

PREFACE

This book emerges from and partly embodies a previous book I published in 1986, *Criminal Law, A Problem Solving Approach*, which is now out of print. With additional years of teaching and writing, I have come to see the theme of problem-solving embodied in that book as true but too general. In contrast, the animating theme of this book, captured in its title, is *Learning Criminal Law as Advocacy Argument*. As detailed in the Introduction, prosecutors and defense lawyers don't just explain or solve problems: Instead, they are oath-bound to marshal, in adversarial fashion, the best factual and legal arguments for each client. Since many common themes, including this adversarial argument theme, permeate this book and my prior books, *Learning Legal Reasoning* and *How To Do Your Best On Law School Exams*, your understanding of this book will be enhanced if you have first studied the other two books.

Learning the substantive criminal law requires learning its distinctive language and vocabulary. Thus, Latin phrases are used in the book mainly to acquaint you with their common usage in criminal law cases. These include *mens rea* (evil mind), *actus reus* (evil act), *raison d'être* (reason for existence), *sine qua non* (without which there is nothing). In addition, English words that are frequently used in criminal law classes and exams are stressed in this book. These include, for example, describing your professor's question to you at the end of an exam problem as an "interrogatory," describing a part of your professor's exam, often a paragraph containing at least one issue, as an "episode," "conflict," or "mini-problem." Moreover, since the criminal law is forged in history, some of that history is occasionally summarized in order to illuminate the repertoire of core issues and related arguments in each area.

While the substantive criminal law can be described in many ways, it is both theoretically and practically illuminating to see it as a multi-layered existential reality rather than being comparable to a scientific reality. Physics and astronomy, it isn't. These many layers include rules, policies, principles, and underlying jurisprudential theories within varying social contexts as constituting the essential realm of law-in-the-books. This realm is incorporated into the equally essential, multi-layered realm of law-in-action.

All of these realms are detailed in varying degrees in this book. But the challenge for you is to recognize those particular layers stressed by your criminal law professor and to concentrate on them. To illustrate, if your professor concentrates mostly on rules and a thin or thick slice of related policies, you concentrate in this book on such rules and policies. If she concentrates instead on core jurisprudential themes and related policies and mostly illustrates them with rules, you adopt her priority in utilizing this book. Clearly, there are *many valid perspectives* in teaching criminal law. Don't see yourself as a scientist studying the criminal law as something "objective" and singular, as if you were studying geology. Don't expect an ideal uniform pedagogy and coverage for learning it. That is false and will lead you astray. Instead, see the criminal law and the pedagogy for learning it as varied and humanly created out of history, and try hard to get on your *professor's wavelength for learning it*. The book details a road map that enables you to identify her priorities in teaching criminal law.

Finally, I invite students to e-mail me with questions and comments that arise from study of any of my books. Unless away, I'll do my best to respond promptly. The internet offers a new, promising, and convenient way for authors and students to interact to the mutual benefit of both.

Let's take advantage of it. E-mail me at John@JohnDelaneyPub.com.