

International Encyclopaedia of Laws

Criminal Law - Outline

The Author

Table of contents

List of abbreviations

Preface

General Introduction

§1. The general background of the country

- I. Geography and climate
- II. Population
- III. Economy
- IV. Political system and administrative structure
- V. The judicial system

§2. Criminal law, criminal justice and criminal science

- I. Definitions of criminal law
 - A. Criminal law
 - B. Substantive criminal law
 - C. Criminal procedure
 - D. Criminal offences
- II. Characteristics of criminal law
- III. Overview of the criminal justice system
 - A. The police
 - B. The prosecution service
 - C. Investigating judges and investigating jurisdictions
 - D. Trial jurisdictions
 - E. Prison system and after-care
 - F. The bar
 - G. Statistical overview
- IV. Trends within criminal justice

§3. The historical background

§4. Sources of criminal law

- I. International sources
- II. National sources
 - A. The Constitution
 - B. Statute legislation
 - C. Statutory delegated legislation
 - D. Court decisions

§5. Classifications and technique of criminal law

Part I. Substantive Criminal Law

Chapter 1. General Principles

§1. The principle of legality

- I. Limitation on penalization
- II. Legality and interpretation

§2. The principle of the individual guilty mind

§3. The principle of proportionality

Chapter 2. Scope of application of criminal statutes

§1. Principles concerning the applicability of criminal statutes with respect to time

- I. Prohibition of retroactive criminal law
- II. Retroactivity of the milder statute
- III. The extent of the prohibition against retroactive criminal law

§2. Principles concerning the applicability of criminal statutes with respect to space

- I. The territorial principle
- II. Extraterritorial criminal jurisdiction
 - A. Principles
 - B. Cases
 - C. Localisation
 - D. The effect of foreign adjudication and execution

§3. Principles concerning the applicability of criminal statutes with respect to persons

- I. Immunities based on national public law
- II. Immunities based on international public law

Chapter 3. General principles of criminal liability

§1. Introduction - The basic elements of criminal offences

§2. The material or physical element (Actus Reus)

- I. Description
- II. Explication
- III. Acts, omissions and causation
 - A. Offences of action
 - B. Offences of omission
 - C. Commission by omission
 - D. Causation offences
- IV. Classification of offences from the point of view of the material element
 - A. Momentary and continuous offences
 - B. Occasional and habitual offences

§3. The moral or mental element (Mens Rea)

- I. Subjective guilt or culpability
- II. Intent
 - A. Degrees of intent
 1. General intent
 2. Specific intent
 - B. Types of intention with reference to their consequences
 1. Direct intent (dolus directus)
 2. Indirect or eventual intent (dolus eventualis)
- III. Negligence
 - A. Definition
 - B. The evaluation of negligence
 - C. Types of negligence
- IV. The required form of guilt

Chapter 4. Justification, excuse and other grounds of impunity

§1. General principles

§2. Grounds of justification

- I. Public duty or orders of the authorities
- II. (Self-)Defence
 - A. Posing the problem
 - B. Position within the national law

- C. Conditions
 - 1. Conditions relating to the attack
 - 2. Conditions relating to the defence
 - D. Legal presumptions of (self-)defence
 - E. Putative (self-)defence
 - III. Legitimate resistance against unlawful acts of civil servants
 - IV. Necessity
 - A. Necessity as a justification
 - B. Conditions
 - C. Putative necessity
 - V. Consent of the victim
- §3. Grounds of excuse
- I. Introduction
 - II. Minority
 - III. Insanity
 - A. Insanity at the moment of the act or omission
 - B. Insanity at time the trial
 - IV. Intoxication
 - V. Force majeure and coercion
 - VI. Ignorance or mistake
 - A. Ignorance or mistake of law
 - B. Ignorance or mistake of fact
 - C. Special cases
- §4. Other grounds of impunity
- I. Report of some criminal offences to the public authority
 - II. Submission to the public authorities
 - III. Family relationship
- Chapter 5. Incomplete or partly perpetrated criminal offences**
- §1. Criminal attempt
- I. Describing the problem
 - II. Attempt statutes
 - III. Conditions
 - A. Intent to commit a crime or a misdemeanour
 - B. Commencement of execution
 - C. Incompletion of the offence independent of the perpetrator's will.
 - IV. Attempting the impossible
 - V. The punishment for attempt
- §2. Participation in, or parties to criminal offences.
- I. General remarks
 - II. The requirement of a principal offence
 - A. The principal offence as a basic condition
 - B. The principal offence as a relevant factor in measuring punishment
 - III. Forms of participation provided for by law
 - A. Principal actors or principals
 - 1. Principals in the first degree
 - 2. Necessary aiders or abettors
 - 3. Moral principles by individual instigation
 - 4. Moral principles by collective instigation
 - B. Accomplices
 - 1. Moral accomplices

2. Material accomplices
3. Useful aiders or abettors
- IV. The Required intent
 - A. General rules
 - B. Incidental departure from the intended unlawful enterprise
- V. Special Cases
 - A. Withdrawal from participation
 - B. Entrapment

Chapter 6. Classification and survey of criminal offences

§1. General classification of criminal offences

- I. Ordinary and political offences
- II. Ordinary and printing press offences

§2. Survey of criminal offences

- I. Criminal offences of the penal code
- II. Criminal offences in the special criminal laws

Chapter 7. The sanctioning system

§1. The general sanctioning system

§2. Punishments

- I. The principal penalties
 - A. The death penalty
 - B. Custodial penalties
 - C. Fine
- II. Accessory penalties
 - A. Fine
 - B. Special confiscation
 - C. Publication
 - D. Loss of rights
 - E. Deprivation of political and civil rights
 - F. Other accessory penalties

§3. Measures of security and reform

- I. Protective and educational measures relating to minors
- II. Protective measures against abnormal and habitual offenders

§4. Modes of punishment

- I. Introduction
- II. The postponement of sentencing
- III. The suspended sentence
- IV. Probation

§5. Principles and rules concerning sentencing

- I. The general principles
- II. Grounds for increasing punishment
 - A. Aggravating circumstances
 - B. Recidivism
- III. Grounds for mitigating punishment
 - A. Extenuating excuses
 1. Provocation or incitement to commit certain offences
 2. Report of certain drug offences to the public authority
 - B. Mitigating circumstances
- IV. Concurrence of offences
 - A. Concurrence by one act
 - B. Real concurrence of offences

- C. Continued or collective offences
- V. Combination of sentencing rules

Part II. Criminal Procedure

Chapter I. Principles, Institutions, Stages

§1. The judicial organisation

- I. Trial jurisdictions
- II. Investigating jurisdictions

§2. The stages of the penal process

- I. Two basic distinctions
- II. The preparatory inquiry
 - A. Similarities and differences between the preliminary and judicial inquiry
 - B. The preliminary inquiry
 - 1. The police and the prosecution service
 - 2. The beginning and closing of the preliminary inquiry
 - a. The beginning of the preliminary inquiry
 - b. The closing of the preliminary inquiry
 - C. The judicial inquiry
 - 1. The investigating judge, the prosecution service and the police
 - 2. The beginning and closing of the judicial inquiry
 - a. The beginning of the judicial inquiry
 - b. The closing of the judicial inquiry
- III. The Prosecution
 - A. The attribution of the right to prosecute
 - B. The object of the right to prosecute
 - C. The suspension of the right to prosecute
 - D. The dissolution of the right to prosecute
 - 1. Abolition of penal provision, grant of amnesty, death of the accused
 - 2. Withdrawal of complaint, friendly settlement
 - 3. Limitation by time
 - 4. Non bis in idem [provisions against double jeopardy]
- IV. The inquiry in court
 - A. General characteristics
 - B. The Judge: an active but impartial arbitrator
 - C. The beginning and closing of the inquiry in court
 - 1. The beginning of the inquiry
 - 2. The closing of the inquiry

§3. The legal position of the accused and the civil party

- I. Introductory remarks
- II. The legal position of the accused
 - A. The provisions in the code of criminal procedure
 - B. Other applicable laws
- III. The legal position of the civil party
 - A. General observations
 - B. The civil party in the preparatory inquiry
 - C. The civil party in the inquiry in court

§4. The rules of evidence

- I. The principles of evidentiary law
- II. The means of proof
- III. The exclusion of evidence

Chapter 2. Powers, rights and duties in the pre-trial proceedings

§1. The powers and duties of the public prosecutor and the police in the preliminary inquiry

- I. Introductory remarks
- II. Covert policing methods
- III. The powers to check and search
 - A. The powers to check
 - B. The powers to search
- IV. The powers of entry, search and seizure
 - A. The powers of entry and search
 - B. The powers of seizure
- V. The powers of arrest
- VI. Miscellaneous
 - A. The powers at the scene of the offence
 - B. The powers to call in experts

§2. Powers, rights and duties within the framework of the pre-trial detention

- I. Introductory remarks
- II. The warrants of attachment and of arrest
 - A. The warrant of attachment
 - B. The warrant of arrest
- III. The continuation of pre-trial detention
- IV. The lifting of the warrant of arrest
- V. The appeals to the court of appeal and the court of cassation
 - A. The appeal to the indicting chamber
 - B. The appeal to the court of cassation
- VI. The impact of the adjustment of the procedure on the detention
- VII. An alternative to the pre-trial detention: freedom and release under conditions

§3. The powers and duties of the investigating judge and the rights of the accused in the judicial inquiry

- I. Introductory remarks
- II. The powers to trace telephonic communications
- III. The powers of entry, search and seizure
- IV. The powers to interview the accused and witnesses
 - A. The interviewing of the accused
 - B. The interviewing of witnesses
- V. Miscellaneous
 - A. The powers of inquiry 'on the spot'
 - B. The powers to call in experts
 - C. The powers to order a mental examination

Chapter 3. The inquiry in court

§1. The trial in the police courts and the correctional courts

- I. The attendance of the parties
- II. The course of the trial
- III. The judgement of the case

§2. The trial in the assize courts

- I. The preparation of the session
- II. The course of the trial
- III. The judgement of the case

§3. The legal remedies

- I. Introductory remarks
- II. The ordinary legal remedies
 - A. Opposition

- B. Appeal
- III. The extra-ordinary legal remedies
 - A. Ordinary appeal by way of an action to quash and/or set aside a judgement
 - B. Extra-ordinary appeal by way of an action to quash and/or set aside a judgment

Part III. Execution and Extinction of Sanctions

Chapter 1. Sources Of Penitentiary Law And Nature Of Regulations

Chapter 2. General Principles Concerning The Execution Of Sentences And Orders

Chapter 3. The Prison System

§1. Organisational structure

- I. Prison administration and classification of penitentiaries
- II. Classification of prisoners

§2. The penitentiary regime

- I. Introduction
- II. Aspects of living conditions
 - A. Visits, correspondence and telephone
 - B. Information and media
 - C. Prison labour
 - D. Disciplinary measures
 - E. Leave from prison
- III. Forms of alternative execution of the prison sentence

§3. Prisoners rights, complaints procedures and judicial control

§4. Early release

- I. Conditional release
- II. Forms of provisional release

Chapter 4. Extinction of sanctions or sentences

§1. Pardon

§2. The limitation of the penalty by time

§3. Deletion of the conviction and rehabilitation of offenders

- I. The deletion of the conviction
- II. Rehabilitation

§4. Revision of sentences

- I. Conditions relating to the nature of the sanction imposed
- II. Circumstances justifying revision of the sentence
 - A. Inconsistency between distinct convictions
 - B. False statement
 - C. New facts or new circumstances
- III. Procedure

General Conclusions

Selected bibliography

Index