

CRIMINAL LAW IN MALAYSIA



Editors

Ashgar Ali Ali Mohamed
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SWEET & MAXWELL

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Foreword

Crime is harmful not only to some individuals but also to the community, society, and the state. It causes injuries or damage to another, either on his person or property and this is a violation of the right to life in the Federal Constitution, Article 5(1). Further, criminal acts are not merely undertaken by deviant psychopathic individuals but also by irresponsible individuals driven by their greed, anger, jealousy, quest for revenge, or pride, among others. Hence, penal laws are enacted to protect the society from marauders. When criminality is under control, the peace of society will reach its maximum level.

Criminal law requires that a crime involves both physical and mental elements which are explained by the Latin maxim "*actus non facit reum, nisi mens sit rea*", that an act does not make a person guilty of his crime unless his mind is also guilty. *Actus reus* denotes all elements in the definition of crime, while the *mens rea* provides the mental elements such as intention, knowledge, and recklessness, among others. Both the physical and mental elements must be present to establish one's criminal responsibility for perpetrating a crime.

Once criminal liability is established, the accused will be subject to appropriate punishment to reflect the seriousness of the offence. In determining the sentence, the public interest supersedes other considerations. Obviously, heinous and dreadful offences such as murder, violence, trafficking in dangerous drugs, and possession or control of any firearm, ammunition, or explosives without lawful authority, would deserve the most severe punishment to reflect society's abhorrence and intolerance towards such crimes.

This book, *Criminal Law in Malaysia* with its 31 chapters, is an excellent introductory text which comprehensively covers the major areas of criminal law. The table of contents is organised in a very appropriate fashion with the chapter orders following the sequence as in the Penal Code namely, essential elements of criminal law, general defences, abetment, criminal conspiracy, offences against the state, offences relating to terrorism, offences affecting the human body, offences against property and attempts to commit offences. It also covers several specific criminal law topics such as drug offences, money laundering, cybercrime, corporate crime, and sedition. The chapters on Islamic criminal law and international criminal law are additional features which make this book go beyond an ordinary Criminal Law textbook. Undoubtedly, the inclusion of such additional chapters would enhance the value of this book, besides attracting a wider readership..

With the chapters and contributors coming from diverse backgrounds and experience, this book would be of great interest not only to undergraduate law students but also to the general public who may want to deepen their knowledge and understanding of the essentials of Malaysian criminal law.

I heartily congratulate the contributors and also the editors for completing this tedious task of merit and successfully coming up with this useful legal reference which would undoubtedly contribute to the pool of legal knowledge for many years to come. I wish you all great success with this publication.

Tun Arifin bin Zakaria
Former Chief Justice of Malaysia

Preface

Crime is a deliberate or reckless action that causes harm to another either of his person or property and the law is required to maintain order in society by confining lawbreakers besides preventing them from violating the rights of other. Criminal law which is among the oldest branches of law is a body of law that defines criminal offences that pose threat, harm, or danger to a person's health, safety, property, or general well-being, and lays down the punishment that can be imposed on an individual or group of people who committed the crime. These include crimes like homicide, assault, theft, robbery, drug trafficking, corporate frauds, and treason, among others. The punishment varies with the severity of the offence. Further, the punishment to be meted out must be proportionate to the guilt of the accused.

The book *Criminal Law in Malaysia* which consists of 31 chapters involves a comprehensive discussion of a wide range of important components of criminal law such as the elements of crime, criminal responsibility, general defences, and attempts. Offences relating to person and property such as murder, culpable homicide, grievous hurt and hurt, theft, extortion, robbery, misappropriation, breach of trust, and cheating are also discussed in this book. Group or joint criminal liability, abetment, and conspiracy are similarly considered. Further, specific offences are also included such as waging war against Yang-di-Pertuan Agong, terrorism and possession of offensive weapons, drugs offences, money laundering, cybercrime, corporate criminal liability, and sedition. The additional feature of this book is its coverage on misprision of felony, courts' criminal jurisdiction and criminal process, Islamic criminal law, and international criminal law.

The book is fully up-to-date with a discussion of the Abolition of Mandatory Death Penalty Bill 2023 which is related to the abolition of the mandatory death sentence and imprisonment for natural life. The temporary revisionary jurisdiction of the Federal Court to review the sentence of death imposed on a convicted person following the enactment of the Abolition of Mandatory Death Penalty Bill 2023 is also discussed with reference to the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023.

The coverage of this book is largely on the Malaysian position, with reference to both statutory law and decided cases. The chapters have been contributed by a pool of local and international academics who are extensively involved in research and publication on this subject. Admittedly, this book would be an excellent source of reference for undergraduate students pursuing the law programme to acquire an understanding of existing statutory and case law on the subject. The non-legal communities would also find this book useful to understand the theoretical and practical application of criminal law. Besides, the chapters have been written in simple language and the contents are easily comprehensible.

At the outset, as the general editors of this title, we would like to express our heartfelt appreciation to all the contributors for their extensive research in terms of the collection of law, principles, and authorities that form the strong foundation of this book. Their research and multifarious knowledge of this subject would certainly make this book an excellent source of reference for all those interested in this subject.

Our heartfelt appreciation and thanks are due to Tun Arifin bin Zakaria, the former Chief Justice of Malaysia for spending his precious time preparing the Foreword to this book. Further, we would like to extend our gratitude to the publisher, Thomson Reuters Asia Sdn Bhd, and in particular, Tabitha Dass and her dedicated colleagues for taking a great deal of interest in the publication and for the support in finally getting this book published.

The applicable laws and the developments stated in this book stand as at April 30, 2023.

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