

TABLE OF CONTENTS

PREFACE TO THE NINTH EDITION.....	V
PREFACE TO THE FIRST EDITION	VII
COPYRIGHT ACKNOWLEDGMENTS	XIII
TABLE OF CASES.....	XXXIX
TABLE OF MODEL PENAL CODE SECTIONS	XLV
Chapter 1. Introduction: Setting the Stage.....	1
A. Nature, Sources, and Limits of the Criminal Law	1
Henry M. Hart, Jr.—The Aims of the Criminal Law	1
Notes and Questions	3
B. Criminal Law in a Procedural Context: Pre-Trial	6
C. Criminal Law in a Procedural Context: Trial by Jury.....	8
D. Proof of Guilt at Trial.....	9
1. “Proof Beyond a Reasonable Doubt”	9
Notes and Questions	10
2. Enforcing the Presumption of Innocence	14
Owens v. State	14
Notes and Questions	18
E. Jury Nullification	19
Introductory Comment.....	19
State v. Ragland	20
Notes and Questions	23
Chapter 2. Principles of Punishment	31
A. Introduction	31
Initial Thoughts and Hard Statistics	31
B. Theories of Punishment	34
1. In General	34
Kent Greenawalt—Punishment	34
Notes and Questions	36
2. Utilitarian Justifications	37
Jeremy Bentham—An Introduction to the Principles of Morals and Legislation	37
Notes and Questions	38
Kent Greenawalt—Punishment	39
Notes and Questions	41
3. Retributive Justifications	43
Michael S. Moore—The Moral Worth of Retribution	43
Notes and Questions	44
Immanuel Kant—The Philosophy of Law.....	44
Notes and Questions	45

2 James Fitzjames Stephen—A History of the Criminal Law of England	46
Notes and Questions	47
Herbert Morris—Persons and Punishment	47
Notes and Questions	49
Jean Hampton—The Retributive Idea	50
Notes and Questions	51
C. The Penal Theories in Action	53
1. Who Should Be Punished?	53
The Queen v. Dudley and Stephens	53
Notes and Questions	55
2. How Much (and What) Punishment Should Be Imposed?	56
People v. Superior Court (Du).....	56
People v. Du	59
Notes and Questions	61
United States v. Gemenetera	64
Notes and Questions	71
D. Proportionality of Punishment	73
1. General Principles	73
Immanuel Kant—The Philosophy of Law.....	73
Jeremy Bentham—An Introduction to the Principles of Morals and Legislation	74
Notes and Questions	75
2. Constitutional Principles	75
Coker v. Georgia	76
Notes and Questions	81
Ewing v. California.....	83
Notes and Questions	92
Chapter 3. Modern Role of Criminal Statutes	95
A. Principle of Legality	95
1. The Requirement of Previously Defined Conduct	95
Commonwealth v. Mochan.....	95
Notes and Questions	98
Keeler v. Superior Court	99
Notes and Questions	107
2. The Values of Statutory Clarity	109
In re Banks	109
Notes and Questions	113
Desertrain v. City of Los Angeles.....	118
Notes and Questions	123
B. Statutory Interpretation	125
Muscarello v. United States	125
Notes and Questions	131
Chapter 4. Actus Reus	133
Introductory Comment: Defining “Actus Reus”	133

A.	Voluntary Act	134
	Martin v. State	134
	Notes and Questions	134
	State v. Utter	137
	Notes and Questions	140
B.	Omissions (“Negative Acts”)	146
1.	General Principles	146
	People v. Beardsley	146
	Notes and Questions	148
2.	Distinguishing Acts from Omissions	152
	Barber v. Superior Court	152
	Notes and Questions	157
C.	Social Harm	157
	Notes and Questions	159
Chapter 5. Mens Rea		161
A.	Nature of “Mens Rea”	161
	United States v. Cordoba-Hincapie	161
	Notes and Questions	162
	Regina v. Cunningham	163
	Notes and Questions	165
B.	General Issues in Proving Culpability	165
1.	“Intent”	165
	People v. Conley	165
	Notes and Questions	168
2.	The Model Penal Code Approach	173
	Introductory Comment	173
	American Law Institute, Model Penal Code and Commentaries, Comment to § 2.02	173
	Notes and Questions	176
3.	“Knowledge” of Attendant Circumstances (the “Wilful Blindness” Problem)	177
	State v. Nations	177
	Notes and Questions	180
4.	Problems in Statutory Interpretation	182
	Introductory Comment	182
	State v. Miles	183
	Notes and Questions	188
C.	Strict Liability Offenses	190
	Morissette v. United States	190
	Notes and Questions	192
	Staples v. United States	193
	Notes and Questions	199
	Garnett v. State	201
	Notes and Questions	207

D. Mistake and Mens Rea.....	208
1. Mistake of Fact	208
People v. Navarro	208
Notes and Questions	211
2. Mistake (or Ignorance) of Law	213
People v. Marrero	213
Notes and Questions	220
Cheek v. United States	225
Notes and Questions	229
Chapter 6. Causation	231
A. Actual Cause (Cause-in-Fact).....	231
Velazquez v. State	231
Oxendine v. State	232
Notes and Questions	236
B. Proximate Cause (“Legal” Cause)	237
People v. Rideout	238
Notes and Questions	244
Velazquez v. State	249
Notes and Questions	251
C. Concurrence of the Elements.....	253
State v. Rose	253
Notes and Questions	255
Chapter 7. Criminal Homicide	257
A. Overview	257
1. Homicide Statistics.....	257
2. Common Law Origins and Statutory Reform	258
American Law Institute, Model Penal Code and Commentaries, Comment to § 210.2	258
American Law Institute, Model Penal Code and Commentaries, Comment to § 210.8	259
3. Variations on the Theme: Some Selected Homicide Statutes	261
Notes and Questions	274
4. The Protected Interest: “Human Being”	274
People v. Eulo	274
Notes and Questions	279
B. Intentional Killings	281
1. Degrees of Murder: The Deliberation-Premeditation Formula.....	281
State v. Guthrie	281
Notes and Questions	284
Midgett v. State	286
Notes and Questions	288
State v. Forrest.....	289
Notes and Questions	291
2. Manslaughter: “Heat of Passion” Killings	293
Introductory Comment.....	293

a.	Common Law Principles	294
	Girouard v. State	294
	Notes and Comments	298
	Joshua Dressler—Rethinking Heat of Passion: A Defense in Search of a Rationale	300
	Joshua Dressler—Why Keep the Provocation Defense?: Some Reflections on a Difficult Subject.....	302
	Notes and Questions.....	304
b.	The “Reasonable Person”: Provocation Law and Beyond.....	305
	Introductory Comment.....	305
	Notes and Questions.....	305
c.	Model Penal Code and Beyond	311
	People v. Casassa.....	311
	Notes and Questions.....	316
3.	Murder Versus Manslaughter: A Literary Problem.....	321
	Willa Cather—O Pioneers.....	321
	Notes and Questions	324
C.	Unintentional Killings: Unjustified Risk-Taking.....	324
	Introduction: A Road Map	324
	People v. Knoller.....	325
	Notes and Questions	329
	State v. Williams	333
	Notes and Questions	336
D.	Unintentional Killings: Unlawful Conduct.....	342
1.	The Felony-Murder Rule.....	342
a.	The Doctrine: In General	342
	American Law Institute, Model Penal Code and Commentaries, Comment to § 210.2.....	342
	People v. Fuller	343
	Notes and Questions.....	345
b.	The Policy Debate	345
	Nelson E. Roth & Scott E. Sundby—The Felony-Murder Rule: A Doctrine at Constitutional Crossroads	345
	David Crump & Susan Waite Crump—In Defense of the Felony Murder Doctrine	348
	Notes and Questions.....	352
c.	Limitations on the Rule.....	353
i.	Overview.....	353
ii.	The “Inherently Dangerous Felony” Limitation	354
	Fisher v. State.....	354
	Notes and Questions	361
iii.	The “Independent Felony” (or Merger) Limitation	363
	People v. Smith	363
	Notes and Questions	366
iv.	Killings “in the Perpetration” or “in Furtherance” of a Felony	368
	State v. Sophophone	368

Notes and Questions	371
2. Unlawful-Act Manslaughter (the “Misdemeanor Manslaughter” Rule)	373
3. A Brain Teaser to End All Brain Teasers	373
Notes and Questions	374
E. Capital Murder	374
1. The Constitutional and Policy Debate	374
Introductory Comment.....	374
<i>Gregg v. Georgia</i>	375
Notes and Questions	383
2. The Quest for Reliable Procedures	391
Introductory Comment.....	391
a. Racial Discrimination.....	392
<i>McCleskey v. Kemp</i>	392
Notes and Questions.....	398
b. Victim Impact Evidence	399
<i>Payne v. Tennessee</i>	399
Notes and Questions.....	406
3. Substantive Limitations on the Death Penalty	408
<i>Tison v. Arizona</i>	408
Notes and Questions	414
Chapter 8. Rape and Related Sexual Offenses	417
A. Overview	417
Reflections on Law in Flux	417
1. Rape (Sexual Assault) Statistics	418
U.S. Dept. of Justice, Bureau of Justice Statistics—Female Victims of Sexual Violence, 1994–2010	418
Notes and Questions	422
2. Social Context	424
Susan Estrich—Rape	424
Notes and Questions	425
Joshua Dressler—Where We Have Been, and Where We Might Be Going: Some Cautionary Reflections on Rape Law Reform	428
Notes and Questions	429
3. Variations on the Theme: Selected Sexual Offense Statutes	431
B. Actus Reus	439
1. The Traditional (Pre-Reform) Approach: Forcible Rape	439
a. Force and Non-Consent	439
<i>State v. Alston</i>	439
Notes and Questions.....	443
b. The Resistance Requirement	445
<i>Rusk v. State</i>	445
<i>State v. Rusk</i>	451
Notes and Questions.....	452

2.	Moving Beyond the Traditional Approach.....	456
a.	Overview.....	456
	Susan Estrich—Rape.....	457
	Susan Ager—The Incident	457
	Notes and Questions.....	459
b.	Redefining “Force”	460
	Commonwealth v. Berkowitz	460
	Notes and Questions.....	469
c.	Abandoning “Force”: Rape as Non-Consensual Sexual Intercourse	471
	State of New Jersey in the Interest of M.T.S.....	471
	Notes and Questions.....	479
d.	“Consent” Obtained by Fraud or Intoxicants.....	483
	Boro v. Superior Court	483
	Notes and Questions.....	487
C.	Mens Rea.....	490
	Commonwealth v. Lopez	490
	Notes and Questions	494
D.	Proving Rape: Rape Shield Laws	497
	State v. Herndon	497
	People v. Wilhelm	498
	Notes and Questions	501
E.	Statutory Rape	501
	Garnett v. State	501
	Notes and Questions	501
Chapter 9. General Defenses to Crimes		507
A.	Categories of Defenses	507
	Paul H. Robinson—Criminal Law Defenses: A Systematic Analysis	507
	Joshua Dressler—Justifications and Excuses: A Brief Review of the Concepts and the Literature	510
	Notes and Questions	513
B.	Burden of Proof.....	513
	Patterson v. New York	514
	Notes and Questions	521
C.	Principles of Justification	521
1.	Structure and Underlying Theories of Justification Defenses	521
1.	1 Paul H. Robinson—Criminal Law Defenses	521
	Joshua Dressler—Understanding Criminal Law	522
2.	Self-Defense	524
a.	General Principles	524
	United States v. Peterson	524
	Notes and Questions.....	530
b.	“Reasonable Belief” Requirement.....	536
i.	In General	536
	People v. Goetz	536

	Notes and Questions.....	542
ii.	The “Reasonable Person”: Objective, Subjective, or a Mixed Standard?.....	549
	State v. Wanrow.....	549
	Notes and Questions.....	552
iii.	Battered Women, Battered Woman Syndrome and Beyond.....	556
	State v. Norman.....	557
	State v. Norman.....	563
	Notes and Questions.....	566
	Stephen J. Morse—The “New Syndrome Excuse Syndrome”	572
	Notes and Questions.....	574
3.	Defense of Others	576
	State v. Giminski.....	576
	Notes and Questions	579
4.	Defense of Habitation/Property and Law Enforcement Defenses	580
	State v. Boyett	581
	Notes and Questions	585
5.	Necessity (“Choice of Evils”)	589
a.	General Principles	589
	Nelson v. State	589
	American Law Institute, Model Penal Code and Commentaries, Comment to § 3.02.....	592
	Notes and Questions.....	593
b.	Civil Disobedience	596
	State ex rel. Haskell v. Spokane County District Court	596
	Notes and Questions.....	604
c.	Defense to Murder?	605
	The Queen v. Dudley and Stephens	605
	Notes and Questions.....	609
D.	Principles of Excuse	613
1.	Why Do We Excuse Wrongdoers?.....	613
	Sanford H. Kadish—Excusing Crime.....	613
	Joshua Dressler—Understanding Criminal Law	615
2.	Duress	617
a.	General Principles	617
	United States v. Contento-Pachon	617
	Notes and Questions.....	620
b.	Necessity Versus Duress	625
	People v. Unger	625
	Notes and Questions.....	629
c.	Defense to Murder?	630
	People v. Anderson	630
	Notes and Questions.....	636

3.	Intoxication	637
	United States v. Veach.....	637
	Notes and Questions	640
4.	Insanity	645
	Introduction: Questions to Consider	645
	a. Some Preliminaries	646
	i. Competency to Stand Trial.....	646
	ii. Pre-Trial Assertion of the Insanity Plea	648
	iii. Burden of Proof at Trial	650
	iv. Post-Trial Disposition of Insanity Acquittees	650
	b. Why Do We Excuse the Insane?: Some Initial Thoughts.....	651
	United States v. Freeman	651
	Notes and Questions.....	651
	c. Struggling for a Definition: The Tests of Insanity	653
	State v. Johnson.....	653
	American Law Institute, Model Penal Code and Commentaries Comment to § 4.01.....	657
	Notes and Questions.....	658
	d. <i>M'Naghten</i> and the Model Penal Code in Greater Detail	667
	State v. Wilson	667
	Notes and Questions.....	673
	e. An Insanity Problem	678
	Yates v. State	678
	Notes and Questions.....	680
	f. Should (and May) the Defense Be Abolished?	681
	American Law Institute, Model Penal Code and Commentaries Comment to § 4.01.....	681
	Notes and Questions.....	682
	Kahler v. Kansas	683
	Notes and Questions.....	690
5.	Diminished Capacity	690
	Stephen J. Morse—Undiminished Confusion in Diminished Capacity.....	690
	Notes and Questions	692
	Clark v. Arizona.....	696
	Notes and Questions	704
6.	Infancy.....	706
	In re Devon T.....	706
	Notes and Questions	712
E.	New Defenses?.....	713
1.	Euthanasia.....	713
	Introduction	713
	Latimer v. The Queen	716
	Notes and Questions	721
	Yale Kamisar—Physician Assisted Suicide: The Problems Presented by the Compelling, Heartwrenching Case	728
	Notes and Questions	733

2.	Addiction/Alcoholism/??? Constitutional Defense	733
	Robinson v. California	733
	Notes and Questions	737
	Powell v. Texas	738
	Notes and Questions	747
3.	“Severe Environmental Deprivation” Defense	747
	Richard Delgado—“Rotten Social Background”: Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?	748
	Notes and Questions	750
4.	Cultural Defense.....	751
	State v. Kargar	751
	Notes and Questions	755
	The Cultural Defense in the Criminal Law	755
	Notes and Questions	760
Chapter 10. Inchoate Offenses		763
A.	Overview	763
	American Law Institute—Model Penal Code and Commentaries, Comment to Article 5	763
	Notes and Questions	764
B.	Attempt	766
1.	General Principles	766
	Ira P. Robbins—Double Inchoate Crimes	766
	Notes and Questions	767
	Andrew Ashworth—Criminal Attempts and the Role of Resulting Harm Under the Code, and in the Common Law	768
	Notes and Questions	770
2.	Grading Criminal Attempts.....	771
	American Law Institute, Model Penal Code and Commentaries, Comment to § 5.05	771
	Notes and Questions	772
3.	Mens Rea	773
	People v. Gentry	773
	Notes and Questions	775
	Bruce v. State.....	777
	Notes and Questions	778
4.	Actus Reus	780
a.	General Principles	780
	United States v. Mandujano	781
	Notes and Questions.....	782
	An Initial Effort at Drawing the Preparation-Perpetration Line	784
	Notes and Questions.....	784

b.	Distinguishing Preparation from Perpetration: The Tests at Work	785
	Commonwealth v. Peaslee	785
	Notes and Questions.....	786
	People v. Rizzo	788
	Notes and Questions.....	789
	People v. Miller	791
	Notes and Questions.....	792
	State v. Reeves	794
	Notes and Questions.....	799
	One Final Problem.....	801
5.	Special Defenses	802
a.	Impossibility.....	802
	People v. Thousand.....	802
	Notes and Questions.....	810
b.	Abandonment.....	818
	Commonwealth v. McCloskey	818
	Notes and Questions.....	821
	A Special Note on Assault	822
	American Law Institute, Model Penal Code and Commentaries, Comment to § 211.1.....	822
	Notes and Questions.....	824
C.	Solicitation	825
	State v. Mann	825
	Notes and Questions	825
	State v. Cotton	826
	Notes and Questions	829
D.	Conspiracy	831
1.	General Principles	831
	People v. Carter	831
	Notes and Questions	831
	Pinkerton v. United States	835
	Notes and Questions	836
2.	Mens Rea.....	839
	People v. Swain.....	839
	Notes and Questions	842
	People v. Lauria	845
	Notes and Questions	849
3.	Actus Reus	850
	Abraham S. Goldstein—Conspiracy to Defraud the United States.....	850
	Notes and Questions	851
	Commonwealth v. Azim	852
	Notes and Questions	853
	Commonwealth v. Cook.....	854
	Notes and Questions	858

4.	Conspiracy: Bilateral or Unilateral?	859
	People v. Foster	859
	Notes and Questions	862
5.	Scope of an Agreement: Party and Object Dimensions	864
	American Law Institute, Model Penal Code and Commentaries, Comment to § 5.03	864
	Kilgore v. State	865
	Notes and Questions	869
	Braverman v. United States	871
	Notes and Questions	872
6.	Defenses	873
	Iannelli v. United States	873
	Notes and Questions	878
	Gebardi v. United States.....	879
	Notes and Questions	880
	People v. Sconce	881
	Notes and Questions	883
E.	Offenses with “a Large Inchoate Aspect”	883
	Major v. State	884
	Notes and Questions	887
Chapter 11. Liability for the Conduct of Another		893
A.	Accomplice Liability	893
1.	General Principles	893
	a. Common Law Terminology and Its Significance	893
	State v. Ward	893
	Notes and Questions.....	894
	b. Theoretical Foundation: Derivative Liability	895
2.	Accomplice Liability: In General	897
	State v. Hoselton	897
	Notes and Questions	899
3.	Mens Rea.....	901
	a. Intent: “Purpose” or “Knowledge”?	901
	People v. Lauria	901
	Notes and Questions.....	901
	b. When Is “Intent” Not Required?	904
	i. Offenses Not Requiring Intent.....	904
	Riley v. State	904
	Notes and Questions	909
	ii. Attendant Circumstances.....	909
	iii. Natural-and-Probable-Consequences Doctrine.....	911
	State v. Linscott	911
	Notes and Questions	914
4.	Actus Reus	915
	State v. V.T.	915
	Notes and Questions	916
	Wilcox v. Jeffery	917

Notes and Questions	919
State v. Helmenstein	919
Notes and Questions	922
People v. Genoa.....	924
Notes and Questions	925
A Special Problem: Mutual Combat	926
5. Distinguishing Direct from Accomplice Liability	928
Bailey v. Commonwealth	928
Notes and Questions	931
6. Relationship of the Liability of the Accomplice to the Principal.....	932
a. If the Principal Is Acquitted	932
United States v. Lopez	932
Notes and Questions.....	934
b. If the Principal Is Convicted	935
People v. McCoy	935
Notes and Questions.....	937
7. Limits to Accomplice Liability	938
In re Meagan R.	938
Notes and Questions	939
State v. Formella	940
Notes and Questions	943
B. Conspiracy Liability	943
Pinkerton v. United States	943
Notes and Questions	943
C. Vicarious Liability	943
Commonwealth v. Koczwara	943
Notes and Questions	949
D. Corporate Liability	949
State v. Christy Pontiac-GMC, Inc.....	949
Pamela H. Bucy—Corporate Ethos: A Standard for Imposing Corporate Criminal Liability	953
Notes and Questions	955
John C. Coffee, Jr.—“No Soul to Damn: No Body to Kick”: An Unscandalized Inquiry Into the Problem of Corporate Punishment.....	956
Notes and Questions	961
Chapter 12. Theft	965
Introductory Comment	965
A. Larceny	966
1. Actus Reus	966
a. “Trespassory Taking (Caption) and Carrying Away (Asportation) * * * ”	966
Lee v. State	966
State v. Jones.....	967
Notes and Questions.....	970

United States v. Mafnas.....	971
Notes and Questions.....	973
Topolewski v. State.....	975
Rex v. Pear	979
Notes and Questions.....	980
Brooks v. State	980
Notes and Questions.....	982
b. “ * * * of the Personal Property of Another * * * ”	982
Lund v. Commonwealth	982
Notes and Questions.....	985
2. Mens Rea: “ * * * with the Intent to Steal the Property”	986
People v. Brown	986
Notes and Questions	988
People v. Davis.....	990
Notes and Questions	995
B. Embezzlement	995
Rex v. Bazeley.....	995
Notes and Questions	998
C. False Pretenses.....	999
People v. Ingram.....	999
Notes and Questions	1000
People v. Whight.....	1001
Notes and Questions	1004
D. Federal Mail, Wire, and Computer Fraud.....	1005
United States v. Czubinski	1005
Notes and Questions	1012
Appendix. American Law Institute Model Penal Code	1015
INDEX.....	1099