CONTENTS

viatio	ons	xxix
wled	gements	xxxi
ackı	nowledgements	xxxiii
of cas	ses	xxxvii
of leg	rislation	li
A	N INTRODUCTION TO CRIMINAL LAW	1
1	What is a crime?	2
2	The role of criminal law	6
3	The statistics of criminal behaviour	8
4	'Principles' of criminal law	9
	4.1 The principle of legality	9
	4.2 The principle of responsibility	9
	4.3 The principle of minimal criminalization	10
	4.4 The principle of proportionality	11
	4.5 The principle of fair labelling	13
5		14
	5.1 Arguments in favour of a Code	14
	5.2 Disadvantages of the Code	16
6	What conduct should be criminal?	16
	6.1 Autonomy	17
	6.2 The harm principle	18
	6.3 Practicality6.4 When is criminalization required?	23 23
7		26
,	7.1 The subjectivism/objectivism debate	30
8	The victim in criminal law	35
9	The criminal process	36
10	Criminal law and the Human Rights Act 1998	38
_•	10.1 The significance of the Human Rights Act 1998	38
	10.2 The important articles in the European Convention	40
	10.3 Potential consequences of the HRA on the criminal law	43

	11	Critical criminal law	50
	12	Feminist legal thought	54
	13	Punishment	59
	10	13.1 Consequentialist theories of punishment	60
		13.2 Non-consequentialist theories	61
		13.3 Mixed theories	63
	14	Sentencing	64
	15	Concluding thoughts	64
2	A	CTUS REUS: THE CONDUCT ELEMENT	66
	P	ART I THE LAW	66
	1	Distinguishing the component elements of a crime	66
	2	The voluntary act 'requirement'	68
		2.1 Omissions	69
		2.2 Situational offences	80
		2.3 Liability for the acts of other people	81
	3	Causation	81
		3.1 Factual or 'but for' causation	82
		3.2 The key test for legal causation	84
		3.3 Acts of third parties breaking the chain of causation	85
		3.4 Omissions of third parties breaking the chain of causation	94
		3.5 Acts of the victim breaking the chain	95
		3.6 The 'thin skull' rule	99
		3.7 A natural event ('acts of God')	99
		3.8 Intended results	99
	P.	ART II ACTUS REUS: THEORY	100
	4	Classification of offences	100
	5	The need for a voluntary act	102
		5.1 Why might the law have a voluntary act requirement?	102
		5.2 What is the 'voluntary act requirement'?	103
	6	Omissions	107
		6.1 Should the criminal law punish omissions?	107
	7	Causation: should consequences matter?	115
		7.1 Arguments against holding people responsible for the consequences	
		of their actions	115
		7.2 Arguments that consequences do matter	117

	CONTENTS xv
8 Seeking a coherent approach to causation	119
8.1 'Causal minimalism'	119
8.2 Hart and Honoré	120
8.3 Reasonable foreseeability	121
8.4 Natural consequences8.5 Narrowness of causation approach	124 126
9 Concluding thoughts	128
y Concluding modelins	120
MENS REA: THE MENTAL ELEMENT	129
PART I THE LAW	129
1 The meaning of mens rea	129
2 Intention	130
2.1 The core meaning of intention	131
2.2 Borderline cases of intention	133
2.3 Intoxication and intent	141
3 Recklessness	141
3.1 Cunningham recklessness	142
3.2 Caldwell recklessness	145
4 Negligence	150
5 Gross negligence	152
6 Distinguishing between intention, recklessness, and negligence	e 152
7 Intoxication	153
7.1 Involuntary and voluntary intoxication	153
7.2 Offences of basic and specific intent	154
7.3 Stating the present law	160
8 Knowledge and belief	161
9 Transferred mens rea	163
10 Coincidence of actus reus and mens rea	164
10.1 'Exceptions' to the coincidence requirement	165
PART II MENS REA: THEORY	169
11 General discussion on mens rea	169
12 Choice/capacity/character theory	171
13 Subjective/objective	172
14 Normal meaning	173

	15	Intent	173
		15.1 Distinguishing indirect intention and direct intention	174
		15.2 Is intention an issue of fact or an issue of moral responsibility?	177
	16	Recklessness	182
		16.1 Subjective and objective forms of recklessness and inadvertence	182
		16.2 An insufficient regard for the interests of others: Victor Tadros	183
		16.3 Practical indifference: Antony Duff	186
	17	Negligence	190
		17.1 Opposition to the use of negligence in criminal law	190
		17.2 Support for the use of negligence in criminal law	191
	18	Intoxication	193
		18.1 Intoxication and crime	193
		18.2 Alcoholism and drug dependency: illness or weakness?	194
		18.3 Explaining the present law on intoxication18.4 Alternatives to <i>Majewski</i>	195 196
		•	
	19	Motive	198
		19.1 Is motive relevant in the criminal law?19.2 Arguments in favour of taking motive into account	198 199
		19.3 Arguments against taking motive into account	200
	20		201
	20	The 'correspondence principle' 20.1 Which principle best reflects the law?	201
		20.2 Which principle is most justifiable in theory?	202
	21	Individualism and mens rea	207
			209
	22	Concluding thoughts	209
	OF		
4	5.	TRICT LIABILITY	210
	P	ART I THE LAW	210
	1	What is a strict liability offence?	210
	2	Which offences are strict liability?	211
	3	When will a court not presume <i>mens rea</i> ?	214
	4	What mens rea will be presumed?	215
	5	The Human Rights Act 1998 and strict liability offences	215
	6	Common law defences and strict liability offences	218
	7	Possession offences	219
	8	Constructive liability	221
	0		1

		CONTENTS xvii
PA	ART II THE THEORY OF STRICT LIABILITY OFFENCES	223
9	The arguments for and against strict liability	223
	9.1 Arguments for strict liability offences	224
	9.2 Arguments against strict liability offences	225
10	Concluding thoughts	229
H	OMICIDE	230
PA	ART I THE LAW	231
1	General	231
2	Murder	231
	2.1 Actus reus	231
	2.2 Mens rea	233
3	Manslaughter: an introduction	234
4	Loss of control	235
	4.1 The defendant lost self-control	237
	4.2 The loss of control was a result of a qualifying trigger	239
	4.3 Would a person with normal tolerance and self-restraint have	ve acted
	as D did?	248
	4.4 Loss of control and victims of domestic violence	251
5	Diminished responsibility	254
	5.1 'Abnormality of mental functioning'	256
	5.2 The effect of the abnormality of mental functioning	259
	5.3 Explanation for the acts	264
_	5.4 Diminished responsibility and intoxication	265
6	Suicide pact	269
7	Mercy killing and euthanasia	270
8	Infanticide	272
9	Constructive manslaughter	273
	9.1 An unlawful act	275
	9.2 Dangerous act9.3 Causation	277
10		278
10	Gross negligence manslaughter 10.1 A duty	279
	10.1 A duty 10.2 A breach of a duty	281 282
	10.3 Causing the death	283
	10.4 A serious and obvious risk of death	283
	10.5 Gross negligence	285

	11	Subjective reckless manslaughter	286
	12	Causing or allowing the death or serious physical harm of a child or vulnerable adult	287
	PA	RT II THEORETICAL ISSUES IN HOMICIDE LAW	288
	13	Homicide: the statistics	288
	14	The structure of homicide	289
		14.1 Creating a wide range of kinds of homicide	290
		14.2 Leaving distinctions to sentencing	290
		14.3 Distinguishing on the basis of the victims	291
		14.4 Labelling the method of killing used	291
	15	The actus reus of homicide	291
	16	Non-homicidal killings	292
	17	The mens rea for murder	292
		17.1 The meaning of intention	292
		17.2 Is intention the appropriate <i>mens rea</i> ?	293
		17.3 The fact that intention to cause grievous bodily harm is sufficient	294
	18	Defining the mens rea for manslaughter	299
	19	Loss of control	306
		19.1 Theory	306
		19.2 There must be a qualifying trigger	309
		19.3 The objective requirement	309
		19.4 The gendered nature of the defence	311
		19.5 The case for the abolition of the defence	315
	20	Diminished responsibility	319
	21	Concluding thoughts	320
6		ON-FATAL NON-SEXUAL OFFENCES GAINST THE PERSON	322
	P.	ART I THE LAW	323
	1	Introduction	323
	2	Assault and battery	324
		2.1 Assault	325
		2.2 Battery	330
	3	Assault occasioning actual bodily harm	335
	4	Malicious wounding	337

CONTENTS	xix
CONTENTS	AIA

5	Wounding with intent	343
6	Mixing and matching the offences	344
7	Poisoning 7.1 The meaning of 'poison' or 'noxious substance' 7.2 The meaning of 'administer' 7.3 The meaning of 'maliciously' 7.4 The meaning of 'endangerment of life' or 'cause grievous bodily harm' 7.5 The meaning of 'with intent to injure, aggrieve or annoy' Other assault crimes	345 346 347 347 347 348
		348
9	Racially and religiously aggravated crimes	
10	Protection from Harassment Act 1997 10.1 Section 1: harassment 10.2 Section 4 of the Protection from Harassment Act 1997 10.3 Stalking	352 352 356 356
11	Controlling or coercive behaviour	358
12	Threats offences	360
13	Transmitting disease 13.1 Clarification	361 367
14	Consent and assault 14.1 To what offences against the person is consent a defence? 14.2 What is consent? 14.3 What if there is no consent but the defendant believes that there is consent?	369 369 382 384
PA	RT II THEORETICAL ISSUES ON ASSAULTS	385
15	The true nature and extent of violent crime	385
16	The nature of an assault	388
17	Objections to and reform of the Offences Against the Person Act 1861	388
18	Proposed reforms to the Offences Against the Person Act 1861	395
19	Consent 19.1 Defence or actus reus? 19.2 The dispute over Brown 19.3 Body modification	397 397 398 408
20	Emotional and relational harm	411
21	Transmitting disease and the criminal law	412
22	Concluding thoughts	417

SE	EXUAL OFFENCES	419
PA	ART I THE LAW ON SEXUAL OFFENCES	419
1	Rape	420
	1.1 Who can commit rape?	420
	1.2 Who can be the victim of rape?	421
	1.3 What is penetration?	421
	1.4 What is consent?	422
	1.5 Mens rea: an intent to penetrate	452
	1.6 Mens rea: the defendant does not reasonably believe that the victim consents	453
2	Assault by penetration	457
3	Sexual assault	458
4	Causing sexual activity without consent	460
5	Preparatory offences	460
6	Sexual offences designed to protect children	461
	6.1 Offences which are versions of the general offences	461
	6.2 Offences designed specifically to protect children from sexual abuse	463
	6.3 Abuse of position of trust offences	464
	6.4 Familial child sex offences	466
	6.5 Child prostitution and child pornography	467
7	Offences against those with a mental disorder	467
8	Prostitution and trafficking	468
9	Miscellaneous offences	468
PA	ART II THE THEORY OF SEXUAL OFFENCES	470
10	Background of sexual crimes	470
11	Statistics on rape	472
12	The nature of rape	473
	12.1 The historical explanation	473
	12.2 The autonomy explanation	474
	12.3 Rape as violence	476
	12.4 Rape as invasion of integrity	477
	12.5 Rape as moral injury	481

12.6 The radical feminist explanation of rape

13.2 What is consent: to waive or intend?

13.1 What is consent: is it objective or subjective?

13 Consent and sexual activity

481

485 485

486

	13.3 What is consent: is a failure to voice opposition consent?	486
	13.4 Consent: what is the status of a mistaken consent?	491
	13.5 Consent and pressure	500
	13.6 Consent: intoxicated mistake	502
	13.7 Should consent be enough?	503
	14 Mens rea for rape	505
	14.1 The intent-based view	505
	14.2 The subjective recklessness view	505
	14.3 The Morgan view	506
	14.4 The negligence view: 'unreasonable belief'	506
	14.5 The negligence view: 'unreasonable formation of belief'	508
	14.6 Strict liability approach to rape	509
	15 The actus reus of rape	509
	16 Concluding thoughts	514
Q	THEFT, HANDLING, AND ROBBERY	515
O	THE I, IMMODELING, MND ROBBERT	313
	PART I THE LAW	515
	1 Theft	515
	1.1 Property	516
	1.2 Belonging to another	520
	1.3 Appropriation	526
	1.4 Intention permanently to deprive	536
	1.5 Dishonesty	541
	2 Robbery	547
		549
	4 Handling stolen goods	549
	4.1 It must be shown that the goods have already been stolen	550
	4.2 It must be shown that the defendant handled the property	551
	4.3 It must be shown that the defendant knew or believed that the goods	
	were stolen	553
	4.4 The defendant was dishonest	554
	5 Money laundering offences	554
	PART II THEFT AND THEORY	554
	6 Introduction to property offences	554
	6.1 In what way do property offences harm victims?	554
	6.2 Structure of property offences	EEG

CONTENTS | xxi

	6.3 The civil law–criminal law interface	558
	6.4 Theft: the statistics	560
	6.5 What is property?	562
	7 The debate over <i>Gomez</i>	563
	7.1 The case for <i>Gomez</i>	563
	7.2 The case against <i>Gomez</i>	563
	8 The <i>Hinks</i> debate	564
	8.1 The arguments against <i>Hinks</i>	564
	9 Temporary appropriation	568
	10 Dishonesty	570
	11 Robberies	572
	12 Handling stolen goods	573
	13 Concluding thoughts	574
9	FRAUD	575
	PART I THE LAW ON FRAUD	575
	1 Fraud	575
	1.1 Fraud by false representation	576
	1.2 Fraud by failing to disclose information	582
	1.3 Fraud by abuse of position	584
	2 Section 6: fraud and possession offences	588
	3 Obtaining services dishonestly	588
	4 Conspiracy to defraud	591
	5 Making off without payment: section 3 of the Theft Act 1978	592
	5.1 Making off from the place where payment was expected	593
	5.2 Goods supplied or services done	593
	5.3 Without having paid as required or expected	594
	5.4 Dishonesty	594
	5.5 Knowing that payment on the spot is required or expected of him	594
	5.6 Intent to avoid payment	595
	PART II THE THEORY OF FRAUD	595
	6 The extent of fraud	595
	7 The nature of fraud	595
	8 Concluding thoughts	600

	5	Computer crime: Computer Misuse Act 1990	632
		5.1 Section 1: unauthorized access to computer material	632
		5.2 Section 2: unauthorized access with intent	634
		5.3 Section 3: unauthorized acts	634
	P	ART II THEORETICAL ISSUES ON CRIMINAL DAMAGE	635
	6	Criminal damage theory	635
		6.1 Statistics	636
		6.2 What is special about damaging property?	636
		6.3 Should it be an offence to damage your own property?	636
		6.4 The definition of damage	636
	7	The theory of computer crimes	637
	8	Concluding thoughts	638
12	D	EFENCES	640
	P	ART I THE LAW	641
	1	Private defence and the prevention of crime	642
		1.1 The legal source of the defence	642
		1.2 To what crimes is private defence a defence?	643
		1.3 What needs to be shown to establish the defence?	643
		1.4 What about defendants who think they are being attacked but are not?	654
		1.5 Self-induced private defences	658
		1.6 Has the Human Rights Act 1998 changed the law?	659
	2	Necessity	661
		2.1 The meaning of necessity	661
		2.2 Cases denying the existence of a general defence of necessity	662
		2.3 The limited defence of necessity at common law	663
		2.4 Implied recognition of necessity	669
		2.5 Duress of circumstances	670
	3	Chastisement	671
	4	Consent	671
	5	Duress	672
		5.1 Terminology	672
		5.2 To what crimes is duress a defence?	672
		5.3 What are the elements of the defence of duress?	675
		5.4 The abolition of the defence of coercion	687
	6	Entrapment	688
	7	Superior orders	689

CONTENTS	xxv

8	Automatism	689
	8.1 A complete loss of voluntary control	690
	8.2 An external factor	691
	8.3 The defendant was not at fault in causing the condition	692
9	Insanity	693
	9.1 Insanity at the time of the alleged offence	693
	9.2 A claim that the defendant was insane at the time of the trial	700
10	Diminished responsibility	701
11	Loss of control	701
12	Children	701
	12.1 Children below the age of 10	701
	12.2 A child aged 10 to 14	702
13	Intoxication	702
14	Mistake	705
	14.1 A mistake which may negate mens rea	706
	14.2 Mistakes and defences	706
	14.3 Mistakes of law	709
PA	RT II THE THEORY OF DEFENCES	710
15	Defining defences	710
	15.1 The traditional approach	710
	15.2 Alternatives to the traditional classification	711
	15.3 Does any of this matter?	711
16	Justifications and excuses	712
	16.1 Justifications	713
	16.2 Excuses	716
	16.3 Does the distinction between justifications and excuses really matter?	720
	16.4 Should justifications be objective and excuses subjective?	722
	16.5 Problems with justifications and excuses	726
17	Character, choice, and capacity	727
	17.1 The capacity theory	730
	17.2 The character theory	731
18	Determinism	734
19	Insanity	735
	19.1 Problems with the present law	735
	19.2 Reform of the present law	737
20	Private defence	741
	20.1 The moral basis of private defence	741
	20.2 Mistaken private defence	744
	20.3 The 'householder' provisions	744

	21 Duress	747
	22 Necessity	750
	 23 Issues which fall between the gaps of the defences 23.1 Kingston 23.2 Battered women 23.3 The Zeebrugge disaster 	754 754 757 760
	24 Concluding thoughts	764
13	THE CRIMINAL LIABILITY OF CORPORATIONS	765
	PART I THE LAW ON CORPORATE CRIMINALITY	765
	1 The difficulty in convicting companies of crimes	765
	2 Corporate killing	766
	3 Vicarious liability	768
	3.1 What is vicarious liability?	768
	3.2 Which crimes can be committed vicariously?	769
	3.3 For whose act can the defendant be vicariously liable?	769
	3.4 What <i>mens rea</i> must be proved?	769
	PART II THE THEORY OF CORPORATE LIABILITY	770
	4 Theoretical issues in corporate liability	770
	4.1 The reality of corporate crime	770
	4.2 The clamour for corporate liability	771
	4.3 Should a company be guilty of a crime?	772
	4.4 If there is to be corporate crime, what form should it take?	773
	5 Concluding thoughts	781
14	INCHOATE OFFENCES	782
	PART I THE LAW ON INCHOATE OFFENCES	782
	1 Inchoate offences	782
	2 Attempt	783
	2.1 Mens rea	783
	2.2 Actus reus	790
	2.3 Impossible attempts	793
	2.4 Attempts and abandonment	798
	3 Serious Crime Act 2007	799

4 Conspiracy	809
4.1 The nature of conspiracy	809
4.2 Statutory conspiracies	810
4.3 Impossibility and statutory conspiracies	819
4.4 Common law conspiracies	820
4.5 Impossibility and common law offences	824
PART II THEORY	825
5 Inchoate offences	825
6 The theory of criminal attempts	827
6.1 Why do we punish attempts?	827
6.2 'The problem of moral luck'	828
6.3 Actus reus of attempt	830
6.4 Mens rea for attempt	834
6.5 Impossible attempts	837
7 Conspiracy theory	838
8 The rationale for the Serious Crime Act offence	s 842
9 Concluding thoughts	844
9 Concluding thoughts COMPLICITY	844 845
COMPLICITY	845
COMPLICITY PART I THE LAW OF COMPLICITY	845
COMPLICITY PART I THE LAW OF COMPLICITY 1 Principals and accomplices	845 845
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal?	845 845 845 846
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency'	845 845 846 848
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus	845 845 846 848 849
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting	845 845 845 846 848 849
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging	845 845 846 848 849 850 851
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise	845 845 846 848 849 850 851
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango	845 845 846 848 849 850 851 851
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango 2.5 Omissions and accomplice liability	845 845 846 848 849 850 851 851 852
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango 2.5 Omissions and accomplice liability 3 Mens rea	845 845 846 848 849 850 851 851 852 855
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango 2.5 Omissions and accomplice liability 3 Mens rea 3.1 Mens rea for accomplices: general principles	845 845 846 848 849 850 851 851 852 855 858
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango 2.5 Omissions and accomplice liability 3 Mens rea 3.1 Mens rea for accomplices: general principles 3.2 Mens rea for accomplices: conditional intent	845 845 846 848 849 850 851 851 852 855 858
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango 2.5 Omissions and accomplice liability 3 Mens rea 3.1 Mens rea for accomplices: general principles 3.2 Mens rea for accomplices: conditional intent 3.3 Fundamentally different acts	845 845 845 846 848 849 850 851 851 852 855 858 858
PART I THE LAW OF COMPLICITY 1 Principals and accomplices 1.1 Who is the principal? 1.2 'Innocent agency' 2 Complicity: the actus reus 2.1 Assisting 2.2 Encouraging 2.3 Joint enterprise 2.4 The problem of Gnango 2.5 Omissions and accomplice liability 3 Mens rea 3.1 Mens rea for accomplices: general principles 3.2 Mens rea for accomplices: conditional intent 3.3 Fundamentally different acts 3.4 Mens rea for accomplices: range of offences	845 845 845 846 848 849 850 851 851 852 855 858 863 863

CONTENTS | xxvii

xxviii | CONTENTS

5	Conviction of secondary party and acquittal of principal	872
6	Can a secondary party ever be guilty of a greater offence than the principal?	873
7	Withdrawal by a secondary party	874
8	Accessories and victims	877
9	Assistance after the offence	877
PA	RT II ACCESSORIES AND THEORY	878
10	General theories of accessorial liability	878
	10.1 Derivative theory of accessorial liability	879
	10.2 Does the theory explain the current law?	879
	10.3 Causation and accomplice liability	882
	10.4 Inchoate model	885
11	Theories of accessorial mens rea	888
	11.1 Purpose	888
	11.2 Recklessness	889
	11.3 The accomplice's mens rea should be the same as that required for	
	the principal	889
12	The theory of joint enterprise	893
13	Actus reus issues	895
14	Reform of the law	896
15	Concluding thoughts	899
Note on bil	bliography	901
Index	0 1 /	903
		- 50