



Thomas J. Gardner | Terry M. Anderson

# CRIMINAL LAW

TENTH EDITION

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# Criminal Law

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TENTH EDITION

# Criminal Law

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*Thomas J. Gardner, Terry M. Anderson*

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*Eileen Gardner*  
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Tom Gardner and Terry Anderson's next project is co-authoring a new edition of *Criminal Evidence*.

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# Contents in Brief

## **PART ONE**

### **Basic Concepts of Criminal Law**

- 1 Criminal Law: Purposes, Scope, and Sources 2
- 2 Essential Elements of a Crime 30
- 3 Criminal Liability 58
- 4 Criminal Responsibility and the Capacity to Commit a Crime 82
- 5 The Law Governing the Use of Force 104
- 6 Other Criminal Defenses 126
- 7 Criminal Punishment 156
- 8 Jurisdiction 180
- 9 Free Speech, Street Crimes, and the Bill of Rights 202

## **PART TWO**

### **Crimes Against the Person**

- 10 Homicide 230
- 11 Assault, Battery, and Other Crimes Against the Person 256
- 12 Sexual Assault, Rape, Prostitution, and Related Sex Crimes 284

## **PART THREE**

### **Crimes Against Property**

- 13 Theft 314
- 14 Robbery and Burglary 340
- 15 White Collar Crime, Cyber Crime, and Commercial Crime 358

## **PART FOUR**

### **Other Criminal Conduct**

- 16 Drug Abuse and Alcohol-Related Crimes 382
- 17 Terrorism 402
- 18 Organized Crime and Gangs 416
- 19 Immigration Crimes, Contempt, and Other Crimes Against Government 436



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# Contents

BOXED FEATURES xvii

PREFACE xxi

---

## PART ONE

### Basic Concepts of Criminal Law

---

#### CHAPTER 1

##### Criminal Law: Purposes, Scope, and Sources 2

###### Criminal Law in a Democracy 4

The Law as the Will of the People Within a Democracy 4

###### Criminal Law and Related Fields of Law 6

Public and Private Law 6

Criminal Procedure 6

Substantive Criminal Law 6

Legal Wrongs 7

Distinction Between a Crime and a Tort 7

Criminal Law and Moral Law 8

###### Goals and Purposes of Criminal Law 9

Background of the U.S. Criminal Justice System 9

Goals and Purposes 10

###### The Permissible Scope of Criminal Laws in the United States 11

The Use of the Police Power to Maintain Public Order 11

Limitations on the Police Power of a State to Regulate Conduct 12

###### The Principle of “No Punishment Without a Law for It” 13

###### Classifications of Crimes 14

Felony and Misdemeanor 15

###### General Constitutional Limitations on Criminal Laws 16

States’ Power to Enact Criminal Laws 16

Ex Post Facto Laws 17

Ex Post Facto and Nonpunitive Laws 17

Bill of Attainder 18

Due Process and the “Void for Vagueness” Doctrine 18

“Overbreadth” Doctrine 19

Status Crimes 19

Equal Protection of the Laws 21

###### Sources of Criminal Law 22

Common Law Crimes 22

Statutory Crimes 25

Administrative Crimes 25

###### Summary 27

###### Case Analysis and Writing Exercises 28

#### CHAPTER 2

##### Essential Elements of a Crime 30

###### Crimes Requiring Proof of Mental Fault 32

Simultaneous Occurrence of the Forbidden Act and the Mental Element 33

*Actus Reus*: The Forbidden Act or Omission 34

*Actus Reus* for Different Elements of Parties to a Crime 34

*Mens Rea*: The Guilty Mind 34

The General Intent–Specific Intent Distinction 35  
Proving Criminal Intent or Criminal State  
of Mind 36

The Requirement of Scienter 37

■ **CASE CLOSE-UP: *Dixon v. United States*** 38

The Motive for Committing a Crime 40

**Strict Liability Crimes** 42

Strict Liability Laws that Seek  
to Protect Children 44

**Proximate Cause or Causation** 45

Unintended Harm Resulting from a Misdemeanor  
or Other Minor Offense 46

When the Illegal Act Would Not Support  
a Manslaughter Conviction 46

The Ancient Year-and-a-Day Murder Rule 46

**Possession Alone as a Crime** 48

The Possession of Illegal Contraband Inference 49

**The Use of Presumptions and Inferences  
in Criminal Law** 50

Functions of Presumptions 51

Inferences Distinguished from Presumptions 52

The Presumption that All Persons Are Sane, Normal,  
and Competent 54

**Summary** 55

**Case Analysis and Writing Exercises** 55

**CHAPTER 3**

**Criminal Liability** 58

**Preliminary, Anticipatory, or Inchoate Crimes** 60

When Is a Crime Committed? 60

Solicitation or Incitement to Commit a Crime 61

Conspiracy to Commit a Crime 62

■ **CASE CLOSE-UP: *Whitfield v. United States*** 64

The Crime of Attempt 66

Impossibility in Attempt Cases 68

**Parties to the Principal Crime** 71

Under the Common Law 71

Criminal Liability in the United States Today 71

Theories of Criminal Liability 72

Civil Liability as an Accomplice or Aider  
and Abettor 73

Liability for Crimes Other than the Planned  
and Intended Offense 74

**Post-Crime Offenses** 75

**Summary** 77

**Case Analysis and Writing Exercises** 77

**CHAPTER 4**

**Criminal Responsibility and the Capacity  
to Commit a Crime** 82

**Ancient Concepts of Criminal Responsibility** 84

**Infancy and Criminal Responsibility** 85

The Juvenile Court System 87

**The Insanity Defense** 87

Insanity at the Time of the Criminal Incident 87

**Tests Used to Determine Insanity** 88

The *M'Naghten* Case and the “Right and Wrong”  
Test 88

Other Tests in the United States 88

The Model Penal Code “Substantial Capacity”  
Test 89

States that Have Abolished the Insanity  
Defense 90

The Plea and Verdict of Guilty but Mentally Ill 91

■ **CASE CLOSE-UP: *Clark v. Arizona*** 92

Mental Conditions that Do Not Satisfy  
the Insanity Defense 93

**The Defense of Diminished Capacity** 93

**The Requirement of Competency to Stand Trial** 96

Can Amnesia Be the Grounds for a Finding  
of Incompetency? 97

Faking Insanity or Incompetency 98

**The Criminal Liability of Corporations** 98

**Summary** 99

**Case Analysis and Writing Exercises** 100

**CHAPTER 5**

**The Law Governing the Use of Force** 104

**Self-Defense and the Defense of Others** 106

Less than Deadly Force in Self-Protection 106

Coming to the Aid of Another 107

The Use of Deadly Force in Self-Defense  
or the Defense of Others 107

“Stand Your Ground” Laws and the Duty  
to Retreat 107

Loss of Self-Defense Privilege for a Wrongdoer  
or an Aggressor 108

The “Castle” Doctrine and the Minority Duty-  
to-Retreat Exception to that Doctrine 109

Battered Women and Domestic Homicides 110

**The Use of Force in the Defense of Property** 112

Less than Deadly Force in the Defense  
of Property 112

Deadly Force in the Defense of Property	113
The Use of Booby Traps to Protect Property	113
<b>The Use of Force in Making an Arrest</b>	<b>114</b>
Less than Deadly Force in Making an Arrest	114
Using Reasonable Force to Obtain Evidence of Drunk or Drugged Driving	115
Standards for the Use of Deadly Force Established by the U.S. Supreme Court	116
Definition of an Unreasonable Seizure Today	117
■ <b>CASE CLOSE-UP: <i>Scott v. Harris</i></b>	<b>118</b>
Use of Force in Resisting an Unlawful Arrest	119
Cases in Which Force Is Not Legally Justified	119
<b>Disciplining Children</b>	<b>121</b>
Use of Force by Parents	121
Others Who May Discipline Children	121
<b>Summary</b>	<b>123</b>
<b>Case Analysis and Writing Exercises</b>	<b>124</b>

## **CHAPTER 6**

### **Other Criminal Defenses 126**

<b>Affirmative Defenses</b>	<b>128</b>
<b>Immunity as a Defense</b>	<b>128</b>
Diplomatic Immunity	128
Legislative Immunity	129
Witness Immunity	129
<b>Mistake or Ignorance of Fact or Law as a Defense</b>	<b>130</b>
Mistake or Ignorance of Fact	130
Strict Liability Crimes and the Defense of Mistake	131
Mistake or Ignorance of Criminal Law	131
<b>Intoxication or Drugged Condition as a Defense</b>	<b>133</b>
Involuntary Intoxication or Drugged Condition	133
<b>Duress, Coercion, or Compulsion as a Defense</b>	<b>134</b>
Duress or Coercion as Justification to Escape from Prison	134
The Defense of Duress in a Charge of Murder	135
The Crime of Coercion	135
<b>Necessity or Choice of Evils Defense</b>	<b>135</b>
<b>Can One Kill to Save Oneself?</b>	<b>136</b>
<b>Alibi as a Criminal Defense</b>	<b>137</b>
Alibi Notice Statutes	137
Determining the Validity of Alibi Defenses	137
<b>The Defense that the Defendant Was Acting Under the Authority, Direction, or Advice of Another</b>	<b>138</b>
The Defense of “I Acted on the Orders of My Boss”	139
<b>The Defense of Double Jeopardy</b>	<b>139</b>

The Times When Jeopardy Attaches	139
Prosecution by Both State and Federal Governments	140
The Meaning of Separate Offense	141
Other Times When the Defense of Double Jeopardy Could Not Be Used Successfully	142
<i>Res Judicata</i> and Collateral Estoppel as Part of the Double Jeopardy Guarantee	142
■ <b>CASE CLOSE-UP: <i>United States v. Castillo-Basa</i></b>	<b>143</b>
<b>Frame-Up as a Defense and as a Crime</b>	<b>145</b>
<b>Entrapment and Outrageous Government Conduct as Defenses</b>	<b>146</b>
Entrapment	146
Outrageous Government Conduct	148
<b>The Defense that Another Person Committed the Crime</b>	<b>149</b>
<b>The Right to a Speedy Trial as a Defense</b>	<b>149</b>
■ <b>CASE CLOSE-UP: <i>Holmes v. South Carolina</i></b>	<b>150</b>
Cases in Which No Speedy Trial Violation Occurred	150
<b>The Statute of Limitations as a Defense</b>	<b>151</b>
<b>Summary</b>	<b>152</b>
<b>Case Analysis and Writing Exercises</b>	<b>153</b>

## **CHAPTER 7**

### **Criminal Punishment 156**

<b>Punishments Used in Early England</b>	<b>158</b>
Practices Used in England to Avoid Severe Penalties	158
Punishment Used in Early America	160
<b>The Constitutional Limitation on Punishment</b>	<b>160</b>
The Proportionality Test for Determining Appropriate Punishment	161
Sentencing and Jury Trials	161
<b>Sentencing</b>	<b>163</b>
<b>Corporal Punishment</b>	<b>165</b>
Corporal Punishment as Criminal Punishment	165
The Use of Corporal Punishment in Schools	165
The Use of Corporal Punishment in Prisons	165
<b>Capital Punishment</b>	<b>167</b>
Death Penalty Laws After <i>Furman v. Georgia</i> in 1972	167
<b>Imprisonment as Punishment</b>	<b>170</b>
Can Indigents Be Held in Jail to Work Off Their Money Fines?	171
<b>Fines as Punishment</b>	<b>171</b>

Forfeiture as Punishment 172  
Career Criminals and the Repeat Offender 173  
■ CASE CLOSE-UP: *James v. United States* 175  
    “Three Strikes” Laws 176  
Summary 177  
Case Analysis and Writing Exercises 177

## CHAPTER 8

### Jurisdiction 180

Jurisdiction to Create Criminal Laws 182  
Jurisdiction over the Offense and  
the Person Charged 182  
    Jurisdiction over the Offense Charged 182  
    Jurisdiction over the Person Charged  
    with a Crime 184  
Long-Arm Statutes 185  
Nation-to-Nation Jurisdiction 186  
    The Law of the Seas: Territorial Waters 188  
    International Criminal Law 188  
Criminal Jurisdiction of the Federal Government 189  
    Federal Enclaves and the Assimilative  
    Crimes Act 190  
Indian Tribes Within the United States 190  
    Self-Government by Indian Tribes 192  
The Military, Martial, and War Powers Jurisdiction  
of the Federal Government 192  
    Jurisdiction of Military Courts 192  
    When U.S. Citizens or Military Are  
    in a Foreign Country 194  
    Martial Law and the Use of Military Forces  
    in the Continental United States 195  
Summary 197  
Case Analysis and Writing Exercises 198

## CHAPTER 9

### Free Speech, Street Crimes, and the Bill of Rights 202

Belief—Speech—Action 204  
    When Speech May Be Regulated 204  
The “Clear and Present Danger” Test 205  
■ CASE CLOSE-UP: *Entertainment Software Assoc.  
v. Granholm* 205  
Fighting Words 207

When Does Vulgar, Insulting Language to  
a Police Officer Constitute Fighting Words? 208  
Obscene Communications 210  
Inciting and Urging Unlawful Acts 211  
    Defamation: Libel and Slander 211  
Symbolic Speech and the First Amendment 211  
    Flag Burning and Cross Burning  
    as Symbolic Speech 212  
Threats of Violence as Crimes 213  
Using the U.S. Mail, Telephones, the Internet,  
or E-Mail to Threaten Another Person 213  
Loud Noise or Nuisance Speech 214  
Regulating the Use of Public and Private Places 214  
The Crimes of Unlawful Assembly and Rioting 218  
Obstruction of the Law Enforcement Process 218  
Public Nuisances as Civil or Criminal Offenses 219  
The Crime of Stalking and Violation  
of Protective Orders 220  
Crime on City Streets 221  
The Controversy over Gun Ownership  
and Registration Laws 222  
The Free Exercise of Religion 224  
The Right of Privacy 225  
Summary 226  
Case Analysis and Writing Exercises 227

---

## PART TWO

### Crimes Against the Person

---

## CHAPTER 10

### Homicide 230

Homicide in General 232  
The Corpus Delicti Requirement 232  
    Proving Corpus Delicti in “No Body” Cases 233  
    Body Without Proof of the Cause  
    of Death Cases 234  
    The Common Law “Born Alive” Requirement and  
    the Crime of Feticide (Fetal Murder) 235  
Proof that the Victim Was Alive at the Time  
of the Defendant’s Unlawful Act 235  
    When Is a Person Legally Dead? 236  
The Causation Requirement 237

Causation and Proximate Cause	237
The Year-and-a-Day Rule	238
<b>Murder</b>	<b>238</b>
Intent-to-Kill Murder	240
The “Deadly Weapon” Doctrine	240
Transferred Intent	241
■ <b>CASE CLOSE-UP: <i>Bradshaw v. Richy</i></b>	<b>242</b>
Intent-to-Do-Serious-Bodily-Harm Murder	<b>242</b>
Depraved-Mind or Depraved-Heart Murder	<b>243</b>
<b>Felony Murder</b>	<b>244</b>
<b>Manslaughter</b>	<b>245</b>
Definition of Manslaughter	245
Voluntary Manslaughter	247
Heat of Passion Manslaughter	247
Imperfect or Unlawful Force in Self-Defense	
Charged as Manslaughter	249
Involuntary Manslaughter	250
<b>Suicide, Assisting Suicide, and Euthanasia</b>	<b>252</b>
Murder, Assisted Suicide, or Neither?	252
The Oregon “Death with Dignity” Law	253
<b>Summary</b>	<b>253</b>
<b>Case Analysis and Writing Exercises</b>	<b>254</b>
<b>CHAPTER 11</b>	
<b>Assault, Battery, and Other Crimes Against the Person</b>	
<b>The Crime of Assault</b>	<b>258</b>
Assault Under the Present Federal Criminal Code	259
Assault with a Deadly or Dangerous Weapon	259
The Crime of Armed Violence	260
<b>Battery</b>	<b>261</b>
Offensive Touching Under Sexual Assault and Sexual Battery Statutes	261
The Crime of Genital Mutilation	262
Sports Injuries When Force Exceeds the Rules of the Game	262
Other Physical Contact Without Consent	262
Menacing, Intentional Scaring, and Jostling	263
<b>Felonious and Aggravated Assaults and Batteries</b>	<b>264</b>
Mayhem and Malicious Disfigurement	264
Mental Culpability Increasing the Degree of the Crime	265
<b>Child Abuse and Neglect</b>	<b>267</b>
<b>Offenses Against the Liberty of a Person</b>	<b>269</b>
Kidnapping	269

Hostage Taking	271
False Imprisonment	272
Parental Kidnapping or Child Snatching	272
The Missing Children’s Assistance Act	274

**Family Violence and Disturbances** 274

Domestic Violence and Women	276
Abuse of the Elderly	277
The Crime of Violation of a Court Order (or Court Injunction)	277

**Violence in the Workplace** 279**Road Rage: Violent Aggressive Driving** 279**Summary** 280**Case Analysis and Writing Exercises** 280**CHAPTER 12****Sexual Assault, Rape, Prostitution, and Related Sex Crimes** 284**Sexual Relations in the United States Today** 286**Rape or Sexual Assault** 286

The Importance of Corroborative Evidence in a Rape Case	287
Possible Responses to a Threat of Rape	288
Different Sexual Assault Statutes Require Different Degrees of Proof	289

■ **CASE CLOSE-UP: *State v. Grimes, Sulliveres v. Comm.*** 290

Defenses in Acquaintance Rape or After-the-Date Rape	291
Convictions for Lesser or Other Offenses in Weak Rape Cases	292
The Report of Rape Rule and the Effect of Delay in Reporting	292
False Reporting	293
Rape Shield Laws	293

**Statutory Rape** 294**The Crime of Incest** 296**Laws that Require Registration for Sex Offenders (Megan’s Law)** 297**Civil Commitment of Sexually Dangerous Offenders** 298**Prostitution** 300

The Crimes of Procuring, Promoting, and Pimping for the Practice of Prostitution	301
Crimes that Require Proof that the Crime Was Committed in a Public Place	303

**Touching or Other Conduct Done to Arouse Sexual Desire** 305

**Protecting Children Against Sexual Exploitation** 307

- Child Pornography 307

**Movies, Videos, and Photographs** 309

- X-Rated Films and Videos 309
- Nude Photos of Children Taken by Family Members 309

**Voyeurism and Other Criminal Invasions of Privacy** 309

**The Crime of Harassment** 310

- Sexual Harassment 310

**Summary** 311

**Case Analysis and Writing Exercises** 312

---

## PART THREE

### Crimes Against Property

---

#### CHAPTER 13

##### Theft 314

###### General Property Concepts 316

###### Theft or Larceny 317

- The Taking 317
- Defining What Property Can Be Stolen 321
- Property of Another 322
- Intent to Steal 324

###### Shoplifting 324

- **CASE CLOSE-UP: *State v. Goodman*** 325
- Taking and Carrying Away in Shoplifting 325
- Proving the Crime of Shoplifting When the Suspect Has Not Left the Store 326
- The Requirement of Probable Cause Based on Personal Knowledge 327
- Criminal or Civil Prosecution of Shoplifters? 329
- Other Retail Theft Crimes 330

###### Fraudulent Use of Credit Cards 331

- Obtaining Credit Cards and Bank Cards for Fraudulent Use 331
- Criminal Use of Bank Cards and Credit Cards 331

###### Check Violations 332

- Worthless Checks or Checks that Bounce 332
- The Crime of Uttering 332
- The Crime of Forgery 333
- Operations of Check-Forging Rings 334

- Passing Forged Checks and Other Counterfeit Securities in Interstate Commerce 334

###### Check Kiting 335

###### Summary 336

###### Case Analysis and Writing Exercises 337

---

#### CHAPTER 14

##### Robbery and Burglary 340

###### Robbery 342

- Changes in Bank Robbery 342
- **CASE CLOSE-UP: *United States v. Kelley*** 343
- Distinguishing Robbery from Theft or Larceny 343
- Where State Courts Differ on What Constitutes Robbery 344
- Carjacking: A New Name for an Old Crime 344
- Home Invasion Robberies 346
- Purse Snatching, Pickpocketing, and Other Thefts from a Person 346
- Theft of Services 347
- Distinguishing Robbery from Extortion 347
- Extortion by Intimidation 348
- The Crime of Bribery 349

###### Burglary 349

- Breaking 350
- Unlawful Entry into Premises 350
- The Dwelling House of Another 351
- Nighttime 352
- Intent to Commit a Felony 352
- Proof of Burglary When Other Crimes Are Committed 355

###### Summary 355

###### Case Analysis and Writing Exercises 356

---

#### CHAPTER 15

##### White Collar Crime, Cyber Crime, and Commercial Crime 358

###### White Collar Crime 360

###### Fraud and Fraudulent Practices 360

- Bank Fraud 360
- Health Care Fraud 361
- Intellectual Property Fraud 361
- Fraud and Corruption in Government 362
- Stock Market and Financial Market Frauds 363
- Other Fraud Statutes in the Federal Criminal Code 364

The Crime of Identity Theft	366
■ <b>CASE CLOSE-UP: <i>State v. Leyda</i></b>	<b>368</b>
<b>Counterfeiting of Money and Commercial Products</b>	<b>368</b>
Counterfeiting of Currency	368
Other Counterfeiting Problems	369
<b>Computer or Cyber Crime</b>	<b>372</b>
<b>The Crime of Trafficking in Stolen Goods</b>	<b>373</b>
The Fence and Fencing Stolen Property	374
When Property Loses Its Character as Stolen Goods	374
Possession of Criminal or Burglary Tools	375
<b>Destroying or Damaging the Property of Another</b>	<b>375</b>
Vandalism and Graffiti Vandalism	375
<b>Arson</b>	<b>376</b>
Essential Elements of Arson	376
<b>Trespass</b>	<b>377</b>
The Crime of Defiant Trespass	377
<b>Product Tampering</b>	<b>378</b>
<b>Summary</b>	<b>379</b>
<b>Case Analysis and Writing Exercises</b>	<b>379</b>

---

## **PART FOUR**

### **Other Criminal Conduct**

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#### **CHAPTER 16**

### **Drug Abuse and Alcohol-Related Crimes 382**

<b>Drug Abuse</b>	<b>384</b>
The Frightening Drug Problem	384
Illegal Drug Users	384
<b>Drug Laws in the United States</b>	<b>385</b>
If You Drank a Bottle of Coca-Cola in the Year 1905, You Probably Wouldn't Know It Contained Cocaine	385
The Uniform Controlled Substances Act	386
Types of Possession of Controlled Substances	387
■ <b>CASE CLOSE-UP: <i>United States v. Heredia</i></b>	<b>388</b>
To Convict of Possession of an Illegal Drug, Must the State Present a "Usable Amount" as Evidence?	388
Delivery of Controlled Substances	389
The Crime of Possession of a Controlled Substance with Intent to Deliver (Sell or Transfer)	389

State–Federal Clash over the Medical Use of Marijuana	390
Drug Rip-Off Cases and Simulated Drugs	390
Criminal Liability for Drug-Induced Deaths	391
Possession or Sale of Drug Paraphernalia	391

### **Alcohol-Related Crimes 395**

Alcohol as a Drug	395
Alcohol's Relation to Crimes and Deaths	396
Alcohol and Drug Problems of Prison Inmates	396
Drunk Driving: The Criminal Homicide Causing the Most Deaths	396
"Booze It and Lose It" Laws	398
When Is a Person Driving, Operating, or "in Physical Control" of a Vehicle?	398

### **Summary 399**

### **Case Analysis and Writing Exercises 399**

## **CHAPTER 17**

### **Terrorism 402**

<b>Terrorism</b>	<b>403</b>
<b>Early Terrorist Acts</b>	<b>405</b>
<b>Terrorism in Recent Years</b>	<b>405</b>
<b>Criminal Charges Against Terrorists</b>	<b>407</b>
Terrorism and Support of Terrorism Under State Laws	407
Other Possible Criminal Charges Against Terrorists	407
<b>The Crime of Terrorizing (Terrorism by Threats)</b>	<b>410</b>
<b>Financing Terrorism: Where Does the Money Come From?</b>	<b>411</b>
Moving Money Into and Out of the United States	412
International Criticism of Aspects of the U.S. War Against Terrorism	413
<b>Summary</b>	<b>414</b>
<b>Case Analysis and Writing Exercises</b>	<b>415</b>

## **CHAPTER 18**

### **Organized Crime and Gangs 416**

<b>Organized Crime and Criminal Gangs</b>	<b>418</b>
<b>Federal and State Laws Passed After 1970 to Fight Organized Crime</b>	<b>421</b>
Limits on Federal Jurisdiction and RICO Prosecutions	422



**The Federal Witness Protection Program and the Crime of Witness Tampering 424**

**The Crime of Money Laundering 425**

Currency Transaction Reports and the Crime of Smurfing 426

■ **CASE CLOSE-UP: *United States v. Haddad* 427**

**Other Criminal Laws Used to Fight Gangs and Organized Crime 428**

The Travel Act 428

Extortion 428

Bribery 430

Kickbacks 430

Mail Fraud 432

Honest Services Fraud 432

**Summary 434**

**Case Analysis and Writing Exercises 434**

**CHAPTER 19**

**Immigration Crimes, Contempt, and Other Crimes Against Government 436**

**Immigration Crimes 438**

Stress on the U.S. Immigration System 438

Criminal Charges for Illegal Immigration

Offenses 439

**Contempt 440**

Civil Contempt 440

Criminal Contempt 441

Contempt Is a Specific Intent Crime that Requires Proof of Intentional Wrongdoing 441

Language by a Witness or Attorney that Would Justify a Contempt Finding 442

Contempt and the Crime of Failure to Appear (Bail Jumping) 443

**Crimes by Public Officials 443**

Some Crimes Committed by Public Officials and Others 443

**Crimes Against Government 445**

Espionage 445

Obstruction of Justice 447

Tax Evasion 447

Environmental Crimes 448

Other Criminal Violations 449

**Summary 449**

**Case Analysis and Writing Exercises 450**

**APPENDIX: Sections of the U.S. Constitution Related to Criminal Law 452**

**GLOSSARY 454**

**CASE INDEX 461**

**SUBJECT INDEX 467**

---

---

# Boxed Features

## CHAPTER 1

### **Criminal Law: Purposes, Scope, and Sources**

- Presidential Signing Statements 5
- Why Some Conduct May or May Not Be Designated as Criminal 7
- Rights of Crime Victims 8
- Distinguishing Crime, Tort, and Moral Wrong 8
- Factors Influencing Whether to Commit a Crime 9
- Quality-of-Life Crimes and the Broken Window Theory 14
- When Failure to Act Is a Crime 14
- Victimless Crimes 16
- “Void for Vagueness” and “Overbreadth” Doctrines 20
- Important Documents of the English-Speaking World 24
- Common Law, Statutory, and Administrative Crimes 27

## CHAPTER 2

### **Essential Elements of a Crime**

- Elements of a Crime 33
- Can One Be Guilty of an Attempt of a General Intent Crime? 36
- Essential Elements of a True Crime 38
- Innocent Acts that, If Done with Forbidden Intent, Are Crimes 39
- Examples of Conduct Made Criminal Under Strict Liability Laws 43
- Cases of Unintended Harm Resulting from a Misdemeanor or Other Minor Offense 47
- When Possession Alone Is a Crime 49
- Permissible and Impermissible Inferences 52

## CHAPTER 3

### **Criminal Liability**

- Mere Knowledge of a Crime Alone Is Not Sufficient to Support a Conspiracy Conviction 65
- Attempt Under the Federal Criminal Code 66
- Attempt and the *Mens Rea* for the Completed Crime 67
- Attempt Crimes and Internet Chat Rooms 69
- Preliminary, Anticipatory, or Inchoate Crimes 70
- If the State Can Prove One of the Following Beyond Reasonable Doubt, a Person Can Be Held Criminally Liable 74
- Strict Liability Distinguished from Vicarious Liability 76

## CHAPTER 4

### **Criminal Responsibility and the Capacity to Commit a Crime**

- Is the Role of Juvenile Courts Changing? 86
- Defendants Who Were Found Not Guilty Because of Insanity 91
- Tests or Procedures Used to Determine Criminal Responsibility 94
- Civil Laws Used by States for Public Safety and Health 95
- May the Government Force a Defendant’s Competency? 97

## CHAPTER 5

### **The Law Governing the Use of Force**

- Defense of Dwellings 110
- When Force *Cannot* Be Used 112
- The Search for Nonlethal Weapons 117
- What Is the Nature of the Contract Between the Police and the People in the United States? 119

Use of Physical Restraints 120  
Summary of the Law on the Use of Force 122

## **CHAPTER 6**

### **Other Criminal Defenses**

Other Important U.S. Supreme Court Cases  
on Double Jeopardy 140  
Single Offense or Multiple Offenses? 144  
FBI Guidelines on Entrapment 147  
Speedy Trial, Double Jeopardy, and Statutes  
of Limitations as Defenses 152

## **CHAPTER 7**

### **Criminal Punishment**

U.S. Supreme Court Cases Stating the Constitutional  
Limitations on Punishment 163  
Important Recent U.S. Supreme Court Death Penalty  
Decisions 168  
Federal Crimes for Which the Death Penalty Can  
Now Be Applied 170  
The Problem of Recidivism in the United States 173  
Alternatives to Prisons for Offenders Believed  
to Be Nonviolent 174  
Sentence Enhancement Statutes 176

## **CHAPTER 8**

### **Jurisdiction**

The Commerce Clause and Federal Crime 183  
Venue and Jurisdiction 184  
Rights of an Accused 185  
Use of Extradition and forcible Abduction  
to Bring Fugitives Before Courts 186  
Crimes Against Ships and Aircraft 188  
Jurisdiction of Law Enforcement Officers 192  
Jurisdiction of Federal Courts to Hear Claims Made  
by Military Detainees 194  
General Jurisdiction Requirements 196  
Drug Courts 197

## **CHAPTER 9**

### **Free Speech, Street Crimes, and the Bill of Rights**

Criminal Convictions for Words Alone 206  
Verbal Offenses 209  
The Former Crimes of Blasphemy, Profanity,  
and Indecent Language 210  
Perjury, Subornation of Perjury, and the Federal  
False Statement Act 215  
Obeying Lawful Police Orders 216

Does Your State Have Gun Control Laws Regulating  
the Following? 223

## **CHAPTER 10**

### **Homicide**

Attempts to Identify and Minimize Violence  
Against Children 234  
Classifications of Common Law Murder 239  
Felony Murder Rule 245  
Examples of Manslaughter 246  
Criminal Homicide in the United States 247  
When Manslaughter Convictions Have Been  
Obtained 251

## **CHAPTER 11**

### **Assault, Battery, and Other Crimes Against the Person**

“Simple Assault” in the Federal Criminal Code 260  
Defenses to an Assault or Battery Charge 263  
Hate Crimes 2005 267  
Criminal and Civil Laws that Seek to Protect  
Children 268  
Offenses Against the Liberty of a Person 270  
Missing Children in the United States 273  
Responses to Domestic Violence 275  
School Shootings 278

## **CHAPTER 12**

### **Sexual Assault, Rape, Prostitution, and Related Sex Crimes**

Old Rape Laws and New Sexual Assault Laws 294  
Other Types of Rapes or Sexual Assaults 295  
Sexual Misbehavior or a Felony? 296  
Sexual Incidents that Received National  
Attention 299  
2004 Report on Juvenile Prostitution 301  
Old Offenses that Are No Longer Crimes  
or Are Seldom Charged 302  
Prostitution 304  
Because Prostitution Fuels the Illegal Drugs Trade,  
Cities Use One or More of the Following  
to Discourage the Crime 305  
Regulation of Nudity by States or Municipalities 306  
Fighting the International Child Sex Trade 307

## **CHAPTER 13**

### **Theft**

Forms of Taking and Types of Theft 320  
Handling a Shoplifting Incident 328

Stay Within the Law While Preventing  
 Shoplifting 330  
 Safeguards in Handling Checks 334

#### **CHAPTER 14**

##### **Robbery and Burglary**

Examples of Different Theft Crimes 351  
 Intent to Steal in a Burglary Charge 352  
 What Is the State Obligated to Prove? 353  
 Forms of Theft 354

#### **CHAPTER 15**

##### **White Collar Crime, Cyber Crime, and Commercial Crime**

National Fraud Facts 365  
 Identity Theft 367  
 White Collar Crimes in the News 370

#### **CHAPTER 16**

##### **Drug Abuse and Alcohol-Related Crimes**

Five Schedules of Controlled Substances 387  
 Possession of a Small Amount of Marijuana 389  
 Illegal Methamphetamine Labs 392  
 Sniffing, Bagging, and Huffing Inhalants 392  
 Other Statutes and Laws Used in the War  
 on Drugs 394  
 Driving and Alcohol 397

#### **CHAPTER 17**

##### **Terrorism**

Antiterrorism Laws Enacted by U.S. Congress 409  
 Rules of War 411  
 Law Enforcement Needs Citizens' Help  
 to Deter Homegrown Terrorists 413

#### **CHAPTER 18**

##### **Organized Crime and Gangs**

Attempts by Cities and States to Regulate Gang  
 Activity 418  
 Will the Mob Ever Get Out of the Crime  
 Business? 420  
 Cell Phone Use by Gangs and Other  
 Criminals 422  
 Gangs and Drugs: A Tale of Two Cities,  
 and Mexico 424  
 Illegal Gambling in the United States 429  
 The Advantages of Federal Prosecutions 431

#### **CHAPTER 19**

##### **Immigration Crimes, Contempt, and Other Crimes Against Government**

Contempt 442  
 Crimes Uncovered by the Watergate  
 and Whitewater Investigations 446

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# Preface

## ≡ Goals

The first edition of this text was published more than thirty years ago. Its goal was to introduce law enforcement personnel and others in the criminal justice field to the main principles of American criminal law. In the subsequent editions, including this, the tenth edition, we have tried to adhere to that goal and at the same time broaden the scope of the text while also keeping it current. As in past editions, we have attempted to include recent court opinions and legislative acts that illustrate the current status of those principles of American criminal law. We have also tried to include information we believe to be helpful to the study of criminal law, taken from governmental reports, empirical studies, and news accounts of current criminal cases and developments. We hope these additions and changes in the tenth edition serve to advance our goal for this text.

We make extensive use of court opinions, especially United States Supreme Court opinions, and case citations in the text. We use these opinions and case citations primarily to illustrate how the majority of courts interpreted and applied criminal statutes within their jurisdiction. We also identify and cite decisions on key points of criminal law so that teachers and students will have a sound basis for doing more extensive research into such points. It has always been our plan to create a text that would prove useful as both a classroom learning tool and a reference book for post-classroom use. We are gratified that users of our text have found that it met that plan in previous editions, and we hope they will conclude the same about this edition.

## ≡ Features

In this edition we continue to use more detailed case excerpts called Case Close-Ups to examine courts' analyses of difficult or emerging criminal law issues, sometimes including our observations about the possible effect of a court's decision on a particular issue. These case excerpts, of which there are fifteen spread throughout the text, generally include a more detailed factual statement, and a more complete discussion of the court's reasoning, than in the other case excerpts found in the text. In some of the cases, such as *James*

*v. United States* discussed in Chapter 7, we include positions taken by dissenting judges. In Chapter 12 we brought two cases together in one Case Close-Up to illustrate some common problems, the resolution of which might vary from state to state. In Chapter 9 we chose *Entertainment Software Assoc. v. Granholm*, a U.S. District Court case, because it seems likely the reasoning and result in that case represent what most federal courts would do with the issue presented.

Where possible, we chose U.S. Supreme Court cases for the Case Close-Up features. In subject areas where the Supreme Court does not ordinarily issue opinions, we chose opinions of the Federal Circuit courts or the highest state courts. Cases were usually selected because their topics were of current interest, but not necessarily because the opinion represents the majority view on the topic. *State v. Leyda*, a Washington State Supreme Court opinion discussed in Chapter 15, is an example of this. We hope these closer looks at important cases will add substance to our coverage of the issues framed in those cases.

We continue to make references to specific state and federal criminal statutes, as well as illustrations from the Model Penal Code. For example, in Chapter 5 we include excerpts from the Florida “Stand Your Ground” statute, which has been a model for similar legislation in twenty-one other states.

In this edition we have changed the titles of the “Questions and Problems” sections to “Case Analysis and Writing Exercises.” We have added new cases in each chapter, and each chapter has four exercises, most of which are new to this edition.

In this edition we also continue to use charts, boxes, and lists as supplements to text and case summaries. We intend the textual materials and case summaries to serve as the main exposition of criminal law principles, with the boxes and other tools helping to illustrate specific applications or examples of those principles.

## ≡ New to This Edition

### Reorganization

In addition to the features just discussed, we have made other changes and additions to this edition. Continuing the reorganization begun in the ninth edition, we have combined some chapters and shortened others. Chapter 1 in this edition includes material from Chapters 1 and 2 in the ninth edition. Chapter 9, a further reorganization of the ninth edition’s Chapter 10, has been changed to focus on the tension between free speech and “public” crimes, and as a result we changed the title of the chapter to reflect this change in emphasis. The property crimes presented in Chapters 13, 14, and 15 in the ninth edition have been reorganized and given new titles, in part to make possible a substantial expansion of white collar and cyber crimes. Part Five from the ninth edition, “Sex Crimes,” has been deleted. We have combined the two chapters from Part Five and placed them in the new Part Two in the tenth edition, “Crimes Against the Person.” Our goal with these changes is to keep the overall length of the text within established limits, without sacrificing content.

### New Content

In addition to the reorganization changes discussed above, in the tenth edition we have made many substantive additions as well.

- **Chapter 1, Criminal Law: Purposes, Scope, and Sources:** New material on the *ex post facto* clause; a new section on trial versus appellate courts; an update on status crimes, such as prosecution of homeless people; a box on presidential signing statements.
- **Chapter 2, Essential Elements of a Crime:** Additions to strict liability crimes, including those under federal criminal law; new section on general intent–specific intent distinction; expansion of the presumption section.
- **Chapter 3, Criminal Liability:** A new box on attempt and Internet chat rooms; a new box on attempt and *mens rea* for completed crimes; new material in the solicitation section.
- **Chapter 4, Criminal Responsibility and the Capacity to Commit a Crime:** We extensively edited the corporate liability section, added a new box on forced competency, and expanded the diminished capacity section.
- **Chapter 5, The Law Governing the Use of Force:** New material on imperfect self-defense; extensive discussion of the new “stand your ground” laws; the most recent Supreme Court case on use of force when making a lawful arrest.
- **Chapter 6, Other Criminal Defenses:** We updated and rewrote the double jeopardy section, added new examples to diplomatic immunity, added a new case on collateral estoppel, and added a new box on the Supreme Court’s decision on the exclusion of evidence on the defense that another person committed the crime.
- **Chapter 7, Criminal Punishment:** A new box on sentencing, jury trials, and the Sixth Amendment; an updated section on capital punishment; a new section on the kinds of sentences available to sentencing judges.
- **Chapter 8, Jurisdiction:** A new box on the Commerce Clause and federal power to make criminal laws based on interstate commerce; a new box on jurisdiction over military detainees.
- **Chapter 9, Free Speech, Street Crimes, and the Bill of Rights:** We have extensively reorganized and rewritten this chapter to emphasize specific crimes and constitutional limits on the government’s power to regulate the conduct made criminal. We deleted much of the noncriminal, First Amendment material from the ninth edition, as well as much of the Second Amendment material. We added new material on students’ free speech and cyber stalking and a new box on street crimes. We focused the right of privacy section on the abortion decisions, including the most recent Supreme Court decision on the federal ban of partial-birth abortions.
- **Chapter 10, Homicide:** We expanded the discussion and added new examples of statutes for first-degree–second-degree murder distinctions. We added new material on “provocative act” murder as compared to felony murder, and new cases on transferred intent, imperfect self-defense, and adequate provocation in manslaughter crimes. We also updated the discussion on the Oregon “death with dignity” law.
- **Chapter 11, Assault, Battery, and Other Crimes Against the Person:** A new box on simple assault under federal law; new cases on the movement requirement for kidnapping and prosecutions under the Violence Against Women Act.
- **Chapter 12, Sexual Assault, Rape, Prostitution, and Related Sex Crimes:** We integrated language from sexual assault statutes into the rape section, added new cases in the rape shield section, and updated the sexual predator and Megan’s Law sections. We also rewrote and updated the child pornography section.



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