Contents

Preface ..... page xiii
Table of cases ..... xv
Table of statutes ..... xxxvi

Section 1 Approaching Criminal Law

1 Images of Criminal Law ..... 3
   a. Theories of criminal law: history, sociology and philosophy ..... 5
      i. Explaining criminal law ..... 5
      ii. Justifying criminal law ..... 9
      iii. The power of criminal law ..... 13

2 Criminal Laws in Context ..... 19
   a. Social norms ..... 20
   b. Shaping criminal law ..... 28
   c. Constructing crime: processing suspects and offenders ..... 33
      i. Institutions, people and practices ..... 34
      ii. Investigating crime ..... 37
      iii. Prosecuting crime ..... 51
      iv. Constructing crime in the trial ..... 52
      v. Sentencing and punishment ..... 59

3 Foundations of Criminal Law ..... 72
   a. Due process and human rights ..... 72
      i. Legal ideology and the rule of law ..... 74
      ii. The presumption of innocence: in search of ‘the golden
          thread’ . . . ..... 79
      iii. Miscarriages of justice ..... 91
   b. Concepts in criminal law ..... 94
      i. ‘Actus reus’ ..... 98
      ii. ‘Mens rea’ ..... 104
iii. The ‘actus reus’/‘mens rea’ combination 117
iv. Exemption, justification and excuse 119
v. Inchoate offences and participatory liability 123

Section II Law, Order and Security

4 Social and Political Constructions of Disorder 129
a. Conceptions of disorder 135
b. Legitimate protest or moral panics? 138
c. Problem populations 141

5 Securing Order: Pre-emptive Measures 144
a. The trend towards preventive justice 144
b. Breach of the peace: arrest and binding over 146
   i. Arrest 146
   ii. Binding over 147
c. Football banning orders 149
d. Anti-social behaviour orders 155

6 Public Order: Control Mechanisms 160
a. Controlling mass assemblies 161
   i. Marches and demonstrations 161
   ii. Trespass 171
b. Riot, violent disorder and affray 176
   i. Outline of offences 176
   ii. Common elements 178
   iii. Mental element 181
c. Harassment offences 181
   i. Public Order Act 1986 181
   ii. Protection from Harassment Act 1997 189
d. Hate crimes 192

7 Criminal Law and Justice: Emerging Themes 198
a. Territory, technology, youth 198
b. Public order and criminal law 205
c. Public order and criminal process 214
d. Thematic summary 225
## Section III Interpersonal Violence; Drug and Alcohol Abuse; Offence Preparation and Participation

### 8 Offences Against the Person 233

- a. The framework 234
  - i. Assault and battery 236
  - ii. Occasioning actual bodily harm, wounding and grievous bodily harm 238
- b. Boundary issues 244
  - i. Psychiatric harm 244
  - ii. Consent 249
  - iii. Disease transmission 251
- c. Practice and reform 259
  - i. Crime patterns 259
  - ii. Charging practice 262
  - iii. Reforming offences against the person 264

### 9 Drug and Alcohol Abuse: Legal Constructions of a Social Problem 268

- a. Drug and alcohol control 268
  - i. The nature of the problem 268
  - ii. Prohibition and regulation 273
- b. Intoxication and criminal responsibility 278

### 10 Offence Preparation and Participation 292

- a. Preparation 292
  - i. Attempt 293
  - ii. Conspiracy 297
  - iii. Assisting and encouraging 306
  - iv. Inchoate liability, impossibility and patterns of criminality 311
- b. Participation 316
  - i. Aiding and abetting 317
  - ii. Joint enterprise 322

## Section IV Property and Propriety

### 11 Defining and Defending Private Property 341

- a. Conceptions of property in social and political thought 341
- b. Shoplifting 351
- c. Occupational and ‘white collar’ crime and conceptions of fraud 354
- d. Burglary 368
12 Constructing Property in Criminal Law 372
   a. Theft 373
      i. The history of theft 373
      ii. Contemporary conceptions of theft: ordinary language through the looking glass . . . 381
   b. Fraud 402
   c. Conspiracy to defraud 407
   d. Burglary 410
   e. Criminal damage 413
   f. Duress, necessity and property 416
   g. Respect for property? 447

13 Property Rights and Criminal Enforcement 449
   a. Crime prevention 450
      i. Situational prevention 450
      ii. Diversifying and privatising control 458
      iii. Money laundering 462
   b. Enforcement patterns: ‘real’ crime and ‘intangible’ property 463

Section V Regulating Sexuality and Bodily autonomy: A Crisis of Trust and Intimacy?

14 The Social Construction of Sexuality and Bodily Autonomy 477
   a. Attitudes to sexuality and autonomy 478
   b. Sexual freedom and sexual discipline 479

15 Sexual Violence 489
   a. Sexual violence and the criminal process 489
      i. A continuum of violence 490
      ii. Investigating and prosecuting sexual violence 494
   b. The offence of rape 499
      i. Penile penetration 501
      ii. Rape and marriage 503
      iii. Consent, belief and mistake – the background 506
      iv. Consent, belief and mistake – the 2003 reforms 513
      v. Evidence and the rape trial 525
      vi. Punishing rape 534

16 Regulating Sexuality 540
   a. Forbidden degrees 541
      i. Ages of consent 541
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ii.</td>
<td>Homosexuality</td>
<td>545</td>
</tr>
<tr>
<td>iii.</td>
<td>Child sexual abuse</td>
<td>556</td>
</tr>
<tr>
<td>iv.</td>
<td>Incest</td>
<td>561</td>
</tr>
<tr>
<td>b.</td>
<td>Prostitution</td>
<td>564</td>
</tr>
<tr>
<td>c.</td>
<td>Pornography</td>
<td>577</td>
</tr>
<tr>
<td>i.</td>
<td>Pornography, obscenity and freedom of speech</td>
<td>577</td>
</tr>
<tr>
<td>ii.</td>
<td>Beyond the liberal approach?</td>
<td>585</td>
</tr>
<tr>
<td>17</td>
<td>Criminalising Healthcare Choices</td>
<td>596</td>
</tr>
<tr>
<td>a.</td>
<td>Reproductive crimes?</td>
<td>596</td>
</tr>
<tr>
<td>i.</td>
<td>Contraception and abortion</td>
<td>596</td>
</tr>
<tr>
<td>ii.</td>
<td>Surrogacy arrangements</td>
<td>613</td>
</tr>
<tr>
<td>iii.</td>
<td>Human fertilisation and cloning</td>
<td>616</td>
</tr>
<tr>
<td>b.</td>
<td>Euthanasia</td>
<td>618</td>
</tr>
<tr>
<td>i.</td>
<td>Respect for life and death</td>
<td>618</td>
</tr>
<tr>
<td>ii.</td>
<td>Consent and necessity</td>
<td>623</td>
</tr>
<tr>
<td>iii.</td>
<td>Assisted suicide</td>
<td>626</td>
</tr>
<tr>
<td>iv.</td>
<td>Avoiding reform</td>
<td>636</td>
</tr>
<tr>
<td>18</td>
<td>The Social Construction of Violence and Personal Harm</td>
<td>643</td>
</tr>
<tr>
<td>a.</td>
<td>Conceptions of violence</td>
<td>643</td>
</tr>
<tr>
<td>b.</td>
<td>Domestic violence</td>
<td>645</td>
</tr>
<tr>
<td>19</td>
<td>The Criminal Regulation of Public Safety</td>
<td>654</td>
</tr>
<tr>
<td>a.</td>
<td>Regulation in context</td>
<td>654</td>
</tr>
<tr>
<td>i.</td>
<td>Road traffic</td>
<td>654</td>
</tr>
<tr>
<td>ii.</td>
<td>Work hazards</td>
<td>659</td>
</tr>
<tr>
<td>b.</td>
<td>Characteristics of regulatory offences</td>
<td>661</td>
</tr>
<tr>
<td>i.</td>
<td>Offence labels</td>
<td>661</td>
</tr>
<tr>
<td>ii.</td>
<td>The prevalence of strict liability</td>
<td>662</td>
</tr>
<tr>
<td>iii.</td>
<td>Enforcement models</td>
<td>670</td>
</tr>
<tr>
<td>c.</td>
<td>Corporate liability for crime</td>
<td>673</td>
</tr>
<tr>
<td>i.</td>
<td>The rise of corporate manslaughter</td>
<td>675</td>
</tr>
<tr>
<td>ii.</td>
<td>Vicarious and 'direct' liability</td>
<td>678</td>
</tr>
<tr>
<td>iii.</td>
<td>The Herald of Free Enterprise story</td>
<td>680</td>
</tr>
<tr>
<td>iv.</td>
<td>Corporate killing – the new offence</td>
<td>686</td>
</tr>
<tr>
<td>20</td>
<td>Homicide: Boundary Issues</td>
<td>692</td>
</tr>
<tr>
<td>a.</td>
<td>Is killing wrong?</td>
<td>692</td>
</tr>
<tr>
<td>b.</td>
<td>Medical non-treatment</td>
<td>697</td>
</tr>
</tbody>
</table>
c. Definitions of death 707

d. Causing death 708

e. Who can be killed? 717

21 Murder and Manslaughter 725

a. The penalty for murder 726

b. The mental element in murder 746

c. Reform: three tiers for homicide?
   i. Murder – one and two? 765
   ii. Partial defences to murder (one?) 767
   iii. Involuntary manslaughter 796

d. Self-defence 810

Bibliography 819

Index 859