



CRIMINAL LAW

TENTH EDITION

JOEL SAMAHA

CRIMINAL LAW

Tenth Edition

Joel Samaha

*Horace T. Morse Distinguished Teaching Professor
University of Minnesota*



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Criminal Law, Tenth Edition

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For my Students

About the Author

Professor Joel Samaha teaches Criminal Law, Criminal Procedure, Introduction to Criminal Justice, and The Constitution in Crisis Times at the University of Minnesota. He is both a lawyer and an historian whose primary interest is crime control in a constitutional democracy. He received his B.A., J.D., and Ph.D. from Northwestern University. Professor Samaha also studied under the late Sir Geoffrey Elton at Cambridge University, England. He was named the College of Liberal Arts Distinguished Teacher in 1974. In 2007 he was awarded the title of University of Minnesota Morse Alumni Distinguished Teaching Professor and inducted into the Academy of Distinguished Teachers.

Professor Samaha was admitted to the Illinois Bar in 1962 and practiced law briefly in Chicago. He taught at UCLA before going to the University of Minnesota in 1971. At the University of Minnesota, he served as Chair of the Department of Criminal Justice Studies from 1974 to 1978. He now teaches and writes full time. He has taught both television and radio courses in criminal justice and has co-taught a National Endowment for the Humanities seminar in legal and constitutional history. He was named Distinguished Teacher at the University of Minnesota in 1974.

In addition to *Law and Order in Historical Perspective* (1974), an analysis of law enforcement in pre-industrial English society, Professor Samaha has transcribed and written a scholarly introduction to a set of local criminal justice records from the reign of Elizabeth I. He has also written several articles on the history of criminal justice, published in the *Historical Journal*, *The American Journal of Legal History*, *Minnesota Law Review*, *William Mitchell Law Review*, and *Journal of Social History*. In addition to *Criminal Law*, he has written two other textbooks, *Criminal Procedure* in its seventh edition, and *Criminal Justice* in its seventh edition.

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Preface

Criminal Law was my favorite class as a first-year law student at Northwestern University Law School in 1958. I've loved it ever since, a love that has only grown from teaching it at least once a year at the University of Minnesota since 1971. I hope my love of the subject comes through in *Criminal Law*, which I've just finished for the tenth time. It's a great source of satisfaction that my modest innovation to the study of criminal law—the text-casebook—has endured and flourished. *Criminal Law*, the text-casebook, brings together the description, analysis, and critique of general principles with excerpts of cases edited for nonlawyers.

Like its predecessors, *Criminal Law*, Tenth Edition, stresses both the general principles that apply to all of criminal law and the specific elements of particular crimes that prosecutors have to prove beyond a reasonable doubt. Learning the principles of criminal law isn't just a good mental exercise, although it does stimulate students to use their minds. Understanding the general principles is an indispensable prerequisite for understanding the elements of specific crimes. The general principles have lasted for centuries. The definitions of the elements of specific crimes, on the other hand, differ from state to state and over time because they have to meet the varied and changing needs of new times and different places.

That the principles have stood the test of time testifies to their strength as a framework for explaining the elements of crimes defined in the fifty states and in the U.S. criminal codes. But there's more to their importance than durability; knowledge of the principles is also practical. The general principles are the bases both of the elements that prosecutors have to prove beyond a reasonable doubt to convict defendants and of the defenses that justify or excuse the guilt of defendants.

So, *Criminal Law*, Tenth Edition, rests on a solid foundation. But it can't stand still, any more than the subject of criminal law can remain frozen in time. The more I teach and write about criminal law, the more I learn and rethink what I've already learned; the more "good" cases I find that I didn't know were there; and the more I'm able to include cases that weren't decided and reported when the previous edition went to press.

Of course, it's my obligation to incorporate into the Tenth Edition these now-decided and reported cases, and this new learning, rethinking, and discovery. But obligation doesn't describe the pleasure that preparing now ten editions of *Criminal Law* brings me. Finding cases that illustrate a principle in terms students can understand while at the same time stimulating them to think critically about subjects worth thinking about is the most exciting part of teaching and writing and why I take such care in revising this book, edition after edition.

Organization/Approach

The chapters in the text organize the criminal law into a traditional scheme that is widely accepted and can embrace, with minor adjustments, the criminal law of any state and/or the federal government. The logic of the arrangement is first to cover the general part of the criminal law, namely principles and doctrines common to all or most crimes, and then the special part of criminal law, namely the application of the general principles to the elements of specific crimes.

Chapters 1–8 cover the general part of criminal law: the nature, origins, structure, sources, and purposes of criminal law and criminal punishment; the constitutional limits on the criminal law; the general principles of criminal liability; the defenses of justification and excuse; parties to crime and vicarious liability; and incomplete crimes (attempt, conspiracy, and solicitation).

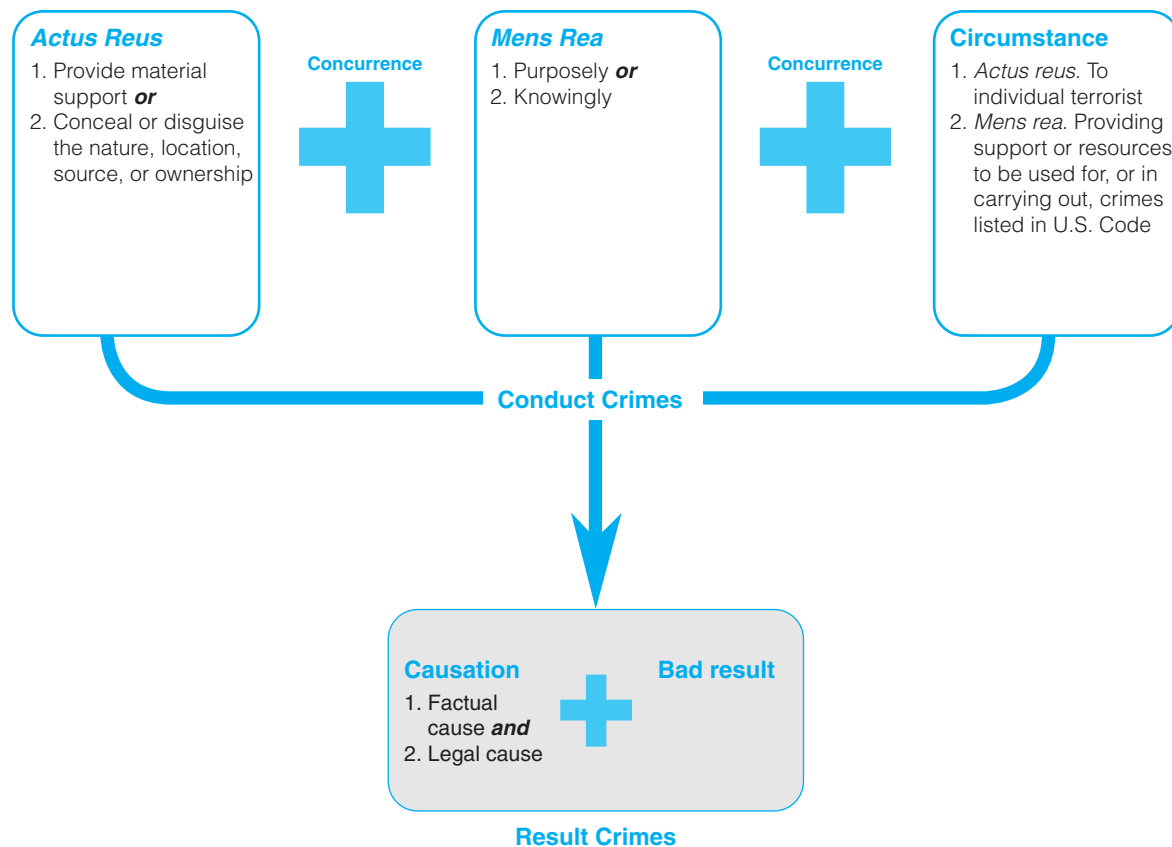
Chapters 9–13 cover the special part of the criminal law: the major crimes against persons; crimes against homes and property; crimes against public order and morals; and crimes against the state.

Criminal Law has always followed the three-step analysis of criminal liability (criminal conduct, justification, and excuse). *Criminal Law* brings this analysis into sharp focus in two ways. First, the chapter sequence: Chapters 3 and 4 cover the general principles of criminal conduct (criminal act, criminal intent, concurrence, and causation). Chapter 5 covers the defenses of justification, the second step in the analysis of criminal liability. Chapter 6 covers the defenses of excuse, the third step. So, the chapter sequence mirrors precisely the three-step analysis of criminal liability.

Criminal Law also sharpens the focus on the three-step analysis through the Elements of Crime art. The design is consistent throughout the chapters involving the special part of criminal law.

All three of these steps are included in each “Elements of Crime” graphic, but elements that are not required in certain crimes—like crimes that don’t require a “bad” result—are grayed out. The new figures go right to the core of the three-step analysis of criminal liability, making it easier for students to master the essence of criminal law: applying general principles to specific individual crimes.

ELEMENTS OF MATERIAL SUPPORT TO TERRORISTS



Changes to the Tenth Edition

In addition to incorporating the latest cases, research, and examples into every chapter of the text, this edition also features a major overhaul of white-collar and corporate crime in Chapter 7 and expanded coverage of punishment/sentencing in Chapter 2. The Tenth Edition is also the first to include chapter-opening learning objectives to provide students with a much-needed map to the chapter's key concepts, cases, and terms. To help ensure student mastery of these key concepts, I not only call out each learning objective in the chapter's margins as it is addressed, but also re-visit the objectives again in the new, bulleted end-of-chapter summary.

Next, I have added a new boxed feature to every chapter to spotlight ethical challenges faced by citizens and professionals. These unique "Ethical Dilemma" boxes touch on everything from computer games that target illegal immigrants, to whether doctor-assisted suicides should be treated as criminal homicides, to what to do with those who tried by false pretenses to collect scarce 9/11 victims' funds. The box topics are powerful and controversial and will, I hope, stimulate critical thinking and classroom discussion.

Finally, I have made the following key changes to each chapter of the text:

Chapter 1, Criminal Law and Criminal Punishment: An Overview

- **ALL NEW.** "Presumption of Innocence and Proving Criminal Liability" describes the rules and principles of the U.S. criminal procedure.

- “Burden of Proof of Criminal Conduct”
- “Proving the Defenses of Justification and Excuse”
- **ALL NEW.** “Discretionary Decision Making” focuses on the informal, often invisible dimensions of criminal law administration.

Chapter 2, Constitutional Limits on Criminal Law

- **ALL NEW.** “The ‘Right to Bear Arms’” concentrates on history and recent developments in second amendment law.
- **ALL NEW.** “The Constitution and Criminal Sentencing” describes and analyzes the major types of sentencing.
- **ALL NEW.** “The Right to Trial by Jury” covers the major constitutional issues surrounding sentencing, particularly the Supreme Court rulings on federal and state sentencing guidelines and the Sixth Amendment.
- **New case excerpts:**
 - *Gall v. U.S.* (2007) The 5-member majority upheld the trial judge’s sentence of Brian Michael Gall to 36 months’ probation instead of a mandatory prison term. The charge was conspiracy to sell ecstasy to his fellow students at the University of Iowa.
 - *Kennedy v. Louisiana* (2008) Patrick Kennedy was convicted of the aggravated rape of his eight-year-old stepdaughter under a Louisiana statute that authorized capital punishment for the rape of a child under 12 years of age and was sentenced to death. The U.S. Supreme Court ruled that the death penalty for child rape was disproportionate and cruel and unusual punishment.

Chapter 3, The General Principles of Criminal Liability: *Actus Reus*

- **New case excerpt:**
 - *Porter v. State* (2003) Constructive possession of a loaded Ruger .357 revolver

Chapter 4, The General Principles of Criminal Liability: *Mens Rea*, Concurrence, Causation, and Ignorance and Mistake

- **New case excerpts:**
 - *Harris v. State* (1999) Carjacking is a general intent crime.
 - *State v. Sexton* (1999) Reasonable mistaken belief that gun fired at a friend was not loaded

Chapter 5, Defenses to Criminal Liability: Justifications

- **NEW SECTION.** “Domestic Violence” and the retreat rule in self-defense
- **NEW SECTION.** “The ‘New Castle Laws’: ‘Right to Defend’ or ‘License to Kill’?”
- **New cases:**
 - *State v. Thomas* (1997) A “battered woman” has already retreated to the wall.
 - *Jacqueline Galas* (2006) Castle doctrine in Florida

- *Sarbrinder Pannu* (2008) Castle doctrine in Mississippi
- *State v. Harold Fish* (2009) Castle doctrine in Arizona
- *People v. John Gray et al.* (1991) Choice of evils defense. Blocking traffic is a lesser evil than polluting NYC air.

Chapter 6, Defenses to Criminal Liability: Excuse

- **New case excerpt:**

- *U.S. v. Hinckley* (2007) Furlough John Hinckley found “not guilty by reason of insanity” for attempting to assassinate President Reagan.

Chapter 7, Parties to Crime and Vicarious Liability

- **NEW SECTIONS.** “Vicarious Liability” has been expanded.

- The “Corporate Liability” section and its subsections are new. An accounting firm is liable for dealings with Enron.

- **New case excerpt:**

- *U.S. v. Arthur Andersen, LLP* (2004) Corporate liability and enterprise vicarious liability

Chapter 8, Inchoate Crimes: Attempt, Conspiracy, and Solicitation

- All sections and cases have been edited for improved clarity, readability, and streamlining.

Chapter 9, Crimes Against Persons I: Murder and Manslaughter

- **NEW SECTION.** Doctor-Assisted Suicide

- The chapter has been renamed, clarified, and streamlined.
- “Unlawful Act Manslaughter” is now “Criminal Negligence/Vehicular/Firearms/Manslaughter.”

- **New case excerpt:**

- *People v. Hudson* (2006) Felony murder; gang murder

Chapter 10, Crimes Against Persons II: Criminal Sexual Conduct, Bodily Injury, and Personal Restraint

- **NEW SECTION.** “Domestic Violence Crimes” expands “bodily injury crimes” to include nonsexual assaults and batteries.

- **New case excerpt:**

- *Hamilton v. Cameron* (1997) Domestic violence

Chapter 11, Crimes Against Property

- **EXPANDED SECTION AND MAJOR NEW SUBSECTIONS.**

- “Theft by False Pretenses”

- “Federal Mail Fraud” (*Madoff* and *Coughlin*)
- “Federal Mail Fraud—Criminal and Civil Liability”
- **New case excerpts:**
 - *U.S. v. Madoff* (2009) Use of mail to operate Madoff’s Ponzi scheme
 - *U.S. v. Coughlin* (2008)

Chapter 12, Crimes Against Public Order and Morals

- **NEW SECTION.** “Gang Activity”
- **NEW SUBSECTIONS.** “Criminal Law Responses to Gang Activity”
 - “Civil Law Responses”
 - “Review of Empirical Research on Gangs and Gang Activity”
- **New case excerpt:**
 - *City of Saint Paul v. East Side Boys and Selby Siders* (2009) Civil gang injunctions

Chapter 13, Crimes Against the State

- **New case excerpt:**
 - *Humanitarian Law Project v. Mukasey* (2009) Providing “material support or resources” to terrorists or terrorist organizations

Supplements

Wadsworth provides a number of supplements to help instructors use *Criminal Law*, Tenth Edition, in their courses and to aid students in preparing for exams. Supplements are available to qualified adopters. Please consult your local sales representative for details.

For the Instructor

- *Instructor’s Edition* Designed just for instructors, the Instructor’s Edition includes a visual walkthrough that illustrates the key pedagogical features of this text, as well as the media and supplements that accompany it. Use this handy tool to learn quickly about the many options this text provides to keep your class engaging and informative.
- *Instructor’s Resource Manual with Test Bank* The manual includes learning objectives, a detailed chapter outline, a chapter summary, key terms, featured cases, suggested readings, media suggestions, and a test bank. Each chapter’s test bank contains questions in multiple-choice, true false, fill-in-the-blank, and essay formats, with a full answer key. The test bank is coded to the learning objectives that appear in the main text and includes the page numbers in the main text where the answers can be found. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage. Our Instructor Approved seal, which appears on the front cover, is our assurance that you are working with an assessment and grading resource of the highest caliber.

- *ExamView® Computerized Testing* The comprehensive Instructor's Resource Manual described earlier is backed up by ExamView, a computerized test bank available for PC and Macintosh computers. With ExamView you can create, deliver, and customize tests and study guides (both print and online) in minutes. You can easily edit and import your own questions and graphics, change test layouts, and reorganize questions. And using ExamView's complete word-processing capabilities, you can enter an unlimited number of new questions or edit existing questions.
- *Lesson Plans* The instructor-created Lesson Plans bring accessible, masterful suggestions to every lesson. Lesson Plans includes a sample syllabus, learning objectives, lecture notes, discussion topics, in-class activities, a detailed lecture outline, and assignments. Lesson Plans are available on the instructor website or by e-mailing your local representative and asking for a download of the eBank files.
- *PowerPoints* These handy Microsoft PowerPoint slides, which outline the chapters of the main text in a classroom-ready presentation, will help you in making your lectures engaging and in reaching your visually oriented students. The presentations are available for download on the password-protected website and can also be obtained by e-mailing your local Cengage Learning representative.
- *Criminal Justice Media Library* This engaging resource provides students with more than 300 ways to investigate current topics, career choices, and critical concepts.
- *WebTutor™* Jumpstart your course with customizable, rich, text-specific content within your Course Management System. Whether you want to Web-enable your class or put an entire course online, WebTutor™ delivers. WebTutor™ offers a wide array of resources including media assets, a test bank, practice quizzes, and additional study aids. Visit webtutor.cengage.com to learn more.

For the Student

- *Study Guide* An extensive student guide has been developed for this edition. Because students learn in different ways, the guide includes a variety of pedagogical aids to help them. Each chapter is outlined and summarized, major terms and figures are defined, and self-tests are provided.
- *Companion Website* The book-specific website at www.cengage.com/criminaljustice/samaha offers students a variety of study tools and useful resources such as quizzes, Internet exercises, a glossary, flashcards, and more.
- *CL eBook* CL eBook allows students to access Cengage Learning textbooks in an easy-to-use online format. Highlight, take notes, bookmark, search your text, and, in some titles, link directly into multimedia: CL eBook combines the best aspects of paper books and ebooks in one package.
- *Course360* Online Learning to the Next Degree. Course360 from Cengage Learning is a complete turnkey solution that teaches course outcomes through student interaction in a highly customizable online learning environment. Course360 blends relevant content with rich media and builds upon your course design, needs, and objectives. With a wide variety of media elements including audio, video, interactives, simulations, and more, Course360 is the way today's students learn.

- *Careers in Criminal Justice Website* Featuring plenty of self-exploration and profiling activities, the interactive Careers in Criminal Justice Website helps students investigate and focus on the criminal justice career choices that are right for them. Includes interest assessment, video testimonials from career professionals, resume and interview tips, and links for reference.

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Joel Samaha
Minneapolis

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