Contents

Gui Prej Tab Tab	Acknowledgements Guide to the book Preface Table of cases Table of statutes and other instruments PART I CONCEPTS IN CRIMINAL LAW		
***************************************		ODUCTION TO CRIMINAL LAW	
1.1	Purpo 1.1.1 1.1.2	ose of criminal law Should the law enforce moral values? Example of the changing nature of criminal law	4 4 7
1.2		es of criminal law Common law offences Statutory offences Codification of the criminal law Reform of the law	7 7 8 8 8
1.3	Define 1.3.1 1.3.2	ing a crime Conduct criminalised by the judges Retroactive effect of case law	10 11 11
1.4	1.4.1 1.4.2	Classifying law by its source Categories for purposes of police powers of detention Classifying by the type of harm caused by the crime Classification by where a case will be tried	12 12 13 14 14
1.5	1.5.1	nal justice system Trials in the magistrates' courts Trials in the Crown Court Appeals from a magistrates' court Appeals from trials in the Crown Court The hierarchy of the courts	14 14 15 16 17 18
1.6	Senter	ncing Purposes of sentencing	18 18
1.7	Elements of a crime		19
1.8	Burde 1.8.1 1.8.2 1.8.3	en and standard of proof Presumption of innocence Raising a defence Standard of proof	20 20 21 22

1.9	1.9.1	inal law and human rights The right to a fair trial	22 22
		Burden of proof	23
		No punishment without law Other human rights	26 27
		Human rights and criminal procedure	30
Furt	her rea		32
		IS REUS	
2.1	The n	physical element	33
2.1		Conduct and consequences	34
		Circumstances	34
	2.1.3	The physical element alone is not a crime	34
	2.1.4	Omissions	35
2.2	Volur	ntary conduct	35
2.3	Omis	sions	35
		Commission by omission	35
		Imposition of a duty to act	36
		Breach of duty to act Reform	42 42
2.4	Causa		43
2.4		Factual causation	43
		Legal causation	44
Sam		say question	57
	her rea		60
		S REA	
3.1	The n	nental element	61
3.2	Inten		62
		Direct intention Oblique intention	62 62
		Oblique intention	
3.3		essness The Commission to the	67
	3.3.1	The Cunningham test The Caldwell years: 1981–2003	67 68
	3.3.3	Back to Cunningham: G and another	69
3.4	Negli	igence	72
3.5	Disho	onesty	73
3.6	Trans	ferred malice	73
3.7	Coinc	cidence of actus reus and mens rea	76
Sam	ple ess	say question	79
Furt	her rea	ading	81
4	STRIC	CT LIABILITY	
4.1	Abso	lute liability	83

	4.2.1 No due diligence defence4.2.2 No defence of mistake4.2.3 Summary of strict liability	85 86 88
4.3	Common law strict liability offences	88
4.4	Statutory strict liability offences 4.4.1 The presumption of <i>mens rea</i> 4.4.2 The <i>Gammon</i> criteria 4.4.3 Looking at the wording of an act 4.4.4 Quasi-criminal offences 4.4.5 Strict liability and human rights 4.4.6 Issues of social concern 4.4.7 Promoting enforcement of the law 4.4.8 21st century cases	89 90 91 91 93 95 97 99
4.5	Justification for strict liability 4.5.1 Arguments against strict liability	107 109
4.6	Proposals for reform	109
Sam	aple essay question	111
Furt	ther reading	112
5	PARTIES TO A CRIME	
5.1	Principal offenders 5.1.1 Difficulties in identifying the principal	113 114
5.2	Innocent agents	114
5.3	Secondary parties 5.3.1 <i>Actus reus</i> of secondary parties: aiding, abetting, counselling or procuring 5.3.2 <i>Mens rea</i> of secondary parties	115 115 120
	5.3.3 Joint enterprise	122
5.4	Withdrawal from participation 5.4.1 Pre-planned criminal activity 5.4.2 Spontaneous criminal activity	134 134 135
5.5	Assisting an offender	136
5.6	Reform	136
	aple essay question	140
	ther reading	141
6	INCHOATE OFFENCES	
6.1	Inchoate offences	142
6.2	Attempt 6.2.1 Actus reus of attempt 6.2.2 Mens rea of attempt 6.2.3 Impossibility 6.2.4 Excluded offences 6.2.5 Successful attempts	143 143 147 148 150 151
	6.2.6 Reform	151

6.3	Conspiracy 6.3.1 Actus reus of statutory conspiracy 6.3.2 Mens rea of statutory conspiracy 6.3.3 Common law conspiracy 6.3.4 Impossibility	152 153 154 159 161
6.4	Assisting or encouraging crime 6.4.1 Background 6.4.2 Liability under the Serious Crime Act 2007 6.4.3 Actus reus elements 6.4.4 Mens rea elements 6.4.5 No requirement for substantive offence to be committed (s 49) 6.4.6 Defence of 'acting reasonably' (s 50)	161 161 162 164 165 167
	6.4.7 Defence for victims (s 51) 6.4.8 Impossibility 6.4.9 Attempt liability 6.4.10 Evaluation of the Serious Crime Act 2007	167 168 168 168
Sam	aple essay question	171
Fur	ther reading	172
7	CAPACITY	
7.1	Children 7.1.1 Children under the age of 10 7.1.2 Child safety orders 7.1.3 Children aged 10 and over	174 174 175 175
7.2	Mentally ill persons 7.2.1 Unfitness to plead 7.2.2 Insanity at time of offence 7.2.3 Diminished responsibility 7.2.4 Sentencing mentally ill offenders	178 178 180 180 181
7.3	Vicarious liability 7.3.1 Extended meaning of words 7.3.2 Delegation principle 7.3.3 Reasons for vicarious liability 7.3.4 Criticisms of vicarious liability	181 182 183 185 186
7.4	Corporate liability 7.4.1 Exceptions to the general rule of liability 7.4.2 The principle of identification 7.4.3 Vicarious liability 7.4.4 Breach of statutory duty	187 187 187 192 194
7.5	Corporate manslaughter 7.5.1 Previous law 7.5.2 Reform of corporate manslaughter 7.5.3 Corporate Manslaughter and Corporate Homicide Act 2007 7.5.4 Why make organisations criminally liable for manslaughter?	195 195 197 198 201
	aple essay question	204
Further reading 2		

8	GENERAL DEFENCES	
8.1	Duress 8.1.1 Sources of the duress 8.1.2 The seriousness of the threat 8.1.3 Threats against whom? 8.1.4 Imminence of the threat, opportunities to escape and police protection 8.1.5 Duress does not exist in the abstract	207 208 208 209 210 212
	 8.1.6 Voluntary exposure to risk of compulsion 8.1.7 Should D have resisted the threats? 8.1.8 The scope of the defence 8.1.9 The development of duress of circumstances 	212 215 218 223
8.2	Necessity	225
8.3	Marital coercion	230
8.4	Mistake 8.4.1 Mistakes of fact 8.4.2 Mistakes of law	231 231 232
8.5	Self-defence 8.5.1 The necessity of force 8.5.2 The reasonableness of force 8.5.3 Intoxication, mistake and self-defence 8.5.4 Section 76 of the Criminal Justice and Immigration Act 2008	232 233 237 238 240
8.6	Consent 8.6.1 Consent must be real 8.6.2 Consent and fraud 8.6.3 The scope of consent 8.6.4 The impact of the European Convention on Human Rights (1950) and the Human Rights Act 1998	242 243 243 246 255
Sam	nple essay question	259
Fur	ther reading	261
9	MENTAL CAPACITY DEFENCES	
9.1	Insanity 9.1.1 Procedure 9.1.2 The special verdict 9.1.3 The M'Naghten rules 9.1.4 Situations not covered by the rules 9.1.5 Reform	262 263 263 264 270 272
9.2	Automatism 9.2.1 What is automatism? 9.2.2 The need for an evidential foundation 9.2.3 Extent of involuntariness required 9.2.4 Self-induced automatism 9.2.5 Reflex actions 9.2.6 Reform	273 273 273 274 276 276

	Intoxication 9.3.1 Intoxication is no defence if D still formed <i>mens rea</i> 9.3.2 Involuntary intoxication 9.3.3 Voluntary intoxication 9.3.4 'Dutch courage' 9.3.5 Intoxication and insanity 9.3.6 Intoxication and automatism 9.3.7 Intoxicated mistakes 9.3.8 Reform	277 278 279 282 289 290 291 291 292
	ple essay question	295
	her Reading	298
PA	RT II SPECIFIC OFFENCES	
10	HOMICIDE	
10.1	Actus reus of homicide 10.1.1 Human being: birth 10.1.2 Human being: death 10.1.3 Under the King or Queen's Peace 10.1.4 Within any county of the realm 10.1.5 The year and a day rule	301 301 302 302 302 302
10.2	Murder 10.2.1 Intention 10.2.2 Grievous bodily harm 10.2.3 Procedure in murder trials 10.2.4 Mercy killings and euthanasia	303 303 304 304 305
10.3	Voluntary manslaughter 10.3.1 Diminished responsibility 10.3.2 Loss of self-control 10.3.3 Suicide pacts	306 306 318 330
10.4	Involuntary manslaughter 10.4.1 Constructive manslaughter 10.4.2 Gross negligence manslaughter 10.4.3 Reckless manslaughter 10.4.4 Reform	330 330 336 342 342
10.5	Causing or allowing the death or serious physical harm of a child or vulnerable adult	343
10.6	Causing death by dangerous driving	345
10.7	Infanticide	346
10.8	Offences against a foetus 10.8.1 Child destruction 10.8.2 Procuring a miscarriage	347 347 348
10.9	Reform of the law of homicide 10.9.1 The structure of homicide offences 10.9.2 First-degree murder 10.9.3 Second-degree murder 10.9.4 Manslaughter	349 349 349 350 350

	10.9.6	Intention Duress A single offence of criminal homicide?	350 351 351
Lega		em solving	352
_	-	y questions	355
	her read		359
11	NON-	FATAL OFFENCES AGAINST THE PERSON	
11.1	11.1.1 11.1.2	on assault Actus reus of assault Actus reus of battery Mens rea of assault and battery	361 361 363 368
11.2	11.2.2	47 Actus reus of section 47 Mens rea of section 47 Consent and section 47	370 370 371 372
11.3		20 Actus reus of section 20 Mens rea of section 20	375 375 377
11.4		18 Actus reus of section 18 Mens rea of section 18	378 378 379
11.5	Reform		380
11.6	Racially	y or religiously aggravated assaults	383
11.7	11.7.1 11.7.2	Administer Noxious thing Maliciously	383 384 384 385
Sam	ple essa	y question	386
Furt	her read	ling	387
12	SEXU	AL OFFENCES	
12.1	Rape 12.1.1	Penetration of the vagina, anus or mouth	390
	12.1.4 12.1.5	of another person, with the penis The absence of consent Intent to penetrate Lack of reasonable belief The marital exception to rape Women as defendants	391 392 400 400 401 402
12.2	Assault	by penetration	402
12.3	Sexual	assault	404
12.4	Rape as	nd other offences against children under 13	405
12.5	Sexual	activity with a child	407

12.6.2	'Sexual activity with a child family member' 'Sex with an adult relative' Sex with an adult relative: consenting to penetration	408 408 410 410
12.7 Other	crimes under the Sexual Offences Act 2003	411
Sample essa	y question	413
Further read	ding	414
13 THEF	T	
13.1 Backgr	round	416
_	Theft	417
13.1.2	The elements of theft	418
13.2 Appro		418
	Assumption of the rights of an owner	419
	Consent to the appropriation The decision in <i>Gomez</i>	420 421
	Consent without deception	421
	Appropriation of credit balances	426
13.2.6	Protection of innocent purchasers	428
13.3 Proper	ty	430
_	Things which cannot be stolen	430
	Real property	431
	Things in action	432
	Other intangible property	433
-	ring to another	434
	Possession or control Proprietary right or interest	434 435
	Property received under an obligation	437
13.4.4	Property got by a mistake	439
13.5 Dishor	nestly	440
	Dishonesty	441
13.5.2	The Ghosh test	442
13.5.3	Problems with the <i>Ghosh</i> test	445
13.6 With in	ntention to permanently deprive	447
13.6.1	Borrowing or lending	449
13.6.2	Conditional disposition	450
Sample essa	y question	453
Further read	ding	454
	BERY, BURGLARY AND OTHER OFFENCES IE THEFT ACTS	
14.1 Robbe		455
14.1.1	The actus reus of robbery	456
14 1 2	Theft as an element of robbery	456

		Force or threat of force Force immediately before or at the time of the theft	457 459
		Force in order to steal	460
		Mens rea for robbery	460
		Possible reform of law of robbery	460
14 2	Burglar	~ 77	463
11.2		The actus reus of burglary	463
	14.2.2		464
		Building or part of a building	464
	14.2.4	As a trespasser	465
		Mens rea of burglary	467
	14.2.6	Burglary of a dwelling	467
14.3	Aggrav	rated burglary	469
	14.3.1	Has with him	469
14.4	Remov	al of items from a place open to the public	470
		Actus reus of removal of items from a public place	471
	14.4.2	Mens rea of removal of items from a public place	471
14.5	Taking	a conveyance without consent	471
		Actus reus of taking a conveyance	472
	14.5.2	Without consent	473
		Conveyance	474
	14.5.4	Mens rea of taking a conveyance	474
14.6	Aggrav	rated vehicle-taking	474
		Dangerous driving	475
	14.6.2	Injury or damage	475
14.7	Abstrac	eting electricity	475
14.8	Blackm	ail	476
		Demand	476
		Unwarranted demand Menaces	477
		View to gain or loss	478 478
14.9		ng stolen goods	480
	14.9.1 14.9.2		480
		Stolen Handling	480 482
		Undertaking or assisting	483
		Mens rea of handling	484
14 10		equipped for stealing	486
14.10		Actus reus of going equipped	486
	14.10.2		487
14.11	Making	; off without payment	488
	14.11.1	Actus reus of making off without payment	488
	14.11.2	Mens rea of making off without payment	489
Samp	le essay	question	492
Further reading			493

15 FRAUD 15.1 Background to the Fraud Act 2006 494 15.2 The need for reform 495 15.2.1 Proposals for reform 497 15.3 Fraud Act 2006 497 15.4 Fraud by false representation 497 15.4.1 False representation 497 15.4.2 False 501 15.4.3 Gain or loss 502 15.4.4 *Mens rea* of s 2 503 15.5 Fraud by failing to disclose information 506 15.5.1 Legal duty 506 15.5.2 *Mens rea* of s 3 507 15.6 Fraud by abuse of position 508 15.6.1 Occupies a position 508 15.6.2 Abuse of position 509 15.6.3 *Mens rea* of s 4 510 15.7 Possession of articles for use in fraud 511 15.7.1 *Mens rea* of s 6 511 15.8 Making or supplying articles for use in frauds 512 15.8.1 Mens rea of s 7 512 15.9 Obtaining services dishonestly 512 15.9.1 Actus reus of obtaining services dishonestly 513 15.9.2 Mens rea of obtaining services dishonestly 514 Sample essay question 517 Further reading 518 16 CRIMINAL DAMAGE 16.1 The basic offence 520 16.1.1 Destroy or damage 520 523 16.1.2 Property 16.1.3 Belonging to another 523 16.1.4 Mens rea of the basic offence 524 16.1.5 Without lawful excuse 527 16.2 Endangering life 531 531 16.2.1 Danger to life 16.2.2 Life not actually endangered 533 16.2.3 Own property 533 16.2.4 Mens rea 533 16.3 Arson 534 16.4 Threats to destroy or damage property 536

16.5	Posses	sing anything with intent to destroy or damage property	537
16.6	Raciall	y aggravated criminal damage	537
Sam	ple essa	y question	539
Furt	her reac	ling	540
17	PUBL	IC ORDER OFFENCES	
17.1		The <i>actus reus</i> of riot <i>Mens rea</i> of riot Trial and penalty	542 542 543 544
17.2	17.2.1 17.2.2	disorder Present together Mens rea of violent disorder Comparison with riot Trial and penalty	544 544 545 545 546
17.3	17.3.2	Actus reus of affray Mens rea of affray Trial and penalty	546 546 547 548
17.4	17.4.1 17.4.2 17.4.3	provocation of violence Actus reus of a s 4 offence Threatening, abusive or insulting Towards another person Mens rea of s 4	548 549 549 549 550
17.5	Intenti 17.5.1	onally causing harassment, alarm or distress Defences	550 552
17.6	17.6.1	ment, alarm or distress Defences Mens rea of a s 5 offence	553 555 555
17.7	Raciall	y aggravated public order offences	556
Sam	ple essa	y question	560
Furt	her reac	ling	561
Appendices		562	
Glos	sary of	legal terminology	570
Inde	x		572