# Contents

*Preface* xxvii  
*Acknowledgments* xxix

## 1

**Corporate Criminal Liability** 1

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Int</td>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>A. Cor</td>
<td>Corporate Criminal Liability</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><em>New York Central &amp; Hudson River</em></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><em>Railroad v. United States</em></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Notes and Questions</td>
<td>4</td>
</tr>
<tr>
<td>B. Cor</td>
<td>Corporate Prosecution Policy</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Kathleen F. Brickey, Enron’s Legacy</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Notes and Questions</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Attorney General Eric Holder, Testimony before the Senate Judiciary Committee</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>A Message from Attorney General Eric Holder, Video Posted on Justice Department Website</td>
<td>13</td>
</tr>
</tbody>
</table>
2

Personal Liability in an Organizational Setting 53

I. Introduction 53

II. Direct Participants 53

Notes and Questions 54

Sanford H. Kadish, Some Observations on the Use of Criminal Sanctions in Enforcing Economic Regulations 54

Notes and Questions 55

Yates Remarks 55

U.S. Attorneys’ Manual 56

Note on Accomplice Liability 56

Problem 2-1 57

III. Responsible Corporate Officers 57

United States v. Park 59

Notes and Questions 65

Problem 2-2 66
3

Conspiracy

I. Introduction 83

II. The Plurality Requirement 84
   \textit{United States v. Stevens} 84
   Notes and Questions 87
   Note on Inconsistent Verdicts 88
   Note on Scope of Conspiracy 89

III. The Object Offense 90
   A. The “Offense” and “Defraud” Clauses 90
      \textit{United States v. Arch Trading Co.} 90
      Notes and Questions 92
   B. Mens Rea 93
      \textit{United States v. Licciardi} 93
      Notes and Questions 98
   C. Vicarious Liability 98
      \textit{Pinkerton v. United States} 98
      Notes and Questions 101
      Note on Overt Acts 101
   D. Conspiring with the “Victim” of the Underlying Offense 102
      \textit{Ocasio v. United States} 102
      Notes and Questions 105

IV. Withdrawal and Termination 106
   Problem 3-1 106
   \textit{United States v. Jimenez Recio} 107
   Notes and Questions 109
Mail Fraud

I. Introduction

II. Schemes to Defraud
   A. Intent to Defraud
      United States v. Hawkey
      Notes and Questions
      Note on Fraud and False Pretenses
      Problem 4-1
      Note on Materiality
      Lustiger v. United States
      Notes and Questions
   B. Protected Interests
      1. Intangible Rights Theory
         United States v. George
         Notes and Questions
      2. Money or Property Requirement
         Carpenter v. United States
         Notes and Questions
         Cleveland v. United States
         Notes and Questions
         Pasquantino v. United States
         Notes and Questions
         a. Intent to Deprive
            United States v. Czubinski
            Notes and Questions
      3. Honest Services Theory
         Skilling v. United States
         Notes and Questions
   III. Use of the Mails
      Schmuck v. United States
      Notes and Questions
      United States v. Sampson
      Notes and Questions
      Note on Proof of Mailing
   IV. Mail and Wire Fraud Affecting a Financial Institution
      United States v. Bouyea
      Notes and Questions
   V. Mail and Wire Fraud in the Context of a Contract
      United States ex rel. O'Donnell v. Bank of America
      Notes and Questions
   VI. Bank Fraud
5

Securities Fraud

I. Introduction 177

II. Willfulness 178

United States v. Tarallo 179
Notes and Questions 183
Note on the “No Knowledge” Proviso 184
Notes and Questions 185

III. Insider Trading 186
A. The Evolving Doctrinal Rules 188
1. Classical Theory
Chiarella v. United States 188
Notes and Questions 193
2. Misappropriation Theory 193
United States v. O’Hagan 193
Notes and Questions 198
3. Tipper/Tippee Theory 199
Dirks v. Securities and Exchange Commission 199
Notes and Questions 203
Problem 5-1 204
Problem 5-2 204
United States v. Chestman 205
Notes and Questions 210
Note on Rule 10b5-2 210
Notes and Questions 211
Salman v. United States 211
Notes and Questions 216
4. Knowing Possession 216
United States v. Teicher 216
Notes and Questions 219
Note on Rule 10b5-1 220
Notes and Questions 221
Problem 5-3 221
5. Materiality 222
Notes and Questions 222
B. The Human Dimension of the Wall Street Insider Trading Scandal 223
   1. Wall Street’s Army of Insiders 223
IV. Misrepresentation and Concealment 223
   Case Study: United States v. Stewart 224
      Notes and Questions 225
V. Securities Fraud Prosecutions Under the Sarbanes-Oxley Act 225
      Notes and Questions 227

6 False Statements 229

I. Introduction 229
II. Jurisdiction 229
   United States v. Rodgers 229
   United States v. Wright 233
      Notes and Questions 235
   United States v. Steiner Plastics Manufacturing Co. 235
      Notes and Questions 236
III. Department or Agency 237
   United States v. McNeil 237
      Notes and Questions 240
   United States v. Pickett 240
      Notes and Questions 242
IV. False Statements 243
   A. False Promises 243
      United States v. Shah 243
         Notes and Questions 247
   B. The “Exculpatory No” Doctrine 247
      Brogan v. United States 247
         Notes and Questions 252
   C. Materiality 252
      Problem 6-1 252
   D. Concealment 253
      United States v. White Eagle 253
         Notes and Questions 256
V. Culpable Mental State 256
   United States v. Yermian 256
   United States v. Green 260
      Notes and Questions 261
   United States v. Natale, Brief for the United States in Opposition 262
      Notes and Questions 265
## Perjury and False Declarations

### I. Introduction

*Bronston v. United States*  
Notes and Questions

*United States v. Walser*  
Notes and Questions

*United States v. Strohm*  
Notes and Questions

### III. The Two-Witness Rule

*United States v. Davis*  
Notes and Questions  
Note on Inconsistent Declarations

Problem 7-2

### IV. The Recantation Defense

*United States v. Sherman*  
Notes and Questions

*United States v. Wiggan*  
Notes and Questions

Note on Competent Tribunals and Ancillary Proceedings

### V. Immunized Testimony

*United States v. Apfelbaum*  
Notes and Questions

### VI. Perjury by Government Witnesses

Notes and Questions
Obstruction of Justice 319

I. Introduction 319

II. Pending Judicial Proceedings 319

   United States v. Simmons 320
   Notes and Questions 323
   United States v. Lundwall 324
   Notes and Questions 328

III. Endeavoring to Influence or Impede 328

   United States v. Collis 329
   Notes and Questions 332
   United States v. Griffin 332
   Notes and Questions 336
   Problem 8-1 336
   United States v. Aguilar 337
   Notes and Questions 341
   United States v. Cintolo 341
   Notes and Questions 345
   Problem 8-2 346
   Note on Lawyer Liability 346
   Notes and Questions 348

IV. The Victim and Witness Protection Act 349

   A. Noncoercive Witness Tampering 349
      1. Section 1503: The Omnibus Clause 349
         United States v. Lester 349
         Notes and Questions 353
      2. Section 1512: Corrupt Persuasion 353
         Arthur Andersen LLP v. United States 353
         Notes and Questions 358
         Michigan State Bar Committee on Professional and Judicial Ethics, Informal Opinion RI-345 360
         Notes and Questions 362
         Note on Evidence Tampering and Document Destruction 362
         Yates v. United States 363
         Notes and Questions 372
      3. Section 1512: Misleading Conduct 372
         United States v. Gabriel 372
         Notes and Questions 376
         Fowler v. United States 377
      4. Section 1512: Harassment 381
         United States v. Wilson 381
         Notes and Questions 383
5. Tampering with Records or Otherwise Impeding an Official Proceeding 383
   Notes and Questions 383
B. Threats and Intimidation 384
   United States v. Willard 384
   Notes and Questions 385
   United States v. Miller 385
   Notes and Questions 387
   Note on Retaliation Against Witnesses and Informants 387
   Notes and Questions 387
V. The Fifth Amendment Privilege 388
A. The Act of Production Doctrine 388
   Notes and Questions 391
B. The Enron Investigation 391
   Case Study: SEC v. Lay 391

9

Bribery of Public Officials 395

I. Introduction 395

II. Bribery of Public Officials 396
   A. Official Acts 396
      United States v. Parker 396
      Notes and Questions 399
      United States v. Arroyo 399
      Notes and Questions 401
      McDonnell v. United States 402
      Notes and Questions 409
   B. Motive and Intent 410
      United States v. Sun-Diamond Growers of California 410
      Notes and Questions 414
      United States v. Anderson 414
      Notes and Questions 417
   C. Thing of Value 417
      United States v. Williams 417
      Notes and Questions 418
   D. Public Officials 419
      1. Appointed Officials 419
         Dixson v. United States 419
         Notes and Questions 424
      2. Elected Officials 424
         United States v. Brewster 424
         Notes and Questions 429
E. Cooperating Witnesses

United States v. Ware 430
Notes and Questions 434
United States v. Ihnatenko 435
Notes and Questions 436

III. Federal Program Bribery

Salinas v. United States 437
Notes and Questions 440
United States v. DeLaurentis 440
Notes and Questions 442
Sabri v. United States 442
Notes and Questions 446
United States v. Copeland 446
Notes and Questions 449

10

RICO 451

I. Introduction 451

II. The Enterprise 451

United States v. Turkette 452
Notes and Questions 455
Boyle v. United States 455
Notes and Questions 459
Problem 10-1 460
National Organization for Women v. Scheidler 460
Notes and Questions 463
Note on the Interstate Commerce Requirement 464

III. Pattern of Racketeering Activity 465

A. The Pattern Requirement 466

H.J., Inc. v. Northwestern Bell Telephone 466
Notes and Questions 472

B. State Predicate Crimes 472

United States v. Garner 472
Notes and Questions 476
Problem 10-2 476
Note on the Dual Sovereignty Doctrine 476

IV. Relationship Between Person and Enterprise 477

Reves v. Ernst & Young 477
Notes and Questions 480
Problem 10-3 480
Problem 10-4 480
McCullough v. Suter 480
Note on Relational Elements 482
V. RICO Conspiracies 483
   Salinas v. United States 483
   Notes and Questions 485
VI. Civil Liability 486
   A. Injury to Business or Property 486
      Sedima, S.P.R.L. v. Imrex Co. 486
      Notes and Questions 490
      Note on RICO Reform 491
      Notes and Questions 492
      Libertad v. Welch 492
      Notes and Questions 495
   B. Causation 496
      Commercial Cleaning Services, L.L.C. v. Colin Service Systems, Inc. 496
      Notes and Questions 500
      Anza v. Ideal Steel Supply Corp. 501
      Notes and Questions 504
      Williams v. Mohawk Industries, Inc. 504
      Notes and Questions 508
      Hemi Group, LLC v. City of New York, NY 508
      Notes and Questions 511
VII. Extraterritorial Application 511
      RJR Nabisco, Inc. v. European Community 511
      Notes and Questions 516
VIII. Asset Forfeiture 517
   A. Forfeitable Interests 517
      Notes and Questions 518
   B. Third-Party Interests 518
   C. Attorneys’ Fees 519
      Luis v. United States 520
      Notes and Questions 524
   D. Constitutional Limits 525
      1. Alexander I 525
      2. Alexander II 526
      Notes and Questions 527
      3. Alexander III 527
      Notes and Questions 528

11

Tax Fraud 529
I. Introduction 529
II. Willfulness 529
A. Proof of Culpability

United States v. Guidry 530
Notes and Questions 533
United States v. Obles 533
Notes and Questions 537

B. Ignorance or Mistake

Cheek v. United States 537
Notes and Questions 543
United States v. Cohen 545
Notes and Questions 548

C. Reliance on Professional Advice

Bursten v. United States 550
Notes and Questions 552
Problem 11-1 552

III. Tax Evasion

A. Attempt to Evade or Defeat

United States v. Eaken 553
Notes and Questions 557

B. Methods of Proof

1. Net Worth Method

United States v. Bencs 557
Notes and Questions 560

2. Bank Deposits and Cash Expenditures Method

United States v. Abodeely 561
Notes and Questions 564

IV. False Declarations

A. Material Matters

United States v. DiVarco 565
United States v. Greenberg 566
Notes and Questions 568

B. True and Correct

Siravo v. United States 568
Notes and Questions 570

12

Currency Reporting Crimes and Money Laundering 571

I. Introduction 571

II. Currency Reporting Crimes 571

A. The Bank Secrecy Act 572

1. Transporting Monetary Instruments

United States v. Forty-Seven Thousand Nine Hundred Eighty Dollars ($47,980) in Canadian Currency 573
Contents

Notes and Questions 576
Note on Forfeitures as “Excessive Fines” 577
Notes and Questions 581

2. Domestic Currency Transactions 582
Ratzlaf v. United States 582
Notes and Questions 588
United States v. Sperrazza 588
Notes and Questions 591

3. Enhanced Penalties 592
United States v. St. Michael’s Credit Union 592
Notes and Questions 596

B. Section 6050I 596
1. Attorney-Client Privilege 597
United States v. Goldberger & Dubin, P.C. 597
Notes and Questions 600
Lefcourt v. United States 602
Notes and Questions 605

2. Designated Reporting Transactions 605
Problem 12-1 606
Problem 12-2 606
Problem 12-3 606

III. Money Laundering 606
United States v. Tencer 607
Notes and Questions 609
United States v. Campbell 610
Notes and Questions 614
United States v. Johnson 615
Notes and Questions 620
United States v. Kennedy 622
Notes and Questions 624
Note on the Meaning of “Proceeds” 624

13

Environmental Crimes 627

I. Introduction 627
II. Water Pollution: The Clean Water Act 627
A. Discharge from a Point Source 628
1. Point Source 628
   United States v. Plaza Health Laboratories, Inc. 628
   Notes and Questions 634
2. Navigable Waters 635
   Paul Boudreaux, A New Clean Water Act 635
B. Permit Requirement
United States v. Frezzo Brothers, Inc. 637
Notes and Questions 639
C. Knowing Violations
United States v. Ahmad 640
United States v. Sinskey 644
Notes and Questions 648
D. Responsible Corporate Officer Doctrine
United States v. Hong 650
Notes and Questions 652
Note on the BP Gulf Spill 653
E. Knowing Endangerment
United States v. Borowski 654
Notes and Questions 658
III. Air Pollution: The Clean Air Act
United States v. Dipentino 660
Notes and Questions 662
IV. Hazardous Waste
A. The Resource Conservation and Recovery Act 662
1. Treatment, Storage, or Disposal Violations
United States v. Johnson & Towers, Inc. 662
United States v. Hoflin 667
Notes and Questions 671
2. Transportation Violations
United States v. Hayes International Corp. 672
Notes and Questions 677
United States v. Fiorillo 677
Notes and Questions 683
3. Knowing Endangerment 683
B. The Comprehensive Environmental Response, Compensation, and Liability Act 684
United States v. Carr 684
Notes and Questions 687

Sanctions 689
I. Introduction 689
II. Imprisonment 690
A. Pre-Guidelines Sentencing 690
United States v. Bergman 690
Notes and Questions 692
xxvi

Contents

1. The Federal Investigation 742
   Department of Justice Press Release 742
   Statement of Stephen S. Trott 744
   Notes and Questions 745
   E. F. Hutton 1985 10-K Report 746
   Notes and Questions 749

2. The State Investigations 749
   Still More Grief 750

Table of Cases 000
Table of Statutes 000
Index 000