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Edited by A. P. Simester Oxford Monographs on Criminal Law and Justice The first full-length consideration of the controversial problem of strict liability in the criminal law European coverage examines implications of the ECHR on strict liability

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Abstract Strict liability is a controversial phenomenon in the criminal law because of its potential to convict blameless persons. Offences are said to impose strict liability when, in relation to one or more elements of the actus reus, there is no need for the prosecution to prove a corresponding mens rea or fault element.

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Appraising Strict Liability is a collection of original contributions offering the first full-length consideration of the problem of strict liability in the criminal law. The chapters, including European and Anglo-American perspectives, provide a sustained and wide-ranging examination of the fundamental issues. ... Series: Oxford Monographs on ...

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The imposition of strict liability in the criminal law is widely thought by scholars to be unjustified. This chapter argues that it is wrong to convict the blameless of stigmatic crimes. We would be right to object to the enactment of a strict liability homicide offence of, say, causing death by one's action.

Is Strict Liability Always Wrong? - Oxford Scholarship
Decisions regarding the constitutionality of strict liability in the United States fit with a principle of 'constitutional innocence'. Under that principle, strict liability crimes are constitutional when, but only when, the other elements of the offence, with the strict liability element excluded, would themselves be constitutional.

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Appraising strict liability (Book, 2007) [WorldCat.org]
Published Oxford: Oxford University Press, 2012 This text analyses the anti-social behaviour order and demonstrates that orders impose a liability on those who fail to reassure others about their future...

Strict liability is a controversial phenomenon in the criminal law because of its potential to convict blameless persons. Offences are said to impose strict liability when, in relation to one or more elements of the actus reus, there is no need for the prosecution to prove a corresponding mens rea or fault element. For example, in the 1986 case of Storkwain, the defendant chemists were convicted of selling controlled medicines without prescription simply upon proof that they had in fact done so. It was irrelevant that they neither knew nor had reason to suspect that the 'prescriptions' they fulfilled were forgeries. Thus strict liability offences have the potential to generate criminal convictions of persons who are morally innocent. Appraising Strict Liability is a collection of original contributions offering the first full-length consideration of the problem of strict liability in the criminal law. The chapters, including European and Anglo-American perspectives, provide a sustained and wide-ranging examination of the fundamental issues. They explore the definition of strict liability; the relationship between strict liability and blame, and its implications for the requirement for culpability in criminal law; the relevance of European and human rights jurisprudence; and the interaction between substantive rules of strict liability and evidential presumptions. The breadth and depth of the contributions combine to present readers with a sophisticated analysis of the place and legitimacy of strict liability in the criminal law.

Law's Judgement elucidates and defends a feature of contemporary law that is currently either overlooked or too glibly dismissed as morally troublesome or historically anachronistic. That feature is the abstract nature of law's judgement and its three components show that, when law judges us, it often does so in ignorance of our particular characters and abilities, on the one hand, and in ignorance of our context and circumstances, on the other. Law's judgement is thus insensitive to all or much that makes us the particular people we are. The book explores various connections between this mode of judgement and some of our most important legal and political values. It shows that law's abstract judgement is closely related to important juristic conceptions of personhood, responsibility and impartiality, and that these notions are not without moral significance. The book also examines the connections between modern law's judgement and three of our most important political values, namely, dignity, equality and community. It argues that, if we value particular conceptions of dignity, equality and community, then we must also value law's judgement. Illuminating these connections therefore serves a double purpose: first, it makes a case against those who counsel liberation from law's abstract judgement and, second, it redirects attention to the task of morally evaluating law's abstract judgement in its own terms.

Concentrating upon those doctrines that make up the general part of the criminal law this collection of essays by leading American and British legal experts sheds theoretical light on key issues of contemporary relevance.

In this consultation paper, the Law Commission sets out the case for reducing the scope for criminal law to be used in regulated fields such as farming, food safety, banking and retail sales. Criminal sanctions should only be used to tackle serious wrongdoing and it is out of proportion for regulators to rely wholly on the criminal law to punish and deter activities that are merely 'risky', unless the risk involved is a serious one. There has been a steep increase in the number of criminal offences created since the late 1980s to penalise risk-taking. The areas regulated cover a wide range of risk-posing activities, and involve millions of people and thousands of businesses. By turning to civil penalties for minor breaches, regulators could reduce costs to themselves and the criminal justice system by £11 million a year. In some cases, criminal prosecution can cost almost twice what the courts obtain in fines. The paper proposes that: (i) regulatory authorities should make more use of cost-effective, efficient and fairer civil measures to govern standards of behaviour; (ii) a set of common principles should be established to help agencies consider when and how to use the criminal law to tackle serious wrongdoing, and (iii) existing low-level criminal offences should be repealed where civil penalties could be as effective. Where criminal offences are created in regulatory contexts, they should require proof of fault elements such as intention, knowledge, or a failure to take steps to avoid harm being done or serious risks posed.

Governance is a word that is increasingly heard and read in modern times, be it corporate governance, global governance, or investment governance. Investment governance, the central concern of this modest volume, refers to the effective employment of resources—people, policies, processes, and systems—by an individual or governing body (the fiduciary or agent) seeking to fulfil their fiduciary duty to a principal (or beneficiary) in addressing an underlying investment challenge. Effective investment governance is an enabler of good stewardship, and for this reason it should, in our view, be of interest to all fiduciaries, no matter the size of the pool of assets or the nature of the beneficiaries. To emphasize the importance of effective investment governance and to demonstrate its flexibility across organization type, we consider our investment governance process within three contexts: defined contribution (DC) plans, defined benefit (DB) plans, and endowments and foundations (E&Fs). Since the financial crisis of 2007–2008, the financial sector's place in the economy and its methods and ethics have (rightly, in many cases) been under scrutiny. Coupled with this theme, the task of investment governance is of increasing importance due to the sheer weight of money, the retirement savings gap, demographic trends, regulation and activism, and rising standards of behavior based on higher expectations from those fiduciaries serve. These trends are at the same time related and self-reinforcing. Having explored the why of investment governance, we dedicate the remainder of the book to the question of how to bring it to bear as an essential component of good fiduciary practice. At this point, the reader might expect investment professionals to launch into a discussion about an investment process focused on the best way to capture returns. We resist this temptation. Instead, we contend that achieving outcomes on behalf of beneficiaries is as much about managing risks as it is about capturing returns—and we mean "risks" broadly construed, not just fluctuations in asset values.

New Private Law Theory is pluralist, comparative, application-oriented, transnational and reflects critical approaches.

Should the criminal law be used to deter and punish corruption in politics: from employing family members at public expense to improper spending on elections, lobbying, and cronyism? How did so many MPs avoid facing charges after the 2009 government expenses scandal? In this book, Jeremy Horder tackles these questions and more. As well as offering the first treatment of the history, philosophy, and politics of the application of the offence of misconduct in office to Members of Parliament in England and Wales, Horder explains how political corruption might be dealt with in future, and how politicians could be held accountable for their actions so that they are deterred from betraying the public's trust. Use of the criminal law should not be the sole or even the main way to remedy all corruption in politics. Nevertheless, for too long the offence of misconduct in a public office has had an ambiguous status in the political realm. If we are to preserve the good health of government it must be seen as a constitutional fundamental. A charge of misconduct provides a way in which corrupt conduct on the part of legislators can be punished with an appropriate label, holding them to account for the misuse of power by reference to the standards of ordinary people. When other - civil law or regulatory - means prove insufficient, it should be possible for ordinary members of a jury, and not for Parliamentarians or other officials, to decide whether, for example, the expenditure of public money on legislators' private income and benefits amounts to a criminal abuse of the public's trust. This book offers an authoritative and accessible account of a 'bottom-up' (jury standards-led), as opposed to a 'top-down' (officials applying their own standards), approach to the role of the criminal law in constitutional contexts.

The law relating to fitness to plead is an increasingly important area of the criminal law. While criminalization may be justified whenever an offender commits a sufficiently serious moral wrong requiring that he or she be called to account, the doctrine of fitness to plead calls this principle into question in the case of a person who lacks the capacity or ability to participate meaningfully in a criminal trial. In light of the emerging focus on capacity-based approaches to decision-making and the international human rights requirement that the law should treat defendants fairly, this volume offers a benchmark for the theory and practice of fitness to plead, providing readers with a unique opportunity to consider differing perspectives and debate on the future development and direction of a doctrine which has up till now been under-discussed and under-researched. The fitness to plead rules stand as an exception to notions of public accountability for criminal wrongdoing yet, despite the doctrine's long-standing function in criminal procedure, it has proven complex to apply in practice and has given rise to many varied legislative models and considerable litigation in different jurisdictions. Particularly troublesome is the question of what is to be done with someone who has been found unfit to stand trial. Here the law is required to balance the need to protect those defendants who are unable to participate effectively in their own trial, whether permanently or for a defined period, and the need to protect the public from people who may have caused serious social harm as a result of their antisocial behaviour. The challenge for law reformers, legislators, and judges, is to create rules that ensure that everyone who can properly be tried is tried, while seeking to preserve confidence in the fairness of the legal system by ensuring that people who cannot properly engage in the criminal trial process are not forced to endure it.

A History of Civil Litigation: Political and Economic Perspectives, by Frank J. Vandall, studies the expansion of civil liability from 1466 to 1980, and the cessation of that growth in 1980. It evaluates the creation of tort causes of action during the period of 1400-1980. Re-evaluation and limitation of those developments from 1980, to the present, are specifically considered. The unique focus of the book is first, to argue that civil justice no longer rests on historic foundations, such as, precedent, fairness and impartiality, but has shifted to power and influence. Reform in the law (legislative, judicial, and regulatory) is today driven by financial interests, not precedent, not a neutral desire for fairness, and not to "make it better." It uses products, cases and policies for much of its argument. These policies can be summarized as a shift from a balanced playing field, negligence, to one that favors injured consumers. The strict liability foreshadowed by Judge Traynor, in Escola v. Coca Cola (1944), was not adopted until 1962, when Traynor wrote the majority opinion in Greenman v. Yuba Power Products for the California Supreme Court. Second, the book examines the role of persuasive non-governmental agencies, such as the American Law Institute, in reforming and shaping civil justice. Never has it been less true that we live under the rule of law. Congress, agencies and the courts make the law, but they are driven by those who have a large financial stake in the outcome. Today, those with power shape the character of products liability law, at every turn.

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