

TABLE OF CONTENTS

CHAPTER 1	CRIMINAL LAW AND GOVERNMENT REGULATION IN PERSPECTIVE	1
	Crime and the Criminal Law System, <i>C. Mitchell</i>	1
	<i>R. v. Roher</i>	3
	What is a Crime?, <i>Law Commission of Canada</i>	41
	Addendum: Incarceration in Canada as of 2016, <i>Rebecca Bromwich</i>	46
	Questions/Discussion	47
CHAPTER 2	PERSPECTIVES ON CRIMINAL LAW	51
	Introduction, <i>R.P. Saunders</i>	51
	2.1 Traditional Legal Perspectives, <i>R.P. Saunders</i>	53
	2.2 Law in the Social Sciences, <i>Ross Hastings</i>	56
	2.3 The Critical Perspective on Criminal Law, <i>Ross Hastings</i>	60
	Critical Race Theory and Aboriginal Perspectives on Criminal Law, <i>Rebecca Bromwich</i>	68
	2.4 Feminist Perspectives on Criminal Law	69
	Contemporary Feminist Engagements with Criminal Law, <i>Rebecca Bromwich</i>	69
	Foreword: The Meaning of Gender Equality in Criminal Law, <i>Dorothy E. Roberts</i>	70
	Feminist Challenges to the Study of Justice, <i>D.H. Currie, B.D. MacLean and D. Milovanovic</i>	72
	Models of Justice: Portia or Persephone? Some Thoughts on Equality, Fairness and Gender in the Field of Criminal Justice, <i>Frances M. Heidensohn</i>	81
	Questions/Discussion	84
	Further Reading	85
CHAPTER 3	THE PRODUCTION OF CRIMINAL LAW	87
	General Introduction, <i>R.P. Saunders</i>	87

3.1 Legislation and the Role of Parliament	93
Introduction, R.P. Saunders	93
Criminal Law, <i>P.W. Hogg</i>	96
Criminal Legislation, <i>E.G. Ewaschuk</i>	100
From Jeremy Bentham to Anne McLellan: Lessons on Criminal Law Codification, <i>Gerry Ferguson</i>	106
The General Part in Canada, <i>Law Reform Commission of Canada</i> . .	108
A Case for a General Part, <i>Don Stuart</i>	111
Commentary, <i>Christine Boyle</i>	112
Criminal Law in Canadian Society, <i>Tim Quigley</i>	114
Questions/Discussion	121
Further Reading	122
3.2 The Role of the Courts	123
Introduction, R.P. Saunders	123
Powers Generally, <i>Frank P. Hoskins</i>	127
Courts, <i>Donald C. Murray</i>	128
Ambiguity and Vagueness in the Criminal Law: An Analysis of Types, <i>Stephen Kloepfer</i>	133
R. v. Paré.	141
The Players of a Criminal Trial, <i>Frank P. Hoskins</i>	149
Controlling the Trial Process: The Judge and the Conduct of Trial, <i>Stanley A. Cohen</i>	151
Canadian Charter of Rights and Freedoms, <i>Thomas A. Cromwell</i> . .	160
Constitutional Dialogues Between Courts and Legislatures: Can We Talk?, <i>The Honourable C.A. Fraser</i>	163
Adversarial Justice and the Charter of Rights: Stunting the Growth of the “Living Tree”, <i>Alan N. Young</i>	167
Questions/Discussion	172
Further Reading	172
CHAPTER 4 CRIMINAL LAW — PERSONNEL, PARTICIPANTS AND POWERS.	175
General Introduction.	175
4.1 Police.	175
Introduction	175
Historical Development, C. Mitchell	176

Editors' Note: "Carding"/ Street Checks by Police	180
Backgrounder: Summary of Draft Ontario Regulation on Street Checks.	180
Arrest and Compelling the Appearance of the Accused, <i>Heather E. MacKay</i>	183
Powers of Arrest — Private Citizens	184
Powers of Arrest — Peace Officers	185
Penetrating Police Investigative Practice Post-Morin, <i>John A. Epp</i>	189
Strategies for Police Accountability and Community Empowerment, <i>Ross Hastings and R.P. Saunders</i>	195
Editors' Note: Civil Litigation: RCMP Class Action	197
Doe v. Metropolitan Toronto Board of Commissioners of Police and the Status of Public Oversight of the Police in Canada, <i>Scott Childs and Paul Ceyssens</i>	197
Questions/Discussion	200
Further Reading	201
4.2 Prosecutor/Defence	203
Introduction	203
Prosecutorial Arrangements and Powers in Canada, <i>Don Stuart</i>	203
Prosecuting, <i>Gavin MacKenzie</i>	204
Accountability of the Crown Attorney to the Attorney General, <i>Don Stuart</i>	210
Prosecutorial Discretion in a Charter-Dominated Trial Process, <i>Wayne Gorman</i>	214
Battered Women: Definition, Models and Prosecutorial Policy, <i>A. McGillivray</i>	218
Plea Bargaining, <i>David Vanek</i>	225
Plea Bargaining, <i>Gavin MacKenzie</i>	226
The Role of Defence Counsel — Historical Development , <i>C. Mitchell</i>	228
The Role of Defence Counsel, <i>Frank P. Hoskins</i>	229
Control of Advocacy, <i>Gavin MacKenzie</i>	231
Plea Bargaining, <i>Gavin MacKenzie</i>	232
R. v. Rockwood	233
Questions/Discussion	237
Further Reading	237
4.3 Judges	239
Introduction	239

The Trial Judge: Pilot, Participant, or Umpire?, <i>H. Silverman</i>	239
The Role of the Judge, <i>Frank P. Hoskins</i>	244
Judicial Accountability in Canada, <i>Ian Greene</i>	247
Questions/Discussion	254
Further Reading	254
4.4 Victims.	255
Introduction , <i>Ross Hastings</i>	255
Report of the Canadian Federal-Provincial Task Force on Justice for Victims of Crime, <i>Ministry of Supply and Services</i> . . .	260
Is There a Place for the Victim in the Prosecution Process?, <i>Patricia Clarke</i>	269
Highlights of Victims' Bill of Rights — 2015	280
Highlights of Bill C-79	282
Questions/Discussion	284
Further Reading	285
4.5 The Accused.	286
Introduction	286
Selecting Accused: Characteristics of the Offender , <i>C. Mitchell</i>	287
Editors' Note: Aboriginal Accused.	291
R. v. Ipeelee	291
Justice and the Poor, <i>National Council of Welfare</i>	294
Questions/Discussion	307
Further Reading	307
CHAPTER 5 SENTENCING AND PUNISHMENT.	309
5.1 Sentencing	309
Introduction	309
Toward a Revised Sentencing Structure for Canada, <i>Keith Jobson and Gerry Ferguson</i>	310
R. v. Nur	313
Sentencing Powers and Principles, <i>Kenneth W. Fiske</i>	318
Justice and the Poor, <i>National Council of Welfare</i>	322
Purpose and Principles of Sentencing — Section 718 of the Criminal Code	329
Statutory Sentencing Reform: The Purpose and Principles of Sentencing, <i>Julian Roberts and A. von Hirsch</i>	331
R. v. Ipeelee	341

R. v. Hollinsky	350
5.2 Punishment	354
Introduction, R.P. Saunders and C. Mitchell	354
Correctional Philosophy, Working Paper No. 1, <i>Solicitor General of Canada</i>	358
A Framework for the Correctional Law Review, Working Paper No. 2, <i>Solicitor General of Canada</i>	361
Justice and the Poor, <i>National Council of Welfare</i>	364
Conditional Release from Prison, <i>Heather E. MacKay</i>	367
Questions/Discussion	372
Further Reading	373
CHAPTER 6 CRIMINAL LAW LIABILITY	377
General Introduction	377
6.1 Elements of an Offence	378
6.1.1 Actus Reus	378
Introduction	378
R. v. Jordan	380
R. v. Smith	383
R. v. Maybin	386
People v. Beardsley	394
Lavin c. Québec (Procureur général)	398
R. v. Thornton	401
R. v. Browne	407
Fagan v. Metropolitan Police Commissioner	411
R. v. Cooper	414
Questions/Discussion	421
Further Reading	422
6.1.2 Mens Rea	422
Introduction	422
R. v. Beaver	424
R. v. King	430
R. v. Ladue	434
R. v. Droste	436
R. v. Tutton	440
R. v. Hundal	449

R. v. Creighton	455
Questions/Discussion	469
Further Reading	470
6.1.3 Strict and Absolute Liability	471
Introduction	471
R. v. Yuen	471
R. v. Sault Ste. Marie (City)	473
R. v. Wholesale Travel Group Inc.	480
R. v. 1260448 Ontario Inc.	496
Questions/Discussion	501
Further Reading	502
6.2 Incomplete Offences	502
6.2.1 Attempts	502
Introduction	502
R. v. Deutsch	504
R. v. Sorrell	509
R. v. Scott	512
R. v. Smith	514
Questions/Discussion	518
Further Reading	519
6.2.2 Counselling	519
Introduction	519
R. v. McLeod	520
R. v. Hamilton	523
Questions/Discussion	527
Further Reading	528
6.2.3 Conspiracy	528
Introduction	528
R. v. O'Brien	529
R. v. Déry	533
Questions/Discussion	535
Further Reading	535
6.3 Attaching Liability: The Limits of Liability	536
Introduction	536

R. v. Kulbacki	537
R. v. Salajko.	539
R. v. Henderson	541
Questions/Discussion	545
Further Reading	546
CHAPTER 7 DEFENCES.	547
General Introduction.	547
7.1 Justifications and Excuses.	549
7.1.1 Duress.	549
Introduction	549
R. v. Carker (No. 2).	550
R. v. Paquette.	554
R. v. Hibbert	557
R. v. Ruzic.	570
R. v Ryan.	577
Questions/Discussion	588
Further Reading	588
7.1.2 Necessity	589
Introduction	589
Perka v. R.	590
R. v. Roberts	600
Editor’s Note/Excerpt from R. v. Latimer	601
Questions/Discussion	602
Further Reading	603
7.1.3 Self-Defence	604
Introduction	604
R. v. Breau.	605
R. v. Lavallee	607
Questions/Discussion	620
7.1.4 Defence of Property	621
Introduction	621
R. v. Chen	621
Questions/Discussion	627

Further Reading	627
7.1.5 Consent	628
Introduction	628
R. v. Maki	629
R. v. Jobidon	632
Questions/Discussion	639
Further Reading	639
7.2 Absence of Intent or Knowledge	640
7.2.1 Mistake of Fact	640
Introduction	640
R. v. Williams.	641
R. v. Kundeus	644
R. v. Pappajohn	650
R v. A (J).	655
Questions/Discussion	657
Further Reading	658
7.2.2 Ignorance of the Law	658
Introduction	658
R. v. MacDonald	659
R. v. Campbell	663
R. v. Cancoil Thermal Corp.	667
Questions/Discussion	673
Further Reading	673
7.3 Policy Defences	674
7.3.1 Entrapment	674
Introduction	674
R. v. Mack	674
R. v. Barnes.	688
Questions/Discussion	692
Further Reading	693
7.3.2 Charter Protections	694
Introduction	694
Canadian Charter of Rights and Freedoms — selected sections . . .	695
Canadian Charter of Rights and Freedoms, <i>Thomas Cromwell</i>	697

Questions/Discussion	706
Further Reading	706
7.4 Incapacity	708
General Introduction	708
7.4.1 Provocation or Heat of Passion	709
Introduction	709
R. c. Parent	710
R. v. Tran	714
Questions/Discussion	723
Further Reading	724
7.4.2 Defence of Mental Disorder	724
Introduction, C. Mitchell and R. Bromwich	724
Hadfield to Swain: The Criminal Code Amendments Dealing with the Mentally Disordered Accused, <i>A.J. O'Marra</i>	727
R. v. Worth	739
Questions/Discussion	742
Further Reading	743
7.4.3 Intoxication	744
Introduction	744
R. c. Daviault	745
Questions/Discussion	759
Further Reading	759
7.4.4 Automatism	760
Introduction	760
R. v. Rabey	760
R. v. Parks	775
R. v. Stone	779
Questions/Discussion	787
Further Reading	788