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Criminal Law: Cases and Comments, 9th Edition

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UNIVERSITY CASEBOOK SERIES®

CRIMINAL LAW

CASES AND COMMENTS

NINTH EDITION

by

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PREFACE

The 2013 ninth edition of *Cases and Comments on Criminal Law* has undergone substantial renovations, which we hope will encourage both new and established professors to give it serious consideration for adoption in their classes. First, and foremost, the contributing authors have changed. After many editions as both contributing author and lead editor, Andre Moenssens has retired and turned management of the book over to Gerry Ashdown at West Virginia University, who has participated in the last three editions. In addition, Adam Gershowitz at William and Mary has taken over for Ginny Hench, who has decided to leave the book. Although the format of the subject matter structure, which has proven successful and eminently workable in the classroom has been maintained, many new cases have been added to strike new themes designed to modernize and make the book more meaningful for contemporary law students. Most importantly, a number of the chapters have been substantially reworked to make them more accessible to teachers and students alike.

Chapter 6 has been revised and expanded to offer a fuller picture of the important and difficult problem of sexual assault. The chapter now begins with data about the prevalence of sexual violence. Seminal cases have been added, including *Commonwealth v. Berkowitz* and *In the Interest of MTS*, to explore the development of the law of acquaintance rape. The new edition also contains new cases and materials that analyze fraud in the inducement, withdrawn consent, a historical review of the spousal exception, and the development of rape shield laws.

Chapter 7 has been revised considerably to demonstrate to students how the law of theft developed from early common law to modern day. The chapter retains the previous edition's core cases about the law of larceny, but it has been expanded to include separate sections and clearer demarcations for the crimes of larceny by trick, false pretenses, and embezzlement. For each of the core topics, classic cases have been added—for instance, *The King v. Pear* and *The King v. Bazeley*—as well as new modern day decisions. The revised chapter also includes a new section on the consolidation of theft offenses so that students can see how jurisdictions have enacted statutes in an attempt to simplify the law of theft.

In Chapter 8 the materials on RICO liability have been considerably reduced to make room for expanded analysis of the law of attempt, accessoryship, and conspiracy. The revised chapter includes much more detailed consideration of the question of how courts separate mere preparation from an actual attempt. In addition to adding classic cases (such as *People v. Rizzo*), the chapter tackles cutting edge questions such as aborted drug purchases and attempts to manufacture methamphetamine. In the accessoryship section, new cases have been included that attempt to distinguish between people who were merely present in drug neighborhoods and those who acted as accomplices by serving as lookouts. Important new materials have also been added for the digital world; the revised chapter includes recent cases about internet predators attempting to solicit undercover officers, and high school students disseminating child pornography.

In addition to the core materials from previous editions, Chapter 11 now includes classic cases (such as *Parsons* and *Durham*) that explain the various tests for determining insanity. The chapter also includes updated and expanded materials on attempts to abolish or limit the insanity de-

fense. We have also added additional cases and notes on the important issue of expert testimony in insanity cases.

In the 8th edition, a new chapter on "Crimes Against Governmental Authority" was added, and this has been maintained in the new ninth edition for those who want to expose students to this branch of the use of the criminal sanction. Although the impetus for this chapter was provided by the government's response to recent terrorist threats, the chapter covers how the state historically has dealt with both physical and sociopolitical challenges to its authority and the welfare of its citizens. After a brief history of governmental acts to defend itself, beginning with sedition at the end of the 18th Century, the chapter covers how traditional crimes have been used by the state in this capacity, and then takes up statutes that have been enacted explicitly to deal with threats to governmental authority, such as crimes aimed at communism, the USA PATRIOT Act, and at material support of terrorist organizations. This chapter was developed to provide a contemporary setting for showing how the criminal law is utilized to combat threats in a nontraditional area of the first-year course of criminal law, and we hope it appeals to those who prefer both the contemporary and the nontraditional.

The basic structure, that begins the study of criminal law by focusing on general concepts of criminality, has been maintained. The coverage and organization of these materials have been geared carefully to the goals of the first-year class in criminal law. Thus, we begin with a study of act, intent, lack of intent, proximate cause, and burdens of proof. In the selection of current cases for inclusion as new principal cases and in the notes, we have sought to focus on those dealing with criminal law developments in modern code states, which frequently liberally discuss the Model Penal Code's suggested revisions of the law, while at the same time not neglecting coverage of traditional common law concepts, which are important both for their historical perspective and because they are still very much the law in a number of jurisdictions.

The Notes and Questions have been updated where desirable to reflect variations on the principal cases in modern factual circumstances. Additionally, problems (with citations to the cases they reflect), which were added to the Notes beginning with the seventh edition, have been maintained and expanded to permit exploration of conceptual nuances in a context less directive than case analysis.

As in the past, our book starts with a brief outline of criminal procedure. We believe it essential that a beginning student have an insight into the criminal justice process as a prerequisite to a proper understanding of the cases on substantive criminal law. As in prior editions, the book ends with an Appendix containing pertinent provisions of the United States Constitution and its Amendments. Since these provisions are liberally referred to in many cases, the student has ready access to their precise wording.

We think that the ninth edition is a substantial modernization of a casebook that began in 1973 with the venerable Fred E. Inbau of Northwestern University. We hope that professors who are choosing a criminal law book for the first time, or are looking to change, will give it the serious consideration that any really new book on the market deserves.

A. A. M.

R. J. B.

G. G. A.

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