

Table of Contents

The Author	3
List of Abbreviations	13
Preface	15
General Introduction	17
Chapter 1. The General Background of the Country	17
§1. GEOGRAPHY AND CLIMATE	17
§2. POPULATION	18
§3. ECONOMY	18
§4. POLITICAL SYSTEM AND ADMINISTRATIVE STRUCTURE	21
§5. SOCIAL AND CULTURAL ASPECTS	24
§6. THE JUDICIAL SYSTEM	25
Chapter 2. Criminal Law, Criminal Justice, and Criminal Science	28
§1. DEFINITIONS OF CRIMINAL LAW	28
I. Criminal Law	28
II. The Concept and Characteristics of Crime	28
III. The Function of Criminal Law	30
IV. Criminal Procedure	31
V. Criminal Offences	33
§2. OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM	34
I. The Police	34
II. The Prosecution	36

Table of Contents

III. Investigating Jurisdictions	37
IV. Trial Jurisdictions	38
V. Prison and Aftercare	38
VI. The Bar	40
VII. Statistical Overview	42
§3. TRENDS WITHIN CRIMINAL JUSTICE	44
Chapter 3. Historical Background	46
§1. THE SOURCE OF THE CRIMINAL LAW	46
§2. THE COMMON LAW ORIGIN	46
I. The Doctrine of Precedent	47
Part I. Substantive Criminal Law	49
Chapter 1. General Principles	49
§1. THE PRINCIPLE OF LEGALITY	49
§2. THE GENERAL NECESSITY OF <i>MENS REA</i>	51
Chapter 2. Scope of Application of Criminal Statutes	53
§1. PRINCIPLES WITH RESPECT TO TIME	53
I. Non-retroactivity	53
A. Principles	53
B. Exceptions	53
C. Localization and Common Law	54
D. Extradition	56
E. Effect of Foreign Adjudication and Execution	57
II. Immunity Based on Municipal Law	58
III. Immunity Based on International Law	60
§2. PRINCIPLES WITH RESPECT TO PERSONS	60
I. Immunity Based on Municipal Law	60
II. Immunity Based on International Law	61
Chapter 3. General Principles of Criminal Liability	62
§1. INTRODUCTION: THE BASIC ELEMENT OF CRIMINAL OFFENCES	62
§2. THE <i>ACTUS REUS</i>	62
I. Omission	62
II. Events	63
III. Causation	65

Table of Contents

§3. <i>MENS REA</i>	67
I. Intention	68
II. Negligence	71
III. Recklessness	73
IV. Knowledge	76
§4. STRICT LIABILITY OFFENCES	79
Chapter 4. Justification, Excuse, and Other Grounds of Impunity	83
§1. GENERAL PRINCIPLES	83
§2. DEFENCES RELATED TO THE MENTAL CONDITION OF THE ACCUSED	83
I. Insanity	83
II. Automatism (Non-insane Automatism)	86
III. Intoxication	86
IV. Diminished Responsibility	89
§3. GENERAL DEFENCES	91
I. Infancy	91
II. Mistake	92
III. Provocation	94
IV. Accident	97
V. Necessity	98
VI. Consent	100
VII. Duress	102
VIII. Public or Private Defence	103
IX. Self-defence	104
X. Superior Orders	106
Chapter 5. Incomplete or Partly Perpetrated Criminal Offences	108
§1. INCITEMENT	108
I. <i>Actus Reus</i>	108
II. <i>Mens Rea</i>	109
III. Impossibility	109
§2. CRIMINAL LAW OF ATTEMPT	110
I. <i>Actus Reus</i>	110
II. <i>Mens Rea</i>	111
III. Impossibility	112
IV. Penalties	113
§3. AIDING AND ABETTING	114

Table of Contents

§4. COUNSELLING AND PROCURING	115
§5. THE CONCEPT OF JOINT ENTERPRISE	116
§6. PRINCIPAL OFFENDER AND SECONDARY PARTIES	118
§7. CONSPIRACY	119
I. History and Development	119
II. <i>Mens Rea</i>	120
III. <i>Actus Reus</i>	120
IV. Impossibility	122
V. Penalties	124
§8. CONSPIRACY FOR CRIMES OF STRICT AND ABSOLUTE LIABILITY AND SUMMARY OFFENCES	124
Chapter 6. Classification and Survey of Criminal Offences	126
§1. GENERAL CLASSIFICATION OF CRIMINAL OFFENCES	126
I. Offences Against the State	127
II. Offences Related to Public Servants	127
III. Offences Against Public Tranquility	129
§2. OFFENCES RELATED TO DISHONESTY	131
I. Offences Under the Theft Ordinance	131
A. Theft	131
B. Obtaining Property by Deception	133
C. Obtaining Pecuniary Advantages by Deception	134
D. Obtaining Services by Deception	135
E. Evasion of Liability by Deception	135
F. False Accounting	136
G. Procuring an Entry into Bank Records by Deception	137
H. Offences Related to Company Directors and Officers of a Company	138
I. Suppression of Documents	138
J. Fraud	139
K. Robbery	140
L. Burglary	141
M. Blackmail	142
N. Handling Stolen Goods	144
§3. MISCELLANEOUS OFFENCES	145
I. Driving Offences	145
A. Dangerous Driving Causing Death	145
B. Dangerous Driving	147
C. Careless Driving	147
D. Driving Under the Influence of Drugs and Alcohol	148

Table of Contents

E. Furious Driving	149
F. Motor Racing	149
II. Nuisance and Miscellaneous Offences	150
III. Offences Related to Drugs	151
IV. Vice Establishment and Related Offences	154
V. Misconduct in Public Office	156
VI. Offences Related to Firearms and Ammunition	158
VII. Offences Related to Offensive Weapons	160
VIII. Piracy	161
IX. Offences Related to the Armed Forces	162
X. Criminal Intimidation	163
XI. Non-fatal Offences	164
XII. Murder	165
XIII. Public Nuisance	168
XIV. False Evidence and Offences Against Public Justice	168
XV. Offences Related to Government Stamps	170
XVI. Offences Related to Forged Documents and Counterfeiting	170
XVII. Offences Related to Crime Proceeds	171
XVIII. Offences Related to the Triads	175
XIX. Offences Related to Marriage	176
XX. Offences Related to Computer Crime	176
XXI. Offences Related to Immigration	179
XXII. Offences Related to Corruption	180
Part II. Criminal Procedure	183
Chapter 1. Principles, Institutions, Stages	183
§1. THE JUDICIAL ORGANIZATION	183
I. Trial Jurisdictions	183
§2. THE STAGES OF THE PENAL PROCESS	187
I. Summons and Warrants	187
II. The Preliminary Inquiry	189
III. The Prosecution	191
§3. THE LEGAL POSITION OF THE ACCUSED	193
I. Constitutional Rights	193
§4. THE RULES OF EVIDENCE	195
I. The Principles	195
II. Burden of Proof	197
III. The Means of Proof	198
IV. The Exclusion of Evidence	202
V. Legal Professional Privilege	208

Table of Contents

Chapter 2. Powers, Rights, and Duties in the Pre-trial Proceedings	210
§1. POWER AND DUTIES	210
I. The Power of Arrest	210
II. The Power to Stop and Search	212
A. Power of the Police	212
B. Power of ICAC	216
C. Seizure of Property	216
D. Effect of Illegal Arrest and Search	217
III. The Power to Detain	218
IV. Police Interrogations	219
A. Witness Statements	219
B. Admissibility of Statements to the Police	219
V. Other Policing Methods	221
A. Undercover Police Officers	221
B. Informers	222
C. Roadblocks	222
D. Video Cameras	222
E. Identification Methods	223
F. Fingerprints and Photographs	224
G. Intimate Samples and Non-intimate Samples	225
H. Covert Surveillance	227
VI. The Power to Release on Bail	227
VII. Criminal Disclosure	230
§2. RIGHTS BEFORE TRIAL	232
I. Plea Bargaining	232
Chapter 3. The Inquiry in Court	234
§1. THE LEGAL DOCUMENTATION OF AN OFFENCE	234
I. Charges	234
A. Duplicity	237
B. Amendment of Charge	237
§2. THE TRIAL	240
I. The Course of Trial	240
II. The Admissibility of Cautioned Statements or Videotaped Interviews	244
III. The Presentation of Evidence	246
Chapter 4. Sanctioning System	251
§1. PRINCIPLES OF SENTENCING	251
I. Grounds for Increasing Punishment	252

Table of Contents

A. Aggravating Factors	252
II. Consecutive and Concurrent Sentences	255
III. Totality Principles	257
IV. Previous Convictions	258
V. Outstanding Offences	259
VI. Sivan Procedure	259
VII. Sentencing in the Juvenile Courts	260
VIII. Enhanced Sentencing	261
IX. Grounds for a Reduction in Sentence	265
X. Grounds for Mitigation in Sentencing	266
XI. Long-Term Prison Sentences Review Ordinance	268
§2. THE PENALTIES	269
I. Death Penalty	269
II. Life Imprisonment	270
III. Absolute Discharge	271
IV. Fine	272
V. Binding-Over Order	274
VI. Police Superintendent's Discretion Scheme	275
VII. Reformatory Training	276
VIII. Detention and Training Centre Order	276
IX. Probation Order	279
X. Community Service Order	280
XI. Compensation Order	281
XII. Forfeiture Order	282
XIII. Disqualification	283
XIV. Criminal Bankruptcy Order	285
XV. Drugs Addiction Treatment Centre	286
XVI. Suspended Sentence	286
§3. THE LEGAL REMEDIES	286
I. Introduction	286
II. Appeal	287
A. Appeal from the District Court and CFI against Conviction	287
B. Appeal from the District Court and CFI against Sentence	291
C. Appeal from Magistracy against Conviction	291
D. Appeal from Magistracy against Sentence	292
E. Right of Appeal to the Highest Appellate Court from Magistracy Appeal	293
III. Review	294
A. Review of a Decision by a Magistrate	294
B. Secretary for Justice's Review against Sentence	294
C. Application for Review of a Bail Decision	295
IV. Reference by the Chief Executive	295
V. Appeal by Way of Case Stated	296
VI. Reference to the Court of Appeal on a Question of Law Following Acquittal	297

Table of Contents

VII. Appeal in Relation to Costs	297
VIII. Judicial Review	299
IX. Miscellaneous Appeal	299
X. Criminal Jurisdiction of the Court of Final Appeal	300
XI. Criminal Jurisdiction of the Court of Appeal	301
Part III. Execution and Extinction of Criminal Sanctions	303
Chapter 1. The Prison System	303
§1. ORGANIZATIONAL STRUCTURE	303
I. Classification of Prisoners	304
§2. THE PENITENTIARY REGIME	304
I. Aspects of Living Conditions	304
A. Prison Labour	304
B. Religious Services	304
C. Letters and Visits	304
D. Information and Media	306
E. Disciplinary Measures	306
§3. PRISONERS' RIGHTS, COMPLAINTS PROCEDURE, AND JUDICIAL CONTROL	307
Chapter 2. Extinction of Sanctions or Sentences	309
§1. CHIEF EXECUTIVE'S PARDON	309
General Conclusion	311
Selected Bibliography	313
Index	315

List of Abbreviations

AG	Attorney General
CAIU	Child Abuse Investigation Unit
CAPO	Complaints against the Police Office
CCTV	Closed-Caption Television
CFI	Court of First Instance
CJU	Complaints Investigation Unit
CPEA	Closer Economic Partnership Arrangement
CSD	Correctional Services Department
DATC	Drug Addiction Treatment Centre
DPP	Director of Public Prosecutions
GDP	Gross Domestic Product
HKC	Hong Kong Court
HKD	Hong Kong Dollar
HKDSE	Hong Kong Diploma of Secondary Education
HKSAR	Hong Kong Special Administrative Region
ICAC	Independent Commission against Corruption
IPCC	Independent Police Complaints Council
IRD	Inland Revenue Department
IVE	Institute of Vocational Education
MDMA	Methylenedioxymethamphetamine
OCTB	Organized and Serious Crime Bureau
OSCO	Organised and Serious Crimes Ordinance
QKT	Qualified Kindergarten Teachers
RTO	Road Traffic Ordinance
SADPP	Senior Assistant Director of Public Prosecutions