

CONTENTS

<i>Table of cases</i>	xix
<i>Table of treaties and conventions</i>	xxvii
<i>Table of legislation</i>	xxviii
1 CRIMINAL JUSTICE AND THE CRIMINAL LAW	1
1.1 The contours of criminal liability	5
1.2 The machinery of English criminal law	7
1.3 The sources of English criminal law	7
1.4 The criminal law in action	9
1.5 Outline of the aims and functions of the criminal law	16
1.6 The criminal law and sentencing	18
Further reading	21
2 CRIMINALIZATION	22
2.1 The principle of individual autonomy	23
2.2 The principle of welfare	26
2.3 The harm principle and public wrongs	28
2.4 The minimalist approach	31
(a) The principle of respect for human rights	32
(b) The right not to be punished	32
(c) Criminalization as a last resort	33
(d) The principle of not criminalizing where this would be counter productive	33
2.5 Morally wrong behaviour	35
2.6 Remote harms	38
2.7 Conclusions and applications	39
Further reading	43
3 PRINCIPLES AND POLICIES	44
3.1 Rules and principles	44
3.2 Constitutionality and codification	45

3.3	Human rights and criminal law	48
3.4	The range of the criminal law	52
	(a) The principle of minimum criminalization	52
	(b) The policy of social defence	52
	(c) The principle of liability for acts not omissions	54
	(d) The principle of social responsibility	54
	(e) Conflicting rights and the principle of necessity	55
	(f) The principle of proportionality	56
3.5	The rule of law and fair procedures	56
	(g) The non-retroactivity principle	57
	(h) The 'thin ice' principle	62
	(i) The principle of maximum certainty	62
	(j) The policy of social defence	66
	(k) The principle of strict construction	67
	(l) A broader purposive approach	69
	(m) The presumption of innocence	71
	(n) The policy of ease of proof	72
3.6	Principles relating to the conditions of liability	73
	(o) The principle of <i>mens rea</i>	74
	(p) The policy of objective liability	74
	(q) The principle of correspondence	75
	(r) Constructive liability	76
	(s) The principle of fair labelling	77
	(t) Efficiency of administration	79
	(u) The principle of contemporaneity	80
	(v) The doctrine of prior fault	80
3.7	Conclusions	81
	Further reading	82
4	CRIMINAL CONDUCT: ACTUS REUS, CAUSATION, AND PERMISSIONS	83
4.1	The general part of the criminal law	83
4.2	Involuntary conduct	86
	(a) Automatism and authorship	86
	(b) The essence of automatism	88

(c) Insane automatism	90
(d) Automatism through intoxication	92
(e) Prior fault	93
(f) Reform	94
4.3 Acts, states of affairs, and possession	95
(a) Situational liability	96
(b) Offences of possession	97
4.4 Omissions	99
4.5 Causation	102
(a) The general principle	105
(b) Interventions between conduct and result	108
(c) Causation and omissions	114
(d) Causing other persons to act	114
(e) Conclusion	115
4.6 Self-defence and permissible force	116
(a) Self-defence and individual autonomy	117
(b) The problem of conflicting rights	117
(c) The rules and the principles	119
(d) The proportionality standard	120
(e) Aspects of the necessity requirement	122
(f) Mistaken belief as to necessity	127
(g) Permissible force and the emotions	128
(h) Conclusions	129
4.7 Permissions, necessity, and the choice of evils	130
(a) Necessity as a permission	130
(b) Medical necessity	132
(c) Necessity and other judicial development of permissions	133
(d) Statutory recognition of purpose-based permissions	134
4.8 Conclusions	135
Further reading	136
5 CRIMINAL CAPACITY, MENS REA, AND FAULT	137
5.1 The issues	137
5.2 Agency, capacity, and mental disorder	139
(a) The minimum age of criminal responsibility	139

(b) The special verdict of insanity	141
(c) Reform	144
5.3 Corporate liability	146
(a) Natural and corporate personality	146
(b) Towards corporate criminal liability	147
(c) Individualism and corporatism	151
(d) Changing the basis of corporate liability	152
5.4 Fault and <i>mens rea</i> : general principles	155
(a) Choice and the subjective principles	155
(b) Constructive liability and 'moral luck'	156
(c) The principle of contemporaneity	157
(d) The doctrine of prior fault	159
5.5 Varieties of fault	160
(a) Strict liability	160
(b) Intention	168
(c) Recklessness	175
(d) Negligence	181
(e) Objective versus subjective	185
5.6 The variety of fault terms	186
5.7 The referential point of fault	187
(a) Fault, conduct, and result	187
(b) Unforeseen mode	188
(c) Mistaken object	189
(d) Transferred fault	189
(e) Establishing the referential point	191
Further reading	192
6 EXCUSATORY DEFENCES	193
6.1 Excuses and other defences	193
6.2 Intoxication	194
(a) The English intoxication rules	194
(b) The attack on the English approach	197
(c) Intoxication, culpability, and social policy	198
(d) Voluntary and non-voluntary intoxication	200
(e) Finding a legal solution	202

6.3	Duress and coercion	204
	(a) Requirements of the defences	205
	(b) Theoretical foundations for the defences	209
	(c) Duress and the taking of life	212
6.4	Reasonable mistake and putative defences	215
6.5	Ignorance or mistake of law	218
	(a) The English rules	218
	(b) Individual fairness and public policy	219
	(c) The reliance cases	222
6.6	Entrapment	224
6.7	Reviewing the non-permission-based defences	225
	(a) The recognition of exculpatory doctrines	226
	(b) Individual responsibility	228
	(c) Social responsibilities and social defence	229
	(d) Exculpation and 'desert'	233
	Further reading	235
7	HOMICIDE	236
7.1	Death and finality	236
7.2	The conduct element: causing death	238
7.3	Defining murder: the inclusionary question	240
	(a) The procedural context	240
	(b) The structure of homicide law	243
	(c) Requirements for murder	243
7.4	Defining murder: the exclusionary question	250
	(a) The mandatory penalty	250
	(b) Manslaughter following a loss of self-control	251
	(c) Manslaughter by reason of diminished responsibility	267
	(d) Killing in pursuance of a suicide pact	275
	(e) Doing an act capable of assisting or encouraging suicide or attempted suicide	276
	(f) 'Mercy' killing	281
	(g) Conclusion: the murder-manslaughter boundary	282
7.5	'Involuntary manslaughter'	285
	(a) Manslaughter by unlawful and dangerous act	286

(b) Manslaughter by gross negligence	289
(c) Corporate manslaughter	294
(d) The contours of involuntary manslaughter	297
7.6 Causing or allowing the death of a child or vulnerable adult	300
7.7 Causing death by driving	300
7.8 Reviewing the structure of the law of homicide	303
Further reading	306
8 NON-FATAL VIOLATIONS OF THE PERSON	307
8.1 Introduction: varieties of physical violation	307
8.2 Reported physical violations	308
8.3 Offences of non-fatal physical violation	309
(a) Attempted murder	310
(b) Wounding or causing grievous bodily harm with intent	310
(c) Intentionally or recklessly inflicting a wound or 'GBH'	312
(d) Aggravated assaults	313
(e) Common assault	316
(f) Questions of consent	320
(g) Protection from Harassment Act 1997	328
(h) Offences under the Public Order Act 1986	329
(i) Administering noxious substances	331
(j) Torture	331
(k) Neglect of duty	332
(l) Weapons, risk, and endangerment	332
(m) The structure of the non-fatal offences	334
8.4 Reported sexual assaults	335
8.5 Non-consensual sexual violation	337
(a) The essence of sexual invasion	337
(b) The structure of the 2003 Act	339
(c) The aims of the 2003 Act	339
(d) Rape	341
(e) Assault by penetration	343
(f) Sexual assault	343
(g) Causing sexual activity	346
(h) Absence of consent	346

(i) Absence of reasonable belief in consent	354
(j) The effect of intoxication	355
8.6 Offences against the vulnerable	356
(a) Offences against children under age 13	356
(b) Offences against children under 16	358
(c) Abuse of trust offences against persons under 18	360
(d) Familial sex offences	361
(e) Offences against persons with mental disorder	362
8.7 Other sexual offences	363
8.8 Re-assessing sexual offences law	364
Further reading	367
Non-fatal offences	367
Sexual offences	367
9 OFFENCES OF DISHONESTY	368
9.1 Introduction	368
9.2 The offence of theft	372
(a) Appropriation	373
(b) Property	381
(c) 'Belonging to another'	382
(d) 'The intention permanently to deprive'	386
(e) The element of dishonesty	389
9.3 Taking a conveyance without consent	394
9.4 Robbery	395
9.5 Blackmail	397
9.6 Burglary	398
9.7 Handling stolen goods and money-laundering	402
9.8 Offences under the Fraud Act 2006	405
(a) Fraud by false representation	405
(b) Fraud by failing to disclose information	407
(c) Fraud by abuse of position	408
(d) Obtaining services dishonestly	410
9.9 Conspiracy to defraud	410
9.10 Dishonesty, discretion, and 'desert'	412
Further reading	415

10 COMPLICITY	416
10.1 Introduction	416
10.2 Distinguishing principals from accessories	419
10.3 The conduct element in complicity	422
(a) Aiding and abetting	423
(b) Accomplice liability and social duties	424
(c) Counselling and procuring	429
(d) The problems of the conduct element	431
10.4 The fault element in complicity	431
10.5 Joint ventures and accessorial liability for different results	436
(a) Joint venture: liability for different, more serious offence	438
(b) Same offence, different result	441
(c) Different, less serious offence	444
10.6 Derivative liability and the missing link	445
10.7 Special defences to complicity	448
(a) Withdrawal	448
(b) The Tyrell principle	449
(c) Crime prevention	450
10.8 Conclusions	450
Further reading	453
11 INCHOATE OFFENCES	454
11.1 The concept of an inchoate offence	454
11.2 The justifications for penalizing attempts at crimes	455
(a) Introduction	455
(b) Two kinds of attempt	456
11.3 The elements of criminal attempt	458
(a) The fault element	458
(b) The conduct element	461
(c) The problem of impossibility	464
(d) Reform	467
11.4 The justifications for an offence of conspiracy	467
11.5 The elements of criminal conspiracy	472
(a) An agreement between two or more persons	472

(b) The criminal conduct agreed upon	473
(c) The fault requirements	474
11.6 Incitement	476
11.7 Encouraging or assisting crime	477
(a) Intentionally encouraging or assisting an offence	477
(b) Encouraging or assisting an offence believing it will be committed	479
(c) Encouraging or assisting offences believing one or more will be committed	480
(d) Special defences	481
(e) Conclusions: the new inchoate offences	483
11.8 Voluntary renunciation of criminal purpose	484
11.9 The relationship between substantive and inchoate crimes	485
(a) Doubly inchoate offences	486
(b) Threats offences	486
(c) Possession offences	487
11.10 The place of inchoate liability	488
Further reading	491
<i>Index</i>	495