

CRIMINAL LAW

Fifth Edition

Wayne R. LaFare

Hornbook Series

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CRIMINAL LAW

Fifth Edition

By

Wayne R. LaFave

*David C. Baum Professor of Law Emeritus
and Center for Advanced Study Professor Emeritus
University of Illinois*



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To
Erin Olivia

***“Grandchildren are the crown
of the aged.”***

~Proverbs 17:6

Preface

This text is intended primarily for use by law students during their study of substantive criminal law. There is, to be sure, no substitute for careful examination of the basic sources—the appellate opinions, statutes, and critical commentary which are to be found in the modern casebooks dealing with this subject. It is neither intended nor expected that this *Criminal Law* Hornbook will be of particular use to the student who has not grappled with those materials. Rather, this book has been prepared on the assumption that the diligent student (particularly in the first year of law study) may find a textual treatment of the subject useful as he or she¹ undertakes the necessary process of reviewing and synthesizing the regularly assigned materials.

Criminal law casebooks currently in use vary considerably in their approach and coverage. It is unlikely that any two teachers of the subject could agree completely as to the objectives of the basic course in criminal law or the content that is most suited to achieving those objectives. This being the case, a brief explanation of the scope of and emphasis within this text is in order.

For one thing, this text is *not* an encyclopedia of crimes in which black-letter definitions of all common offenses—from abortion to vagrancy—may be found. The imparting of detailed information about many different crimes is not the goal of a basic course in criminal law, and thus the discussion of specific offenses herein is limited to certain crimes against the person (Part III) and crimes relating to property (Part IV). Major emphasis is given to homicide, rape and theft, three areas most teachers of criminal law have concluded are particularly suited to such tasks as: (a) evaluation of the criminal process as a technique for social control; (b) comparison and evaluation of the actual and potential contributions of courts (through the common law) and legislatures (through codification) in defining and grading crimes; (c) understanding the significance of history in the development of the law of crimes; (d) acquiring expertise in use of the case method and techniques of legal analysis.

The reach of the substantive criminal law is constantly expanding, and thus today's law student is much more likely than his counterpart of some years ago to find himself engaged to some extent in the practice of criminal law after graduation. This practice may involve the prosecution

1. So that the sentence structure may be as short and direct as possible, the phrases "he or she" and "his or her" are generally not used in this Hornbook. Consistent with traditional rules of construction in statutes and legal texts, masculine pronouns should be read as referring to both male and female actors unless the context indicates otherwise.

of or defense against charges of such familiar crimes as robbery, battery, and rape; it may instead or in addition be concerned with the increasing body of regulatory crimes which have been enacted in response to such contemporary concerns as consumer protection and environmental control. An adequate preparation for such practice requires an *understanding* of the fundamental bases of our system of substantive criminal law, rather than *knowledge* of the precise definitions of the growing list of crimes. Consequently, the major emphasis in this text is upon what is usually referred to as the “general part” of the criminal law (Part II), having to do with such matters as acts and omissions, mental state, causation, responsibility, justification and excuse, inchoate crimes, and accomplice liability. Greater attention has been given to certain subjects—such as causation, insanity, and conspiracy—which experience has shown are particularly troublesome for beginning law students.

In American law schools, particularly during the first year of study, there has been an undue preoccupation with the decisions of appellate courts and the common law system. There is a growing realization that law students should be made equally aware of the actual and potential contributions of the legislative branch, and the course in substantive criminal law often has been found particularly suited to this purpose. At many schools, students enrolled in criminal law are required to work intensively with some actual or proposed criminal code; the intent is not to teach “local law,” but rather to give the student a greater sense of the potentialities and limitations of legislative formulation. This development has been taken into account in the preparation of this text. Frequent reference is made to the Model Penal Code, which has “played an important part in the widespread revision and codification of the substantive criminal law of the United States that has been taking place”² over the last fifty years. In addition, considerable attention is given to the matter of statutory interpretation and to the constitutional limits upon the federal and state legislative power to create crimes (Part I).

No effort has been made in this Hornbook to document this legislative response with extensive citations to the statutes of the various jurisdictions on each point discussed. The assumption is that a law student will not ordinarily have a need for such citations in the context in which this Hornbook will ordinarily be used. However, if a student is undertaking some research on a matter of substantive criminal law as to which statutory references are needed, two sources may be suggested. One is LaFare, *Substantive Criminal Law* (2d ed.2003), a multi-volume treatise that follows precisely the same organization as this book. The quickest way for a student to access the material needed is via WESTLAW; just go to database SUBCRL and examine the same chapter or

2. Wechsler, Foreword, in 1 American Law Institute, Model Penal Code and Commentaries (1985). This six-volume work should be consulted for more detailed treatment of the Code's impact.

section as is relevant in this book. The other is Professor Paul H. Robinson's excellent two-volume work on *Criminal Law Defenses* (1984).³

Largely because of the tremendous growth in recent years of that body of law concerning the constitutional rights of persons suspected or accused of crime, the teaching of criminal procedure is today a separate enterprise at most law schools. Consequently, this book concentrates upon the substantive criminal law, and no attempt has been made at a systematic or comprehensive treatment of criminal procedure.⁴ Some aspects of criminal procedure have been discussed, however, when deemed essential to an adequate understanding of certain substantive provisions. For example, incompetency to stand trial, the manner of presenting the insanity defense, and the consequences of a finding of not guilty by reason of insanity are all dealt with in some detail because of their importance in gaining a full appreciation of the insanity defense. Similarly, it has obviously been necessary to take into account certain procedural matters in discussing such subjects as reform of the law of rape, consolidation of theft offenses, abolition of the distinctions between parties to crime, and the peculiar problems raised by the crime of conspiracy. On a more general level, attention has been given to the relationship between discretionary enforcement and the content of the substantive criminal law, and to the burden and manner of proving the elements of crimes and defenses thereto.

The present work is an expanded and updated version of the fourth edition, published in 2003. The material appearing in the prior edition has, of course, been updated to reflect developments in the intervening years. The text has been elaborated at some points so as to provide fuller explanation of some areas of the law. The footnotes throughout have been enriched with significant cases decided since 2003, as well as with references to books, law review articles and other secondary sources that have come into existence more recently.

This book is the most recent edition of a work published in its first edition in 1972 by the late Professor Austin W. Scott, Jr., and me. It is thus appropriate to note that Scott's contribution to that endeavor has served as a continuing influence upon the various subsequent revisions and expansions, including the present one. I also wish to thank Dean

3. In this Hornbook, some attention is also given to the proposed new federal code of 1971, as drafted by the National Commission on Reform of the Federal Criminal Laws. Although Congress did not adopt that proposal or any other major revision of federal substantive law, the Commission's work is worth noting, especially as to certain innovative proposals and also certain divergences from the Model Penal Code which have occasionally been adopted in state law reform.

4. On Criminal Procedure, see W. LaFave, J. Israel, N. King & O. Kerr, *Criminal Procedure* (5th ed. 2009).

Heidi Hurd and her recent successor, Dean Bruce Smith, for their support and for generously making available to me the resources of the College of Law.

WAYNE R. LAFAYE

December 2009
Champaign, Illinois

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Summary of Contents

| | Page |
|--|-------------|
| PREFACE | v |
| WESTLAW OVERVIEW | ix |
| PART ONE. INTRODUCTION; SOURCES AND LIMITATIONS | |
| Chapter | |
| 1. Introduction and General Considerations | 2 |
| 2. Sources and General Limitations | 77 |
| 3. Constitutional Limits on Power to Create Crimes | 136 |
| 4. Criminal Jurisdiction | 198 |
| PART TWO. GENERAL PRINCIPLES | |
| 5. Mental States | 252 |
| 6. Acts; Concurrence and Consequences | 319 |
| 7. Insanity Defense | 389 |
| 8. Insanity—Procedural Considerations | 424 |
| 9. Excuses and Other Conditions | 468 |
| 10. Justification | 551 |
| 11. Solicitation and Attempt | 601 |
| 12. Conspiracy | 648 |
| 13. Parties; Liability for Conduct of Another | 700 |
| PART THREE. OFFENSES AGAINST THE PERSON | |
| 14. Murder | 764 |
| 15. Manslaughter; Suicide Assistance | 817 |
| 16. Physical Harm and Apprehension Thereof | 858 |
| 17. Rape | 891 |
| 18. Confinement | 933 |
| PART FOUR. OFFENSES AGAINST PROPERTY | |
| 19. Theft | 966 |
| 20. Other Personal Property Crimes | 1031 |
| 21. Real Property Crimes | 1069 |
| APPENDIX: WESTLAW RESEARCH | 1105 |
| TABLE OF CASES | 1127 |
| TABLE OF STATUTES AND MODEL PENAL CODE REFERENCES | 1261 |
| INDEX | 1275 |

Table of Contents

| | Page |
|---|----------|
| PREFACE | v |
| WESTLAW OVERVIEW | ix |
| PART ONE. INTRODUCTION; SOURCES AND LIMITATIONS | |
| Chapter 1. Introduction and General Considerations | 2 |
| Sec. | |
| 1.1 The Scope of Criminal Law and Procedure | 3 |
| (a) The Concern of Criminologists | 3 |
| (b) The Concern of Lawyers | 4 |
| 1.2 Characteristics of the Substantive Criminal Law | 8 |
| (a) Specific Crimes and General Principles | 8 |
| (b) Nature of Criminal Law—Basic Premises | 10 |
| (c) Variations in Definitions of Crimes | 11 |
| (d) Necessity for Prescribed Punishment | 12 |
| (e) Purpose of Criminal Law—Prevention of Harm | 13 |
| (f) Criminal Law and Morality | 14 |
| 1.3 Crimes and Civil Wrongs | 15 |
| (a) Similarities and Differences | 15 |
| (b) Crimes and Torts | 16 |
| (c) Interaction of Criminal Law and Civil Law | 18 |
| 1.4 Characteristics of Criminal Procedure | 19 |
| (a) The Evidentiary Tests | 20 |
| (b) Corpus Delicti | 21 |
| (c) The Exercise of Discretion | 23 |
| (d) Use of Part of the Criminal Process | 25 |
| 1.5 Purposes of the Criminal Law—Theories of Punishment | 26 |
| (a) Theories of Punishment | 27 |
| (1) Prevention | 27 |
| (2) Restraint | 28 |
| (3) Rehabilitation | 28 |
| (4) Deterrence | 29 |
| (5) Education | 30 |
| (6) Retribution | 30 |
| (7) Restoration | 32 |
| (b) Conflict Between the Theories | 33 |
| 1.6 Classification of Crimes | 36 |
| (a) Felony and Misdemeanor | 36 |
| (b) Malum In Se and Malum Prohibitum | 38 |
| (c) Crimes Involving Moral Turpitude | 42 |
| (d) Infamous Crimes | 42 |

| Sec. | | Page |
|---|--|-----------|
| 1.6 | Classification of Crimes—Continued | |
| | (e) Petty Offenses | 43 |
| | (f) Common Law Crimes and Statutory Crimes | 44 |
| 1.7 | Classification of Proceedings | 44 |
| | (a) Juvenile Delinquency | 45 |
| | (b) Sexual Psychopathy | 46 |
| | (c) Violations of Municipal Ordinances | 47 |
| | (d) Statutory Penalties | 50 |
| | (e) Contempt of Court | 51 |
| 1.8 | Burden of Proof; Directed Verdict | 57 |
| | (a) Aspects of Burden of Proof | 58 |
| | (b) Elements of the Crime | 58 |
| | (c) Affirmative Defenses | 61 |
| | (d) Sentencing | 67 |
| | (e) Unconstitutionality of a Criminal Statute | 70 |
| | (f) Rebuttable Presumptions, Case Law and Statutory | 70 |
| | (g) Meaning of “Beyond a Reasonable Doubt” and “Presumption of Innocence” | 71 |
| | (h) No Directed Verdict of Guilty | 72 |
| | (i) Directed Verdict of Acquittal | 73 |
| | (j) Test for Passing on Motion | 75 |
| Chapter 2. Sources and General Limitations | | 77 |
| Sec. | | |
| 2.1 | Common Law Crimes | 78 |
| | (a) The Problem | 78 |
| | (b) Common Law Crimes in England | 79 |
| | (c) Common Law Crimes in the United States | 80 |
| | (d) The Common Law in Jurisdictions Abolishing Common Law Crimes | 81 |
| | (e) What the Common Law of Crimes Encompasses in States Retaining Common Law Crimes | 82 |
| | (f) The Pros and Cons of Common Law Crimes | 88 |
| 2.2 | Interpretation of Criminal Statutes | 89 |
| | (a) Use of Canons of Construction | 90 |
| | (b) Plain Meaning Rule | 90 |
| | (c) Implied Exceptions and Obvious Mistakes | 91 |
| | (d) Strict Construction of Criminal Statutes | 92 |
| | (e) Legislative History | 96 |
| | (f) Title of the Statute | 99 |
| | (g) “Striking Change of Expression” | 100 |
| | (h) Eiusdem Generis | 101 |
| | (i) Expressio Unius, Exclusio Alterius | 103 |
| | (j) The Special Controls the General, the Later Controls the Earlier | 103 |
| | (k) Administrative Interpretation | 104 |
| | (l) Borrowed Statutes | 106 |
| | (m) Stare Decisis in Interpreting Criminal Statutes | 107 |
| 2.3 | Unconstitutional Uncertainty—The Void-for-Vagueness Doctrine | 108 |
| | (a) In General | 109 |
| | (b) Fair Warning | 110 |
| | (c) Arbitrary and Discriminatory Enforcement | 113 |
| | (d) Breathing Space for First Amendment Rights | 114 |

| | Page |
|--|------------|
| Sec. | |
| 2.4 Ex Post Facto Laws and Bills of Attainder | 115 |
| (a) Ex Post Facto Laws | 115 |
| (b) Date of Offense for Ex Post Facto Purposes | 121 |
| (c) Ex Post Facto Judicial Decisions | 122 |
| (d) Bills of Attainder | 125 |
| 2.5 Repeal or Amendment of Statute | 126 |
| (a) Common Law Rule | 127 |
| (b) Saving Provisions | 128 |
| 2.6 Administrative Crimes | 130 |
| (a) When Statute Fixes the Penalty | 131 |
| (b) When Regulations Fix the Penalty | 133 |
| (c) Delegation of Power to Adjudicate | 134 |
| (d) Administrative Orders | 135 |
| Chapter 3. Constitutional Limits on Power to Create Crimes | 136 |
| Sec. | |
| 3.1 Generally | 137 |
| (a) Significance of a Successful Constitutional Challenge | 138 |
| (b) Procedures for Raising Constitutional Objections | 139 |
| 3.2 Equal Protection | 141 |
| (a) Kinds of Classifications | 141 |
| (b) Equal Protection and the Supreme Court | 142 |
| (c) Equal Protection in the State Courts | 146 |
| 3.3 Substantive Due Process | 147 |
| (a) Legislation Bearing No Substantial Relationship to Injury to the Public | 148 |
| (b) No Substantial Relation to Injury to the Public: The State Courts | 150 |
| (c) State Cases: Statutes Covering Harmless Conduct | 154 |
| (d) Mental State and Act as Constitutional Requirements | 155 |
| (e) Taking Clause Objections Distinguished | 157 |
| 3.4 Due Process and Statutory Presumptions, Defenses, and Exceptions | 158 |
| (a) Forms of Presumptions | 158 |
| (b) Permissive Inferences | 160 |
| (c) Mandatory Rebuttable Presumptions | 163 |
| (d) Conclusive Mandatory Presumptions | 164 |
| (e) Affirmative Defenses | 165 |
| (f) Statutory Exceptions | 167 |
| 3.5 The Bill of Rights | 168 |
| (a) Substantive Due Process and the Bill of Rights | 168 |
| (b) Freedom of Expression and Association | 169 |
| (c) Right to Bear Arms | 174 |
| (d) Freedom of Religion | 175 |
| (e) Freedom From Unreasonable Search and the Right of Privacy | 177 |
| (f) Privilege Against Self-Incrimination | 179 |
| (g) Freedom From Cruel and Unusual Punishment | 181 |
| 3.6 Other Limitations on the States | 192 |
| (a) Congress Has Not Acted: The Negative Implications of the Commerce Clause | 192 |
| (b) Congress Has Acted: The Preemption Doctrine | 194 |

| | Page |
|--|-------------|
| Chapter 4. Criminal Jurisdiction | 198 |
| Sec. | |
| 4.1 In General | 199 |
| (a) The Power to Create Crimes | 199 |
| (b) Proof of Jurisdiction | 200 |
| 4.2 Federal Territorial Jurisdiction | 203 |
| (a) Federal Power as to Conduct Within the States | 204 |
| (b) Federal Enclaves | 206 |
| (c) Ships and Aircraft | 207 |
| (d) Subjective vs. Objective Territoriality | 210 |
| 4.3 Federal Extraterritorial Jurisdiction | 213 |
| (a) International Law or Congressional Mandate | 213 |
| (b) Nationality | 216 |
| (c) The Protective Principle | 218 |
| (d) Passive Personality | 220 |
| (e) Universal Jurisdiction | 221 |
| 4.4 State Jurisdiction | 223 |
| (a) Common Law View of Territorial Jurisdiction | 224 |
| (b) Statutory Extensions of Territorial Jurisdiction | 229 |
| (c) Other Possible Bases of Jurisdiction | 233 |
| (1) Based on the Protective Principle | 233 |
| (2) Based on Citizenship | 234 |
| (3) Universal Jurisdiction | 234 |
| 4.5 Jurisdiction in “Indian Country” | 235 |
| (a) “Indian Country,” “Indian” | 235 |
| (b) Federal Jurisdiction | 236 |
| (1) Crimes of Nationwide Applicability | 237 |
| (2) General Crimes Act | 237 |
| (3) Major Crimes Act | 238 |
| (c) Tribal Jurisdiction | 239 |
| (d) State Jurisdiction | 240 |
| (1) Without Public Law 280 Authority | 240 |
| (2) With Public Law 280 Authority | 241 |
| (e) Recapitulation | 242 |
| 4.6 Multiple Jurisdiction and Multiple Prosecution | 243 |
| (a) Federal–State Jurisdiction and Prosecution | 243 |
| (1) State Prosecution First | 244 |
| (2) Federal Prosecution First | 245 |
| (b) State–State Jurisdiction and Prosecution | 245 |
| (c) Tribal–Federal or State Jurisdiction and Prosecution | 247 |

PART TWO. GENERAL PRINCIPLES

| | |
|---|------------|
| Chapter 5. Mental States | 252 |
| Sec. | |
| 5.1 Generally | 253 |
| (a) Common Law and Statutory Crimes | 253 |
| (b) Ambiguity as to Requisite Mental State | 254 |
| (c) Basic Types of Mental State | 257 |
| (d) Differing Mens Rea Requirements for a Single Crime | 257 |
| (e) Mental State and the General Principles of Criminal Law | 258 |

| | Page |
|--|------------|
| Sec. | |
| 5.2 Intent and Knowledge | 259 |
| (a) The Traditional View of Intent | 259 |
| (b) The Modern View: Intent and Knowledge Distinguished | 261 |
| (c) Disparity Between Intended and Actual Result | 264 |
| (1) Unintended Victim | 264 |
| (2) Unintended Manner | 264 |
| (3) Unintended Type of Harm | 265 |
| (4) Unintended Degree of Harm | 265 |
| (d) Conditional and Multiple Intentions | 266 |
| (e) “Criminal,” “Constructive,” “General,” and “Specific” Intent | 267 |
| (f) Proof of Intention (“Presumed Intent”) | 270 |
| 5.3 Motive | 272 |
| (a) Relevance in the Substantive Criminal Law | 272 |
| (b) Relevance in Criminal Procedure | 276 |
| 5.4 Recklessness and Negligence | 277 |
| (a) Negligence | 278 |
| (1) Unreasonable Risk | 278 |
| (2) Objective Standard | 279 |
| (b) Criminal Negligence | 280 |
| (c) Violation of Statute or Ordinance | 283 |
| (d) Proof of Subjective Realization of Risk | 284 |
| (e) Risk of What Harm? | 285 |
| (f) Recklessness vs. Intention and Knowledge | 285 |
| (g) What Kind of Fault Should Criminal Liability Require? | 286 |
| (h) Disparity Between Foreseeable Result and Actual Result | 287 |
| (1) Unforeseeable Victim | 288 |
| (2) Unforeseeable Manner | 288 |
| (3) Unhazarded Type of Harm | 288 |
| (4) Unexpected Degree of Harm | 288 |
| 5.5 Strict Liability | 288 |
| (a) Statutory Interpretation | 290 |
| (b) Constitutionality | 294 |
| (c) Pros and Cons of Strict-Liability Crimes | 295 |
| (d) Alternatives to Strict Liability | 297 |
| 5.6 Ignorance or Mistake | 298 |
| (a) Generally | 298 |
| (b) Ignorance or Mistake Negating Mental State; Reasonableness | 300 |
| (c) The “Lesser Legal Wrong” and “Moral Wrong” Theories | 304 |
| (d) Belief Conduct Not Proscribed by the Criminal Law | 307 |
| (e) Belief Conduct Not Proscribed Because of Governmental Action or Inaction | 311 |
| (1) Enactment Not Reasonably Made Available | 312 |
| (2) Reasonable Reliance Upon a Statute or Judicial Decision | 312 |
| (3) Reasonable Reliance Upon an Official Interpretation | 314 |
| (4) Reliance Upon Advice of Private Counsel | 317 |
| Chapter 6. Acts; Concurrence and Consequences | 319 |
| Sec. | |
| 6.1 Requirement of an Act | 320 |
| (a) Meaning of “Act” | 320 |
| (b) Necessity for an Act | 321 |

| Sec. | Page |
|---|------|
| 6.1 Requirement of an Act—Continued | |
| (c) Voluntary Nature of Act | 322 |
| (d) Crimes of Personal Condition | 326 |
| (e) Crimes of Possession | 326 |
| (f) Vicarious Liability | 329 |
| 6.2 Omission to Act | 329 |
| (a) Duty to Act | 330 |
| (1) Duty Based Upon Relationship | 331 |
| (2) Duty Based Upon Statute | 333 |
| (3) Duty Based Upon Contract | 333 |
| (4) Duty Based Upon Voluntary Assumption of Care | 334 |
| (5) Duty Based Upon Creation of the Peril | 334 |
| (6) Duty to Control Conduct of Others | 335 |
| (7) Duty of Landowner | 335 |
| (b) Knowledge of Legal Duty and Facts Giving Rise to Duty | 335 |
| (c) Possibility of Performing the Act | 337 |
| (d) Causation | 338 |
| (e) Crimes That May be Committed by Omission to Act | 339 |
| (f) A Broader Duty to Rescue? | 340 |
| 6.3 Concurrence of Acts and Results With Mental Fault | 341 |
| (a) Concurrence of Act or Omission and Mental Fault | 341 |
| (b) Attendant Circumstances and Results | 344 |
| (c) What Act Must Concur With the Mental Fault? | 345 |
| (d) Concurrence of Results and Mental Fault—Difference as to Type of Harm | 347 |
| (e) Concurrence of Results and Mental Fault—Difference as to Degree of Harm | 348 |
| 6.4 Causation | 350 |
| (a) The Problem | 351 |
| (b) Cause in Fact | 353 |
| (c) Legal (Proximate) Cause Generally | 356 |
| (d) Intentional Crimes—Unintended Victim (“Transferred Intent”) | 357 |
| (e) Reckless and Negligent Crimes—Unhazardous Victim (“Transferred Negligence”) | 362 |
| (f) Intentional Crimes—Unintended Manner | 363 |
| (1) Direct Cause | 364 |
| (2) Pre-existing Weakness | 364 |
| (3) Intervening Cause: Generally | 364 |
| (4) Intervening Cause: Acts of the Victim | 365 |
| (5) Intervening Cause: Acts of a Third Person | 367 |
| (6) Intervening Cause: Acts of the Defendant | 368 |
| (7) Intervening Cause: Non-Human Acts | 368 |
| (g) Reckless and Negligent Crimes—Unforeseeable Manner | 369 |
| (1) Direct cause | 369 |
| (2) Intervening Cause | 371 |
| (h) Unintended Type of Harm—Felony—Murder and Misdemeanor—Manslaughter | 373 |
| (i) Year-and-a-Day Rule in Homicide | 378 |
| (j) Absolute Liability Crimes | 379 |
| (k) Causation and the Jury | 379 |
| 6.5 Consequences: Significance of Consent, Conduct, or Condonation by Victim | 380 |
| (a) Consent | 380 |
| (b) Guilt of the Victim | 384 |