

INDEX

[See also the detailed TABLE OF CONTENTS]

ABUSE

process, of, 669

ACCESSIBLE

law must be, 34

ACCESSORIES AFTER THE FACT

author's comments, 716

generally, 713

ACTUS REUS

aiding and abetting, 694

attempts

author's comments, 739

existing tests, 728

generally, 735

commission, act of

ambiguously defined, 92

generally, 92

status offences, 97

consequences, causing

causation principles, codifying, 176

causation rules, 149

cause

factual, 160

imputable, 163

code homicide causation rules, 149

confusion, 157

factual cause, 160

generally, 157

imputable cause, 163

independent actors, 170

Maybin, 170

Nette, 157

principles, codifying, 176

rationale, 148

reconsideration, 157

Smithers test, 151

challenging, 153

generally, 151

definition

ambiguous, 92

generally, 87

human being, by, 113

omission, act of

author's comments, 109

definition, 88

existing law, 92

necessaries of life, to provide, 106

requirement of an act, 87

voluntary

author's comments, 146

generally, 113

intoxication, 142

rationale, 117

restrictions

generally, 121

insanity, 122

intoxication, voluntary, 142

negligence, 144

AGE INCAPACITY

children, special crimes for, 415

rules of, 419

AGGRAVATED ASSAULT

predicate offences, 309

AIDING AND ABETTING

actus reus, 694

generally, 694

mens rea, 698

special rules, 701

AIR OF REALITY

consent, mistaken belief in, 332

excuse, 519

justification, 519

mistake of fact, 332

provocation, 614

ASSAULT

- aggravated, 311
- causing bodily harm, 311
- predicate offences, 309
- sexual
 - consent, defence of, 642
 - consent, mistaken belief in, 332, 357
 - mistake of fact, 332, 357

ATTEMPTED CRIMES

- abandonment of law re, 739
- actus reus*
 - author's comments, 735
 - existing tests, 728
 - generally, 728
- combining, 770
- desistance, voluntary, 740
- generally, 723, 744
- impossible, 742
- mens rea*, 724
- penalty, 745
- rationale, 723

AUTHORITY, PROTECTING PERSONS IN

- children, discipline of, 564
- offence, to commit, 564
- physical discipline, 564, 571
- protection of persons in, 546
- ship, discipline aboard a, 571
- surgery, 572

AWARENESS—see KNOWLEDGE, MENS REA**BEARD RULES**

- degree of, 482
- incapacity or intent in fact, 480
- intoxication generally, 469
- specific intent, 280, 473

BIKERS

- criminal organizations, 794

CAUSE/CAUSATION

- code homicide, 149
- confusion, 157
- consequences generally, 147

- death—*see* DEATH, CAUSING
- factual, 160
- imputable, 163
- independent actors (*Maybin*), 170
- Nette*, 157
- principles, codifying, 176
- rationale, 148
- reconsideration, 176
- rules, 149
- Smithers* test
 - challenging, 153
 - generally, 151

CERTAIN

- law must be
 - ideal, as an, 21
 - imperative, as a constitutional, 25
 - overbreadth, 25
 - vagueness, 25

CHARTER OF RIGHTS AND FREEDOMS

- consent, mistaken belief in, 358
- demonstrably justified reasonable limits, 17
- dialogue with Parliament, 14
- due diligence
 - liberty interests, threats to, 214
 - minimum, 214
 - qualified, not to be, 220
 - reverse onus, 221
 - security interests, threats to, 218
- fault—*see* standards re fault
- generally, 13
- impact on criminal justice, 18
- mistaken belief in consent, challenges re, 358
- moral involuntariness as standard under, 514
- new defences under, 509
- public welfare offences—*see* due diligence
- purposeful interpretation, 13
- standards re fault—*see also* due diligence

- constructive murder, 225
 - first degree murder, 223
 - foresight of harm, 238
 - generally, 225
 - intentional conduct vs. negligence, 237
 - marked departure, 238
 - moral involuntariness, 514
 - negligence vs. intentional conduct, 237
 - objective crimes, 291
 - predicate offences, 238
 - punishment, 235
 - subjective awareness required, 235
- CHILDREN**
- age incapacity, rules of, 419
 - disciplining, 564
 - immaturity generally, 419
 - infanticide, 629
 - physical discipline of, 566
 - special crimes for, 415
- COERCION—see DURESS**
- COLOUR OF RIGHT, 387**
- COMMISSION, ACT OF**
- actus reus*
 - ambiguously defined, 92
 - generally, 92
 - status offences, 97
- COMMON INTENT, DOCTRINE OF**
- commission of offence, 711
 - common purpose, 707
 - generally, 705, 707
 - knowledge of commission of offence, 710
 - parties generally, 705
 - probable commission of offence, 710
- COMPLICITY, 712**
- COMPULSION— see DURESS**
- CONSENT**
- defence of
 - author's comments, 665
 - death, to, 650
 - express, 639
 - fraud, vitiated by, 654
 - generally, 637
 - given freely, 651
 - implied, 639
 - informed, 641
 - juristic nature, 637
 - nature of offence, not excluded by, 651
 - “no means no”, codifying, 642
 - policy considerations, vitiated by, 661
 - sexual assault, 642
 - subjectively determined, 639
 - mistaken belief in
 - air of reality test, 332
 - Barton* limits, 357
 - Charter challenges, 358
 - Ewanchuk* limits, 345
 - generally, 323
 - honest belief, 328
 - reasonable steps, duty to take, 340
 - sexual assault and, 332
- CONSEQUENCES, CAUSING**
- actus reus* generally, 147
 - causation principles, codifying, 176
 - causation rules, 148
 - cause
 - factual, 160
 - imputable, 163
 - code homicide causation rules, 149
 - confusion, 157
 - factual cause, 160
 - imputable cause, 163
 - independent actors, 170
 - Maybin*, 170
 - Nette*, 157
 - principles, codifying, 176
 - rationale, 148
 - reconsideration, 157
 - Smithers* test
 - challenging, 153
 - generally, 151

CONSPIRACY

- abolition of, 748
- combining, 776
- common law, 745
- desistance, voluntary, 769
- doctrine
 - agents provocateurs, 762
 - agreement, 751
 - common purpose, 751
 - companies, one-person, 761
 - generally, 750
 - persons, two or more, 759
 - purpose, prohibited
 - generally, 762
 - indictable offence, 764
 - summary conviction of-
fence, 764
 - restricting, 767
 - spouses, 760
- history, 745
- impossible, 770
- legislation, 762
- merger, 770
- specialized, 772

CONSTRUCTIVE LIABILITY, 310**CONSTRUCTIVE MAN-
SLAUGHTER, 310****CONSTRUCTIVE MENS REA, 502****CONSTRUCTIVE MURDER, 225****CORPORATIONS**

- applying general principles to, 786
- author's comments
 - corporate culture, shift focus
to, 789
 - directors, special standards
for, 791
 - generally, 789
- common law, 779
- corporate culture, 789
- Criminal Code provisions, recent,
764
- directors, 791
- United Kingdom, 783
- United States, 785

COUNSELLING

- author's comments, 712
- commission of offence, 703
- incomplete crimes generally, 691

CRIMINAL CODE

- history, 1, 2, 84

CRIMINAL ORGANIZATIONS

- author's comments, 797
- bikers, 795
- gangsterism, 795
- generally, 794
- Manitoba Warriors trial, 797
- participation in, 795
- street gangs, 797

CRIMINOLOGY, 54**DAVIAULT DEFENCE**

- abolition of, 495
- generally, 489

DEATH, CAUSING

- code homicide causation rules, 149
- consent to, 650
- constructive manslaughter, 310
- homicide causation rules, 149
- infanticide, 629
- murder
 - constructive, 225
 - deliberate, 283
 - planned, 283
 - provocation defence, 599

**DEFENCE OF PERSON OR PROP-
ERTY—see EXCUSES****DIRECTORS**

- corporate, 791

DISPENSING POWERS

- de minimis non curat lex*, 684
- discharges, 682
- generally, 682

DIVERSION, 76**DRUNKEN MENS REA, 471****DUE DILIGENCE**

- author's comments re, 314
- public welfare offences

Charter standard, 214—*see also* due diligence, standard of
 generally, 196
 real vs. regulatory offences, 212
Sault Ste. Marie
 absolute liability, 206
 applying, 206
 decision, 196
 half-way house approach, 202
 offences, classification of, 200
 prior to, 189
 standard of
 liberty interests, threats to, 214
 minimum, 214
 qualified, not to be, 220
 reverse onus, 221
 security interests, threats to, 218

DURESS

author's comments, 554
 belief of accused, 551
 conspiracy, whether party to, 553
 defence generally, 540
 escape, no safe avenue of, 552
 excluded offences, 544
 proportionality, 552
 threat, nature of, 549

ENTRAPMENT

abuse of process, stay as, 670
 author's comments, 680
 burden of proof, 678
 generally, 665
 mitigating sentence, 679
 standard of proof, 678
 stay as abuse of process, 670
 substantive requirements, 672
 trial judge, matter for, 677
 United States, defence in, 666

ERRONEOUS STATEMENT OF LAW, 391**EXCUSES OR JUSTIFICATIONS**

air of reality, 519
 Charter
 defences under, new, 509
 moral involuntariness as standard, 514
 defences
 administering the law, protection of persons, 556
 authority
 children, discipline of, 564
 offence, to commit, 562
 physical discipline, 564, 571
 protection of persons in, 556
 ship, discipline aboard a, 571
 surgery, 572
 Charter, under the, 509
 common law, at, 509
 duress
 author's comments, 544
 belief of accused, 551
 conspiracy, whether party to, 553
 escape, no safe avenue of, 552
 excluded offences, 544
 generally, 540
 proportionality, 552
 threat, nature of, 549
 enforcing the law, protection of persons, 556
 excuse, reasonable, 562
 impossibility—*see* necessity
 moral involuntariness, 514
 murder—*see* partial
 necessity
 generally, 576, 597
 generous defence, a more, 597
 impossibility defence, separate from, 592
Latimer, 582
Morgentaler, 579
Perka, 576

- residual defence of, 593
 - orders, following or obeying, 633
 - person, of
 - abuse, victims of, 533
 - complexity of rules, 522
 - section 34, 523
 - umbrella approach, 523
 - prank, 632
 - property, of, 538
 - justification, distinguished from, 511
 - moral involuntariness, 514
 - objective, 512
 - onus of proof, 519
 - principle of, 511
 - putative, 518
 - subjective, 517
- FAULT—see also MENS REA, NEGLIGENCE**
- FEMINIST PERSPECTIVES, 80, 340, 642**
- FITNESS TO STAND TRIAL**
- incapacity generally, 433
 - mental disorder, unfitness due to, 430
- GANGSTERISM, 794**
- GROUP RESPONSIBILITY**
- corporations
 - applying general principles to, 786
 - author's comments
 - corporate culture, shift focus to, 789
 - directors, special standards for, 791
 - generally, 789
 - common law, 779
 - Criminal Code provisions, recent, 792
 - generally, 779
 - United Kingdom, 783
 - United States, 785
 - criminal organizations
 - author's comments, 797, 799
 - bikers, 794
 - gangsterism, 795, 799
 - generally, 794
 - Manitoba Warriors trial, 797
 - participation in, 795
 - terrorist groups
 - 2020 realities, 812
 - 9/11 Attacks, 804
 - generally, 804
 - offences, new, 807
 - terrorism defined, 805
 - three-year review, 811
- HISTORY**
- Criminal Code, 1, 2, 84
 - criminal law sources
 - Charter of Rights and Freedoms
 - dialogue with Parliament, 14
 - demonstrably justified reasonable limits, 17
 - generally, 8
 - impact on criminal justice, 18
 - purposeful interpretation, 13
 - judge-made, 9
 - statutory, 8
 - criminology, 54
 - diversion, 76
 - evidentiary context
 - contrasting issues, 52
 - generally, 41
 - offences, classification of, 52
 - presumption of innocence, 41
 - substantive issues, 52
 - feminist perspectives, 80, 340, 642
 - penal sanctions, restraint with, 58
 - procedural context
 - contrasting issues, 52
 - generally, 41
 - offences, classification of, 52
 - presumption of innocence, 41
 - substantive issues, 52
 - restorative justice, 76

- rule of law
 - accessibility, 34
 - certainty
 - ideal, as an, 21
 - imperative, as a constitutional, 25
 - overbreadth, 25
 - vagueness, 25
 - generally, 20
 - non-retroactivity, 35
 - presumption favouring liberty, 37
 - strict construction, 37
 - sentencing
 - aims, 63
 - mandatory minimums, 69
 - principles, 63
 - victims' rights, 77
- IMMATURITY**
- age incapacity, rules of, 419
 - children, special crimes for, 415
 - incapacity generally, 415
- IMPOSSIBILITY—see also NECESSITY**
- attempts and, 742
 - conspiracies and, 770
 - mistake of law, 382
 - necessity, separate from, 592
- INCAPACITY**
- fault and, 298
 - fitness to stand trial
 - generally, 433
 - mental disorder, unfitness due to, 430
 - immaturity
 - age incapacity, rules of, 419
 - children, special crimes for, 415
 - generally, 415
 - insanity
 - alternatives re disposition, limited, 427
 - civil commitment procedures, dangers of, 426
 - defence of
 - author's comments, 457
 - disease of the mind, 439
 - evidence negating *mens rea*, 453
 - generally, 434
 - incapacity to appreciate nature and quality of act/omission, 444
 - incapacity to know conduct was wrong, 448
 - juristic nature, 452
 - onus, 437
 - section 16, 435
 - generally, 421
 - psychiatry, limits of, 421
 - unfitness to stand trial, 433
- intoxication
- generally, 502
 - constructive *mens rea*, 502
 - drunken *mens rea*, 500
 - generally, 500
 - guilty but intoxicated, verdict of, 507
 - independent offence, 504
 - mens rea* determinations, allow for, 500
 - negligence, not allow for, 500
 - special verdict akin to insanity, 503
 - automatism, akin to, 495
 - Daviault* defence, 495
 - abolition of, 495
 - generally, 489
 - degrees of, 500
 - generally, 469
 - insanity, akin to, 489
 - specific intent crimes, defence to
 - degree of, 500
 - generally, 471
 - incapacity or intent in fact, 480
 - specific intent, 489
 - specific vs. general intent, 485
 - mistake of law and, 401

nature of act/omission, knowing, 448
 objective *mens rea* and, 298
 wrongness of conduct, knowing, 277

INCOMPLETE CRIMES

attempts
 abandonment of law of, 739
actus reus
 author's comments, 735
 existing tests, 728
 generally, 728
 desistance, voluntary, 740
 generally, 723
 impossible, 742
mens rea, 724
 penalty, 745
 rationale, 723
 combining, 776
 conspiracy
 abolition of, 748
 common law, 745, 748
 desistance, voluntary, 769
 doctrine
 agents provocateurs, 762
 agreement, 751
 common purpose, 751
 companies, one-person, 761
 generally, 745
 indictable offence, 764
 persons, two or more, 759
 purpose, prohibited, 762
 restricting, 767
 spouses, 760
 summary conviction of-
 fence, 764
 generally, 745
 history, 745
 impossible, 770
 legislation, 762
 merger, 770
 specialized, 772
 counselling
 author's comments, 712
 generally, 703

INDEPENDENT ACTORS/ACTIONS

causation and, 170
 consequences and, 703

INSANITY—see INCAPACITY**INTENT / INTENTIONAL**

Beard rules—see specific intent crimes
 conduct distinguished from negligence, 241
 cumulative effect on, 628
 indirect, 259
 innocent act, superimposing on, 411
 motive, 253
 specific intent crimes, 280, 473
 subjective *mens rea*, 235, 241
 superimposing on innocent act, 411

INTOXICATION—see INCAPACITY**JUSTIFICATIONS—see EXCUSES OR JUSTIFICATIONS****KNOWLEDGE**

common intent, doctrine of, 705
 incapacity re wrongness of conduct, 277, 448
 indirect, 259
 subjective *mens rea*, 241
 wrongness of conduct, of, 277, 448

LIBERTY

law presumed to favour, 37

MANSLAUGHTER—see DEATH, CAUSING**MATERIALITY**

mistake of fact, 364

MENS REA—see also FAULT, NEGLIGENCE

aiding and abetting, 698
 attempted crimes, 724
 constructive, 502
 evidence negating, 453
 fault—see also fault categories
 author's comments
 codified definitions needed, 316

- due diligence, low standard of, 314
 - generally, 314
 - objective standards, need for further restricted, 315
 - standard, guidelines needed for fault, 319
- Charter standards, 225
- constructive murder, 225, 310
- first degree murder, 223
- foresight of harm, 238
- intentional conduct vs. negligence, 237
- marked departure, 238
- negligence vs. intentional conduct, 237
- objective crimes, 291
- predicate offences, 309
- subjective awareness required, 235
- crimes, generally for, 235
- fault categories
 - generally, 179
 - objective
 - activity-sensitive approach, 302
 - criminal negligence, 295
 - express, 294
 - implied, 294
 - incapacity, 298
 - individual factors, 291
 - individualised objective standards, 291
 - marked departure, requirement of, 295
 - substantial departure, 304
 - predicate offences, crimes based on
 - aggravated assault, 311
 - assault causing bodily harm, 311
 - constructive liability, 310
 - constructive manslaughter, 310
 - generally, 309
 - limited fault required, 309
 - subjective *mens rea*, 244
 - deliberate murder, 283
 - dishonesty, 278
 - express, 242
 - foresight of consequences, 277
 - implied, 242
 - indirect intent/knowledge, 259
 - intent, 252, 253, 259
 - knowledge, 252
 - knowledge of wrongness, 277
 - motive, 253
 - murder, planned and deliberate, 283
 - planned murder, 283
 - policy favouring, 251
 - recklessness, defined, 266
 - recklessness, extension to, 260
 - specific intent, 280, 473
 - transferred malice, 287
 - UK courts, 275
 - wilful blindness, 290
- public welfare offences
 - Charter standard, 214—*see also* due diligence, standard of
 - due diligence, standard of
 - liberty interests, threats to, 214
 - minimum, 214
 - qualified, not to be, 220
 - reverse onus, 221
 - security interests, threats to, 218
 - generally, 189
 - real vs. regulatory offences, 212
 - Sault Ste. Marie*
 - absolute liability, 206
 - applying, 206
 - decision, 196
 - half-way house approach, 202

- offences, classification of, 200
 - prior to, 189
- MISTAKE OR IGNORANCE**
 - fact, of, 323
 - distinguishing from mistakes of law, 402
 - fault, question of, 323
 - generally, 323
 - materiality, 364
 - objective, 325—*see also* subjective vs. objective
 - subjective vs. objective
 - air of reality test, 332
 - Barton* limits, 357
 - belief and reasonable steps, 331
 - Canadian view, 328
 - Charter challenges, 353
 - consent, mistaken belief in, 332
 - Ewanchuk* limits, 345
 - generally, 323
 - honest belief, 336
 - reasonable steps, duty to take, 340
 - sexual assault and, 339
 - UK law, 325
 - generally, 323
 - law, of
 - distinguishing from mistakes of fact, 402
 - general rule
 - colour of right, 382
 - erroneous statement of law, 391
 - exceptions, 382
 - generally, 374
 - impossibility, 382
 - incapacity, 401
 - non-publication, 382
 - rationale, 375
 - reliance on law, 391
 - generally, 374
 - omissions and, 406
- MORAL INVOLUNTARINESS, 514**
- MOTIVE, 253**
- MURDER—see DEATH, CAUSING**
- NECESSARIES OF LIFE**
 - act of omission to provide, 106
- NECESSITY**
 - defence of, 576, 597
 - generous defence, a more, 597
 - impossibility defence, separate from, 592
 - Latimer*, 582
 - Morgentaler*, 579
 - Perka*, 576
 - residual defence of, 593
- NEGLIGENCE—see also MENS REA**
 - actus reus*, 144
 - Charter standards, 214, 295
 - criminal, 295
 - incapacity and, 298
 - intentional conduct, contrasted with, 237
 - intoxication and, 500
 - objective crimes
 - activity-sensitive approach, 302
 - criminal negligence, 304
 - express, 294
 - implied, 294
 - incapacity, 298
 - individual factors, 298
 - individualised objective standards, 298
 - marked departure, requirement of, 295
 - substantial departure, 304
 - simultaneous principle and, 413
 - voluntariness, 144
- NON-RETROACTIVE**
 - law must be, 35
- OBEDIENCE, 633**
- OMISSION**
 - act of
 - author's comments, 109
 - definition, 88
 - existing law, 92

- necessaries of life, to provide, 106
- mistake and, 406
- ORDERS, FOLLOWING, 633**
- OVERBREADTH, 25**
- PARTIAL DEFENCES**
 - cumulative effect on intent, 628
 - diminished responsibility, 624
 - excessive force, 625
 - generally, 599
 - infanticide, 629
 - intent, cumulative effect on, 628
 - intoxication, voluntary, 624
 - provocation
 - act, wrongful, 603
 - air of reality, 614
 - anger alone, 601
 - extenuating circumstances, 620
 - generally, 599
 - immediacy of response, 613
 - insult, wrongful, 603
 - murder only, 600
 - narrowed trigger, 604
 - response to provocation, acting in, 612
 - self-control, loss of, 606
 - suddenness of response, 613
 - voluntariness and, 601
 - rolled up charge, 628
- PARTIES TO OFFENCE**
 - accessories after the fact
 - author's comments, 716
 - generally, 713
 - aiding and abetting
 - actus reus*, 694
 - generally, 694
 - mens rea*, 698
 - special rules, 700
 - common intent, doctrine of
 - commission of offence, 711
 - common intent, 707
 - common purpose, 700, 711
 - generally, 705
 - knowledge of commission of offence, 710
 - probable commission of offence, 710
 - complicity, reforming law of, 712
 - counselling, 703
 - history, 691
 - principals, 693
 - procuring, 703
 - vicarious responsibility, 716
- PENAL SANCTIONS, RESTRAINT WITH, 58**
- PRANK, 632**
- PREDICATE OFFENCES**
 - aggravated assault, 311
 - assault causing bodily harm, 311
 - Charter standards, 229
 - constructive liability, 310
 - constructive manslaughter, 310
 - crimes based on, 309
 - limited fault required, 309
- PRESUMPTION OF INNOCENCE**
 - evidentiary and procedural context, 41
- PRINCIPALS, 693—see also PARTIES TO OFFENCE**
- PROCURING**
 - commission of offence, 703
- PROTECTION**
 - administering the law, of persons, 556
 - authority, persons in
 - children, discipline of, 564
 - offence, to commit, 562
 - physical discipline, 564, 571
 - protection of persons in, 546
 - ship, discipline aboard a, 571
 - surgery, 572
 - enforcing the law, of persons, 556
 - person, of
 - abuse, victims of, 533
 - complexity of rules, 522
 - section 34, 523
 - umbrella approach, 523

property, of, 538
 self-defence—*see* person, of

PROVOCATION

act, wrongful, 603
 air of reality, 614
 anger alone, 601
 extenuating circumstances, 620
 generally, 599
 immediacy of response, 613
 insult, wrongful, 603
 murder only, 600
 narrowed trigger, 604
 response to, acting in, 612
 self-control, loss of, 606
 suddenness of response, 613
 voluntariness and, 601

RECKLESSNESS

defined, 266
 extension of subjective *mens rea* to, 260

RESTORATIVE JUSTICE, 76

ROLLED UP CHARGE, 628

SENTENCING

aims of, 63
 entrapment and, 679
 mandatory minimus, 69
 principles of, 63

SEXUAL ASSAULT—*see* MISTAKE, CONSENT

SIMULTANEOUS PRINCIPLE

departures
 danger, failing to correct, 412
 generally, 409
 innocent act, intent superimposed upon, 411
 intent, superimposing, 411
 intoxication for purpose of crime, 413
 negligence offences, 413
 series of acts as single transaction, treating, 412
 generally, 409

STRICT CONSTRUCTION, 37

SURGERY, 572

TERRORISM

defined, 805

TERRORIST GROUPS

2020 realities, 812
 9/11 Attacks, 804
 generally, 804
 offences, new, 807
 terrorism defined, 805
 three-year review, 811

VAGUENESS, 25

VICARIOUS LIABILITY, 716

VICTIM

abuse of, 533
 rights of, 77

VOLUNTARY / VOLUNTARINESS

actus reus
 author's comments, 146
 generally, 113
 insanity, 122
 intoxication, 142, 624
 negligence, 144
 rationale, 117
 restrictions generally, 121
 morally, whether, 574
 provocation and, 601

WILFUL BLINDNESS, 270