

Table of Contents

The Author	3
List of Abbreviations	15
General Introduction	17
§1. THE GENERAL BACKGROUND OF THE COUNTRY	17
I. Geography and Climate	17
II. Population	18
III. Economy	18
IV. Political System and Administrative Structure	19
A. The Founding Principles of the American Constitution	19
B. Political System	20
1. Congress	21
2. The President	22
3. The Judiciary	25
4. Administrative and Governmental Agencies	25
V. The Judicial System	26
A. Overview	26
B. The Federal Criminal Courts	26
1. Federal District Courts	27
2. Federal Court of Appeals	27
3. United States Supreme Court	28
C. The State Courts	37
§2. CRIMINAL LAW AND PROCEDURE, AND THE CRIMINAL JUSTICE SYSTEM	38
I. Definitions of Criminal Law	38
A. Criminal Law	38
B. Substantive Criminal Law	38
C. Criminal Procedure	39
II. Overview of the Criminal Justice System	39
A. Law Enforcement	39
B. The Prosecutorial Function	40
C. Investigations and Arrests	42
D. Trial Jurisdictions	42

Table of Contents

E. Prison System and After-Care	42
F. The Bar	43
G. Statistical Overview	44
III. Trends within Criminal Justice	44
§3. THE HISTORICAL BACKGROUND	45
§4. SOURCES OF CRIMINAL LAW	46
I. National and Local Sources	47
A. The Constitution	47
B. The Common Law	47
C. Statutory Legislation	47
D. Statutorily Delegated Legislation	48
E. Court Decisions	48
II. International Sources	48
A. Treaty Law	48
B. Customary Law	50
§5. CLASSIFICATIONS AND TECHNIQUE OF CRIMINAL LAW	50
Part I. Substantive Criminal Law	53
Chapter 1. General Principles	53
§1. THE PRINCIPLE OF LEGALITY	54
I. Limitation on Penalization	54
II. Legality and Interpretation	55
§2. THE PRINCIPLE OF THE INDIVIDUAL GUILTY MIND	56
§3. THE PRINCIPLE OF PROPORTIONALITY	56
Chapter 2. Scope and Application of Criminal Statutes	57
§1. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO TIME	57
I. Prohibition of Retroactive Criminal Law	57
II. Retroactivity of the Milder Statute	57
§2. PRINCIPLES CONCERNING THE (EXTRA) TERRITORIAL APPLICABILITY OF CRIMINAL LAW	58
I. The Territorial Principle	58
II. Extraterritorial Criminal Jurisdiction	59
A. Principles	59
B. Cases	60
C. Localization	60

Table of Contents

D. The Effect of Foreign Adjudication and Execution	61
§3. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO PERSONS	62
I. Immunities Based on National Public Law	62
II. Immunities Based on International Public Law	63
Chapter 3. General Principles of Criminal Liability	64
§1. INTRODUCTION: THE BASIC ELEMENTS OF CRIMINAL OFFENSES	64
§2. THE MATERIAL OR PHYSICAL ELEMENT (<i>ACTUS REUS</i>)	64
I. Description	64
II. Explication	64
III. Acts, Omissions, and Causation	65
A. Offenses of Action	65
B. Offenses of Omission	65
C. Commission by Omission	65
D. Causation Offenses	66
IV. Classification of Offenses from the Point of View of the Material Element	66
A. Momentary and Continuing Offenses	66
B. Occasional and Habitual Offenses	67
§3. THE MORAL OR MENTAL ELEMENT (<i>MENS REA</i>)	67
I. Subjective Guilt or Culpability	67
II. Strict Liability	67
III. Degrees of Intent	68
A. General Intent	68
B. Specific Intent	68
IV. <i>Mens Rea</i> Categories	68
A. Intentionally	68
B. Purposefully	69
C. Knowingly	69
D. Recklessly	69
E. Negligently	70
Chapter 4. Justification, Excuse, and Other Grounds of Impunity	71
§1. GENERAL PRINCIPLES	71
§2. GROUNDS OF JUSTIFICATION	71
I. Public Duty or Orders of the Authorities	71
II. Self-Defense	72
A. Its Rationale	72

Table of Contents

B. Position within the National Law	72
C. Conditions	72
1. Conditions Relating to the Attack	72
2. Conditions Relating to the Defense	73
D. Legal Presumptions of Self-Defense	74
E. Putative Self-Defense	74
III. Legitimate Resistance against Unlawful Acts of Civil Servants	75
IV. Necessity	75
A. Necessity as a Justification	76
B. Conditions	76
C. Putative Necessity	76
V. Consent of the Victim	77
§3. GROUNDS OF EXCUSE	77
I. Introduction	77
II. Minority	77
III. Insanity	78
A. Standards for Determining Insanity	78
1. The <i>M'Naghten</i> Test	79
2. The Deific Command Test	79
3. The Irresistible Impulse Test	79
4. The <i>Durham</i> Product Rule	80
5. The Federal Test	80
6. The MPC's Test	80
B. Insanity at the Moment of the Act or Omission	81
C. Competency to Stand Trial	81
D. Diminished Capacity	81
IV. Intoxication	81
V. Force Majeure and Coercion (aka "Duress")	82
VI. Ignorance or Mistake	83
A. Ignorance or Mistake of Law	83
B. Ignorance or Mistake of Fact	85
Chapter 5. Incomplete or "Inchoate" Criminal Offenses	86
§1. CRIMINAL ATTEMPT	86
I. Describing the Problem	86
II. Attempt Statutes	86
A. The MPC Test	87
B. The Last Act or Last Step Test	87
C. The Physical Proximity Test	88
D. The Dangerous Proximity Test	88
E. The Unequivocality Test	88
F. The Probable Desistance Test	88
G. The Indispensable Element Test	89
III. Conditions	89
A. Intent to Commit a Crime or a Misdemeanor	89

Table of Contents

B. Beyond Preparation to Perpetration	89
C. Frustration and Abandonment	90
IV. Attempting the Impossible	90
V. The Punishment for Attempt	91
§2. SOLICITATION	91
§3. PARTICIPATION IN, OR PARTIES TO, CRIMINAL OFFENSES	92
I. General Remarks	92
II. Forms of Participation Provided for by Law	92
A. Accomplice Liability	92
1. Principal in the First Degree	93
2. Principal in the Second Degree	93
3. Accessory Before the Fact	93
4. Accessory After the Fact	93
5. Modern Accomplice Statutes and the MPC	94
6. Withdrawal from Participation	94
§4. CONSPIRACY	95
I. The <i>Actus Reus</i>	95
II. The <i>Mens Rea</i>	96
III. The Overt Act	96
IV. The MPC	96
V. Withdrawal from a Conspiracy	97
§5. ENTRAPMENT	97
Chapter 6. Classification and Survey of Criminal Offenses	99
§1. GENERAL CLASSIFICATIONS OF CRIMINAL OFFENSES	99
§2. SURVEY OF CRIMINAL OFFENSES	99
I. Criminal Offenses under the Federal Code	99
II. State Criminal Offenses	101
Chapter 7. The Sanctioning System	102
§1. THE GENERAL SANCTIONING SYSTEM	102
§2. PUNISHMENT	102
I. The Principal Penalties	102
A. The Death Penalty	102
B. Custodial Penalties	104
C. Fines	104
II. Accessory Penalties	105
A. Special Confiscation	105

Table of Contents

B. Publication	106
C. Loss of Rights	106
D. Deprivation of Political and Civil Rights	106
Chapter 8. Corporate Criminal Liability	108
§1. OVERVIEW	108
I. Respondeat Superior	108
II. The Model Penal Code	109
III. Corporate Agents and Officers	109
Part II. Criminal Procedure	111
Chapter 1. Principles, Institutions, Stages	111
§1. THE JUDICIAL ORGANIZATION	111
§2. THE STAGES OF THE CRIMINAL PROCESS	112
Chapter 2. The Investigatory Process	113
§1. THE SEARCH AND SEIZURE OF PERSONS AND PROPERTY	113
I. Definition of Searches and Seizures Protected by the Constitution	113
A. Searches	113
B. Seizures	115
II. Conditions Attached to Searches and Seizures	116
A. Requirement of a Search Warrant	116
B. Standard of Proof for a Warrant: Probable Cause	116
C. Exceptions to the Warrant Requirement	118
1. Warrantless Searches	118
2. Consent Searches	118
3. The "Plain View" Doctrine	119
4. The <i>Terry</i> Doctrine	119
5. Searches of Vehicles and Containers	119
6. Inventory Searches	120
III. Consequences of an Unlawful Search: The "Exclusionary Rule"	121
§2. THE INTERROGATION PROCESS	121
I. Questioning and the "Voluntariness" Standard	121
II. The <i>Miranda</i> Decision	122
III. The Sixth Amendment "Right to Counsel"	124
§3. PROCEDURES FOR IDENTIFICATION	124
I. Eyewitness Identification	124
II. Identification Techniques Involving the Body	125
III. High-Tech Investigative Techniques	126

Table of Contents

Chapter 3. Pre-trial Proceedings	129
§1. INITIAL DECISIONS AND PROCEEDINGS	129
I. The Prosecution's Initial Decisions	129
A. The Decision to Prosecute	129
B. Pre-trial Diversion	129
C. Bail	130
II. Initial Proceedings	131
A. The Complaint, Indictment, Initial Appearance, and Probable Cause Hearing	131
B. The Grand Jury	132
C. The Discovery Process	133
D. Pleas and Plea Bargaining	134
Chapter 4. The Trial	137
§1. THE JURY	137
I. An Overview	137
II. Jury Selection	137
§2. TRIAL RIGHTS	139
I. Presence at Trial	139
II. Privilege against Self-Incrimination	139
III. Compulsory Process	140
IV. Confrontation of Witnesses	140
V. Assistance of Counsel	141
§3. DOUBLE JEOPARDY	142
I. In General	142
II. Acquittals	143
III. Mistrials	144
IV. Dismissals	144
V. Convictions	145
§4. THE BURDEN OF PROOF AND THE VERDICT	145
I. The Burden of Proof	145
II. The Verdict	146
III. Deadlocked Juries	147
IV. Jury Nullification	147
Chapter 5. The Appellate Process	149
§1. THE RIGHT TO AN APPEAL	149
I. The Right in General	149
II. Standards of Review	149
A. Plain Error	149

Table of Contents

B. Harmless Error	150
III. Habeas Corpus	151
Part III. Sentencing and Imprisonment	153
Chapter 1. General Principles of Sentencing	153
I. The General Principles	153
A. Retribution	155
B. Deterrence	155
C. Rehabilitation	155
D. Incapacitation	155
II. Grounds for Increasing or Decreasing Punishment	155
A. Aggravating Circumstances	155
B. Recidivism	156
C. Extenuating Excuses	157
D. Mitigating Circumstances	157
III. Alternatives to Incarceration	157
A. The Suspended Sentence	157
B. Probation	157
C. Other Alternatives	158
IV. Concurrence of Offenses	158
§1. THE DIFFERENT SENTENCING SYSTEMS	159
§2. SENTENCING PROCEDURES	159
§3. STRUCTURED SENTENCING	159
I. Mandatory Minimum Sentences	159
II. Sentencing Commissions	160
A. The Federal System	160
B. The State Systems	161
§4. RECENT SENTENCING DEVELOPMENTS	161
Chapter 2. The Prison System	163
§1. ORGANIZATIONAL STRUCTURE	163
I. Prison Administration and Classification of Penitentiaries	163
II. Classification of Prisoners	164
§2. THE PENITENTIARY REGIME	164
I. Introduction	164
II. Visits and Correspondence	164
III. The Media and Free Speech	165
IV. Prison Labor	166
V. Disciplinary Measures	166

Table of Contents

§3. PRISONERS' RIGHTS AND COMPLAINT PROCEDURES	166
§4. EARLY RELEASE	167
General Conclusion	169
Selected Bibliography	171
Index	173