

|| Contents ||

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxi</i>

— 1 —

<i>The Purposes of Punishment and Sentencing</i>	<i>1</i>
A. SOCIAL PURPOSES OF SENTENCING	2
1. Stated Purposes	3
a. Purposes Statutes	3
ABA Standards for Criminal Justice, Sentencing	
18-2.1	3
18 United States Code §3553	6
Tennessee Code §40-35-102	6
Notes	7
Problem 1-1. Richard Graves	11
Montana Code Annotated §46-18-101	12
Notes	13
b. Community Purposes	18
A Healing Circle in the Innu Community of	
Sheshashit	20
Notes	25
Problem 1-2. Red Hook Community Court	27
2. Implicit Purposes	27
Purposes and Functions of Sentencing, Michael	
Tonry	28
Discipline and Punish: The Birth of the Prison,	
Michel Foucault	31
Notes	35
B. PURPOSES IN PRACTICAL CONTEXT	37
1. Use of Purposes in Sentencing an Individual Offender	38
<i>The Queen v. Robert James Arnautovic</i>	39
Notes	47
Problem 1-3. Bromley Heath	48
2. Use of Purposes in System Components	48

	Simplification Paper: Criminal History	49
	Notes	53
3.	Politics, Philosophy, and Economics (“PP&E”)	55
a.	Equality/Disparity Concerns	55
	ABA Standards for Criminal Justice, Sentencing 18-2.5	56
	Notes	57
b.	Cents and Sentencing Ability	58
	The Conservative Case for Reform	58
	Notes	61
	Problem 1-4. Sentencing without Prison or Death	62
	Problem 1-5. Sentencing Budgets	63
c.	Public Sentiment	63
	Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing, Karen Gelb	63
	Notes	70
	Problem 1-6. Crime in America	71
— 2 —		
	<i>Who Sentences?</i>	73
	Research on Sentencing: The Search for Reform, Alfred Blumstein, Jacqueline Cohen, Susan Martin, and Michael Tonry	73
	Notes	76
A.	SENTENCING IN THE COURTROOM	77
1.	Judges and Parole Boards in Indeterminate Sentencing	77
	<i>Samuel Williams v. New York</i>	78
	Notes	80
	Problem 2-1. Determining the Indeterminable	82
	The Parole Process in Georgia	83
	Problem 2-2. Savings Plan	85
	Notes	85
2.	Sentencing Juries	87
	Arkansas Code §16-97-101 Felony Jury Trials; Guilt and Sentencing Phases	88
	Arkansas Code §16-97-103 Relevant Evidence	88
	Arkansas Code §16-90-107 Punishment; Juries and Courts	89
	Manual for Courts-Martial, United States Exec. Order No. 12,473, 49 Fed. Reg. 17,152	90
	Notes	91
B.	LEGISLATURES AND COMMISSIONS	93
	Code of Hammurabi	93
	Mandatory Minimum Penalties in the Federal Criminal Justice System	94

<i>Contents</i>	xiii
Notes	100
ABA Standards for Criminal Justice, Sentencing 18-4.1	104
Modeling Discretion in American Sentencing Systems, Kevin Reitz	104
Notes	108
C. PROSECUTORS	109
<i>People v. Wayne Robert Stewart</i>	110
The Screening/Bargaining Tradeoff, Ronald Wright and Marc Miller	113
Notes	116
D. APPELLATE COURT GUIDANCE	117
<i>R. v. Edward Bilinski</i>	120
Notes	122

— 3 —

<i>Regulating Discretion</i>	125
A. ORIGINS OF SENTENCING GUIDELINE STRUCTURES	126
Criminal Sentences: Law Without Order, Marvin E. Frankel	126
Notes	131
B. DEVELOPMENT AND STRUCTURE OF STATE GUIDELINE SYSTEMS	134
Structuring Criminal Sentencing, Dale Parent	135
Notes	138
Problem 3-1. The Minnesota Machine	140
Sentencing Guidelines in Minnesota, Other States, and the Federal Courts: A Twenty-Year Retrospective, Richard S. Frase	142
Notes	147
C. STRUCTURE OF THE FEDERAL SENTENCING GUIDELINES	148
Federal Sentencing Guidelines Manual, Chapter One — Introduction, Authority, and General Application Principles	149
Notes	154
Federal Sentencing: The Basics	155
Notes	161
D. DEPARTURES AND DISCRETION UNDER THE FEDERAL GUIDELINES	163
Substantial Assistance: An Empirical Yardstick Gauging Equity in Current Federal Policy and Practice, Linda Drazga Maxfield and John H. Kramer	165
Notes	167

E.	ADVISORY GUIDELINES: THE AFTERMATH OF <i>BOOKER</i>	169
	<i>United States v. Freddie J. Booker</i>	170
	Notes	181
	<i>Derrick Kimbrough v. United States</i>	184
	Notes	195
F.	DEPARTURES AND VARIANCES IN FEDERAL PRACTICE	198
	<i>U.S. Sentencing Commission, Special Post-Booker</i>	
	<i>Coding Project: Cases Sentenced Subsequent to</i>	
	<i>United States v. Booker (July 6, 2006)</i>	200
	Notes	200
	Problem 3-2. New Constitutional Guidelines	202

— 4 —

	<i>Sentencing Inputs: The Crime and Its Effects</i>	205
	Problem 4-1. Rob Anon	205
A.	WHICH CRIME?	206
	1. Real Offense Versus Conviction Offense	207
	U.S. Sentencing Guidelines Manual	208
	<i>United States v. Vernon Watts</i>	209
	<i>Charles Frederick Barr v. State</i>	213
	Notes	214
	Problem 4-2. Rob Anon Revisited	220
	2. Multiple Convictions	220
	Problem 4-3. Take Two	221
	North Carolina General Statutes §15A-1340.15	222
	Kansas Statutes §21-6819	222
	Problem 4-4. Predisposed to Prison	223
	Notes	224
	3. Role in a Group Offense	227
	U.S. Sentencing Guidelines Manual	227
	<i>United States v. Donald Carpenter</i>	228
	Notes	231
	Problem 4-5. Rob Anon Revisited	232
B.	ASSESSING OFFENSE SERIOUSNESS	233
	U.S. Senate Report No. 98-225	233
	Notes	234
	1. Qualitative Assessments of Harm	235
	<i>Ehrlich Anthony Coker v. Georgia</i>	236
	Notes	239
	<i>Patrick Kennedy v. Louisiana</i>	240
	Notes	248
	<i>State v. Stanley Royster</i>	250
	U.S. Sentencing Guidelines Manual	251
	Notes	252
	Problem 4-6. Rob Anon Revisited	254

2.	Quantitative Assessments of Harm	254
	<i>Richard Chapman v. United States</i>	254
	Notes	258
	Problem 4-7. Getting Tough on Drunk Drivers	262
3.	The Role of Mens Rea and Motive	262
a.	Strict Liability Sentencing Factors	262
	<i>United States v. Ana Marin de Velasquez</i>	262
	Notes	264
b.	Hate Crimes and the Relevance of Motive	266
	<i>Wisconsin v. Todd Mitchell</i>	266
	Notes	268
	Problem 4-8. Rob Anon (aka Jean Valjean?) Revisited	269
C.	THE ROLE OF VICTIMS AND THE COMMUNITY	270
	<i>State v. Rasheed Muhammad</i>	270
	Notes	275

— 5 —

|| ***Sentencing Inputs: The Offender’s Record and
Background*** ||

279

	Problem 5-1. Rob Anon	279
A.	PRIOR CRIMINAL RECORD	281
1.	“Strikes” Laws and Other Mandatory Rules	281
	<i>People v. Jerry Garcia</i>	281
	Notes	288
2.	Complicated Criminal Records	290
	<i>United States v. Anthony Croom</i>	290
	Notes	292
3.	“Violent Crime” Recidivist Enhancements	294
	<i>Samuel Johnson v. United States</i>	295
	Notes	300
4.	The First-Time Offender	301
	Washington Revised Code §9.94A.650	301
	<i>State v. Joshua Fowler</i>	301
	Notes	304
B.	THE COOPERATIVE DEFENDANT	307
1.	Acceptance of Responsibility and Plea Bargains	307
	<i>State v. David Tiernan</i>	308
	U.S. Sentencing Guidelines Manual	312
	Powers of Criminal Courts (Sentencing) Act	312
	Notes	313
2.	Substantial Assistance	316
	<i>United States v. Amanda Williams</i>	316
	Nevada Revised Statutes §453.3405(2)	318
	Problem 5-2. Helping Others	319
	Problem 5-3. Earned Time	319
	Notes	320

C. THE OFFENDER'S CHARACTER AND CIRCUMSTANCES	322
Problem 5-4. Turning Guidance into Guidelines	322
Notes	323
1. Immutable Characteristics	325
ABA Standards for Criminal Justice, Sentencing 18-3.4(d)	326
<i>Evan Miller v. Alabama</i>	326
Notes	337
2. Circumstances Within the Defendant's Control	341
<i>Brian Michael Gall v. United States</i>	341
Problem 5-5. Treatment and Timing	349
Problem 5-6. Restitution and Rehabilitation	349
Notes	350
3. Social Context of the Offender	353
<i>United States v. Fadya Husein</i>	353
Notes	362
Problem 5-7. Pillar of the Community	364
Notes	365

— 6 —

|| *Procedure and Proof at Sentencing* || 367

A. FORMAL TRIAL, INFORMAL SENTENCING	368
<i>Dynel McMillan v. Pennsylvania</i>	370
Notes	373
B. THE RESURGENT JURY TRIAL RIGHT	377
<i>Ralph Blakey, Jr. v. Washington</i>	377
Notes	387
Problem 6-1. Moving Violations	390
Problem 6-2. The Capital Jury	391
Notes	392
C. REBUILDING GUIDELINE PROCEDURES	394
<i>State v. Abdul Abdullah</i>	395
Problem 6-3. Prior Juvenile Adjudications	400
Notes	401

— 7 —

|| *Sentencing Outcomes: The Scale of Imprisonment* || 407

A. INCARCERATION TRENDS	407
1. The Prison as an American Innovation	408
The Future of Imprisonment, Norval Morris	408
Notes	410
2. Prison Growth	412
Notes	414

<i>Contents</i>	xvii
B. COMPETING EXPLANATIONS FOR GROWTH?	417
1. Crime Control and Social Conditions	417
The Growth of Incarceration Rates in the United States: Exploring Causes and Consequences	417
Notes	426
2. Constraining Influences	430
North Carolina General Statutes §120-36.7(d)	431
Kansas Statutes §74-9101(b)	431
Notes	432
C. THE HUMAN EXPERIENCE OF PRISON	434
The Contemporary Prison, 1965-Present, Norval Morris	434
Notes	437
D. LIMITING IMPRISONMENT UNDER THE EIGHTH AMENDMENT	441
Problem 7-1. Lookout	443
Problem 7-2. Family Business	443
Problem 7-3. Enough Is Enough	444
Notes	445
<i>Terrance Jamar Graham v. Florida</i>	447
Notes	458
E. RECONSIDERING MASS INCARCERATION	461
Reconsidering Incarceration: New Directions for Reducing Crime, Don Stemen	462
The Price of Prisons: Examining State Spending Trends, 2010–2015	467
Notes	468
<i>Table of Cases</i>	471
<i>Table of Statutes, Rules, and Guidelines</i>	475
<i>Index</i>	479