing; it offers you an introductory road map through what is otherwise often-treacherous intellectual terrain.

What kind of road map does this book offer you? Hmmm. In the age of ubiquitous GPS devices, do you even know what a "road map" is? What do I mean when I say that? Well, let me answer that by telling you what background and contextual material *Jumpstart Criminal Law* actually covers.

Chapter 1 starts you off by explaining what the study of Criminal Law includes in the United States and, just as important, what it does not include. Chapter 3 introduces you to some of the most important contextual points, focusing upon the key concepts of jurisdictional variance in United States Criminal Law, and the relationship between state and federal Criminal Law statutes.

Chapter 4 is particularly useful to students—or, frankly, to anyone—new to this area, detailing the steps (in chronological order) that take place in the criminal justice process, from the investigation or report of a crime to the appeal of a conviction. In that same explanatory vein, Chapter 2 defines for

you the language of the law, and more specifically, the language of the Criminal Law (often called “terms of art”). What are judges, prosecutors, and defense counsel talking about? What do they mean when they use standard English in what seems, to the lay listener at least, a novel way? Chapter 4 gives you the low down.

Chapter 5 explains the differing roles of the criminal trial judge and the jury in United States criminal trials. Understanding the fundamental points introduced here makes the analysis of decisional law in criminal cases much easier, and more sensible.

Chapter 6 discusses the focal approach to the prosecution and defense of criminal cases in the United States—so-called “element analysis.” Understand this basic Criminal Law method of analysis, and you can better understand what judges are saying—and why they are saying it—in the decisions you read in class. And usefully, this method of analysis also enables you to better understand why criminal cases you hear discussed in the media have been decided the way they have. Chapter 7 continues with this theme, centering more specifically on the nature and significance of the different types of Criminal Law defenses.

Chapter 8 introduces you to the topic of why and how particular conduct is criminalized (or not criminalized). To truly understand how the Criminal Law “works,” you need to know what is actually punished, how it came to be punished, and the political significance of that process of criminalization. This process is not pretty, and it may not work the way you thought or wished that it did. But, like it or not, it is important for you to know how this process works in any event. Chapter 10 focuses more specifically on two of the most important concepts in United States Criminal Law: *mens rea* and *actus reus*. What do these terms of art mean? Chapter 10 lays it out for you.

Chapter 9 provides you with the most effective analytic tool for assessing and understanding the Criminal Law decisions you will be discussing in a Criminal Law class, mostly decisions handed down by appellate judges. Why focus on appellate decisions? Well, Chapter 11 answers that question, discussing the significance of the study of appellate court—rather than trial court—decisions.

Chapter 12 takes a more pragmatic view of success in a Criminal Law course, giving you specific pointers on how to be successful on the standard sorts of Criminal Law exams. And, finally, Chapter 13 tries to sum up what you should have learned from all of these chapters in *Jumpstart Criminal Law*, offering some concluding thoughts.

The heavily edited brief extracts from judicial opinions included in *Jumpstart Criminal Law* are intended to complement the substantive material that is covered in any of the many Criminal Law casebooks used in law schools across the United States (including mine). What *Jumpstart Criminal Law* adds

to that coverage is, once again, a road map. Follow that road map and you are bound to be more successful in your Criminal Law course, and hopefully, you will also be better situated to master some of the skills you need to become an effective and successful lawyer.

John M. Burkoff
February 2013

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