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The Basics

SECOND EDITION



Frank August Schubert



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Criminal Law

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Law & Business

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TO WALLACE W. SHERWOOD, ESQ.,
A WONDERFUL LAWYER, EDUCATOR, AND FRIEND



This textbook is intended for undergraduate students enrolled in a one-semester introductory course in criminal law. It is an outgrowth of my over 40-year career interest in criminal law as a law student, practitioner (police administration and prosecutor), college professor, and author. My objective has been to write a focused, understandable, and concise exposition on the basic principles of criminal law. The text introduces students to the most important concepts in an interesting, intellectually challenging subject and explains how our democracy uses law to respond to the problem of crime in our society.

Back in 1980, when I was new to teaching criminal law, I required my students to read every chapter in a 700-page textbook that was overstuffed with information. After teaching the course a few times, I discovered, to my chagrin, that many students were not focusing on learning what I thought was the crux of the course. Instead of concentrating on learning the basic concepts, they were trying to memorize bits of information and “black letter rules.” Many students confessed that they were overwhelmed by the seeming complexity of the topics, intimidated by the legal jargon, and exhausted by the lengthy reading assignments.

It was obvious that if I wanted students to learn “the important things,” I had to be willing to trade breadth of coverage for increased understanding. I had to focus on teaching the basic conceptual building blocks of criminal law. My response was to cut the amount of required reading, reduce the amount of information that students were expected to learn, and insist that students really understand what was being taught. My shift in emphasis resulted in my having more time to better explain concepts. The class atmosphere was more relaxed and students actually began to ask questions. My students began reporting on their teacher/course evaluations that they were learning more and that the course was more interesting than they had anticipated. The university even gave me an award for teaching excellence.

This textbook consists of eight chapters. The first five chapters establish a sound foundation for the discussion of substantive offenses that follows. The substantive offenses discussed in the final three chapters give students an ample opportunity to apply the foundational concepts they have learned in earlier chapters as they learn about specific criminal offenses. Chapters 6 and 7 focus on crimes against persons (homicide, assault and battery, rape and sexual assault,

kidnapping, and false imprisonment), and crimes against property and habitation (larceny, embezzlement, false pretenses, theft, robbery, extortion, forgery, burglary, arson, and trespassing). Chapter 8 addresses inchoate and derivative crimes (solicitation, attempt, conspiracy, and RICO offenses).

Underlying Themes

The text emphasizes two underlying themes: the common law heritage that has so influenced criminal law in this country and the importance of federalism in our republic. Few students are aware of the common law's significant role in the development of American criminal law. Many enter the course expecting to study "the criminal law" and are surprised to learn that there are actually fifty-one sets of "criminal laws" in this country. While almost all students are aware of the U.S. Supreme Court and the existence of federal courts, few know anything about the constitutional boundaries that theoretically distinguish federal and state jurisdiction. This text helps to clarify, albeit at a basic level, some of the issues and implications of these themes.

Use of Cases

The text relies primarily on carefully edited appellate opinions coupled with brief, textual expositions to explain relevant principles. Once students learn how to read cases, they will find that they are better able to understand the underlying legal principles because these principles are presented within the context of a real dispute.

Instructors will find that cases work well in the classroom and can be used to teach both substantive and procedural law. By systematically guiding students through each case, instructors can help students understand the "what" of each case, as well as the more important question, the "why." If an instructor manipulates the facts of the cases, other questions and issues will arise and students will learn how to reason from example to example. This process naturally encourages class participation and the ultimate goal—learning. The cases have been carefully selected for their "teachability." Statutes are often included so that students understand that it is the legislature and not the courts that primarily defines what is criminal and determines the sentencing options.

Website

In the interest of saving space in the printed text, supplemental materials—including cases, text, statutes, and dissenting/concurring opinions that are too long to include in the printed text—are available on the textbook's website. The website materials will be periodically updated to reflect current developments in criminal law.

Textbook Resources

In the interest of saving space in the printed text, supplemental materials—including cases, text, statutes, and dissenting/concurring opinions that are too long to include in the printed text—are available on the textbook's companion website at www.aspenlawschool.com/schubert_criminallaw/. The website provides additional resources for students and instructors, including:

- Study aids to help students master the key concepts for this course. Visit the site to access interactive StudyMate exercises such as flash cards, matching, fill-in-the-blank, and crosswords. These activities are also available for download to an iPod or other hand-held device.
- Instructor resources to accompany the text, including additional cases.
- Links to helpful websites and updates.

The website materials will be periodically updated to reflect current developments in criminal law.

Criminal Law: The Basics comes packaged with four months of prepaid access to Loislaw's online legal research database, at <http://www.loislawschool.com/>.

Blackboard and eCollege course materials are also available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

Lastly, instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these materials are available on a CD-ROM or for download from our companion website.

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This edition is dedicated to my former colleague for 25 years at Northeastern University, Professor Wallace Sherwood. His dedication to law and the teaching of criminal law have benefited Northeastern students for over 35 years.

Finally, I wish to thank two special people in my family who have directly assisted me in writing this book. First, thanks go to my daughter Tracy for her work in proofreading the text. I am very proud that my daughter has so directly contributed to the completion of this project. As always, I thank my wife Barbara, who has constantly encouraged and supported my writing endeavors. Her suggestions, insight, and perspective have greatly influenced my thinking, writing, and teaching for over three decades.

It has been my experience that while undergraduate students find the study of criminal law to be fascinating, many attempting to read judicial opinions for the first time find the legal jargon and the formalistic language used by appellate court judges intimidating. The following suggestions are offered to help you overcome this barrier. The most important task is to strengthen your vocabulary skills. A good technique for ensuring long-term retention of newly acquired vocabulary is to develop a “personal dictionary” that you can refer to and periodically revise. Basically, at first you need to look up every word with which you are unfamiliar. Many of these words will be included in the glossary at the back of this textbook. You can find most nontechnical words in a standard English dictionary. For legal jargon, you can either buy a paperback version of a legal dictionary or use an online legal dictionary (one good source is www.Findlaw.com). If you systematically look up unfamiliar words, record them in a personal dictionary, and revise and review the dictionary’s contents from time to time, your vocabulary skills will improve. As vocabulary skills strengthen, you’ll need less time to read and understand the cases and you’ll begin to experience a “learning dividend.” That is, you’ll discover that you can read and understand not only this and other textbooks but also newspaper and magazine articles that contain legal terms. If you make the commitment to strengthen your vocabulary skills, you are likely to jump the vocabulary hurdle by the third or fourth week. The learning dividend will continue to pay off for a lifetime.

Criminal Law

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