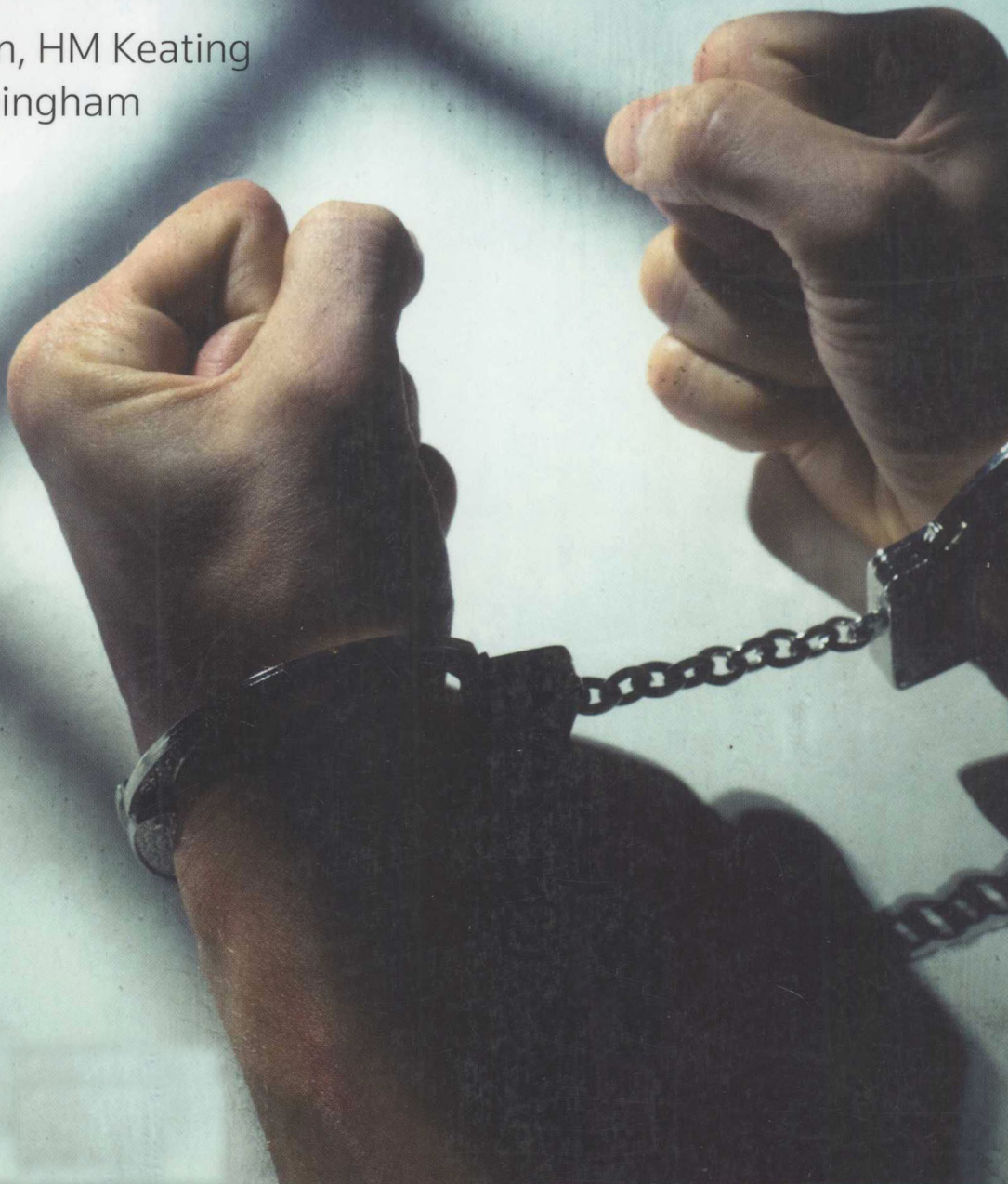


Clarkson and Keating Criminal Law

Seventh Edition

CMV Clarkson, HM Keating
and SR Cunningham



CLARKSON AND KEATING CRIMINAL LAW: TEXT AND MATERIALS

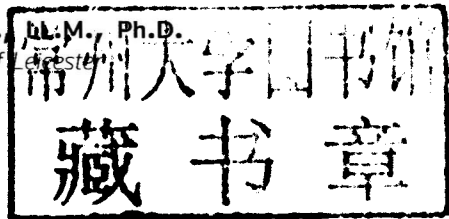
SEVENTH EDITION

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PREFACE

The aim of this book is to examine the main principles and rules of the criminal law and to expose the theoretical bases upon which they are founded.

The criminal law is the backdrop to the operation of the whole criminal justice system. It informs the way in which victims, the public, the police and other law enforcement agencies, the C.P.S. and judges and other court personnel react and operate. It is, therefore, inextricably linked to issues of criminal procedure, criminology, moral philosophy and penology. Fletcher has stated that "the criminal law should express the way we live". It is a reflection of community values aimed at isolating the blameworthy who are deserving of punishment. Equally, it is a means of social control; it attempts to uphold, as well as reflect, these community values; it sets a standard, albeit at times a minimal one, of necessary compliance. In short, it is a set of moral commandments that are backed up by the legal threat of punishment. It thus follows that whether sanctions are imposed on the basis of desert or on utilitarian grounds, the rules of the criminal law and the punishment of offenders are the two sides of the same coin. A whole range of substantive issues—such as, whether "recklessness" should include "inadvertence", whether one can justify the existence of offences of "strict liability", how the boundaries of the law of "attempt" and "accessorial" crime should be drawn, and so on—are, in reality, issues relating to the justification of punishment in such cases. A true appreciation of the substantive criminal law must thus involve some understanding of the rationale of punishment and why conduct is criminalised—and it is in this context that we have sought to present the main rules of the law.

Like many other works in this field, this is a book on the actual rules of the criminal law. We have attempted to provide a full analysis of these main rules on the topics covered. But, in doing this, we have attempted the more ambitious task of using the law to extract, and develop, some fundamental ideas underlying the law. We have tried to explore, in the context of punishment, such issues as: the relationship between blame and harm, the criteria for identifying the blameworthy, the structure of offences in relation to each other and whether such structure fairly represents the differing wrongdoing involved, and the role of the general defences. In short, we have attempted to subject the criminal law to the beginnings of a philosophical analysis that can throw some light on the substantive rules.

The criminal law changes with great rapidity and therefore this book has been substantially rewritten and updated for the 7th edn. In particular, the Coroners and Justice Act 2009 (on loss of control [formerly, provocation] and diminished responsibility) and the Serious Crime Act 2007 (replacing incitement with new offences of encouraging or assisting crime) have radically reformed these areas of law. The Criminal Justice and Immigration Act 2008 s.76 has largely codified the common law rules on self-defence. The Regulatory Enforcement and Sanctions Act 2008 is of immense importance for the way regulatory, strict liability offences are dealt with. The Corporate Manslaughter and Corporate Homicide Act 2007 introduced the new offence of corporate man-

slaughter. Numerous important judicial decisions have necessitated substantial rewriting of various sections: *Kennedy (No 2)* (causation); *Evans* (omissions); *R. v JTB* (lack of age); *R. v G* (rape of child under 13); and *Rahman* (participation). Full coverage is also given to new reform proposals such as the Law Commission Reports on attempt and conspiracy, joint unlawful enterprise and intoxication.

We have been anxious to ensure that this book is accessible to, and easily digestible by, undergraduate and other students concerned with criminal law. We have approached our task, and included appropriate materials, with this concern very much in mind. We have tried to cover the range of competing views and present them in a discursive manner allowing the reader to make choices—while not being afraid to state our own preferences.

By now the format of this book should be familiar. It is neither a straight “textbook”, nor a “cases and materials” book. Instead, we have tried to combine what we regard as the best features of both such styles—a book with the flow and coherence of a textbook thus providing the reader with guidance and direction, but one that also enables a substantial amount of original material from a diversity of sources to be absorbed.

We are very grateful to our publishers for their help and patience during the preparation of this book.

This is the last edition of this book with which Chris Clarkson will be involved. He leaves the book in good hands and is hugely appreciative of the invaluable role played by Heather Keating over the past 26 years and seven editions of the book. His thanks also extend to Sally Cunningham for her excellent contribution to this and the last edition. He is indebted to his wife, Barbara, for her support during the writing of all seven editions. He would like to dedicate his share of this book to all his students – past and present—who have used this book.

Heather Keating would like to thank Jan Prescott for her assistance in preparing this edition. As ever, she would like to express her thanks to her children for the understanding they have shown during the writing of this book. Finally, she would like to express how very much she has valued the support and friendship of her co-author, Chris Clarkson, over the course of seven editions.

Sally Cunningham would like to express her gratitude to her husband Matt for his tolerance and support in difficult times. Her share of the book is dedicated to her son, Benjamin, a new arrival since the 6th edn. She is indebted to Chris Clarkson for his guidance and mentorship as a colleague and co-author. She intends to strive to maintain in future editions the standard set by his authorship and is appreciative of the confidence he has placed in her to continue in his absence.

This book has been written with reference to the law as it stood on February 1, 2010, although it has been possible to incorporate some subsequent changes to the law.

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