

Smith & Hogan

CRIMINAL LAW

Fifth Edition



Butterworths

Criminal Law

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Preface to the Fifth Edition

Five years have elapsed since we wrote the preface to the fourth edition and a great deal has happened to the criminal law in the meantime. The Criminal Attempts Act 1981 has required us to re-write much of the chapter on conspiracy and the whole of the chapter on attempts to commit crime. The Theft Act 1978 came too late to be considered in the fourth edition but it has now been incorporated in the chapter on theft and related offences. The old chapter 16 on Forgery and Related Offences has been wholly replaced by an account of the Forgery and Counterfeiting Act 1981. Most of the section on Contempt of Court has been re-written in the light of the Contempt of Court Act 1981.

Developments in case law have been no less significant. In the last edition it was a pleasure to incorporate the effects of *Morgan* [1976] AC 182, a major step towards a rational and principled criminal law. On this occasion, we had the sad duty of coping with the far-reaching effects of *Caldwell* [1982] AC 341 and *Lawrence* [1982] AC 510. After that experience, we can only concur in the reference by the learned editor of *Archbold* (Preface, 41st edition) to “the mischief wrought by those extraordinary decisions”. If they are, as Mr Mitchell says, “a challenge to even the most gifted of Her Majesty’s trial judges”, what of the hapless students to whom our book is primarily directed, the magistrates, the police and the jurors?

The very large amount of new case law has led to an inevitable expansion of sections of the book. We have kept it down to approximately the same length as the last edition by omitting the section on Road Traffic with the exception of the offences of causing death by reckless driving, reckless driving and careless driving. Much of the Road Traffic law, particularly the drink and driving provisions, has become so complex that it is not possible to deal with it adequately in a book of this character. The practitioner will inevitably turn to one of the specialist works and road traffic offences play little part in the average undergraduate criminal law course.

Once again our warm thanks are due to Diane Birch and to Michael Gunn who have given invaluable assistance with proof-reading. JCS records his thanks to the Dean of Osgoode Hall Law School, Toronto, for making an office, the law school’s splendid library and a research assistant available during the summer of 1982; and to Joyce Elder Tom for the very thorough and complete research which she contributed. BH records his thanks to Christine Taylor, an incomparable secretary. As always, we have received gentle encouragement and a ready response to requests for help from our friends at Butterworths.

We have attempted to state the law as at May 1, 1983.

J. C. SMITH

BRIAN HOGAN

The standard scale of fines for summary offences

Section 37 of the Criminal Justice Act 1982, which came into force on April 11, 1983, provides a standard scale of fines for summary offences. The scale is as follows.

<i>Level on the scale</i>	<i>Amount of fine</i>
1	£25
2	£50
3	£200
4	£500
5	£1,000

When there is a change in the value of money, the Secretary of State is empowered by section 48 of the Act to vary the maximum amount of fines, including the amounts specified in the standard scale, as appears to him to be justified by the change.

Preface to the First Edition

It is thought that university teachers and undergraduates will require no explanation or apology for the production of a new text-book on the substantive law of crime. Criminal Law has not received the same detailed and critical examination in university text-books as have other fields of the common law, for example, Contract and Tort. In the university law schools Kenny's *Outlines of Criminal Law* has long held almost unchallenged sway but it is now sixty-three years since the first edition of that classic work appeared. An immense amount of work has been done on the Criminal Law in the meantime, not least by the present learned editor of Kenny, Dr. J. W. C. Turner. There may now be something to be said for a book which makes a completely fresh start. Cross and Jones's *Introduction to Criminal Law*, on the other hand, may be thought too brief for the needs of the undergraduate—though we are full of admiration for the amount of information and learning which those authors have packed into so small a space. Moreover, both of these books deal in a single volume not only with the substantive law but also with Criminal Procedure and Evidence. Dr. Glanville Williams's great work, *Criminal Law: The General Part*, covers only general principles, while other books covering the whole field do not face up to the problems with which the undergraduate is expected to grapple.

We have endeavoured to provide the undergraduate with as complete an exposition of the substantive Criminal Law as he has to guide him in other fields of study. We have excluded Procedure and Evidence from consideration except in so far as these are necessary for an understanding of the law. Only by so doing could we give our subject the kind of treatment we think it demands. Moreover, Evidence is now commonly regarded as a worthy subject of academic study in its own right; and Criminal Procedure is by no means always part of a Criminal Law course.

All the important crimes are examined. Few courses, in or out of universities, perhaps cover so much ground; but the book allows scope for selection. In making the book reasonably comprehensive, we have not been unmindful of the fact that the practitioner commonly, and increasingly, finds assistance in the solution of problems in books designed primarily for students; and the citation of authorities is, therefore, more extensive than the needs of the undergraduate alone would have required. We have drawn freely on the published researches of scholars in the Criminal Law, not only in Britain but also in the Commonwealth and United States. In particular, we would acknowledge our debt, which will be apparent in almost every chapter, to the writings of Dr. Glanville Williams.

We have derived great assistance from many discussions with our colleagues and students at Nottingham and elsewhere; and our thanks are particularly due to Mr. P. R. H. Webb who read the whole of the manuscript. Tribute is also due to the helpfulness and, particularly, the patience of our publishers who waited a long time, without complaint, for the manuscript. Even their tolerance, however, is hardly in the same class as that of our wives, particularly throughout a recent long vacation during which we almost lived in the law library.

The book began as the work of only the first-named author, but the task proved greater than expected and a large proportion of the text has been contributed by the second. It has been revised in common and we each accept responsibility for the whole. We have endeavoured to state the law as at April 30, 1965.

J. C. SMITH

BRIAN HOGAN

Abbreviations

The following are the abbreviations used for the principal text-books and legal journals cited in this book. References are to the latest editions, as shown below, unless it is specifically stated otherwise. The particulars of other works referred to in the text are set out in the relevant footnotes.

Andenaes, GPCL	<i>The General Part of the Criminal Law of Norway</i> (1965) by Johannes Andenaes.
Archbold	<i>Criminal Pleading, Evidence and Practice</i> , by John Frederick Archbold. 41st ed. (1982) by Stephen Mitchell, P. J. Richardson and J. H. Buzzard.
Blackstone, <i>Commentaries</i> , i	<i>Commentaries on the Laws of England</i> , by Sir William Blackstone, Vol. 1 [4 Vols.]. 17th ed. (1830) by E. Christian.
Burchell and Hunt, SACLP	<i>South African Criminal Law and Procedure</i> , Vol. 1, <i>General Principles</i> (1983) by E. M. Burchell, J. R. L. Milton and J. M. Burchell.
Butler	Report of the Committee on Mentally Abnormal Offenders, 1975, Cmnd. 6244.
CLJ	Cambridge Law Journal.
Can Bar Rev	Canadian Bar Review.
Co 1 Inst	<i>Institutes of the Laws of England</i> , by Sir Edward Coke, Vol. 1 [4 vols.] (1797).
Col LR	Columbia Law Review.
<i>Crime, Proof and Punishment</i>	<i>Crime, Proof and Punishment</i> , Essays in honour of Sir Rupert Cross. Edited by C. F. H. Tapper (1981).
Crim LR	Criminal Law Review.
CLP	Current Legal Problems.
CLRC/OAP/R	Criminal Law Revision Committee, Fourteenth Report, Offences against the Person, 1980, Cmnd. 7844.
CLRC/OAP/WP	Criminal Law Revision Committee, Working Paper on Offences against the Person, 1976.
CLRC/SO/WP	Criminal Law Revision Committee, Working Paper on Sexual Offences, 1980.
East, 1 PC	<i>A Treatise of the Pleas of the Crown</i> , by Edward Hyde East, Vol. 1 [2 vols.] (1803).
Edwards, <i>Mens Rea</i>	<i>Mens Rea in Statutory Offences</i> , by J. Ll. J. Edwards (1955).

Foster	<i>A Report on Crown Cases and Discourses on the Crown Law</i> , by Sir Michael Foster. 3rd ed. (1792) by M. Dodson.
Gordon	<i>Criminal Law of Scotland</i> 2nd ed. (1978) by G. H. Gordon.
Griew, <i>Theft</i>	<i>The Theft Acts 1968 and 1978</i> . 4th ed. (1982) by Edward Griew.
Hale, 1 PC	<i>The History of the Pleas of the Crown</i> , by Sir Matthew Hale, Vol. 1 [2 vols.] (1736).
Hall, <i>General Principles</i>	<i>General Principles of Criminal Law</i> , by Jerome Hall (2nd ed., 1960).
Halsbury	<i>The Laws of England</i> , by the Earl of Halsbury and other lawyers. 4th ed. (1973—) by Lord Hailsham of St. Marylebone.
Harv LR	Harvard Law Review.
Hawkins, 1 PC	<i>A Treatise of the Pleas of the Crown</i> , by W. Hawkins, Vol. 1 [2 vols.]. 8th ed. (1795) by J. Curwood.
Holdsworth, 1 HEL	<i>A History of English Law</i> , by Sir William Holdsworth, Vol. 1 [14 vols.] (1923–64).
Howard, SR	<i>Strict Responsibility</i> , by Colin Howard (1963).
J Cr L	Journal of Criminal Law (English).
J Cr L & Cr	Journal of Criminal Law and Criminology (U.S.A.)
JSPTL	Journal of the Society of Public Teachers of Law.
Kenny, <i>Outlines</i>	<i>Outlines of Criminal Law</i> , by C. S. Kenny. 19th ed. (1965) by J. W. C. Turner.
LQR	Law Quarterly Review.
MACL	<i>The Modern Approach to Criminal Law</i> , ed. by L. Radzinowicz and J. W. C. Turner (1948).
Med Sci & L	Medicine, Science and the Law.
MLR	Modern Law Review.
NZ Essays	<i>Essays on Criminal Law in New Zealand</i> , edited by R. S. Clark (1971).
Phillimore	Report of the Committee on Contempt of Court, 1974, Cmnd. 5794.
Pollock and Maitland, 1 HEL	<i>The History of English Law before the Time of Edward I</i> , by Sir Frederick Pollock and F. W. Maitland, Vol 1 [2 vols.] 2nd ed.
RCCP	Report of the Royal Commission on Capital Punishment, 1953, Cmd. 8932.
<i>Reshaping the Criminal Law</i>	<i>Reshaping the Criminal Law</i> . Essays in honour of Glanville Williams. Edited by P. R. Glazebrook (1978).
Russell	<i>Crime</i> , by Sir W. O. Russell. 12th ed. (1964) by J. W. C. Turner [2 vols.].
Smith, <i>Theft</i>	<i>The Law of Theft</i> . 4th ed. (1979) by J. C. Smith.
SHC	<i>Criminal Law: Cases and Materials</i> . 2nd ed. (1980) by J. C. Smith and Brian Hogan.

SALJ	South African Law Journal.
Stephen, <i>Digest</i>	<i>A Digest of the Criminal Law</i> , by Sir James Fitzjames Stephen. 9th ed. (1950) by L. F. Sturge.
Stephen, 1 HCL	<i>A History of the Criminal Law of England</i> , by Sir James Fitzjames Stephen, Vol. 1 [3 vols.] (1883).
Street, <i>Torts</i>	<i>The Law of Torts</i> , by H. Street (6th ed., 1976).
U Pa Law Rev	University of Pennsylvania Law Review.
Williams, CLGP	<i>Criminal Law: The General Part</i> , by Glanville L. Williams (2nd ed., 1961).
Williams, TBCL	<i>Textbook of Criminal Law</i> , by Glanville L. Williams (1978).
YLJ	Yale Law Journal.

Table of Statutes

References in this Table to *Statutes* are to Halsbury's Statutes of England (Third Edition) showing the volume and page at which the annotated text of the Act will be found.

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