

Table of Contents

The Authors	3
List of Abbreviations	17
General Introduction	19
§1. THE GENERAL BACKGROUND OF SPAIN	19
I. Geography and Climate	19
II. Population	20
III. Economy	20
IV. Political and Administrative Structure	21
V. The Judicial System	24
§2. CRIMINAL LAW, CRIMINAL JUSTICE, AND CRIMINAL SCIENCE	25
I. Definitions of Criminal Law	25
A. Criminal Justice System	25
B. Criminal Law	25
C. Criminal Procedure	25
D. Criminal Offences	26
II. Characteristics of Criminal Law	26
III. Overview of the Criminal Justice System	27
A. The Police	27
B. The Prosecution Service	30
C. Investigating Judges	31
D. Trial Courts	32
E. Prison System and Probation Service	32
F. The Bar	33
G. Statistical Overview	34
§3. THE HISTORICAL BACKGROUND	35
I. Historical Criminal Law	35
II. The Historical Penal Codes	36
III. Criminal Law in the Constitutional Regime	39
IV. The Penal Code of 1995	41
V. Subsequent Reforms	41



Table of Contents

3	§4. TRENDS IN CRIMINAL JUSTICE	43
	I. The Debate on the Attribution of the Investigation Phase to the Public Prosecution Service	43
	II. The Generalization of the Double Instance	45
	III. Principle of Opportunity and Mediation	46
	IV. Substantive Criminal Law: The Harmonization Process in the EU	47
	§5. SOURCES OF CRIMINAL LAW	49
	I. International Sources	49
	II. National Sources	50
	A. The Constitution	50
	B. Statutory Legislation	50
	C. Statutory Delegated Legislation	52
	D. Case Law	52
	E. Public Prosecutor's Office Guidelines	53
	§6. CLASSIFICATIONS AND TECHNIQUES OF CRIMINAL LAW	53
	Selected Bibliography	57
	I. Legislation	57
	II. Cases	57
	III. Journals	57
	IV. Books	58
	Part I. Substantive Criminal Law	59
	Chapter 1. General Principles	59
	§1. THE PRINCIPLE OF LEGALITY	59
	I. Statement and Content	59
	II. Legality and Interpretation	63
4	§2. THE PRINCIPLE OF INDIVIDUAL GUILT (MENS REA OR AUTONOMY)	63
	§3. THE PRINCIPLE OF PROPORTIONALITY	64
	Chapter 2. Scope of Application of Criminal Statutes	65
	§1. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO TIME	65
	I. Principle of Non-retroactivity/Prohibition of Retroactive Criminal Law	65
	II. Retroactivity of the Milder Statute	65
	§2. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO SPACE	66
	I. The Territorial Principle	66
	II. Extraterritorial Criminal Jurisdiction	67



Table of Contents

§3. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO PERSONS	67
I. Inviolabilities Based on National Public Law	68
II. Immunities Based on National Public Law	69
III. Immunities Based on Supra-National Provisions	70
IV. Jurisdictional Exemptions or Immunities Based on International Public Law	70
Chapter 3. General Principles of Criminal Liability	72
§1. INTRODUCTION: THE BASIC ELEMENTS OF CRIMINAL OFFENCES	72
I. Methodological Systems	72
II. The Concept of the Offence in Spanish Criminal Law	73
§2. THE MATERIAL OR PHYSICAL ELEMENT (ACTUS REUS)	73
I. Description	73
II. Development	73
III. Acts, Omissions, and Causation	74
A. Offences of Action	74
B. Offences of Omission	74
C. Commission by Omission	75
D. Causation	77
IV. Classification of Offences from the Point of View of the Material Element	78
A. Momentary, Permanent, and Other Offence Types	78
B. Habitual Offences	79
§3. THE MORAL OR MENTAL ELEMENT (MENS REA)	80
I. Subjective Guilt or Culpability	80
II. Intent	82
A. Classes of Intent	83
B. Types of Intent with Reference to Their Consequences	85
1. Direct Intent (<i>Dolus Directus</i>)	85
2. Second-Degree Intent and Contingent Intent (<i>Dolus Eventualis</i>)	85
III. Negligence/Recklessness	86
A. Definition	86
B. The Criminalization of Negligence	87
C. Types of Negligence	87
IV. Exceeded Intent or Concurrence of Intent and Negligence	89
Chapter 4. Justification, Excuse, and Other Grounds of Impunity	90
§1. GENERAL PRINCIPLES	90
§2. GROUNDS OF JUSTIFICATION	91



Table of Contents

I. Fulfilment of a Duty or Exercise of a Right	92
II. Self-Defence	94
A. General Characterization	94
B. Requirements	94
C. Putative (Self-) Defence and Other Problems in Relation to Mistake	97
III. Necessity	98
A. Necessity as a Justification	98
B. Conditions	99
C. Putative Necessity	100
IV. Consent of the Victim	100
§3. GROUNDS OF EXCUSE	102
I. Introduction	102
II. Minority	102
III. Mental Abnormalities or Disturbances and Temporary Mental Disorders	103
IV. Intoxication and Withdrawal Symptoms	104
A. Intoxication	104
B. Withdrawal Symptoms and the Regulation of Drug Addiction	105
C. Cases of <i>Actiones Liberae in Causa</i>	106
V. Grave Disturbance of the Perception of Reality	106
VI. Irresistible Force	107
VII. Insurmountable Fear	107
VIII. Ignorance or Mistake	108
A. Mistake of Offence Description	110
B. Mistake of Prohibition	111
C. Other Cases	113
§4. OTHER GROUNDS OF IMPUNITY	113
I. Grounds of Impunity Based on the Avoidance of the Consequences of the Offence	114
II. The Effect of Confession to the Authorities	115
III. Grounds of Impunity Based on Family Relationships	115
IV. Others	117
Chapter 5. Criminal Attempt and Parties to Criminal Offences	118
§1. CRIMINAL ATTEMPT	118
I. Overview	118
II. Punishable Manifest Resolutions	118
III. Attempt	120
IV. Attempting the Impossible	121
§2. PARTICIPATION IN CRIMES OR PARTIES TO CRIMINAL OFFENCES	122
I. Regulations on Punishment of Participation	122
II. Principals and Assimilated Parties	123





Table of Contents

III. Cooperators	124
IV. Special Rules for Perpetrators of Offences Committed through the Media	125
V. Acting on Behalf of Someone Else	126
VI. Criminal Liability of Legal Persons	127
A. General Principle: Legal Persons Cannot Be Criminally Liable	127
B. Exceptions and Future Prospects	129
Chapter 6. Classification and Survey of Criminal Offences	131
§1. GENERAL CLASSIFICATION OF CRIMINAL OFFENCES	131
I. Statutory Trichotomy of Criminal Offences	131
II. Ordinary and Political Offences	132
III. Public, Semi-public, and Private Offences	133
§2. SURVEY OF CRIMINAL OFFENCES	135
I. Criminal Offences of the Penal Code	136
II. Criminal Offences in Special Criminal Laws	150
A. Military Offences	150
B. Aviation Offences	151
C. Smuggling Offences	153
D. Other Offences Regulated in Special Statutes	153
Chapter 7. The Sanctioning System	155
§1. GENERAL OVERVIEW	155
I. Definition of Sanctions	155
II. Administrative and Criminal Sanctions	155
§2. PUNISHMENT	156
I. Principles Guiding the System of Punishment	156
II. Classifications of Penalties	157
III. Principal Penalties	158
A. Liberty-Depriving Penalties	158
1. Imprisonment	158
2. The Punishment of Permanent Localization	158
3. Personal Subsidiary Liability	159
B. Penalties Restricting Rights	159
1. General Disqualification	159
2. Specific Disqualifications	159
3. Suspension from Public Employment or Position	160
4. Disqualification from Driving	160
5. Disqualification from Possessing and Carrying Arms	160
6. Restrictions on the Rights to Reside in or Travel to Certain Places	160
7. Prohibition on Approaching or Communicating with Certain Persons	161
8. Work for the Benefit of the Community	161





Table of Contents

C. Pecuniary Penalties	163
1. Fines	163
2. Non-payment of Fines: Subsidiary Personal Liability	166
IV. Accessorial Penalties	166
V. Penalties and Precautionary Measures	168
§3. MEASURES OF SECURITY AND REFORM	168
I. Security Measures in the Penal Code	169
A. Prerequisites for the Imposition of Security Measures	169
B. Classes of Measures	170
C. Execution of Measures	172
D. Concurrence of Penalty and Security Measure	173
II. Measures of Youth Criminal Legislation	173
§4. THE SO-CALLED ACCESSORIAL CONSEQUENCES	175
I. Confiscation	175
II. Other Accessorial Consequences	176
§5. SUBSTITUTE FORMS OF EXECUTION OF PRISON SENTENCES	176
I. Introduction	176
II. Suspension of the Execution of Liberty-Depriving Penalties	177
III. Substitution of Liberty-Depriving Penalties	178
§6. PRINCIPLES AND RULES CONCERNING SENTENCING	180
I. Introduction	180
II. Circumstances Modifying Criminal Responsibility	181
A. Mitigating Circumstances	182
B. Aggravating Circumstances	183
C. Family Relationship as Mixed Circumstance	185
III. Concurrence of Offences	185
A. Real Concurrence of Offences	185
B. Concurrence by One Act	187
C. Continued Offences	188
D. Apparent Concurrence of Criminal Provisions	189
IV. Combination of Sentencing Rules	190
Chapter 8. Other Consequences of Offences	193
§1. CIVIL LIABILITY	193
I. Content of Civil Liability	193
II. Civilly Liable Persons	194
§2. PROCEDURAL COSTS	195
Part II. Criminal Procedure	197
Chapter 1. Principles, Institutions, and Stages	197



Table of Contents

§1. THE JUDICIAL ORGANIZATION	197
I. Trial Courts	198
II. Investigating Judges	201
III. Judicial Cooperation	202
§2. THE STAGES OF THE PENAL PROCESS	203
I. Some Basic Concepts	203
II. The Pre-trial Stage	205
A. The Judicial Inquiry	205
B. Main Features of the Judicial Inquiry	208
C. Aims and Content	209
D. Beginning of the Judicial Inquiry	210
E. Closing of the Judicial Inquiry and Intermediary Stage	211
III. The Prosecution	213
A. The Attribution of the Right to Prosecute	213
1. The Public Prosecutor	213
2. Other Accusing Parties	216
B. The Object of the Right to Prosecute	217
C. The Suspension of the Right to Prosecute	218
D. Lapse of the Right to Prosecute	219
1. Death of the Defendant, Abolition of Penal Provision, and Grant of Amnesty	219
2. The Pardon of the Offended: Withdrawal of the Complaint	219
3. Statute of Limitations	220
4. Double Jeopardy	221
IV. The Trial	222
A. General Characteristics	222
B. The Position of the Judge	223
C. The Beginning and Closing of the Inquiry	224
1. The Indictment	224
2. The Guilty Plea	226
3. The Trial	227
4. The Sentence	227
§3. THE LEGAL POSITION OF THE ACCUSED	229
§4. THE CIVIL PARTY	232
§5. THE RULES OF EVIDENCE	234
I. Principles of Evidence	234
A. Free Evaluation of Evidence, Burden of Proof, and Presumption of Innocence	235
B. The Evidentiary Value of the Pre-trial Acts and Respect of the Principle of Immediacy	236
II. Means of Proof	237
A. The Statement of the Accused	237
B. The Statement of the Witness	238

Table of Contents

C. Expert Evidence	240
D. Documents	240
E. Inspection by the Judge	241
III. Illegally Obtained Evidence	241
Chapter 2. Powers, Rights, and Duties in the Pre-trial Proceedings	244
§1. THE POWERS AND DUTIES OF THE POLICE IN THE PRELIMINARY INQUIRY	244
I. Introductory Remarks	244
II. At the Crime Scene	245
III. Interview of Suspects and Witnesses	245
IV. Search of Clothing and Body	246
A. Search of Clothing and Body	246
B. X-rays	247
V. The Powers of Entry and Search	247
VI. Alcohol- and Drug-Related Breath Tests	248
VII. Covert Police Methods	249
A. Controlled Delivery of Drugs and Other Objects	249
B. Visual and Video Surveillance	250
C. Informants	250
D. Buy-Bust Operations	251
VIII. Stop, Arrest, Detention	252
A. Stop for Breath Testing of Drivers	252
B. Stop for Identification	252
C. Arrest and Preventive Detention	253
IX. Miscellaneous	255
A. Identification Techniques	255
§2. THE POWERS AND DUTIES OF THE PUBLIC PROSECUTOR IN THE PRELIMINARY INQUIRY	256
I. The Position of the Public Prosecutor in the Pre-trial Investigation	256
II. The Powers and Duties of the Public Prosecutor in the Investigative Stage	257
§3. PRE-TRIAL DETENTION AND REMAND INTO CUSTODY BY THE INVESTIGATING JUDGE	258
I. Introductory Remarks	258
II. The Remand into Custody	259
A. Conditions for Remand	259
B. Time Limits of Remand	260
III. Procedure	261
IV. The Appeals	261
V. The Lifting of the Remand into Custody	262
VI. Right to Compensation for Damages in Case of Acquittal	262
VII. Alternatives to the Remand into Custody	262

Table of Contents

§4. THE POWERS AND DUTIES OF THE INVESTIGATING JUDGE AND THE RIGHTS OF THE ACCUSED IN THE JUDICIAL INQUIRY	263
I. Introductory Remarks	263
II. Wire-Tapping and Electronic Eavesdropping	264
A. Wire-Tapping	264
B. Eavesdropping	266
III. Entry, Search, and Seizure	266
A. Entry and Search	266
B. Subpoena to Produce Objects	269
C. Seizure	269
IV. Body Searches and DNA Tests	271
V. Interception of Other Types of Communication	272
A. Mail	272
B. Computers	274
VI. Interviewing the Accused	274
VII. Interviewing Witnesses	275
A. Procedure	276
B. Testimonial Privileges	277
C. Witnesses' Protection Measures	279
VIII. Confrontation	280
IX. The Power of Inquiry 'on the Spot'	281
X. The Power to Call in Experts	281
XI. Undercover Agent	282
Chapter 3. The Trial and the Legal Remedies	284
§1. PROCEEDINGS IN THE COURT OF FIRST INSTANCE	284
I. Introductory Remarks	284
II. Petty Offence Proceedings	284
A. Attendance of the Parties	284
B. Simplified Petty Offence Proceedings	285
C. Ordinary Petty Offence Proceedings	286
D. The Course of the Trial	287
III. Proceedings for Serious Offences	287
A. Preparatory Acts and Pre-trial Motions	287
B. Attendance of the Parties	288
C. Attendance of Witnesses and Experts	289
D. The Course of the Trial	290
E. The Judgment	292
IV. Proceedings for Less Serious Offences (Proceso Abreviado)	293
A. Preparatory Acts	293
B. Attendance of the Parties	294
C. The Course of the Trial	295
D. Judgment	295
E. Simplified Proceedings for Less Serious Offences	295

Table of Contents

V. Jury Trial	297
A. Preparatory Acts	298
B. The Course of the Trial	298
C. Verdict and Sentence	299
§2. REMEDIES AND APPEALS	300
I. Introductory Remarks	300
II. The Ordinary Legal Remedies	301
A. Remedies against Interlocutory Decisions	301
B. Remedies against Judgments	302
1. Appeal	303
2. Cassation	304
III. Extraordinary Remedies	306
A. Opposition (Recurso de Anulación)	306
B. Appeal by Review	306
Part III. Execution and Extinction of Sanctions	309
Chapter 1. Sources of Penitentiary Law and the Nature of Regulations	309
Chapter 2. Fundamental Principles of the Prison System	312
Chapter 3. The Prison System	313
§1. ORGANIZATIONAL STRUCTURE	313
I. Prison Administration	313
II. Types and Organizational Regimes of Penitentiaries	313
§2. PENITENTIARY TREATMENT	314
I. Scientific Individualization System	314
II. Classification by Grades	315
§3. PENITENTIARY REGIME	316
I. Introduction	316
II. Aspects of Living Conditions	316
A. Health Care	316
B. Communications	317
C. Work	317
D. Security and Disciplinary Regime	318
E. Leave from Prison	319
F. Other	319
§4. JUDICIAL CONTROL: THE SUPERVISING PRISON JUDGE	320

§5. PRISON PRIVILEGES	321
I. Conditional Release	321
A. Ordinary Regime	321
B. Special Cases	322
1. Early Conditional Release	322
2. Prisoners of 70 or More Years or Who Are Seriously Ill	322
3. Foreign Nationals	323
II. Individual Pardon	323
§6. OTHER ELEMENTS AFFECTING THE EXECUTION OF LIBERTY-DEPRIVING PENALTIES	323
I. Crediting of Time Served on Remand for Other Offences	323
II. Combination of Sentences	324
III. Suspension of the Sentence Due to Later Mental Disorder	324
IV. Transfer of Foreign Nationals for the Service of Prison Sentences	324
Chapter 4. Extinction of Criminal Liability	326
§1. PARDON	326
§2. PARDON BY THE VICTIM	327
§3. STATUTE OF LIMITATIONS	328
I. Limitation of the Offence	328
II. Limitation of Penalties	329
III. Limitation of Security Measures	330
§4. REHABILITATION	330
General Conclusion	333
Index	335