

TABLE OF CONTENTS

<i>Preface to the Sixteenth Edition</i>	i
<i>Acknowledgments</i>	v

Chapter 1. INTRODUCTION

1. ROLE OF THE CRIMINAL JUSTICE SYSTEM IN CANADIAN SOCIETY	1
(a) The Proper Scope of Criminal Law	1
Canadian Committee on Corrections, <i>Towards Unity: Criminal Justice and Corrections (Ouimet Report)</i>	3
Law Reform Commission of Canada, <i>Report: Our Criminal Law</i>	4
<i>R. v. Malmo-Levine</i>	5
<i>R. v. Labaye; R. v. Kouri</i>	10
(b) Critiques of the Criminal Justice System	16
Adult Criminal Court Statistics, 2017/2018.....	16
Indigenous Overrepresentation in the Criminal Justice System 2019.....	17
Menkel-Meadow, <i>Portia in a Different Voice</i>	18
Wilson, <i>Will Women Judges Really Make a Difference?</i>	23
Law Reform Commission of Canada, <i>Aboriginal Peoples and Criminal Justice (1991)</i>	27
Napoleon and Friedland, <i>Indigenous Legal Traditions: Roots to Renaissance</i>	29
Final Report of Truth and Reconciliation Commission in Canada (2015).....	31
<i>R. v. R.D.S.</i>	32
Victims' Rights	38
(c) Sentencing	41
(i) Sentencing Principles	41
Doob and Webster, <i>Sentence Severity and Crime: Accepting the Null Hypothesis</i>	41
<i>R. v. Priest</i>	45
<i>R. v. Gladue</i>	50
Truth and Reconciliation Commission of Canada, <i>Honouring the Truth, Reconciling for the Future</i>	53
Quigley, <i>R. v. Friesen: Sentencing Guidance from the Supreme Court</i>	56
(ii) Sentencing and the Charter	62
(iii) Tools of Sentencing	67
Discharges	67
Fines	69
Probation	69

	Restitution.....	72
	Community Service	73
	Intermittent Sentence.....	74
	Recognizance to Keep the Peace.....	74
	Imprisonment	74
	Conditional Sentences.....	75
	<i>R. v. Proulx</i>	75
2.	SOURCES	78
	(a) Common Law (Judge-made Law)	78
	(i) Offence definition	78
	<i>R. v. Sedley</i>	78
	<i>Frey v. Fedoruk</i>	79
	The <i>Criminal Code</i>	81
	(ii) Doctrine of precedent	83
	<i>R. v. Henry</i>	83
	(b) Statute	87
	(i) General principles of statutory interpretation	87
	Application under S. 83.28 of the <i>Criminal Code, Re</i>	87
	<i>R. v. Clark</i>	88
	(ii) Bilingual interpretation	93
	(iii) Strict construction	94
	<i>R. v. Goulis</i>	94
	<i>R. v. Paré</i>	95
	<i>R. v. Mac</i>	98
	(iv) Limits on the value of codification	99
	(c) Division of Powers under the Constitution Act 1867	102
	The <i>Constitution Act, 1867</i>	102
	Reference re <i>Firearms Act (Canada)</i>	103
	(d) Charter of Rights and Freedoms	112
	(i) Purposive approach	114
	<i>Hunter v. Southam Inc.</i>	114
	(ii) Section 7 and principles of fundamental justice	115
	<i>Canadian Foundation for Children, Youth and the Law v.</i>	
	<i>Canada (Attorney General)</i>	116
	<i>Bedford v. Canada (Attorney General)</i>	123
	<i>R. v. Safarzadeh-Markhali</i>	132
	(iii) Oakes test for section 1	135
	<i>R. v. Oakes</i>	135
	<i>R. v. J. (K.R.)</i>	137
	<i>Bedford v. Canada (Attorney General)</i>	140
3.	PROCEDURAL OVERVIEW	142
	(a) Classification of Offences and Mode of Trial	142
	(i) Offences triable only on indictment	143
	(ii) Summary conviction offences	144
	(iii) Crown election offences (dual, hybrid)	145
	(b) Presumption of Innocence	147

	<i>(i) Common law</i>	147
	<i>Woolmington v. D.P.P.</i>	147
	Allen, <i>Legal Duties and Other Essays in Jurisprudence</i>	154
	<i>(ii) Reasonable doubt</i>	154
	<i>R. v. Lifchus</i>	154
	<i>R. v. Starr</i>	157
	<i>R. v. S. (J.H.)</i>	158
	<i>R. v. Mullins-Johnson</i>	162
	<i>(iii) Section 11(d) of the Charter</i>	164
	<i>R. v. Oakes</i>	165
	<i>R. v. Downey</i>	170
	Coughlan, <i>Doubt Mountain and the Presumption of Innocence</i>	171
4.	ROLES AND RESPONSIBILITIES OF JUDGES AND LAWYERS ..	175
	(a) The Adversary System	175
	Coughlan, <i>The “Adversary System”: Rhetoric or Reality?</i> ..	178
	(b) Ethical Obligations of Crown and Defence Counsel	181
	Federation of Law Societies of Canada, <i>Model Code of Professional Conduct (2022)</i>	181
	Cory, <i>The Inquiry Regarding Thomas Sophonow</i>	183
	Luban, <i>The Adversary System Excuse</i>	185
	Hazard, <i>Ethics in the Practice of Law</i>	187
	Greenspan and Jonas, <i>The Case for the Defence</i>	187
 Chapter 2. THE ACT REQUIREMENT (ACTUS REUS)		
1.	INTRODUCTION	195
	Howard, <i>Criminal Law</i>	195
	Stephen, <i>A History of the Criminal Law of England</i>	196
2.	COMMISSION OF AN UNLAWFUL ACT	197
	(a) Causing Disturbance in Public Place	198
	<i>R. v. Lohnes</i>	198
	(b) Vicarious Liability	204
	(c) Possession Offences	206
	<i>R. v. Pham</i>	207
	<i>R. v. Morelli</i>	213
	<i>R. v. Chalk</i>	216
	(d) Consent Making Act Lawful	217
	<i>R. v. Jobidon</i>	218
	<i>R. v. Moquin</i>	229
	<i>R. v. Mabior</i>	233
	(e) De Minimis Non Curat Lex	246
	<i>R. v. Kubassek</i>	247
3.	OMISSIONS — LEGAL DUTIES TO ACT	251
	(a) Acts, Omissions, and Simultaneity	251
	Ryan, <i>Criminal Responsibility for Omissions</i>	252

	<i>Fagan v. Commissioner of Metropolitan Police</i>	255
	<i>R. v. Miller</i>	258
	(b) How Do Legal Duties Arise?	260
	<i>R. v. Thornton</i> (Ont. C.A.).....	260
	<i>Thornton v. R.</i> (S.C.C.).....	264
	<i>R. v. Browne</i>	264
4.	VOLUNTARINESS	268
	(a) Defining Conduct That Is Not “Voluntary”	268
	<i>R. v. King</i>	268
	Patient, <i>Some Remarks about the Element of Voluntariness</i> <i>in Offences of Absolute Liability</i>	269
	(b) Examples Associated with Mental Disorder	270
	<i>Rabey v. R.</i>	270
	<i>R. v. Parks</i>	271
	<i>R. v. Stone</i>	271
	(c) Examples Not Associated with Mental Disorder	271
	<i>R. v. Lucki</i>	271
	<i>R. v. Swaby</i>	272
	<i>R. v. Wolfe</i>	274
	<i>R. v. Ryan</i>	274
5.	CAUSATION	277
	(a) Criminal Code	277
	(b) Common Law	277
	<i>Smithers v. R.</i>	277
	<i>R. v. Harbottle</i>	284
	<i>R. v. Nette</i>	286
	(c) Charter	292
	(d) Cases of Intervening Cause	293
	<i>R. v. Smith</i>	293
	<i>R. v. Blaue</i>	296
	<i>R. v. Maybin</i>	299

Chapter 3. THE FAULT REQUIREMENT (MENS REA OR NEGLIGENCE)

1.	INTRODUCTION	311
	Stephen, <i>A History of the Criminal Law of England</i>	311
	Williams, <i>Criminal Law: The General Part</i>	312
2.	SUBJECTIVE/OBJECTIVE DISTINCTION	313
	<i>R. v. Zora</i>	313
	<i>R. v. Hundal</i>	314
	<i>R. v. Walle</i>	315
3.	FAULT FOR PUBLIC WELFARE (REGULATORY) OFFENCES	316
	(a) Common Law	316
	<i>Beaver v. R.</i>	316
	<i>R. v. City of Sault Ste. Marie</i>	320

	<i>R. v. Wholesale Travel Group Inc</i>	329
	<i>R. v. Chapin</i>	336
(b)	Charter Standards	341
	<i>Reference re. Section 94(2) of the Motor Vehicle Act (B.C.)</i>	342
	<i>R. v. Wholesale Travel Group Inc</i>	349
	<i>R. v. Transport Robert, R. v. William Cameron Trucking</i> ...	356
(c)	Summary	362
4.	FAULT FOR CRIMES	363
	(a) Murder	363
	(i) Murder under ss. 229(a)(i) and (ii)	364
	<i>Simpson v. R.</i>	365
	(ii) Murder of an unintended victim: s. 229(b)	367
	<i>R. v. Collins</i>	367
	(iii) Constructive murder: ss. 229(c) and 230	369
	<i>Vaillancourt v. R.</i>	369
	<i>R. v. Martineau</i>	376
	<i>R. v. Shand</i>	387
	(iv) First degree murder: s. 231	393
	<i>R. v. Smith</i>	393
	<i>R. v. Sundman</i>	399
	(b) Subjective Awareness Guaranteed by Charter for Few Crimes ...	404
5.	THREE TYPES OF FAULT FOR CRIMES SINCE CREIGHTON	406
	(a) Crimes Requiring Subjective Awareness	406
	(i) Common law presumption	406
	<i>R. v. H. (A.D.)</i>	407
	(ii) Motive	411
	(iii) Desire/Purpose	413
	<i>R. v. Hibbert</i>	413
	(iv) Intention or knowledge	417
	<i>R. v. Buzzanga and Durocher</i>	418
	<i>R. v. Thérroux</i>	427
	<i>R. v. Boulanger</i>	430
	(v) Recklessness or wilful blindness	432
	<i>Sansregret v. R.</i>	433
	<i>R. v. Briscoe</i>	437
	<i>R. v. Lagace</i>	438
	<i>R. v. Blondin</i>	439
	(b) Crimes of Objective Fault	442
	(i) Criminal negligence: s. 219	443
	<i>O'Grady v. Sparling</i>	444
	<i>R. v. Tutton and Tutton</i>	444
	(ii) Marked departure test	452
	<i>R. v. Hundal</i>	452
	<i>R. v. Creighton</i>	456
	<i>R. v. Beatty</i>	464

	<i>R. v. F. (J.)</i>	474
	<i>R. c. Javanmardi</i>	476
	<i>R. v. Goforth</i>	478
(c)	Crimes Based on Predicate Offences	481
	<i>R. v. DeSousa</i>	482
	<i>R. v. Creighton</i>	490
6.	GENERAL REVIEW QUESTIONS	501

Chapter 4. SEXUAL ASSAULT

1.	RAPE LAWS IN CONTEXT	507
	(a) Prior Sexual History	510
	(b) Doctrine of Recent Complaint	511
	(c) Corroboration	511
	(d) Historical Offence of Rape	513
	<i>Pappajohn v. R.</i>	513
2.	DEFINITION OF SEXUAL ASSAULT (1983)	518
	<i>R. v. Chase</i>	519
3.	EVIDENCE OF THE COMPLAINANT’S OTHER SEXUAL ACTIVITY	525
	<i>R. v. Seaboyer; R. v. Gayme</i>	525
	<i>R. v. Darrach (S.C.C.)</i>	538
	<i>R. v. Goldfinch</i>	543
	<i>R. v. R.V.</i>	545
	Craig, <i>Websites of Canada’s “Top Sex Crime Lawyers”</i>	548
	Dufraimont, <i>Myth, Inference and Evidence in Sexual Assault Trials</i>	551
4.	CONSENT AND MISTAKEN BELIEF IN COMMUNICATED CONSENT	554
	<i>R. v. Ewanchuk</i>	558
	<i>R. v. Darrach (Ont. C.A.)</i>	572
	<i>R. v. Barton</i>	574
	<i>R. v. G.F.</i>	581
	<i>R. v. Hutchinson</i>	590
	<i>R. v. Kirkpatrick</i>	591

Chapter 5. MISTAKE

1.	MISTAKE OF FACT	595
	(a) General Principles	595
	(b) Charter Standards	595
	<i>R. v. Hess; R. v. Nguyen</i>	596
	<i>R. v. Morrison</i>	599
	(c) As to Nature of Offence	601
	<i>R. v. Ladue</i>	602
	<i>R. v. Kundeus</i>	604

2.	MISTAKE OF LAW	609
	(a) Policy Considerations	609
	<i>R. v. Campbell and Mlynarchuk</i>	609
	(b) Distinguishing Mistake of Law and Fact	614
	<i>R. v. Prue; R. v. Baril</i>	614
	<i>R. v. MacDonald</i>	618
	(c) Colour of Right for Property Offences	620
	<i>R. v. Dorosh</i>	621
	(d) Officially Induced Error of Law	627
	<i>Lévis (City) v. Tétreault</i>	627
3.	GENERAL REVIEW QUESTIONS	633

Chapter 6. INCAPACITY

1.	AGE	635
2.	INSANITY (MENTAL DISORDER)	636
	(a) Psychiatric Classification: Limited Truths	636
	(b) Mental Disorder under <i>Criminal Code</i>	638
	<i>Cooper v. R.</i>	642
	<i>Kjeldsen v. R.</i>	651
	<i>R. v. Abbey</i>	652
	<i>R. v. Chaulk</i>	654
	<i>R. v. Campione</i>	656
	(c) Mental Disorder Negating <i>Mens Rea</i>	659
3.	AUTOMATISM	659
	<i>R. v. Rabey (Ont. C.A.)</i>	660
	<i>Rabey v. R. (S.C.C.)</i>	664
	<i>R. v. Parks</i>	667
	<i>R. v. Stone</i>	678
	<i>R. v. Luedecke</i>	687
	<i>R. v. Bouchard-Lebrun</i>	699
	<i>R. v. Fontaine</i>	705
4.	INTOXICATION	708
	(a) Common Law	708
	<i>R. v. Tatton</i>	709
	Coughlan, <i>Bringing Clarity to the General/Specific</i> <i>Intent Distinction: R. v. Tatton</i>	715
	(b) Charter Standards	721
	<i>R. v. Daviault</i>	721
	<i>R. v. Brown</i>	730
	Amended s. 33.1 (2022)	737

Chapter 7. JUSTIFICATIONS AND EXCUSES

1.	WHY ALLOW COMMON LAW DEFENCES?	739
	Stephen, <i>The Nineteenth Century</i>	739

2.	AIR OF REALITY FOR DEFENCES	741
	<i>R. v. Cinous</i>	741
	<i>R. v. Gauthier</i>	744
3.	DEFENCE OF PERSON (<i>Criminal Code s. 34</i>)	747
	<i>R. v. Lavallee</i>	750
	<i>R. v. Malott</i>	760
	<i>R. v. Khill (S.C.C.)</i>	764
	<i>Editors' Comments on Canada's New</i> <i>Self-Defence Regime</i>	775
4.	DEFENCE OF PROPERTY (<i>Criminal Code s. 35</i>)	781
	<i>R. v. Cormier</i>	781
5.	NECESSITY	782
	<i>R. v. Dudley and Stevens</i>	782
	<i>Perka v. R</i>	786
	<i>R. v. Latimer</i>	797
6.	DURESS	807
	(a) Section 17 and Common Law	807
	<i>R. v. Carker (No. 2)</i>	807
	<i>R. v. Paquette</i>	809
	<i>R. v. Hibbert</i>	814
	(b) Charter Standard of Moral Involuntariness	818
	<i>R. v. Ruzic</i>	818
	<i>R. v. Ryan</i>	829
7.	PARTIAL DEFENCES TO MURDER	844
	(a) Provocation	844
	<i>R. v. Hill</i>	844
	<i>R. v. Parent</i>	853
	<i>R. v. Tran</i>	855
	<i>R. v. Simard</i>	870
	(b) Voluntary Intoxication	872
	(c) Cumulative Effect on Intent (rolled up charge)	872
	<i>R. v. Nealy</i>	872
8.	ENTRAPMENT	878
	<i>R. v. Mack</i>	878
	<i>R. v. Barnes</i>	888
	<i>Stuart, Ahmad and Ramelson: Stays for Entrapment</i> <i>Still Mired in Complexity and Resistance</i>	898
 Chapter 8. PARTIES TO A CRIME		
1.	CO-PRINCIPALS	903
	<i>R. v. Ball</i>	903
2.	AIDING AND ABETTING	906
	<i>R. v. Laurencelle</i>	906

	<i>R. v. Briscoe</i>	910
	<i>R. v. Gong</i>	913
	<i>R. v. Logan</i>	915
	<i>R. v. Gauthier</i>	920
3.	COUNSELLING	922
	<i>R. v. Cowan</i>	923
4.	ACCESSORY AFTER FACT	925
	<i>R. v. Duong</i>	925
5.	GENERAL REVIEW QUESTION	929
 Chapter 9. INCOMPLETE CRIMES		
1.	ATTEMPTS	931
	<i>R. v. Ancio</i>	931
	<i>R. v. Sorrell and Bondett</i>	933
	<i>R. v. Deutsch</i>	938
	<i>United States v. Dynar</i>	945
2.	CONSPIRACY	949
	<i>R. v. Celebrity Enterprises Ltd. (No. 2)</i>	949
	<i>R. v. Innocente</i>	951
3.	LIABILITY FOR OFFENCE NOT COMMITTED	955
	<i>R. c. Déry</i>	955
	<i>R. v. Hamilton</i>	959
 Chapter 10. GROUP RESPONSIBILITY: CORPORATIONS, CRIMINAL ORGANIZATIONS AND TERRORIST GROUPS		
1.	CORPORATIONS	971
	(a) Common Law	971
	<i>Canadian Dredge and Dock Co. v. R.</i>	971
	(b) Criminal Code Provisions for Organizations (2003)	974
2.	CRIMINAL ORGANIZATIONS	976
	(a) Biker Violence	976
	(b) Participation in Criminal Organization (Gangsterism) (1997)	977
	(c) Fiasco of Manitoba Warriors Trial	980
	(d) Widening Gangsterism Laws (2001)	981
3.	TERRORIST GROUPS	986
	(a) 9/11 Attacks	986
	(b) Definition of Terrorism	986
	(c) Broad New Offences	988
	(d) Three-Year Review	990
	 <i>Table of Cases</i>	 993