

## Table of Contents

<b>Preface .....</b>	13
<b>Preface .....</b>	15
<b>I. Introductory Issues .....</b>	17
A.Glossary .....	18
B. The Nature of Law .....	54
i. Objectives of Law .....	56
a. Continuity and Stability .....	56
b. Adaptability .....	56
c. Justice, Speed and Economy.....	56
d. Determining Desirable Public Policy .....	58
ii. Sources of Law .....	58
a. Customary Law.....	58
b. Doctrine (Specialized Legal Literature).....	59
c. Legal Practice (Case Law) and Judicial Precedent .....	60
d. Normative Contract .....	61
e. Normative Act .....	62
iii. Various Conceptions of Law .....	62
a. Legal Positivism .....	63
b. Natural Law .....	64
c. Legal Realism .....	66
C.Legal Systems .....	68
i. Civil Law System .....	69
a. Civil Law Countries and Common Law Countries.....	70
b. Different Meanings of Civil Law.....	70
c. Codification in the Civil Law Context.....	72
ii. Common Law System.....	72
a. The Key Features of the Common Law Tradition .....	74
b. Sources of Law in Common Law Tradition .....	75
iii. Other Types of Legal System .....	77
a. Hybrid Legal System .....	77
b. Eastern Legal Conceptions .....	77
D.Comparative Law .....	82
i. Nature and Scope of Comparative Law .....	82
ii. Comparative Law: Method or Science?.....	84
iii. Uses and Limits of Comparative Law .....	85
a. Comparative Law as an Aid to Legislation and the Reform of Law .....	85

## **6 □ Academic Law Texts in Use**

b. Comparative Law as a Tool of Judicial Interpretation.....	88
E. Legal Translation .....	91
i. Introductory Remarks .....	91
ii. Equivalents .....	92
iii. Subsidiary Solutions .....	93
iv. Consequences for Bilingual Legal Dictionaries.....	96
<b>II. Private Law .....</b>	<b>99</b>
A. Glossary .....	100
B. Introduction To Private Law .....	137
i. A Distinction Rooted in Civil Law .....	138
ii. Claims and Obligations.....	139
iii. Property Rights .....	140
C. Law of Contract .....	142
i. Definition, Evolution and Elements.....	142
a. Definition and Objectivity .....	144
b. Offer .....	146
c. Acceptance .....	149
d. Consideration.....	151
e. Intention to Create Legal Relations .....	154
f. Privity of Contract .....	155
g. Legal Capacity.....	155
ii. Discharge of Contracts .....	157
a. Discharge by Performance and Breach.....	157
b. Discharge by Breach.....	158
c. Discharge by Agreement .....	158
d. Discharge by Frustration.....	160
iii. Remedies for Breach of Contract .....	160
a. Damages: Purpose .....	161
b. Damages: Measure .....	162
D. Tort Law.....	165
i. The Function of Tort Law.....	165
ii. Rights and Duties.....	166
iii. The Range of Torts .....	169
iv. Torts and Wrongs .....	171
v. Tort Law and Contract Law .....	172
E. Property Law.....	174
i. Classifications of Property .....	174
ii. Intellectual Properties .....	175
a. Trademarks .....	175
b. Patents.....	176
c. Copyrights .....	176
iii. Real Property .....	177
a. Estates in Land.....	177
b. Easements .....	178
c. Licenses .....	178
d. Covenants .....	178

## Table of contents □ 7

e. Adverse Possession.....	179
iv. Personal Property.....	179
a. Purchase.....	179
b. Creation .....	180
c. Capture .....	180
d. Accession.....	180
e. Finding.....	180
f. Confusion .....	180
g. Gift.....	180
h. Inheritance .....	181
F. Family Law .....	182
i. Legal Definition of Family .....	182
ii. Marriage .....	183
a. The Meaning of Marriage .....	184
b. Legal Nature of Marriage: Status or Contract?!.....	185
c. The Presumption of Marriage .....	187
iii. Divorce .....	187
a. The Respondent's Adultery.....	187
b. The Respondent's Behaviour .....	188
c. The Respondent's Desertion .....	189
d. Two Years' Separation with the Respondent's Consent to the Divorce .	190
e. Five Years' Separation .....	190
G.Alternative Dispute Resolution (ADR) .....	191
i. Introductory Remarks .....	191
ii. Voluntary ADR.....	192
iii. Court-annexed ADR .....	193
iv. ADR Techniques .....	194
a. Settlement Conferences .....	194
b. Arbitration .....	195
c. Mediation.....	197
d. Minitrials .....	198
e. Summary Jury Trials .....	199
f. Private Trials.....	200
<b>III. Public Law .....</b>	<b>201</b>
A.Glossary .....	202
B.Introduction to Public Law.....	219
i. Relevance of Public Law .....	221
ii. Key Principles of Public Law .....	221
C.Constitutional Law .....	224
i. Constitution: Families of Meanings.....	224
ii. Flexible and Rigid Constitutions .....	226
iii. The Emergence of Constitutionalism .....	227
a. Constitutionalism and The Rule of Law .....	229
b. Scepticism About Constitutionalism .....	230
c. Constitutionalism and Democracy.....	231
iv. Constitutions Embedded in Different Legal Systems .....	233

## **8 □ Academic Law Texts in Use**

a. History .....	233
b. Concept of a Constitution in Civil Law and Common Law.....	234
V. Separation of Powers .....	236
vi. Process of Constitutional Review .....	238
D. Administrative Law.....	241
ii. Red and Green Light Perspectives .....	242
a. Red Light Theory.....	243
b. Green Light Theory .....	245
c. Amber Light Perspective .....	247
iii. Judicial Review of Administrative Action.....	248
a. Grounds of Review .....	249
b. Non-justiciability .....	249
c. Surrender of Discretion.....	249
d. Fettering of Discretion.....	250
iv. Abuse of Power.....	250
E. Tax Law .....	252
i. The Taxing Power.....	252
ii. Goals of Taxation .....	253
a. Revenue .....	254
b. Redistribution .....	254
c. Regulation.....	255
iii. Different Tax Bases .....	256
a. Taxes on Income.....	256
b. Taxes on Goods and Services .....	258
c. Taxes on Property .....	259
iv. International Tax Law.....	260
<b>IV. Criminal Law.....</b>	<b>263</b>
A.Glossary .....	264
B.Introduction: The Nature of Criminal Law .....	287
i. Criminal Conduct: The Criminalization Debate .....	288
ii. Theories of Legal Punishment .....	290
a. Utilitarian Theories.....	291
b. Retributive Theories .....	291
C.The Structure of a Crime.....	293
i. The Actus Reus and Mens Rea Dichotomy .....	293
ii. The Bipartite Structure of Crime .....	294
iv. Actus Reus: Commission Versus Omission.....	295
a. Offences of Commission .....	296
b. Criminal Omissions: Liability in the Absence of Action.....	296
v. Mens Rea or the Subjective Element .....	297
a. Intention.....	297
b. Conditional Intent Versus Recklessness .....	298
c. Negligence .....	300
D.Specific Crimes .....	301
i. Fatal Offences Against the Person.....	301
a. A human being.....	301

## Table of contents □ 9

b. Death.....	301
c. Causation .....	302
d. Murder .....	307
e. Voluntary Manslaughter .....	310
f. Involuntary Manslaughter.....	311
ii. Non-fatal Offences Against the Person.....	312
a. Assault .....	313
b. Battery .....	315
c. Crimes using the internet .....	316
iii. Sexual Offences .....	316
a. Rape.....	316
b. Assault by Penetration .....	320
c. Sexual Assault .....	321
iv. Property Offences .....	321
a. Theft .....	321
c. Burglary.....	327
d. Blackmail.....	329
e. Handling .....	330
f. Arson .....	331
E. General Defences .....	332
i. Infancy .....	333
ii. Insanity .....	333
iii. Automatism .....	335
a. Involuntary Act.....	335
b. External Cause.....	336
c. Self-induced Automatism .....	337
iv. Mistake .....	337
a. Mistake and Mens Rea.....	337
b. An Honest Mistake .....	338
v. Intoxication .....	339
a. Absence of Mens Rea .....	340
b. Specific and Basic Intent Crimes .....	340
vi. Self-defence, Defence of Property and Public Defence .....	341
a. Public Defence.....	341
b. Self-defence .....	342
c. Protection of Property.....	342
d. Necessity for Action .....	342
vii. Duress .....	343
a. Duress by Threats .....	343
b. Two-part Test .....	343
c. Duress of Circumstances .....	343
viii. Necessity .....	344
ix. Consent .....	345
a. An Informed Consent .....	345
b. Consent Obtained by Fraud .....	346
c. A Genuine Consent.....	346
d. Capacity to Consent.....	347
F. CRIMINAL SUBSTANTIVE AND PROCEDURAL LAW.....	348

## **10 □ Academic Law Texts in Use**

i.	The Basic Structure of the Criminal Process .....	349
a.	Investigations.....	349
b.	Trial .....	349
ii.	Adversarial or Inquisitorial? .....	350
iii.	Basic Principles of Criminal Justice Systems .....	352
a.	Tension Between Security and Liberty.....	352
b.	Presumption of Innocence .....	352
c.	Fair Trial and Proportionality .....	353
d.	Proportionality .....	354
<b>V. Public International Law .....</b>		<b>355</b>
A.Glossary .....		356
B.Historical Development .....		377
i.	Early Origins.....	377
ii.	The Middle Ages and the Renaissance .....	380
iii.	The Founders of the Modern International Law .....	382
iv.	Positivism and Naturalism .....	384
v.	The Nineteenth Century .....	385
vi.	The Twentieth Century .....	387
C.Sources of Public International Law .....		389
i.	International Custom .....	391
a.	The Concept of Custom .....	391
b.	The Elements of Custom .....	392
c.	The Relativity of Custom.....	394
ii.	Treaties .....	396
a.	"Law-Making" Treaties .....	396
b.	Relation of Treaties to Custom.....	397
iii.	General Principles of Law .....	398
a.	General Principles of Law in the Practice of Tribunals .....	399
b.	General Principles of Law in the Practice of Tribunals .....	400
iv.	Judicial Decisions .....	400
a.	General Principles of Law in the Practice of Tribunals .....	400
b.	Decisions of International Tribunals.....	402
c.	Decisions of the International Court and its Predecessor.....	402
d.	Decisions of National Courts.....	403
v.	Other Material Sources .....	403
a.	The Conclusions of International Conferences.....	403
b.	Resolutions of the General Assembly.....	403
c.	The Writings of Publicists .....	404
d.	Codification and the Work of the International Law Commission .....	404
D.Subjects of Public International Law .....		406
a.	States.....	407
b.	Entities Legally Proximate to States .....	407
c.	Entities Recognized as Belligerents.....	408
d.	International Administration of Territories Prior to Independence .....	408
e.	International Organizations .....	409
f.	Individuals .....	410

## Table of contents □ 11

ii. Special Types of Personality .....	410
a. Corporations, Public and Private .....	410
b. Non-Self-Governing Peoples.....	411
c. Entities Sui Generis .....	412
E. Law of the Sea.....	414
i. The Territorial Sea.....	416
a. The Baseline for Measurement of the Territorial Sea.....	417
b. Breadth of the Territorial Sea .....	418
c. Bays .....	419
d. Islands, Rocks and Low-Tide Elevations.....	420
e. Legal Regime of the Territorial Sea .....	422
ii. The Contiguous Zone .....	422
a. The Concept of Contiguous Zone .....	422
b. Functional Jurisdiction in the Contiguous Zone .....	423
iii. The Continental Shelf .....	423
a. Origins of the Continental Shelf .....	423
b. Rights of the Coastal State in The Shelf .....	425
c. Natural Resources of the Shelf .....	425
d. Artificial Islands and Installations on the Shelf .....	426
e. Regime of the Subsoil.....	426
f. Outer Limit of the Shelf.....	426
iv. The Exclusive Economic Zone/Fisheries Zone.....	427
a. Fishery Zones .....	427
b. The EEZ as an Established Zone .....	428
v. Other Zones for Special Purposes .....	430
a. Security Zones .....	430
b. Other Miscellaneous Claims.....	430
F. Human Rights .....	432
i. Historical Perspectives.....	432
a. The Equivocal Experience of the League of Nations .....	432
b. The International Labour Organization (ILO) .....	433
c. The Universal Declaration of Human Rights, 1948.....	433
d. The Helsinki Final Act, 1975.....	433
e. Subsequent Declarations.....	434
ii. Sources of Human Rights Standards .....	434
a. Subsequent Declarations.....	434
b. Customary International Law .....	437
a. Non-Discrimination .....	438
b. Self-Determination .....	438
c. Rights of Minorities .....	439
d. Rights of Indigenous People .....	440
e. Other Collective Rights .....	441
<b>VI. Annex .....</b>	<b>443</b>
A.Legal Maxims .....	444
<b>Bibliography.....</b>	<b>469</b>