

# Criminal Law: General Part

Ceza Hukuku Genel Hükümler

Murat Volkan Dülger

4th ed., Seçkin Publishing, Ankara, October 2026, 1560 pages, ISBN 9786253612337

## ■ Table of contents

|                                  |    |
|----------------------------------|----|
| Preface to the 4th Edition ..... | 7  |
| Preface to the 3rd Edition ..... | 8  |
| Preface to the 2nd Edition ..... | 9  |
| Preface .....                    | 10 |
| Abbreviations .....              | 45 |

### BOOK ONE

### INTRODUCTION TO CRIMINAL LAW

#### CHAPTER ONE

#### BASIC CONCEPTS AND PRINCIPLES OF CRIMINAL LAW

|                                                                                                                           |    |
|---------------------------------------------------------------------------------------------------------------------------|----|
| § 1. THE FUNCTION OF CRIMINAL LAW, ITS PLACE WITHIN THE LEGAL ORDER AND ITS RELATIONSHIP WITH OTHER BRANCHES OF LAW ..... | 51 |
| I. OFFENCE, PUNISHMENT AND CRIMINAL LAW .....                                                                             | 51 |
| A. Structure of the Criminal (Offence) Norm .....                                                                         | 51 |
| B. Distinguishing Criminal Law from Procedural Law and the Law on the Execution of Sentences .....                        | 58 |
| C. The State's Power to Punish .....                                                                                      | 59 |
| D. Definition, Subject Matter and System of Sanctions of Criminal Law .....                                               | 60 |
| E. The Term Criminal Law and the Designation of the Field .....                                                           | 61 |
| II. THE FUNCTION OF CRIMINAL LAW .....                                                                                    | 62 |
| A. The Social Function of Criminal Law .....                                                                              | 62 |
| 1. The Function of Criminal Law as a Social Phenomenon .....                                                              | 62 |
| 2. The Legal Interest Protected by Criminal Law as a Social Function .....                                                | 64 |
| a. Meaning of the Legal Interest .....                                                                                    | 64 |
| b. Functions of the Legal Interest .....                                                                                  | 66 |
| c. The Distinction between the Legal Interest and the (Legal) Object of the Offence .....                                 | 74 |
| d. Change in the Protected Legal Interest .....                                                                           | 77 |
| 3. The Purpose of the Criminal Code under the Turkish Criminal Code (TCK) .....                                           | 80 |
| 4. The Purpose of Liberal Criminal Law .....                                                                              | 81 |
| B. The Function of Criminal Law as a Scholarly Discipline .....                                                           | 83 |
| C. The Function and Purpose of the Course on the General Part of Criminal Law .....                                       | 86 |
| III. THE PLACE OF CRIMINAL LAW WITHIN THE LEGAL ORDER AND ITS RELATIONSHIP WITH OTHER BRANCHES OF LAW .....               | 87 |
| A. Criminal Law as a Discipline within Public Law .....                                                                   | 87 |
| B. The Relationship of Criminal Law with Directly Related Disciplines .....                                               | 88 |
| 1. Relationship with the Law of Criminal Procedure .....                                                                  | 89 |
| 2. Relationship with the Law on the Execution of Sentences .....                                                          | 92 |

|             |                                                                                                                |            |
|-------------|----------------------------------------------------------------------------------------------------------------|------------|
| 3.          | Relationship with the Law of Misdemeanours (Administrative Offences)                                           | 94         |
| a.          | The View that Misdemeanours Should Be Decriminalised                                                           | 94         |
| b.          | The Distinction between Offences and Misdemeanours and the Law of Misdemeanours                                | 96         |
| 4.          | Relationship with Criminology, Victimology, Criminalistics and Forensic Medicine                               | 99         |
| C.          | The Relationship of Criminal Law with Other Branches of Law                                                    | 101        |
| 1.          | Relationship with Legal Philosophy and the Sociology of Law                                                    | 101        |
| 2.          | Relationship with Constitutional Law                                                                           | 108        |
| 3.          | Relationship with Administrative Law                                                                           | 109        |
| 4.          | Relationship with Public International Law                                                                     | 111        |
| 5.          | Relationship with Civil Law and the Law of Obligations                                                         | 114        |
| 6.          | Relationship with Tax Law                                                                                      | 115        |
| <b>§ 2.</b> | <b>CRIMINAL POLICY AND THE BASIC PRINCIPLES OF CRIMINAL LAW</b>                                                | <b>116</b> |
| I.          | CRIMINAL POLICY AND ITS INFLUENCE ON CRIMINAL LAW                                                              | 116        |
| II.         | THE BASIC PRINCIPLES OF CRIMINAL LAW                                                                           | 119        |
| A.          | The Principle of the Rule of Law                                                                               | 120        |
| B.          | The Principle of Culpability                                                                                   | 123        |
| 1.          | Meaning, Scope and Basis of the Concept of Culpability in Criminal Law                                         | 123        |
| 2.          | Interdisciplinary Approaches to the Principle of Culpability                                                   | 128        |
| a.          | Approaches in Neurobiology                                                                                     | 128        |
| b.          | Philosophical Approaches                                                                                       | 130        |
| C.          | The Principle of the Subsidiarity of Criminal Law (Last Resort/Ultima Ratio)                                   | 131        |
| D.          | The Principle of Humanity (Humanism)                                                                           | 133        |
| E.          | The Guarantee Function of Criminal Law: The Principle of Legality of Offences and Penalties                    | 135        |
| 1.          | Emergence and Framework of the Principle                                                                       | 135        |
| 2.          | The Liberating Character of Criminal Law                                                                       | 138        |
| 3.          | Sub-principles Derived from the Principle of Legality of Offences and Penalties                                | 139        |
| a.          | Prohibition of Creating or Abolishing Offences and of Altering Penalties by a Source of Law Other than Statute | 140        |
| i.          | In General                                                                                                     | 140        |
| ii.         | Prohibition of Establishing Offences and Penalties by Regulatory Acts of the Administration                    | 140        |
| iii.        | State of Emergency Decree-Laws (KHK) and Presidential Decrees                                                  | 142        |
| b.          | Prohibition of Establishing Offences and Penalties on the Basis of Custom (Lex Scripta)                        | 146        |
| c.          | The Principle of Certainty (Lex Certa)                                                                         | 149        |
| d.          | Prohibition of Analogy and of Extensive Interpretation Amounting to Analogy (Lex Stricta)                      | 156        |
| e.          | Prohibition of Retroactivity (Lex Praevia)                                                                     | 162        |

## CHAPTER TWO

### SOURCES OF CRIMINAL LAW AND METHODS OF INTERPRETATION

|             |                                |            |
|-------------|--------------------------------|------------|
| <b>§ 3.</b> | <b>SOURCES OF CRIMINAL LAW</b> | <b>165</b> |
| I.          | INTRODUCTION                   | 165        |
| II.         | DIRECT SOURCES                 | 165        |
| A.          | The Constitution               | 165        |
| B.          | International Conventions      | 166        |
| C.          | Laws                           | 166        |

|      |                                                                               |     |
|------|-------------------------------------------------------------------------------|-----|
| 1.   | The Turkish Criminal Code .....                                               | 166 |
| 2.   | Other Laws Containing Criminal Law Norms .....                                | 167 |
| 3.   | Conflict between the TCK and Other Laws .....                                 | 168 |
| a.   | Scope of Application of Article 5 of the TCK .....                            | 168 |
| b.   | Time of Application of Article 5 of the TCK .....                             | 169 |
| III. | INDIRECT (SUBSIDIARY) SOURCES .....                                           | 171 |
| A.   | Court Decisions .....                                                         | 171 |
| B.   | Rules of Custom .....                                                         | 172 |
| C.   | Legal Scholarship .....                                                       | 173 |
| § 4. | INTERPRETATION IN CRIMINAL LAW .....                                          | 174 |
| I.   | INTERPRETATION AS A SUB-DISCIPLINE OF ANCIENT RHETORIC AND HERMENEUTICS ..... | 174 |
| II.  | THE MEANING OF INTERPRETATION AND ITS DIFFERENCE FROM ANALOGY .....           | 175 |
| III. | METHODS OF INTERPRETATION .....                                               | 177 |
| A.   | Grammatical (Literal/Textual) Interpretation .....                            | 177 |
| B.   | Historical Interpretation .....                                               | 178 |
| C.   | Systematic Interpretation .....                                               | 180 |
| D.   | Purposive (Teleological) Interpretation .....                                 | 180 |
| IV.  | TYPES OF INTERPRETATION .....                                                 | 181 |
| A.   | Formal Interpretation .....                                                   | 181 |
| 1.   | Legislative Interpretation .....                                              | 181 |
| 2.   | Judicial Interpretation .....                                                 | 183 |
| 3.   | Doctrinal Interpretation .....                                                | 184 |
| B.   | Substantive Interpretation .....                                              | 185 |
| 1.   | Restrictive Interpretation .....                                              | 185 |
| 2.   | Extensive Interpretation .....                                                | 188 |
| 3.   | Corrective Interpretation .....                                               | 189 |

### CHAPTER THREE

## SCOPE OF APPLICATION OF CRIMINAL LAW

|      |                                                                                                         |     |
|------|---------------------------------------------------------------------------------------------------------|-----|
| § 5. | APPLICATION IN RESPECT OF TIME .....                                                                    | 191 |
| I.   | THE MEANING OF APPLICATION IN RESPECT OF TIME .....                                                     | 191 |
| II.  | ENTRY INTO FORCE AND REPEAL OF LAWS .....                                                               | 192 |
| III. | THE RULE ON APPLICATION IN RESPECT OF TIME .....                                                        | 195 |
| IV.  | PROHIBITION OF RETROACTIVITY .....                                                                      | 196 |
| V.   | RETROACTIVITY OF THE LAW MORE FAVOURABLE TO THE PERPETRATOR .....                                       | 201 |
| A.   | The Rule .....                                                                                          | 201 |
| 1.   | Criminal Laws Apply Prospectively .....                                                                 | 201 |
| 2.   | A Law Producing Consequences to the Detriment of the Perpetrator Cannot Be Applied Retroactively .....  | 201 |
| 3.   | A Law Producing Consequences in Favour of the Perpetrator Is Applied Retroactively .....                | 201 |
| 4.   | Intervening Laws Are Taken into Account in Determining the Law More Favourable to the Perpetrator ..... | 203 |
| B.   | Determining the Law More Favourable to the Perpetrator .....                                            | 203 |
| 1.   | Rules on Security Measures .....                                                                        | 206 |
| 2.   | Rules on Limitation Periods .....                                                                       | 207 |
| C.   | Applying the Law More Favourable to the Perpetrator .....                                               | 208 |
| VI.  | APPLICATION IN RESPECT OF TIME OF FIXED-TERM AND TEMPORARY LAWS .....                                   | 210 |

|                                                                                |     |
|--------------------------------------------------------------------------------|-----|
| VII. DETERMINING THE TIME AT WHICH THE OFFENCE WAS COMMITTED .....             | 210 |
| A. Instantaneous Offence .....                                                 | 211 |
| B. Uninterrupted (Permanent) Offence .....                                     | 213 |
| C. Continuing (Successive) Offence .....                                       | 214 |
| D. Offence of Omission .....                                                   | 214 |
| § 6. APPLICATION IN RESPECT OF PLACE .....                                     | 215 |
| § 7. APPLICATION IN RESPECT OF PERSONS .....                                   | 216 |
| I. THE MEANING OF APPLICATION IN RESPECT OF PERSONS .....                      | 216 |
| II. EXCEPTIONS ARISING FROM DOMESTIC LAW .....                                 | 217 |
| A. Non-liability of the President of the Republic .....                        | 217 |
| B. Parliamentary Immunity .....                                                | 220 |
| 1. Parliamentary Non-liability .....                                           | 221 |
| 2. Parliamentary Inviolability .....                                           | 224 |
| a. In General .....                                                            | 224 |
| b. Exceptional Cases in which Parliamentary Inviolability Does Not Apply ..... | 227 |
| III. EXCEPTIONS ARISING FROM INTERNATIONAL LAW .....                           | 232 |
| A. Diplomatic Immunity .....                                                   | 232 |
| 1. In General .....                                                            | 232 |
| 2. Legal Nature and Consequences of Diplomatic Immunity .....                  | 234 |
| 3. Legal Status of Consuls and Consulates .....                                | 235 |
| B. Immunity of Foreign Military Personnel .....                                | 236 |
| 1. In General .....                                                            | 236 |
| 2. Persons Entitled to Immunity .....                                          | 236 |
| 3. Scope of the Immunity .....                                                 | 236 |
| a. Exclusive Jurisdiction .....                                                | 237 |
| b. Primary Jurisdiction .....                                                  | 237 |

## CHAPTER FOUR

### HISTORICAL DEVELOPMENT OF CRIMINAL LAW

|                                                                                          |     |
|------------------------------------------------------------------------------------------|-----|
| § 8. INTRODUCTION TO THE HISTORY OF CRIMINAL LAW .....                                   | 239 |
| I. HISTORICAL FOUNDATIONS OF CRIMINAL LAW .....                                          | 239 |
| II. THE PERIOD OF PRIMITIVE CRIMINAL LAW .....                                           | 243 |
| A. In General .....                                                                      | 243 |
| B. The Offence in the Primitive Period .....                                             | 244 |
| C. Punishment in the Primitive Period .....                                              | 245 |
| 1. The Practice of Vengeance and Its Drawbacks .....                                     | 245 |
| 2. Limitations Imposed on the Practice of Vengeance .....                                | 246 |
| III. DEVELOPMENT OF CRIMINAL LAW IN EUROPEAN SOCIETIES .....                             | 248 |
| A. Ancient Greek Law .....                                                               | 249 |
| B. Roman Law .....                                                                       | 253 |
| C. Germanic Law .....                                                                    | 258 |
| D. Medieval (Canon–Church) Law .....                                                     | 260 |
| E. The Common Criminal Law .....                                                         | 261 |
| F. Criminal Law from the Age of Enlightenment to the Present .....                       | 265 |
| 1. In General .....                                                                      | 265 |
| 2. The Influence of Philosophical Movements on Criminal Law – The Classical School ..... | 267 |

|      |                                                                                               |     |
|------|-----------------------------------------------------------------------------------------------|-----|
| a.   | The Contractarians .....                                                                      | 267 |
| b.   | The Utilitarians .....                                                                        | 268 |
| c.   | The Justice Theorists .....                                                                   | 271 |
| d.   | The Mixed View – The Classical School .....                                                   | 272 |
| 3.   | Experiment and Observation in Criminal Law – The Positivist School .....                      | 274 |
| IV.  | DEVELOPMENT OF CRIMINAL LAW IN TURKISH SOCIETIES .....                                        | 278 |
| A.   | Criminal Law in Turkish Societies in the Pre-Republican Period .....                          | 278 |
| 1.   | Criminal Law among the Early Turks .....                                                      | 278 |
| 2.   | Criminal Law among the Turks after the Adoption of Islam .....                                | 279 |
| B.   | Criminal Law in Turkish Society in the Republican Period .....                                | 281 |
| 1.   | The Period of the Turkish Criminal Code No. 765 .....                                         | 281 |
| 2.   | The Period of the Turkish Criminal Code No. 5237 .....                                        | 282 |
| § 9. | CONTEMPORARY CRIMINAL LAW .....                                                               | 284 |
| I.   | CRIMINAL LAW IN THE TWENTIETH CENTURY .....                                                   | 284 |
| A.   | Modern Criminal Law – The Synthesis of the Classical and Positivist Schools .....             | 284 |
| B.   | Criminal Law on the Pendulum between Liberal and Authoritarian Regimes .....                  | 286 |
| II.  | CRIMINAL LAW IN THE TWENTY-FIRST CENTURY .....                                                | 289 |
| A.   | Preventive Criminal Law in the Fight against Crime and the Theory of Enemy Criminal Law ..... | 291 |
| B.   | New Types and Fields of Criminality in the Digital World .....                                | 297 |

## BOOK TWO

### THEORY OF THE OFFENCE

#### CHAPTER ONE

#### FOUNDATIONS OF THE THEORY OF THE OFFENCE

|       |                                                                                 |     |
|-------|---------------------------------------------------------------------------------|-----|
| § 10. | INTRODUCTION TO THE THEORY OF THE OFFENCE .....                                 | 301 |
| I.    | THE METHOD OF ANALYSIS OF THE THEORY OF THE OFFENCE .....                       | 301 |
| II.   | THE TASK OF THE THEORY OF THE OFFENCE .....                                     | 304 |
| III.  | HISTORICAL DEVELOPMENT OF THE THEORY OF THE OFFENCE .....                       | 307 |
| A.    | Period I (The Classical Theory of the Offence) .....                            | 308 |
| B.    | Period II (The Neoclassical Theory of the Offence) .....                        | 309 |
| C.    | Period III (The Finalist Theory of the Offence) .....                           | 310 |
| D.    | The Eclectic Theory of the Offence Prevailing Today .....                       | 312 |
| E.    | The Functionalist Theory of the Offence .....                                   | 313 |
| IV.   | THE CONCEPT OF THE OFFENCE AND THE ELEMENTS OF THE OFFENCE .....                | 313 |
| V.    | NON-COMPLIANCE WITH NORMS OF CONDUCT: WRONGDOING .....                          | 316 |
| A.    | Content of the Concept of Wrongdoing and Its Difference from Unlawfulness ..... | 316 |
| B.    | Wrongdoing Inherent in the Act .....                                            | 321 |
| C.    | Wrongdoing Inherent in the Result .....                                         | 326 |
| D.    | Assessment and Our View .....                                                   | 329 |
| § 11. | THEORIES EXPLAINING THE STRUCTURE OF THE OFFENCE .....                          | 334 |
| I.    | IN GENERAL .....                                                                | 334 |
| II.   | THE CLASSICAL THEORY OF THE OFFENCE .....                                       | 336 |
| III.  | THE NEOCLASSICAL THEORY OF THE OFFENCE .....                                    | 339 |
| IV.   | THE PURPOSIVE (FINAL, FINALIST) THEORY OF THE OFFENCE .....                     | 341 |
| V.    | THE TELEOLOGICAL THEORY OF THE OFFENCE .....                                    | 344 |

|                                                                                              |     |
|----------------------------------------------------------------------------------------------|-----|
| VI. THE THEORY OF THE NEGATIVE ELEMENTS OF THE OFFENCE (HOLISTIC THEORY OF WRONGDOING) ..... | 346 |
|----------------------------------------------------------------------------------------------|-----|

## CHAPTER TWO

### CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE (TATBESTANDSMÄSSIGKEIT)

#### SUB-CHAPTER ONE

##### CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE IN GENERAL

|                                                                                                                  |     |
|------------------------------------------------------------------------------------------------------------------|-----|
| § 12. THE CONCEPT, FUNCTION AND CHARACTERISTICS OF CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE ..... | 349 |
| I. THE CONCEPT OF CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE .....                                  | 349 |
| II. DEFINITION AND TASK OF CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE .....                         | 350 |
| III. THE STATUTORY DEFINITION AS THE ABSTRACT DESCRIPTION OF THE OFFENCE .....                                   | 351 |
| A. The Statutory Definition of the Offence in the Broad Sense .....                                              | 352 |
| B. The Statutory Definition of the Offence in the Narrow Sense .....                                             | 352 |
| C. Functions of the Statutory Definition of the Offence .....                                                    | 352 |
| 1. Limiting Function .....                                                                                       | 353 |
| 2. Distinguishing Function .....                                                                                 | 354 |
| 3. Warning Function .....                                                                                        | 354 |
| 4. Educational Function .....                                                                                    | 354 |
| 5. Presumption Function .....                                                                                    | 355 |
| IV. STRUCTURE OF THE STATUTORY DEFINITION OF THE OFFENCE .....                                                   | 355 |
| A. Elements Constituting the Statutory Definition of the Offence .....                                           | 355 |
| B. Classification of the Elements Constituting the Statutory Definition of the Offence .....                     | 357 |
| 1. Written and Unwritten Elements .....                                                                          | 357 |
| 2. Descriptive and Evaluative Elements .....                                                                     | 358 |
| 3. Structural and Qualifying Elements of the Offence .....                                                       | 360 |
| 4. Material and Mental Elements .....                                                                            | 361 |
| V. RELATIONSHIP BETWEEN CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE AND UNLAWFULNESS .....           | 362 |
| VI. RELATIONSHIP BETWEEN CONFORMITY WITH THE STATUTORY DEFINITION OF THE OFFENCE AND CULPABILITY .....           | 363 |

#### SUB-CHAPTER TWO

##### MATERIAL (OBJECTIVE) ELEMENTS OF THE OFFENCE

|                                                                                                                                  |     |
|----------------------------------------------------------------------------------------------------------------------------------|-----|
| § 13. THE ACT .....                                                                                                              | 366 |
| I. CONTENT OF THE ACT .....                                                                                                      | 366 |
| II. THEORIES EXPLAINING THE ACT .....                                                                                            | 369 |
| A. Ontological (Natural) Theories of the Act .....                                                                               | 372 |
| 1. The Causal Theory of the Act .....                                                                                            | 374 |
| 2. The Purposive (Final) Theory of the Act .....                                                                                 | 378 |
| 3. The Social Theory of the Act .....                                                                                            | 390 |
| 4. The Individual (Personal) Theory of the Act .....                                                                             | 397 |
| B. The Normativist Theory of the Act .....                                                                                       | 400 |
| C. Our View on the Theories of the Act .....                                                                                     | 402 |
| 1. Comparison of the Theories and Our View .....                                                                                 | 402 |
| 2. The Impact of Current Scientific Developments on the Theory of the Act and the Origin and Meaning of Purpose in the Act ..... | 405 |
| 3. Consequences of the Theories We Adopt .....                                                                                   | 411 |
| III. FUNCTIONS OF THE ACT .....                                                                                                  | 413 |

|       |                                                                                                                                                                    |     |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| A.    | Classifying Function .....                                                                                                                                         | 413 |
| B.    | Defining Function .....                                                                                                                                            | 414 |
| C.    | Linking Function .....                                                                                                                                             | 414 |
| D.    | Delimiting Function .....                                                                                                                                          | 414 |
| 1.    | The Distinction between Capacity to Act and Capacity for Culpability .....                                                                                         | 417 |
| 2.    | Acts Performed under the Influence of Absolute Force .....                                                                                                         | 418 |
| 3.    | Acts Performed under the Influence of Force Majeure .....                                                                                                          | 419 |
| 4.    | Acts Performed under the Influence of Coercive Force .....                                                                                                         | 419 |
| 5.    | Reflex, Spontaneous, Affective and Semi-automatic Acts .....                                                                                                       | 420 |
| a.    | The Reflex Act .....                                                                                                                                               | 420 |
| b.    | The Spontaneous Act .....                                                                                                                                          | 421 |
| c.    | The Affective Act .....                                                                                                                                            | 422 |
| d.    | The Semi-automatic Act .....                                                                                                                                       | 422 |
| 6.    | Acts of Animals .....                                                                                                                                              | 423 |
| 7.    | Acts Performed in a State of Loss / Absence of Consciousness .....                                                                                                 | 423 |
| 8.    | Assessment and Our View .....                                                                                                                                      | 424 |
| IV.   | OFFENCES ACCORDING TO THE NATURE OF THE ACT .....                                                                                                                  | 425 |
| A.    | Single-Act and Multiple-Act Offences .....                                                                                                                         | 425 |
| 1.    | Single-Act Offences .....                                                                                                                                          | 425 |
| 2.    | Multiple-Act Offences .....                                                                                                                                        | 425 |
| a.    | Offences with Combined Acts .....                                                                                                                                  | 425 |
| b.    | Offences with Divisible Acts .....                                                                                                                                 | 426 |
| c.    | Offences with Alternative Acts .....                                                                                                                               | 428 |
| B.    | Offences with Unspecified and Specified Acts .....                                                                                                                 | 428 |
| C.    | Offences with Instantaneous and Uninterrupted (Permanent) Acts .....                                                                                               | 429 |
| 1.    | In General .....                                                                                                                                                   | 429 |
| 2.    | The Persisting Element in Permanent Offences and the Definition of the Permanent Offence .....                                                                     | 431 |
| 3.    | Manner of Commission and Conditions of Existence of Permanent Offences .....                                                                                       | 432 |
| 4.    | Consequences Attached to Permanent Offences and Special Cases .....                                                                                                | 433 |
| D.    | Offences of Commission and Offences of Omission .....                                                                                                              | 434 |
| § 14. | THE RESULT .....                                                                                                                                                   | 436 |
| I.    | THE RESULT AS AN INDEPENDENT ELEMENT OF THE OFFENCE .....                                                                                                          | 436 |
| II.   | FUNCTIONS OF THE RESULT .....                                                                                                                                      | 437 |
| III.  | DISTINCTION AND CLASSIFICATION OF OFFENCES ACCORDING TO THE RESULT .....                                                                                           | 439 |
| A.    | The Distinction between Mere Conduct Offences and Result Offences .....                                                                                            | 439 |
| B.    | The Distinction between Offences of Harm and Offences of Endangerment .....                                                                                        | 440 |
| 1.    | The Concepts of Offence of Harm and Offence of Endangerment .....                                                                                                  | 440 |
| 2.    | Classification of Offences of Endangerment among Themselves: The Distinction between Offences of Abstract Endangerment and Offences of Concrete Endangerment ..... | 441 |
| 3.    | Offences of Undertaking (Attempt) .....                                                                                                                            | 445 |
| § 15. | THE CAUSAL LINK .....                                                                                                                                              | 448 |
| I.    | IN GENERAL .....                                                                                                                                                   | 448 |
| II.   | THEORIES EXPLAINING THE CAUSAL LINK .....                                                                                                                          | 451 |
| A.    | The Condition Theory (Theory of the Equivalence of Conditions) .....                                                                                               | 452 |
| 1.    | Application of the Condition Theory by Means of the "But For" (Condictio Sine Qua Non) Formula .....                                                               | 452 |

|       |                                                                                                                            |     |
|-------|----------------------------------------------------------------------------------------------------------------------------|-----|
| 2.    | Scientific Rigour in the Application of the Condition Theory: The Formula of the Condition in Conformity with Natural Laws | 456 |
| B.    | Theories Developed to Limit the Condition Theory                                                                           | 459 |
| 1.    | The Theory of Adequate Cause                                                                                               | 460 |
| 2.    | The Theory of Legal Significance (Relevance): Limiting the Condition Theory by Conformity with the Statutory Definition    | 463 |
| 3.    | The Theory of Efficient Cause                                                                                              | 465 |
| III.  | PROBLEMS OF CAUSATION                                                                                                      | 466 |
| A.    | Alternative (Double) Causation                                                                                             | 466 |
| B.    | Cumulative (Accumulating) Causation                                                                                        | 468 |
| C.    | Overtaking Causation                                                                                                       | 470 |
| D.    | Assumed (Hypothetical) Causation                                                                                           | 471 |
| E.    | A Special Form of Alternative Causation: The Liability of Members for Decisions Taken by Collegiate Bodies                 | 473 |
| § 16. | OBJECTIVE ATTRIBUTION                                                                                                      | 475 |
| I.    | IN GENERAL                                                                                                                 | 475 |
| A.    | The Concept of Attribution                                                                                                 | 475 |
| B.    | The Function of the Doctrine of Objective Attribution                                                                      | 477 |
| C.    | The Framework of the Doctrine of Objective Attribution                                                                     | 478 |
| II.   | CASES EXCLUDING OBJECTIVE ATTRIBUTION                                                                                      | 482 |
| A.    | Cases in which No Legally Prohibited (Blameworthy) Risk Is Created                                                         | 482 |
| 1.    | Permitted Risk                                                                                                             | 484 |
| 2.    | Increasing a Risk to a Legally Insignificant Extent                                                                        | 489 |
| 3.    | Reduction of the Risk                                                                                                      | 492 |
| B.    | Cases in which the Result Does Not Arise from the Risk Created and the Perpetrator's Control Has Ceased                    | 494 |
| 1.    | Cases in which the Result Occurs owing to an Atypical Causal Course (a Natural Event, Chance)                              | 496 |
| 2.    | Cases in which the Result Occurs owing to the Victim's Act (Assumption by the Victim)                                      | 498 |
| 3.    | Cases in which the Result Occurs owing to the Act of a Third Party (Assumption by the Third Party)                         | 503 |
| a.    | The Theory of the Adequate Attribution Relationship                                                                        | 505 |
| b.    | The Theory of the Interruption of the Attribution Relationship                                                             | 506 |
| c.    | The Theory of Limited Responsibility (die Theorie der begrenzten Verantwortungsbereiche)                                   | 506 |
| C.    | Cases Falling Outside the Protective Purpose (Scope) of the Norm                                                           | 509 |
| 1.    | Existence of a Duty Relating to the Perpetrator's Own Protection                                                           | 509 |
| 2.    | The Result Would Have Occurred in the Same Way Even If the Perpetrator Had Acted with Due Care                             | 511 |
| D.    | Special Situations Excluding Objective Attribution                                                                         | 513 |
| 1.    | Cases in which a Nexus with the Breach of Duty Is Required (Cases of Assumed Causation under Lawful Conduct)               | 513 |
| 2.    | The Principle of Reliance                                                                                                  | 514 |
| III.  | CRIMINAL-LAW CONSEQUENCES ATTACHED TO THE EXCLUSION OF OBJECTIVE ATTRIBUTION                                               | 516 |
| IV.   | OUR VIEW AND OPINION                                                                                                       | 518 |
| § 17. | THE PERPETRATOR                                                                                                            | 520 |
| I.    | THE PERPETRATOR AS THE PERSON COMMITTING THE OFFENCE                                                                       | 520 |
| II.   | SPECIAL (STATUS) OFFENCE                                                                                                   | 521 |

|                                                                                                            |                                                                                                           |     |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|-----|
| A.                                                                                                         | Genuine Special Offence .....                                                                             | 521 |
| B.                                                                                                         | Apparent Special Offence .....                                                                            | 522 |
| C.                                                                                                         | Offence that Can Be Committed Only by the Perpetrator in Person .....                                     | 523 |
| III.                                                                                                       | THE QUESTION WHETHER LEGAL PERSONS CAN BE PERPETRATORS OF AN OFFENCE .....                                | 524 |
| A.                                                                                                         | Theories Explaining the Basis of the Criminal Liability of Legal Persons .....                            | 525 |
| 1.                                                                                                         | The Fiction Theory .....                                                                                  | 525 |
| 2.                                                                                                         | The Reality Theory .....                                                                                  | 526 |
| B.                                                                                                         | Assessment of the Criminal Liability of Legal Persons with regard to General Principles .....             | 526 |
| 1.                                                                                                         | Liability of Legal Persons from the Standpoint of the Principle of the Personal Nature of Penalties ..... | 527 |
| 2.                                                                                                         | Criminal Liability of Legal Persons from the Standpoint of the Principle of Culpability .....             | 528 |
| 3.                                                                                                         | Criminal Liability of Legal Persons from the Standpoint of the Theory of the Act .....                    | 528 |
| C.                                                                                                         | Assessment and Our View .....                                                                             | 529 |
| § 18.                                                                                                      | THE VICTIM .....                                                                                          | 533 |
| I.                                                                                                         | THE CONCEPT OF THE VICTIM .....                                                                           | 533 |
| A.                                                                                                         | In General .....                                                                                          | 533 |
| B.                                                                                                         | The Distinction between the Victim and the Person Harmed by the Offence .....                             | 534 |
| II.                                                                                                        | OFFENCES WITHOUT A SPECIFIC VICTIM .....                                                                  | 534 |
| § 19.                                                                                                      | THE OBJECT OF THE OFFENCE .....                                                                           | 537 |
| § 20.                                                                                                      | QUALIFYING ELEMENTS OF THE OFFENCE .....                                                                  | 540 |
| I.                                                                                                         | THE CONCEPT OF THE QUALIFYING ELEMENT .....                                                               | 540 |
| II.                                                                                                        | TYPES OF QUALIFYING ELEMENTS .....                                                                        | 541 |
| A.                                                                                                         | Objective Qualifying Elements .....                                                                       | 541 |
| 1.                                                                                                         | Qualifying Elements Relating to the Act .....                                                             | 541 |
| a.                                                                                                         | Qualifying Elements Based on the Manner in which the Act Is Committed .....                               | 541 |
| b.                                                                                                         | Qualifying Elements Based on the Place and Time at which the Act Is Committed .....                       | 543 |
| 2.                                                                                                         | Qualifying Elements Relating to the Status of the Perpetrator or the Victim .....                         | 543 |
| a.                                                                                                         | Qualifying Elements Based on the Perpetrator .....                                                        | 543 |
| b.                                                                                                         | Qualifying Elements Based on the Victim .....                                                             | 543 |
| c.                                                                                                         | Qualifying Elements Based on the Relationship between the Perpetrator and the Victim .....                | 544 |
| 3.                                                                                                         | Qualifying Elements Relating to the Object of the Offence .....                                           | 544 |
| B.                                                                                                         | Subjective Qualifying Elements .....                                                                      | 545 |
| <div> <div>SUB-CHAPTER THREE</div> <div>MENTAL (COGNITIVE/SUBJECTIVE) ELEMENTS OF THE OFFENCE</div> </div> |                                                                                                           |     |
| § 21.                                                                                                      | THE CONCEPT OF THE MENTAL ELEMENT AND ITS PLACE WITHIN THE THEORY OF THE OFFENCE .....                    | 546 |
| § 22.                                                                                                      | INTENT .....                                                                                              | 552 |
| I.                                                                                                         | SCOPE AND ELEMENTS OF INTENT .....                                                                        | 552 |
| A.                                                                                                         | The Concept and Elements of Intent in General .....                                                       | 552 |
| B.                                                                                                         | The Question of What the Knowledge Required for Intent Must Cover .....                                   | 554 |
| II.                                                                                                        | THEORIES EXPLAINING INTENT .....                                                                          | 558 |
| A.                                                                                                         | The Theory of Representation .....                                                                        | 558 |
| B.                                                                                                         | The Theory of Will .....                                                                                  | 560 |
| C.                                                                                                         | The Mixed Theory: The Theory of Awareness and Will .....                                                  | 562 |
| D.                                                                                                         | Assessment and Our View .....                                                                             | 563 |
| III.                                                                                                       | THE ELEMENT OF PURPOSE – MOTIVE .....                                                                     | 565 |

|                                                                                        |     |
|----------------------------------------------------------------------------------------|-----|
| IV. TYPES OF INTENT .....                                                              | 568 |
| A. Direct Intent .....                                                                 | 568 |
| B. Conditional (Indeterminate) Intent .....                                            | 572 |
| 1. Theories of Representation: The Possibility Theory and the Probability Theory ..... | 574 |
| 2. Theories of Will: The Indifference Theory and the Acceptance Theory .....           | 575 |
| 3. Assessment and Our View .....                                                       | 576 |
| 4. Special Situations in Conditional Intent .....                                      | 577 |
| 5. The Problem of Attempt in Conditional Intent .....                                  | 580 |
| V. SPECIAL MANIFESTATIONS OF INTENT .....                                              | 583 |
| A. Sudden Intent–Premeditated Intent .....                                             | 583 |
| B. Occurrence of the Delayed Result (Dolus Generalis / Weber’s Intent) .....           | 587 |
| 1. The Completion View .....                                                           | 589 |
| a. The Act View .....                                                                  | 589 |
| b. The Causation View .....                                                            | 590 |
| 2. The Attempt View .....                                                              | 590 |
| 3. The Adequacy View .....                                                             | 590 |
| 4. The View Based on the Realisation of the Perpetrator’s Plan .....                   | 592 |
| 5. Our View .....                                                                      | 593 |
| 6. Cases of Reverse Dolus Generalis .....                                              | 594 |
| C. Alternative Intent – Cumulative Intent .....                                        | 595 |
| VI. THE TIME AT WHICH INTENT MUST EXIST .....                                          | 598 |

### CHAPTER THREE UNLAWFULNESS

#### SUB-CHAPTER ONE THE ELEMENT OF UNLAWFULNESS

|                                                                                                                |     |
|----------------------------------------------------------------------------------------------------------------|-----|
| § 23. THE CONCEPT OF UNLAWFULNESS AND THE FUNCTION OF ITS EXPRESS MENTION IN CERTAIN OFFENCE DEFINITIONS ..... | 603 |
| I. THE CONCEPT OF UNLAWFULNESS .....                                                                           | 603 |
| A. Definition and the Distinction between Formal and Substantive Unlawfulness .....                            | 603 |
| B. The Relationship between Prohibitive Norm and Permissive Norm .....                                         | 605 |
| C. The Place of Unlawfulness in the Structure of the Offence .....                                             | 607 |
| D. The Relationship between Unlawfulness and Culpability .....                                                 | 608 |
| E. Content of Unlawfulness .....                                                                               | 610 |
| F. Conformity with the Statutory Definition of the Offence Raises a Presumption of Unlawfulness .....          | 610 |
| G. Unlawfulness Is an Assessment Made from the Standpoint of the Entire Legal Order .....                      | 612 |
| H. The Relationship between Unlawfulness and Wrongdoing .....                                                  | 617 |
| II. THE FUNCTION OF THE EXPRESS MENTION OF UNLAWFULNESS IN CERTAIN OFFENCE DEFINITIONS .....                   | 618 |
| A. In General .....                                                                                            | 618 |
| B. The View of Special Unlawfulness .....                                                                      | 619 |
| C. The Doctrine of Elements Evaluating the Act as a Whole and the Solution Based on This Distinction .....     | 620 |
| D. The View Asserting that These Expressions Have No Function .....                                            | 622 |
| E. Assessment and Our View .....                                                                               | 622 |

#### SUB-CHAPTER TWO GROUNDS OF JUSTIFICATION

|                                                               |     |
|---------------------------------------------------------------|-----|
| § 24. GENERAL FRAMEWORK OF THE GROUNDS OF JUSTIFICATION ..... | 626 |
|---------------------------------------------------------------|-----|

|              |                                                                                                                                            |            |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------|------------|
| I.           | IN GENERAL .....                                                                                                                           | 626        |
| II.          | THE MENTAL (SUBJECTIVE) ELEMENT OF GROUNDS OF JUSTIFICATION: THE PERPETRATOR'S ACTING<br>IN THE KNOWLEDGE THAT THE CONDUCT IS LAWFUL ..... | 631        |
| <b>§ 25.</b> | <b>PERFORMANCE OF A DUTY .....</b>                                                                                                         | <b>637</b> |
| I.           | CARRYING OUT A PROVISION OF LAW .....                                                                                                      | 637        |
| II.          | CARRYING OUT A LAWFUL ORDER OF A SUPERIOR .....                                                                                            | 640        |
| <b>§ 26.</b> | <b>SELF-DEFENCE .....</b>                                                                                                                  | <b>643</b> |
| I.           | IN GENERAL .....                                                                                                                           | 643        |
| II.          | LEGAL NATURE OF SELF-DEFENCE .....                                                                                                         | 644        |
| III.         | CONDITIONS OF SELF-DEFENCE .....                                                                                                           | 649        |
| A.           | Conditions Relating to the Attack .....                                                                                                    | 649        |
| 1.           | There Must Be an Attack .....                                                                                                              | 649        |
| 2.           | The Attack Must Be Unlawful .....                                                                                                          | 653        |
| 3.           | The Attack Must Be Directed against a Right .....                                                                                          | 661        |
| 4.           | The Attack Must Be Present, or Its Occurrence or Repetition Must Be Certain .....                                                          | 664        |
| B.           | Conditions Relating to the Defence .....                                                                                                   | 669        |
| 1.           | The Defence Must Be Necessary .....                                                                                                        | 669        |
| 2.           | The Defence Must Be Directed against the Attack and the Attacker .....                                                                     | 671        |
| 3.           | Proportionality between the Defence and the Attack .....                                                                                   | 672        |
| IV.          | SELF-DEFENCE FOR THE BENEFIT OF A THIRD PARTY (ASSISTING DEFENCE) .....                                                                    | 680        |
| A.           | Self-Defence for the Benefit of Persons .....                                                                                              | 680        |
| B.           | Self-Defence for the Benefit of the State .....                                                                                            | 684        |
| C.           | Self-Defence for the Benefit of Animals .....                                                                                              | 686        |
| <b>§ 27.</b> | <b>EXERCISE OF A RIGHT .....</b>                                                                                                           | <b>688</b> |
| I.           | Immunity of the Defence .....                                                                                                              | 689        |
| II.          | Freedom of Expression .....                                                                                                                | 691        |
| A.           | The Concept .....                                                                                                                          | 691        |
| B.           | Content of Freedom of Expression .....                                                                                                     | 692        |
| C.           | Meaning and Application of Freedom of Expression .....                                                                                     | 693        |
| D.           | Exercise of Freedom of Expression .....                                                                                                    | 694        |
| E.           | Its Significance for Criminal Law .....                                                                                                    | 694        |
| <b>§ 28.</b> | <b>CONSENT OF THE PERSON CONCERNED .....</b>                                                                                               | <b>696</b> |
| I.           | IN GENERAL .....                                                                                                                           | 696        |
| II.          | LEGAL NATURE .....                                                                                                                         | 698        |
| III.         | CONDITIONS REQUIRED FOR CONSENT TO BE VALID .....                                                                                          | 699        |
| A.           | The Person Concerned Must Have the Right to Dispose Freely of the Matter .....                                                             | 699        |
| 1.           | Situations in which the Right of Disposal Exists and Does Not Exist .....                                                                  | 699        |
| 2.           | Euthanasia .....                                                                                                                           | 703        |
| B.           | The Person Concerned Must Have the Capacity to Consent .....                                                                               | 705        |
| C.           | The Form in which Consent Is Declared .....                                                                                                | 706        |
| IV.          | PRESUMED CONSENT .....                                                                                                                     | 707        |
| V.           | HYPOTHETICAL CONSENT .....                                                                                                                 | 708        |
| <b>§ 29.</b> | <b>CONFLICT OF DUTIES .....</b>                                                                                                            | <b>710</b> |

|                                                                                                                           |            |
|---------------------------------------------------------------------------------------------------------------------------|------------|
| <b>§ 30. THE PLACE OF CULPABILITY IN THE THEORY OF THE OFFENCE AND ITS ELEMENTS</b>                                       | <b>713</b> |
| I. THE BASIS OF CULPABILITY                                                                                               | 713        |
| A. The Concept: The Relationship between Fault and Culpability                                                            | 713        |
| B. A Value Judgement on the Blameworthiness of the Perpetrator                                                            | 715        |
| C. Secular Morality as the Basis of Blameworthiness                                                                       | 718        |
| D. The Relationship between Blameworthiness and Awareness of Wrongdoing                                                   | 723        |
| E. Awareness of Wrongdoing, the Concept of Cooperation and the Rule that Ignorance of the Law Is No Excuse                | 724        |
| II. THEORIES EXPLAINING CULPABILITY                                                                                       | 725        |
| A. General Framework                                                                                                      | 726        |
| B. The Psychological Theory of Culpability                                                                                | 727        |
| C. The Normative Theory of Culpability                                                                                    | 729        |
| D. The Finalist View                                                                                                      | 732        |
| E. The Soft Theory of Culpability                                                                                         | 734        |
| F. Comparison of the Intent, Culpability, Strict Culpability and Soft Culpability Theories and Their Effect on Punishment | 736        |
| G. Consequences of the Theories of Culpability for Offences of Omission and the Guarantor's Duty                          | 739        |
| III. ELEMENTS OF CULPABILITY                                                                                              | 745        |
| A. Capacity for Culpability                                                                                               | 745        |
| B. Awareness of Wrongdoing                                                                                                | 746        |
| C. Expectability                                                                                                          | 748        |
| <b>§ 31. GROUNDS AFFECTING CULPABILITY</b>                                                                                | <b>749</b> |
| I. THE PROBLEM OF TERMINOLOGY                                                                                             | 749        |
| II. GROUNDS AFFECTING CULPABILITY IN THE TURKISH CRIMINAL CODE (TCK)                                                      | 750        |
| III. THE PLACE OF THE CIRCUMSTANCES AFFECTING CULPABILITY IN THE SYSTEM OF THE OFFENCE AND THE ORDER OF EXAMINATION       | 751        |
| <br>                                                                                                                      |            |
| SUB-CHAPTER TWO                                                                                                           |            |
| GROUNDS EXCLUDING OR REDUCING CULPABILITY                                                                                 |            |
| <b>§ 32. MINORITY</b>                                                                                                     | <b>754</b> |
| I. IN GENERAL                                                                                                             | 754        |
| II. FIRST GROUP OF MINORITY: CHILDREN WHO HAVE NOT REACHED THE AGE OF 12                                                  | 755        |
| III. SECOND GROUP OF MINORITY: CHILDREN WHO HAVE REACHED THE AGE OF 12 BUT NOT THE AGE OF 15                              | 757        |
| IV. THIRD GROUP OF MINORITY: CHILDREN WHO HAVE REACHED THE AGE OF 15 BUT NOT THE AGE OF 18                                | 759        |
| <b>§ 33. MENTAL ILLNESS</b>                                                                                               | <b>762</b> |
| I. SYSTEMS DETERMINING THE EFFECT OF MENTAL ILLNESS ON THE CAPACITY FOR CULPABILITY                                       | 763        |
| A. The Biological System                                                                                                  | 763        |
| B. The Psychological System                                                                                               | 763        |
| C. The Mixed System                                                                                                       | 764        |
| II. THE EFFECT OF MENTAL ILLNESS ON CULPABILITY IN THE TCK                                                                | 764        |
| <b>§ 34. DEAFNESS AND MUTENESS</b>                                                                                        | <b>768</b> |
| <b>§ 35. TEMPORARY CAUSES, BEING UNDER THE INFLUENCE OF ALCOHOL OR NARCOTIC SUBSTANCES</b>                                | <b>770</b> |

|                              |                                                                                                                                                                        |            |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| I.                           | THE CONCEPT OF TEMPORARY CAUSE .....                                                                                                                                   | 770        |
| II.                          | ASSESSMENT OF SITUATIONS THAT MAY BE REGARDED AS TEMPORARY CAUSES .....                                                                                                | 771        |
| III.                         | THE DOCTRINE OF THE ACT FREE IN ITS CAUSE (ACTIONE LIBERA IN CAUSA) .....                                                                                              | 773        |
| IV.                          | VIEWS EXPLAINING THE DOCTRINE OF THE ACT FREE IN ITS CAUSE .....                                                                                                       | 774        |
| A.                           | The Theory of Bringing the Act Forward/The Theory of Prior Imputation .....                                                                                            | 774        |
| B.                           | Indirect Perpetration/The Instrument Theory .....                                                                                                                      | 775        |
| C.                           | The Exception Theory .....                                                                                                                                             | 777        |
| D.                           | Assessment and Our View .....                                                                                                                                          | 779        |
| V.                           | INTOXICATION THROUGH THE EFFECT OF ALCOHOL OR NARCOTICS TAKEN INVOLUNTARILY .....                                                                                      | 780        |
| VI.                          | INTOXICATION THROUGH THE EFFECT OF ALCOHOL OR NARCOTICS TAKEN VOLUNTARILY .....                                                                                        | 781        |
| VII.                         | THE EFFECT OF THE CAPACITY FOR CULPABILITY ON THE OFFENCE IN PERSONS ADDICTED TO ALCOHOL OR NARCOTIC SUBSTANCES .....                                                  | 782        |
| <b>§ 36.</b>                 | <b>UNJUST PROVOCATION .....</b>                                                                                                                                        | <b>783</b> |
| I.                           | LEGAL NATURE OF UNJUST PROVOCATION .....                                                                                                                               | 784        |
| II.                          | CONDITIONS OF UNJUST PROVOCATION .....                                                                                                                                 | 785        |
| A.                           | Existence of a Provoking Act .....                                                                                                                                     | 786        |
| B.                           | The Provoking Act Must Be Unjust .....                                                                                                                                 | 787        |
| C.                           | The Perpetrator Must Be in a State of Anger or Severe Distress on Account of the Unjust Provoking Act .....                                                            | 788        |
| D.                           | The Offence Must Have Been Committed under the Influence of Anger and Severe Distress .....                                                                            | 789        |
| E.                           | The Perpetrator's Act Must Be Directed against the Person Who Gave the Provocation .....                                                                               | 790        |
| III.                         | SPECIAL CASES OF UNJUST PROVOCATION .....                                                                                                                              | 792        |
| A.                           | Unjust Provocation and Self-defence .....                                                                                                                              | 793        |
| B.                           | Unjust Provocation and Premeditation .....                                                                                                                             | 793        |
| C.                           | Unjust Provocation and the Motives of Blood Feud and Custom .....                                                                                                      | 794        |
| IV.                          | THE CONSEQUENCE OF UNJUST PROVOCATION .....                                                                                                                            | 795        |
| <b>§ 37.</b>                 | <b>EXCEEDING THE LIMITS IN CASES EXCLUDING CRIMINAL RESPONSIBILITY (ART. 27(1)) .....</b>                                                                              | <b>796</b> |
| I.                           | EXCEEDING THE LIMITS OF GROUNDS OF JUSTIFICATION WITHOUT INTENT .....                                                                                                  | 796        |
| II.                          | THE DIFFERENCE BETWEEN EXCEEDING THE LIMITS OF GROUNDS OF JUSTIFICATION WITHOUT INTENT AND EXCEEDING THE LIMITS OF SELF-DEFENCE .....                                  | 798        |
| <br><b>SUB-CHAPTER THREE</b> |                                                                                                                                                                        |            |
| <b>GROUND OF EXCUSE</b>      |                                                                                                                                                                        |            |
| <b>§ 38.</b>                 | <b>THE CONCEPT OF THE GROUND OF EXCUSE AND ITS LEGAL NATURE .....</b>                                                                                                  | <b>800</b> |
| I.                           | THE CONCEPT OF THE GROUND OF EXCUSE AND ITS EMERGENCE .....                                                                                                            | 800        |
| II.                          | LEGAL NATURE .....                                                                                                                                                     | 802        |
| A.                           | How the Ground of Excuse Differs from Other Circumstances Affecting or Excluding Criminal Responsibility and the Need to Recognise It as an Independent Category ..... | 802        |
| B.                           | The Basis of the Ground of Excuse: Expectability .....                                                                                                                 | 804        |
| C.                           | The Place of the Ground of Excuse in Turkish Criminal Law Scholarship .....                                                                                            | 808        |
| <b>§ 39.</b>                 | <b>NECESSITY .....</b>                                                                                                                                                 | <b>810</b> |
| I.                           | IN GENERAL .....                                                                                                                                                       | 810        |
| II.                          | CONDITIONS OF NECESSITY .....                                                                                                                                          | 814        |
| A.                           | Conditions Relating to the Danger .....                                                                                                                                | 814        |
| 1.                           | Existence of a Serious Danger .....                                                                                                                                    | 814        |
| 2.                           | Existence of a Present and Certain Danger .....                                                                                                                        | 815        |
| 3.                           | The Danger Must Be Directed against a Right of the Person Concerned or of Another .....                                                                                | 816        |
| B.                           | Conditions Relating to the Protective Conduct .....                                                                                                                    | 816        |

|       |                                                                                    |     |
|-------|------------------------------------------------------------------------------------|-----|
| 1.    | Impossibility of Averting the Danger by Other Means .....                          | 817 |
| 2.    | Proportionality between the Protective Conduct and the Gravity of the Danger ..... | 818 |
| C.    | The Will to Rescue (Subjective Element) .....                                      | 819 |
| D.    | Circumstances Affecting Expectability .....                                        | 819 |
| 1.    | The Danger Must Not Have Been Knowingly and Personally Caused .....                | 820 |
| 2.    | Absence of a Special Legal Relationship Requiring the Danger to Be Faced .....     | 821 |
| III.  | DIFFERENCES BETWEEN NECESSITY AND SELF-DEFENCE .....                               | 822 |
| § 40. | EXECUTION OF AN UNLAWFUL BUT BINDING ORDER .....                                   | 824 |
| I.    | IN GENERAL .....                                                                   | 824 |
| II.   | CRITIQUE OF THE PROVISIONS ON SUPERIOR ORDERS .....                                | 826 |
| § 41. | EXCEEDING THE LIMITS OF SELF-DEFENCE (ART. 27(2)) .....                            | 830 |
| I.    | IN GENERAL .....                                                                   | 830 |
| II.   | LEGAL NATURE .....                                                                 | 830 |
| III.  | CASES IN WHICH THE LIMIT IS EXCEEDED .....                                         | 832 |
| IV.   | DISTINCTION FROM UNJUST PROVOCATION .....                                          | 835 |
| V.    | DISTINCTION FROM MISTAKE .....                                                     | 836 |
| § 42. | IMPAIRMENT OF THE PERPETRATOR'S CAPACITY OF WILL BY FORCE AND THREAT .....         | 838 |

## CHAPTER FIVE MISTAKE (ERROR)

|       |                                                                                                                             |     |
|-------|-----------------------------------------------------------------------------------------------------------------------------|-----|
| § 43. | THE MEANING AND TYPES OF MISTAKE .....                                                                                      | 841 |
| I.    | IN GENERAL .....                                                                                                            | 841 |
| II.   | MISTAKES EXCLUDING INTENT .....                                                                                             | 843 |
| A.    | Mistake as to the Material Elements of the Statutory Definition of the Offence .....                                        | 845 |
| 1.    | Equivalent and Non-equivalent Mistakes .....                                                                                | 848 |
| 2.    | Mistake in respect of Offences with Alternative Acts .....                                                                  | 851 |
| 3.    | Reverse Mistake as to an Element, Double Reverse Mistake and the Offence Incapable of Commission (Impossible Attempt) ..... | 852 |
| B.    | Mistake as to the Qualifying Elements of the Offence .....                                                                  | 854 |
| C.    | Mistake as to the Factual Conditions of Grounds of Justification .....                                                      | 855 |
| III.  | MISTAKE AS TO GROUNDS AFFECTING CULPABILITY .....                                                                           | 859 |
| A.    | Mistake as to the Factual Elements of Grounds Excluding or Reducing Culpability .....                                       | 859 |
| B.    | Mistake as to Wrongfulness (Mistake of Prohibition) .....                                                                   | 861 |
| 1.    | In General .....                                                                                                            | 861 |
| 2.    | The Concept of Awareness of Wrongfulness and Its Relationship with Mistake as to Wrongfulness .....                         | 862 |
| 3.    | Mistake as to the Existence of a Ground of Justification .....                                                              | 864 |
| 4.    | Consequences Attached to Mistake as to Wrongfulness .....                                                                   | 867 |
| IV.   | THE EFFECT OF MISTAKE ON THE OBJECTIVE CONDITIONS OF PUNISHABILITY .....                                                    | 868 |
| § 44. | DEVIATION FROM THE TARGET .....                                                                                             | 870 |

## CHAPTER SIX SPECIAL FORMS OF APPEARANCE OF THE OFFENCE

|       |                                      |     |
|-------|--------------------------------------|-----|
| § 45. | ACT BY OMISSION .....                | 875 |
| I.    | OFFENCES COMMITTED BY OMISSION ..... | 876 |
| A.    | Genuine Offence of Omission .....    | 876 |

|       |                                                                                                                  |     |
|-------|------------------------------------------------------------------------------------------------------------------|-----|
| B.    | Improper (Non-genuine) Offence of Omission .....                                                                 | 878 |
| 1.    | Concept, Legal Nature and Elements .....                                                                         | 878 |
| 2.    | Conditions for Treating the Conduct as Equivalent to Commission by a Positive Act .....                          | 879 |
| a.    | Duty to Prevent the Result (Guarantor Position) .....                                                            | 879 |
| b.    | Preventability of the Result (Hypothetical Causation) .....                                                      | 882 |
| c.    | Objective Attribution .....                                                                                      | 884 |
| d.    | Equivalence of the Omission to Commission by a Positive Act .....                                                | 886 |
| 3.    | Sources of the Duty to Prevent the Result .....                                                                  | 889 |
| a.    | Guarantor Status Arising from a Legal Provision .....                                                            | 889 |
| i.    | Duty Arising from Marriage and the Parental Relationship .....                                                   | 890 |
| ii.   | The Duty of Protection of the State (of Public Officials) .....                                                  | 892 |
| b.    | Guarantor Status Arising from Contract .....                                                                     | 894 |
| i.    | The Legal Basis of the Guarantor Position Arising from Contract .....                                            | 894 |
| ii.   | Formation of the Contract and the Theory of Trust .....                                                          | 895 |
| iii.  | The Requirement of Actual Assumption of the Duty .....                                                           | 896 |
| iv.   | Exceptions to the Requirement of Actual Assumption .....                                                         | 898 |
| v.    | Commencement and Termination of the Guarantor Position .....                                                     | 900 |
| vii.  | The Special Position of Health-care Professionals .....                                                          | 902 |
| c.    | Guarantor Status Arising from the Prior Creation of a Danger .....                                               | 904 |
| 4.    | The Statutory Basis of Improper Offences of Omission .....                                                       | 907 |
| 5.    | Is the List of Improper Offences of Omission Exhaustive? .....                                                   | 910 |
| 6.    | The Relationship between the Guarantor Position and the Aggravated (Qualified) Form in Art. 82(1)(e) .....       | 913 |
| II.   | CONFORMITY OF THE OFFENCE OF OMISSION WITH THE STATUTORY DEFINITION OF THE OFFENCE (TATBESTANDSMÄSSIGKEIT) ..... | 916 |
| A.    | The Danger of the Result Occurring and the Arising of the Duty to Act .....                                      | 916 |
| B.    | The Nature of the Act Expected of the Guarantor .....                                                            | 917 |
| C.    | Individual Capacity to Act .....                                                                                 | 918 |
| D.    | The Structure of the Statutory Definition of the Offence of Omission .....                                       | 919 |
| III.  | CAUSATION IN OMISSION .....                                                                                      | 919 |
| A.    | Causation in Genuine Offences of Omission .....                                                                  | 920 |
| B.    | The Problem of Causation in Improper Offences of Omission .....                                                  | 920 |
| C.    | The Inadequacy of the Condition Theory with regard to Omission .....                                             | 921 |
| D.    | Quasi-causation (Quasikausalität) .....                                                                          | 922 |
| E.    | Hypothetical Addition of the Alternative Conduct in Conformity with the Duty .....                               | 922 |
| F.    | The Court of Cassation's Quasi-causation Approach .....                                                          | 923 |
| G.    | The Relationship between Causation and Objective Attribution .....                                               | 924 |
| IV.   | ATTEMPT IN OFFENCES OF OMISSION .....                                                                            | 924 |
| A.    | Attempt in respect of Genuine and Improper Offences of Omission .....                                            | 924 |
| B.    | The Moment at Which the Attempt Begins in the Improper Offence of Omission .....                                 | 927 |
| 1.    | The Theory of the Last Possible Intervention .....                                                               | 928 |
| 2.    | The Theory of the First Possible Rescue Intervention .....                                                       | 928 |
| 3.    | The Theory of the Immediate Endangerment of the Legal Interest .....                                             | 929 |
| 4.    | Our View .....                                                                                                   | 930 |
| V.    | THE EFFECT OF OMISSIVE CONDUCT ON CRIMINAL POLICY AND THE THEORY OF SANCTIONS .....                              | 931 |
| § 46. | NEGLIGENCE .....                                                                                                 | 933 |
| I.    | NEGLIGENCE AS A CONCEPT .....                                                                                    | 933 |

|      |                                                                                                                                   |     |
|------|-----------------------------------------------------------------------------------------------------------------------------------|-----|
| A.   | The Relationship between Intent and Negligence .....                                                                              | 933 |
| B.   | The Place of Negligence in the Systematic Structure of the Offence .....                                                          | 934 |
| C.   | The Problem of a Statutory Definition of Negligence .....                                                                         | 935 |
| D.   | The Essence of Negligence: Breach of the Duty of Attention and Care .....                                                         | 935 |
| E.   | The Point of Reference of Negligence: The Result or All the Material Elements of the Offence? .....                               | 936 |
| II.  | VIEWS ON THE LEGAL STRUCTURE OF NEGLIGENCE AND THEIR CONSEQUENCES .....                                                           | 937 |
| A.   | The Negligent Offence as a Breach of a Twofold Duty of Care .....                                                                 | 937 |
| B.   | The Finalist Theory's Approach to Negligence .....                                                                                | 939 |
| C.   | The Negligent Offence as a Structure Composed of Wrongfulness and Culpability .....                                               | 940 |
| 1.   | The Classical (Causal) Theory .....                                                                                               | 943 |
| 2.   | The Neo-classical Theory .....                                                                                                    | 944 |
| 3.   | Modern Doctrine .....                                                                                                             | 944 |
| III. | THE SYSTEMATIC STRUCTURE AND ELEMENTS OF NEGLIGENT OFFENCES .....                                                                 | 947 |
| A.   | Act .....                                                                                                                         | 948 |
| B.   | Causing the Result .....                                                                                                          | 949 |
| C.   | Breach of the Objective Duty of Care .....                                                                                        | 951 |
| 1.   | Content and Standard of the Objective Duty of Care .....                                                                          | 951 |
| 2.   | Limitation of the Duty of Care .....                                                                                              | 953 |
| D.   | Objective Attributability of the Result .....                                                                                     | 955 |
| 1.   | Objective Foreseeability of the Result .....                                                                                      | 955 |
| 2.   | The Breach-of-Duty Nexus .....                                                                                                    | 956 |
| 3.   | The Protective Scope of the Norm .....                                                                                            | 958 |
| 4.   | Problems Arising in the Field of Objective Attribution .....                                                                      | 959 |
| a.   | Supervening Conduct of the Victim (Self-harm or Self-endangerment Not Entailing Responsibility) .....                             | 959 |
| b.   | Intervention of a Third Party Acting Intentionally or Culpably .....                                                              | 962 |
| c.   | The Addition of Another Person's Negligent Conduct to the Perpetrator's Negligent Conduct .....                                   | 965 |
| E.   | Culpability in the Negligent Offence .....                                                                                        | 966 |
| 1.   | Recognisability of the Objective Duty of Care and the Ability to Fulfil It .....                                                  | 967 |
| 2.   | Expectability of Compliance with the Duty of Care on the Part of the Perpetrator .....                                            | 968 |
| IV.  | TYPES OF NEGLIGENCE .....                                                                                                         | 969 |
| A.   | Simple Negligence .....                                                                                                           | 969 |
| B.   | Conscious Negligence .....                                                                                                        | 970 |
| V.   | UNJUST PROVOCATION AND NEGLIGENT OFFENCES .....                                                                                   | 972 |
| VI.  | PERSONAL GROUND OF EXEMPTION FROM PUNISHMENT AND PERSONAL GROUND REQUIRING A REDUCTION OF THE PENALTY IN NEGLIGENT OFFENCES ..... | 973 |
| VII. | BORDERLINE CASES: NEGLIGENT OFFENCES COMMITTED BY OMISSION .....                                                                  | 975 |
| A.   | Approaches Addressed at the Level of Conformity with the Statutory Definition of the Offence (Tatbestandsmäßigkeit) .....         | 977 |
| 1.   | The Focus of Blameworthiness as a Normative Approach .....                                                                        | 977 |
| 2.   | The Naturalistic-Ontological Approach .....                                                                                       | 979 |
| B.   | The Concurrence Solution .....                                                                                                    | 980 |
| C.   | The Inadequacy of These Views in Negligent Offences .....                                                                         | 980 |
| D.   | The Confusion of the Concepts of Negligence and Omission .....                                                                    | 981 |
| E.   | The Approach of the Court of Cassation .....                                                                                      | 983 |
| F.   | Similar Approaches in Legal Scholarship .....                                                                                     | 985 |
| G.   | Our View that Negligence and Omission Should Not Be Treated as Equal .....                                                        | 986 |

|              |                                                                                                             |             |
|--------------|-------------------------------------------------------------------------------------------------------------|-------------|
| H.           | The Need for an Express Provision within the General Provisions .....                                       | 988         |
| <b>§ 47.</b> | <b>COMBINATIONS OF INTENT AND NEGLIGENCE: THE OFFENCE AGGRAVATED BY ITS RESULT .....</b>                    | <b>991</b>  |
| I.           | THE STRUCTURE AND ELEMENTS OF THE OFFENCE AGGRAVATED BY ITS RESULT .....                                    | 993         |
| A.           | Objective Imputability of the Result .....                                                                  | 998         |
| B.           | Subjective Imputability of the Result .....                                                                 | 999         |
| II.          | PROBLEMS ARISING IN THE OFFENCE AGGRAVATED BY ITS RESULT .....                                              | 1001        |
| A.           | The Problem of Attempt in the Offence Aggravated by Its Result .....                                        | 1001        |
| 1.           | The Perpetrator Attempts the Basic Offence but Negligently Causes the Specific Result .....                 | 1002        |
| 2.           | The Perpetrator Attempts the Aggravated Result .....                                                        | 1005        |
| 3.           | The Basic Offence Remains at the Stage of Attempt and the Form Aggravated by the Result Is Absent .....     | 1006        |
| B.           | The Problem of Participation in Offences Aggravated by Their Result .....                                   | 1006        |
| <b>§ 48.</b> | <b>ATTEMPT .....</b>                                                                                        | <b>1009</b> |
| I.           | IN GENERAL .....                                                                                            | 1009        |
| II.          | THEORIES ON THE REASON FOR PUNISHING ATTEMPT .....                                                          | 1010        |
| A.           | The Objective Theory .....                                                                                  | 1010        |
| B.           | The Subjective Theory .....                                                                                 | 1012        |
| C.           | The Impression Theory .....                                                                                 | 1012        |
| D.           | The Approach Adopted by the Turkish Criminal Code (TCK) .....                                               | 1013        |
| III.         | CONDITIONS OF ATTEMPT .....                                                                                 | 1014        |
| A.           | Preliminary Assessment: Non-completion of the Offence and Suitability of the Offence Type for Attempt ..... | 1015        |
| B.           | Existence of an Intentionally Committed Offence and of the Intent to Commit That Offence .....              | 1016        |
| C.           | Directly Beginning the Commission of the Offence by Suitable Acts .....                                     | 1018        |
| 1.           | Preparatory Acts and the Reason for Their Non-punishability .....                                           | 1018        |
| 2.           | The Suitable Act .....                                                                                      | 1021        |
| 3.           | The Putative (Imaginary) Offence .....                                                                      | 1025        |
| 4.           | Directly Beginning the Acts of Execution .....                                                              | 1026        |
| a.           | Objective Theories .....                                                                                    | 1027        |
| i.           | The Formal-Objective Theory .....                                                                           | 1027        |
| ii.          | The Material-Objective Theory .....                                                                         | 1028        |
| b.           | Subjective Theories .....                                                                                   | 1030        |
| c.           | Mixed Theories .....                                                                                        | 1031        |
| d.           | The Approach Adopted by the TCK .....                                                                       | 1032        |
| 5.           | The Concepts of Completed Attempt and Incomplete Attempt .....                                              | 1033        |
| 6.           | Attempt at More than One Offence .....                                                                      | 1035        |
| IV.          | SPECIAL CASES OF ATTEMPT .....                                                                              | 1035        |
| V.           | VOLUNTARY ABANDONMENT .....                                                                                 | 1036        |
| A.           | In General .....                                                                                            | 1036        |
| B.           | Theories Explaining Why the Perpetrator Is Not Punished in Voluntary Abandonment .....                      | 1037        |
| 1.           | The Criminal Policy Theory .....                                                                            | 1038        |
| 2.           | The Utility Theory (Pardon – Reward Theory) .....                                                           | 1039        |
| 3.           | The Purpose of Punishment Theory .....                                                                      | 1039        |
| 4.           | Legal Theories .....                                                                                        | 1040        |
| C.           | Elements of Voluntary Abandonment .....                                                                     | 1041        |
| 1.           | Non-completion of the Offence .....                                                                         | 1041        |
| 2.           | The Abandonment Must Be Willed and Voluntary .....                                                          | 1044        |

|                                  |                                                                                                                                                 |             |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 3.                               | The System Governing Voluntary Abandonment .....                                                                                                | 1046        |
| <b>§ 49. PARTICIPATION</b> ..... |                                                                                                                                                 | <b>1048</b> |
| I.                               | INTRODUCTION .....                                                                                                                              | 1048        |
| II.                              | THE LEGAL BASIS OF PARTICIPATION IN AN OFFENCE .....                                                                                            | 1049        |
| III.                             | SYSTEMS FOR DETERMINING RESPONSIBILITY IN PARTICIPATION IN AN OFFENCE .....                                                                     | 1051        |
| A.                               | The System of Equality (Unitary Perpetration) .....                                                                                             | 1051        |
| B.                               | The Dualist System .....                                                                                                                        | 1052        |
| C.                               | The System of Determining the Penalty according to the Perpetrator (Subjective System) .....                                                    | 1053        |
| D.                               | The System Adopted in the TCK for Participation in an Offence and for the Distinction<br>between Perpetration and Secondary Participation ..... | 1054        |
| IV.                              | CONDITIONS OF PARTICIPATION IN AN OFFENCE .....                                                                                                 | 1057        |
| A.                               | Plurality of Persons Taking Part in the Offence .....                                                                                           | 1057        |
| B.                               | Existence of More than One Act of Causal Significance .....                                                                                     | 1057        |
| C.                               | Existence of the Will to Participate in the Offence .....                                                                                       | 1058        |
| D.                               | The Requirement that the Offence in Whose Commission There Is Participation Must Have<br>Reached at Least the Stage of Attempt .....            | 1059        |
| V.                               | PERPETRATION .....                                                                                                                              | 1060        |
| A.                               | The Distinction between Single-perpetrator and Multiple-perpetrator Offences .....                                                              | 1060        |
| 1.                               | Single-perpetrator Offences .....                                                                                                               | 1060        |
| 2.                               | Multiple-perpetrator Offences .....                                                                                                             | 1061        |
| a.                               | Convergence Offences .....                                                                                                                      | 1062        |
| b.                               | Encounter Offences .....                                                                                                                        | 1062        |
| B.                               | Forms of Perpetration .....                                                                                                                     | 1062        |
| 1.                               | Independent (Direct) Perpetration .....                                                                                                         | 1063        |
| a.                               | Offences That Can Only Be Committed in Person .....                                                                                             | 1064        |
| b.                               | Special Offences .....                                                                                                                          | 1065        |
| c.                               | Duty Offences .....                                                                                                                             | 1066        |
| 2.                               | Co-perpetration .....                                                                                                                           | 1067        |
| a.                               | In General .....                                                                                                                                | 1067        |
| b.                               | Conditions of Co-perpetration .....                                                                                                             | 1068        |
| i.                               | Establishment of Joint Control over the Commission of the Offence .....                                                                         | 1068        |
| ii.                              | The Value of a Contribution to the Offence Made by Omission .....                                                                               | 1071        |
| aaa)                             | Co-perpetration by Omission .....                                                                                                               | 1071        |
| bbb)                             | Participation by Omission in an Act of Commission .....                                                                                         | 1073        |
| ccc)                             | Preparatory Acts Do Not Confer Joint Control .....                                                                                              | 1075        |
| iii.                             | The Joint Decision to Commit the Offence .....                                                                                                  | 1076        |
| 3.                               | Indirect Perpetration .....                                                                                                                     | 1081        |
| a.                               | In General .....                                                                                                                                | 1081        |
| b.                               | Forms of Indirect Perpetration .....                                                                                                            | 1084        |
| i.                               | Indirect Perpetration in the Form of Control over the Will through Coercion .....                                                               | 1084        |
| ii.                              | Indirect Perpetration in the Form of Using a Person Lacking Capacity for Culpability<br>as an Instrument .....                                  | 1087        |
| iii.                             | Indirect Perpetration by Inducing a Mistake in the Human Instrument or by<br>Exploiting That Person's Existing Mistake .....                    | 1088        |
| iv.                              | Indirect Perpetration by Omission .....                                                                                                         | 1091        |
| 4.                               | Parallel Perpetration .....                                                                                                                     | 1093        |
| VI.                              | SECONDARY PARTICIPATION .....                                                                                                                   | 1094        |
| A.                               | In General .....                                                                                                                                | 1094        |

|       |                                                                                                                                                                       |      |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| B.    | The Legal Basis for Punishing Secondary Participation .....                                                                                                           | 1095 |
| C.    | Types of Secondary Participation .....                                                                                                                                | 1096 |
| 1.    | Instigation .....                                                                                                                                                     | 1096 |
| a.    | In General .....                                                                                                                                                      | 1096 |
| b.    | Material Elements of Instigation .....                                                                                                                                | 1098 |
| i.    | The Object of Instigation .....                                                                                                                                       | 1098 |
| ii.   | The Requirement of at Least One Instigator and One Person Instigated .....                                                                                            | 1099 |
| iii.  | The Nature of the Act of Instigation .....                                                                                                                            | 1101 |
| iv.   | The Causal Link between the Acts of the Instigator and of the Person Instigated<br>and the Objective Attributability of the Resulting Outcome to the Instigator ..... | 1102 |
| v.    | The Person Instigated Must Have Begun the Commission of the Offence after the<br>Act of Instigation .....                                                             | 1103 |
| c.    | The Mental Element of Instigation: Intent to Instigate .....                                                                                                          | 1103 |
| d.    | Exceeding the Intent of the Person Instigated .....                                                                                                                   | 1104 |
| e.    | Failed (Unsuccessful) Instigation .....                                                                                                                               | 1106 |
| f.    | Qualified Forms Increasing or Reducing the Penalty in Instigation .....                                                                                               | 1107 |
| 2.    | Aiding .....                                                                                                                                                          | 1109 |
| a.    | In General .....                                                                                                                                                      | 1109 |
| b.    | Material Aiding .....                                                                                                                                                 | 1111 |
| i.    | Providing the Means Used in the Commission of the Offence .....                                                                                                       | 1111 |
| ii.   | Facilitating the Commission of the Offence by Rendering Assistance before or<br>during Its Commission .....                                                           | 1112 |
| c.    | Psychological Aiding .....                                                                                                                                            | 1112 |
| i.    | Encouraging the Commission of an Offence .....                                                                                                                        | 1112 |
| ii.   | Reinforcing the Decision to Commit an Offence .....                                                                                                                   | 1113 |
| iii.  | Promising to Render Assistance after the Commission of the Offence .....                                                                                              | 1113 |
| iv.   | Giving Guidance on How the Offence Is to Be Committed .....                                                                                                           | 1114 |
| VII.  | THE RULE OF ACCESSORINESS .....                                                                                                                                       | 1114 |
| A.    | In General .....                                                                                                                                                      | 1114 |
| B.    | Communication of Aggravated (Qualified) Forms in Offences Committed in Participation .....                                                                            | 1116 |
| C.    | Participation in Special Offences .....                                                                                                                               | 1118 |
| VIII. | SPECIAL CASES OF PARTICIPATION IN AN OFFENCE .....                                                                                                                    | 1119 |
| A.    | The Effect on Participation of the Offence Being Committed in an Organised Manner .....                                                                               | 1119 |
| B.    | Indirect Perpetration Based on Organisational Control .....                                                                                                           | 1120 |
| C.    | Attempt and Voluntary Abandonment in Participation in an Offence .....                                                                                                | 1122 |
| § 50. | CONCURRENCE (JOINDER) OF OFFENCES .....                                                                                                                               | 1125 |
| I.    | INTRODUCTION .....                                                                                                                                                    | 1125 |
| A.    | In General .....                                                                                                                                                      | 1125 |
| B.    | Term and Concept .....                                                                                                                                                | 1127 |
| C.    | The Subject Matter of the Concurrence of Offences .....                                                                                                               | 1128 |
| 1.    | The Rule: Real Concurrence (Cumulation of Penalties) .....                                                                                                            | 1128 |
| 2.    | The Exception: Concurrence (Joinder) of Offences .....                                                                                                                | 1128 |
| D.    | The Meaning of the Concept of Plurality of Offences .....                                                                                                             | 1129 |
| II.   | THE DISTINCTION BETWEEN UNITY AND PLURALITY OF ACTS .....                                                                                                             | 1130 |
| A.    | The Criterion to Be Applied in Distinguishing between Unity and Plurality of Acts .....                                                                               | 1130 |
| B.    | The Concept of the Natural Act .....                                                                                                                                  | 1131 |
| C.    | Unity of Act in the Legal Sense .....                                                                                                                                 | 1132 |

|      |                                                                                                         |      |
|------|---------------------------------------------------------------------------------------------------------|------|
| 1.   | Statutory (Normative) Unity of Act .....                                                                | 1132 |
| 2.   | Natural Unity of Acts .....                                                                             | 1133 |
| D.   | The Distinction between Unity and Plurality of Acts in Comparative Law .....                            | 1134 |
| III. | <b>NOTIONAL CONCURRENCE (IDEAL CONCURRENCE)</b> .....                                                   | 1135 |
| A.   | Definition and Legal Nature .....                                                                       | 1135 |
| B.   | Views Explaining the Imposition of a Single Penalty in Notional Concurrence .....                       | 1136 |
| 1.   | The View Based on Unity of Act .....                                                                    | 1137 |
| 2.   | The View Based on the Principle of Non Bis In Idem .....                                                | 1137 |
| 3.   | Our View .....                                                                                          | 1138 |
| C.   | Conditions of Notional Concurrence .....                                                                | 1139 |
| 1.   | Singleness of the Act .....                                                                             | 1139 |
| 2.   | The Single Act Giving Rise to More than One Offence – Types of Notional Concurrence .....               | 1141 |
| a.   | Notional Concurrence of the Same Kind (Homogeneous Ideal Concurrence) .....                             | 1142 |
| b.   | Notional Concurrence of Different Kinds (Heterogeneous Ideal Concurrence) .....                         | 1147 |
| 3.   | Fulfilment of the Conditions for Prosecution and Punishability in respect of Each Offence .....         | 1149 |
| D.   | Special Cases of Notional Concurrence .....                                                             | 1150 |
| E.   | Application of Notional Concurrence in Cases of Deviation from the Target .....                         | 1153 |
| F.   | Consequences of Notional Concurrence .....                                                              | 1155 |
| IV.  | <b>CONTINUING OFFENCE (SUCCESSIVE OFFENCE)</b> .....                                                    | 1156 |
| A.   | Definition and Legal Nature .....                                                                       | 1156 |
| B.   | Conditions of the Continuing Offence .....                                                              | 1158 |
| 1.   | Existence of More than One Act .....                                                                    | 1159 |
| 2.   | Commission of Each of the Acts at Different Times .....                                                 | 1162 |
| 3.   | The Acts Must Constitute the Same Offence .....                                                         | 1165 |
| 4.   | Identity of the Victim .....                                                                            | 1167 |
| 5.   | Commission of the Offences “in Execution of the Same Decision to Commit an Offence” .....               | 1171 |
| C.   | The Consequence of the Continuing Offence .....                                                         | 1173 |
| D.   | Cases in Which the Continuing Offence Cannot Be Applied .....                                           | 1174 |
| V.   | <b>APPARENT CONCURRENCE (JOINDER)</b> .....                                                             | 1176 |
| A.   | In General .....                                                                                        | 1176 |
| B.   | Principles and Types of Apparent Concurrence .....                                                      | 1177 |
| 1.   | The Principle of Priority of the Special Norm (Special Norm – General Norm Relationship) .....          | 1177 |
| 2.   | The Principle of Consumption of One Norm by Another (Consuming Norm – Consumed Norm Relationship) ..... | 1181 |
| a.   | In General .....                                                                                        | 1181 |
| b.   | Compound Offence .....                                                                                  | 1183 |
| i.   | In General .....                                                                                        | 1183 |
| ii.  | Combination of the Elements of Two Offences into an Independent Offence .....                           | 1185 |
| iii. | One Offence Being an Element or an Aggravated (Qualified) Form of Another .....                         | 1186 |
| iv.  | Attempt in Compound Offences .....                                                                      | 1190 |
| 3.   | The Principle of Subsidiarity of the Auxiliary Norm .....                                               | 1190 |
| a.   | In General .....                                                                                        | 1190 |
| b.   | Transitional Offence .....                                                                              | 1192 |
| c.   | Mixed Offence .....                                                                                     | 1194 |
| 4.   | Primary Norm – Auxiliary Norm Relationship .....                                                        | 1195 |

|                                                           |             |
|-----------------------------------------------------------|-------------|
| <b>§ 51. OTHER CONDITIONS OF PUNISHABILITY</b>            | <b>1197</b> |
| I. IN GENERAL                                             | 1197        |
| II. OBJECTIVE CONDITIONS OF PUNISHABILITY                 | 1198        |
| III. PERSONAL GROUNDS OF EXEMPTION FROM PUNISHMENT        | 1204        |
| IV. PERSONAL GROUNDS EXTINGUISHING OR REDUCING PUNISHMENT | 1206        |
| V. CONDITIONS FOR INVESTIGATION AND PROSECUTION           | 1208        |
| A. Complaint                                              | 1209        |
| B. Authorisation, Request and Decision                    | 1212        |

|                                                                                 |             |
|---------------------------------------------------------------------------------|-------------|
| <b>§ 52. THE PURPOSE OF PUNISHMENT AND THE TYPES OF PENALTIES</b>               | <b>1217</b> |
| I. THE CONCEPT OF PUNISHMENT, ITS HISTORY AND THE SOURCE OF THE POWER TO PUNISH | 1218        |
| A. The Concept of Sanction and the Dual-track System of Sanctions               | 1218        |
| B. "Punishment" as a Part of Criminal Law Theory                                | 1219        |
| C. The Historical Development of Punishment                                     | 1220        |
| D. The Source and Legitimacy of the Power to Punish                             | 1226        |
| 1. The Views and Their Classification                                           | 1226        |
| 2. The Debate on the Source of the Power to Punish                              | 1228        |
| II. THE PURPOSE OF PUNISHMENT                                                   | 1232        |
| A. Absolute Theories                                                            | 1233        |
| 1. The Theory of Expiation                                                      | 1235        |
| a. The Views It Advances                                                        | 1235        |
| b. Criticism of the Theory                                                      | 1237        |
| 2. The Theory of Justice                                                        | 1238        |
| a. Kant's Views                                                                 | 1238        |
| b. Hegel's Views                                                                | 1241        |
| c. Günther Jakobs's Views                                                       | 1244        |
| d. Criticism of the Theory                                                      | 1244        |
| B. Relative Theories                                                            | 1246        |
| 1. The Theory of General Prevention                                             | 1247        |
| a. The Views It Advances                                                        | 1247        |
| b. Criticism of the Theory                                                      | 1250        |
| 2. The Theory of Special Prevention                                             | 1251        |
| a. The Views It Advances                                                        | 1251        |
| b. Criticism of the Theory                                                      | 1252        |
| C. Mixed Theories                                                               | 1255        |
| 1. In General                                                                   | 1255        |
| 2. Andreas von Hirsch's Views                                                   | 1257        |
| 3. Claus Roxin's Views                                                          | 1257        |
| D. Our View and the System Adopted by the Turkish Criminal Code (TCK)           | 1258        |

|       |                                                                                                                                                                    |      |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| III.  | PRINCIPLES AND CHARACTERISTICS OF PUNISHMENT .....                                                                                                                 | 1259 |
| A.    | Principles of Punishment .....                                                                                                                                     | 1259 |
| 1.    | The Principle of Legality of Offences and Penalties .....                                                                                                          | 1259 |
| 2.    | The Principle of the Personal Nature of Penalties .....                                                                                                            | 1260 |
| 3.    | The Principle that the Penalty Must Be Proportionate to the Wrong .....                                                                                            | 1261 |
| 4.    | The Principle that the Penalty Must Be Proportionate to Culpability .....                                                                                          | 1263 |
| 5.    | The Principle of Compatibility with Human Dignity .....                                                                                                            | 1264 |
| B.    | Characteristics of the Penalty .....                                                                                                                               | 1267 |
| 1.    | Effectiveness .....                                                                                                                                                | 1267 |
| 2.    | Divisibility and Capacity for Individualisation .....                                                                                                              | 1268 |
| 3.    | Revocability and Rectifiability .....                                                                                                                              | 1268 |
| 4.    | Low Cost .....                                                                                                                                                     | 1269 |
| IV.   | TYPES OF PENALTIES .....                                                                                                                                           | 1270 |
| A.    | Penalties according to Their Legal Nature .....                                                                                                                    | 1270 |
| B.    | Penalties according to the Legal Interest .....                                                                                                                    | 1270 |
| C.    | Penalties under the TCK .....                                                                                                                                      | 1271 |
| § 53. | THE DEATH PENALTY .....                                                                                                                                            | 1272 |
| § 54. | IMPRISONMENT .....                                                                                                                                                 | 1274 |
| I.    | THE HISTORY OF IMPRISONMENT .....                                                                                                                                  | 1274 |
| II.   | METHODS OF EXECUTING SENTENCES OF IMPRISONMENT .....                                                                                                               | 1278 |
| A.    | Execution of Sentences in Congregate Confinement .....                                                                                                             | 1278 |
| B.    | The Cellular System .....                                                                                                                                          | 1279 |
| C.    | The Mixed System .....                                                                                                                                             | 1279 |
| D.    | The Progressive System .....                                                                                                                                       | 1280 |
| E.    | The Panopticon System .....                                                                                                                                        | 1281 |
| III.  | VIEWS ON IMPRISONMENT .....                                                                                                                                        | 1283 |
| A.    | Favourable Views .....                                                                                                                                             | 1283 |
| B.    | Unfavourable Views .....                                                                                                                                           | 1284 |
| IV.   | TYPES OF IMPRISONMENT .....                                                                                                                                        | 1285 |
| A.    | Aggravated Life Imprisonment .....                                                                                                                                 | 1285 |
| B.    | Life Imprisonment .....                                                                                                                                            | 1286 |
| 1.    | In General .....                                                                                                                                                   | 1286 |
| 2.    | Reintegration into Society and the Concept of the Right to Hope .....                                                                                              | 1287 |
| C.    | Fixed-term Imprisonment .....                                                                                                                                      | 1291 |
| D.    | Short-term Imprisonment and Alternative Sanctions to Short-term Imprisonment .....                                                                                 | 1292 |
| 1.    | Conditions for Conversion into Alternative Sanctions .....                                                                                                         | 1293 |
| a.    | Conditions for Conversion into Alternative Sanctions at the Discretion of the Judge .....                                                                          | 1294 |
| b.    | Mandatory Conversion into an Alternative Sanction and Its Conditions .....                                                                                         | 1295 |
| 2.    | The Alternative Sanctions Available for Conversion .....                                                                                                           | 1296 |
| a.    | Conversion into a Judicial Fine .....                                                                                                                              | 1296 |
| b.    | Conversion into Other Sanctions .....                                                                                                                              | 1296 |
| i.    | Full Reparation of the Damage Suffered by the Victim or the Public by Restitution in Kind, Restoration of the Situation Prior to the Offence or Compensation ..... | 1297 |
| ii.   | Attendance at an Educational Institution .....                                                                                                                     | 1298 |
| iii.  | Prohibition from Going to Certain Places or Engaging in Certain Activities .....                                                                                   | 1299 |
| iv.   | Withdrawal of Licences and Permits, Prohibition from Exercising a Certain Profession or Trade .....                                                                | 1299 |

|      |                                                                                                                                                                       |      |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| v.   | Employment on a Voluntary Basis in Work for the Public Benefit .....                                                                                                  | 1299 |
| V.   | INSTITUTIONS AIMED AT REMEDYING THE DRAWBACKS OF IMPRISONMENT .....                                                                                                   | 1300 |
| A.   | Institutions Preventing a Conviction .....                                                                                                                            | 1300 |
| 1.   | Prepayment .....                                                                                                                                                      | 1300 |
| 2.   | Victim–Offender Mediation .....                                                                                                                                       | 1303 |
| a.   | The Idea of Restorative Justice and Victim–Offender Mediation .....                                                                                                   | 1303 |
| b.   | Offences Subject to Victim–Offender Mediation and the Mediation Procedure .....                                                                                       | 1306 |
| 3.   | Postponement of the Institution of Public Prosecution .....                                                                                                           | 1308 |
| a.   | In General .....                                                                                                                                                      | 1308 |
| b.   | Conditions .....                                                                                                                                                      | 1309 |
| i.   | Attainment of Sufficient Suspicion Requiring the Institution of Public Prosecution .....                                                                              | 1309 |
| ii.  | The Offence under Investigation Must Be One of the Offences Specified by Law .....                                                                                    | 1309 |
| iii. | The Suspect Must Not Previously Have Been Sentenced to Imprisonment for an Intentional Offence .....                                                                  | 1311 |
| iv.  | The Investigation Must Give Rise to the Conviction that the Suspect Will Refrain from Committing Offences if the Institution of Public Prosecution Is Postponed ..... | 1311 |
| v.   | Being More Beneficial for the Suspect and for Society than the Institution of Public Prosecution .....                                                                | 1311 |
| vi.  | Reparation of the Damage Suffered by the Victim or the Public .....                                                                                                   | 1312 |
| c.   | The Decision, the Supervision Period and the Outcome .....                                                                                                            | 1312 |
| 4.   | Deferment of the Pronouncement of the Judgment .....                                                                                                                  | 1313 |
| a.   | In General .....                                                                                                                                                      | 1313 |
| b.   | Conditions .....                                                                                                                                                      | 1314 |
| i.   | Imposition of a Sentence of Imprisonment of Two Years or Less or of a Judicial Fine .....                                                                             | 1314 |
| ii.  | No Previous Conviction for an Intentional Offence .....                                                                                                               | 1315 |
| iii. | Satisfying the Court, through Personality Traits and through Attitude and Conduct at the Hearing, that No Further Offence Will Be Committed .....                     | 1315 |
| iv.  | Reparation of the Damage Suffered by the Victim or the Public .....                                                                                                   | 1316 |
| c.   | The Decision .....                                                                                                                                                    | 1316 |
| d.   | The Supervision Period, Setting Aside or Pronouncement of the Judgment .....                                                                                          | 1318 |
| B.   | Institutions Relating to the Execution of Imprisonment .....                                                                                                          | 1319 |
| 1.   | Suspension of the Sentence of Imprisonment .....                                                                                                                      | 1319 |
| a.   | In General .....                                                                                                                                                      | 1319 |
| b.   | Conditions .....                                                                                                                                                      | 1319 |
| i.   | The Sentence of Imprisonment Must Be Two Years or Less .....                                                                                                          | 1319 |
| ii.  | The Accused Must Not Previously Have Been Sentenced to More than Three Months' Imprisonment for an Intentional Offence .....                                          | 1320 |
| iii. | The Court Must Be Satisfied that the Accused Will Not Commit a Further Offence .....                                                                                  | 1321 |
| iv.  | Reparation of the Damage Caused .....                                                                                                                                 | 1321 |
| c.   | Consequences of the Suspension of the Sentence of Imprisonment .....                                                                                                  | 1322 |
| 2.   | Conditional Release .....                                                                                                                                             | 1323 |
| a.   | In General .....                                                                                                                                                      | 1323 |
| b.   | Conditions .....                                                                                                                                                      | 1326 |
| i.   | A Certain Portion of the Sentence of Imprisonment Imposed Must Have Been Served .....                                                                                 | 1326 |
| ii.  | The Convicted Person Must Have Spent That Period in Good Conduct .....                                                                                                | 1328 |
| c.   | The Decision on Conditional Release, Its Consequences and Revocation of the Decision .....                                                                            | 1329 |

|                                                                                                      |             |
|------------------------------------------------------------------------------------------------------|-------------|
| 3. Probation .....                                                                                   | 1331        |
| <b>VI. EXECUTION OF SENTENCES OF IMPRISONMENT .....</b>                                              | <b>1334</b> |
| A. Commencement of Execution .....                                                                   | 1334        |
| 1. Admission of Convicted Persons to the Institution .....                                           | 1334        |
| 2. Placement of Convicted Persons in the Institution .....                                           | 1336        |
| B. Postponement of Execution .....                                                                   | 1336        |
| 1. Postponement of Execution on Grounds of Illness .....                                             | 1337        |
| 2. Postponement of Execution at the Request of the Convicted Person .....                            | 1337        |
| C. Visits, Meetings and Communication .....                                                          | 1338        |
| D. Relaxation of Execution and Leave .....                                                           | 1340        |
| E. Disciplinary Penalties and Measures .....                                                         | 1341        |
| F. Rewards .....                                                                                     | 1342        |
| G. Types of Penal Institutions .....                                                                 | 1343        |
| <b>§ 55. JUDICIAL FINE .....</b>                                                                     | <b>1347</b> |
| I. CONCEPT .....                                                                                     | 1347        |
| II. THE DISTINCTION BETWEEN JUDICIAL AND ADMINISTRATIVE FINES .....                                  | 1348        |
| III. DETERMINATION OF THE JUDICIAL FINE .....                                                        | 1348        |
| IV. EXECUTION OF THE JUDICIAL FINE .....                                                             | 1351        |
| <b>§ 56. DETERMINATION AND INDIVIDUALISATION OF THE PENALTY .....</b>                                | <b>1354</b> |
| I. DETERMINATION OF THE BASIC PENALTY AND INDIVIDUALISATION .....                                    | 1354        |
| A. In General .....                                                                                  | 1354        |
| B. Matters Connected with the Wrong to Be Taken into Account in Determining the Basic Penalty .....  | 1356        |
| C. The Gravity of the Perpetrator's Culpability Based on Intent or Negligence .....                  | 1358        |
| D. The Effect of Conditional Intent (Dolus Eventualis) and Conscious Negligence on the Penalty ..... | 1359        |
| E. Application of the Aggravated (Qualified) Forms of the Offence .....                              | 1360        |
| II. DETERMINATION OF THE FINAL PENALTY AND THE FACTORS AFFECTING IT .....                            | 1360        |
| A. Special Forms of Appearance of the Offence .....                                                  | 1361        |
| B. Grounds Reducing Culpability .....                                                                | 1362        |
| C. Personal Grounds of Exemption from Punishment and Personal Grounds Extinguishing Punishment ..... | 1363        |
| D. Discretionary Grounds for Mitigation .....                                                        | 1363        |
| III. DEDUCTIONS FROM PENALTIES .....                                                                 | 1365        |

## CHAPTER TWO SECURITY MEASURES

|                                                               |             |
|---------------------------------------------------------------|-------------|
| <b>§ 57. THE CONCEPT AND TYPES OF SECURITY MEASURES .....</b> | <b>1367</b> |
| I. CONCEPT AND CONDITIONS OF APPLICATION .....                | 1367        |
| A. Concept .....                                              | 1367        |
| B. Conditions of Application .....                            | 1368        |
| 1. Dangerousness .....                                        | 1368        |
| 2. Existence of an Offence Committed .....                    | 1369        |
| 3. Legality .....                                             | 1370        |
| 4. Court Decision .....                                       | 1370        |
| II. DEPRIVATION OF THE EXERCISE OF CERTAIN RIGHTS .....       | 1370        |
| III. CONFISCATION .....                                       | 1373        |
| A. Confiscation of Objects .....                              | 1374        |

|      |                                                                        |      |
|------|------------------------------------------------------------------------|------|
| 1.   | Confiscation of Objects Connected with the Offence .....               | 1375 |
| 2.   | Confiscation of Objects That in Themselves Constitute an Offence ..... | 1377 |
| B.   | Confiscation of Proceeds .....                                         | 1377 |
| IV.  | SECURITY MEASURES SPECIFIC TO CHILDREN .....                           | 1379 |
| A.   | Protective and Supportive Measures .....                               | 1380 |
| B.   | Guidance Measures .....                                                | 1380 |
| V.   | SECURITY MEASURES SPECIFIC TO THE MENTALLY ILL .....                   | 1382 |
| VI.  | RECIDIVISM .....                                                       | 1383 |
| A.   | In General .....                                                       | 1383 |
| B.   | Views on Recidivism .....                                              | 1383 |
| C.   | Conditions for the Application of Recidivism .....                     | 1385 |
| 1.   | A Previously Rendered Conviction .....                                 | 1385 |
| 2.   | Commission of a New Offence within the Recidivism Period .....         | 1386 |
| D.   | Exceptions to Recidivism .....                                         | 1387 |
| E.   | Consequences of Recidivism .....                                       | 1388 |
| F.   | Particularly Dangerous Offenders .....                                 | 1388 |
| VII. | SECURITY MEASURES APPLICABLE TO LEGAL PERSONS .....                    | 1389 |

### CHAPTER THREE

## CIRCUMSTANCES TERMINATING THE RELATIONSHIP OF PROSECUTION AND OF PUNISHMENT

|       |                                                                                                           |      |
|-------|-----------------------------------------------------------------------------------------------------------|------|
| § 58. | GROUND'S EXTINGUISHING CRIMINAL LIABILITY .....                                                           | 1393 |
| I.    | DEATH OF THE ACCUSED OR OF THE CONVICTED PERSON .....                                                     | 1393 |
| A.    | Death of the Accused .....                                                                                | 1394 |
| B.    | Death of the Convict (the Convicted Person) .....                                                         | 1394 |
| II.   | AMNESTY .....                                                                                             | 1395 |
| A.    | Types of Amnesty .....                                                                                    | 1396 |
| 1.    | General Amnesty .....                                                                                     | 1396 |
| 2.    | Special Amnesty .....                                                                                     | 1397 |
| III.  | LIMITATION PERIOD .....                                                                                   | 1398 |
| A.    | General Information .....                                                                                 | 1398 |
| B.    | Legal Nature .....                                                                                        | 1399 |
| C.    | Limitation Period for Prosecution .....                                                                   | 1400 |
| 1.    | General Information .....                                                                                 | 1400 |
| 2.    | Limitation Periods and the Calculation of the Limitation Period under the System Adopted by the TCK ..... | 1401 |
| 3.    | Limitation Period in the Event of a Retrial for the Same Act .....                                        | 1403 |
| 4.    | The Moment at Which the Limitation Period Begins to Run .....                                             | 1403 |
| 5.    | Suspension or Interruption of the Limitation Period for Prosecution .....                                 | 1404 |
| a.    | Suspension of the Limitation Period for Prosecution .....                                                 | 1405 |
| b.    | Interruption of the Limitation Period for Prosecution .....                                               | 1406 |
| D.    | Limitation Period for the Execution of the Sentence .....                                                 | 1407 |
| 1.    | General Information .....                                                                                 | 1407 |
| 2.    | Limitation Periods .....                                                                                  | 1407 |
| 3.    | The Moment at Which the Limitation Period Begins to Run .....                                             | 1409 |
| 4.    | Suspension and Interruption of the Limitation Period for the Execution of the Sentence .....              | 1409 |
| a.    | Suspension of the Limitation Period for the Execution of the Sentence .....                               | 1409 |
| b.    | Interruption of the Limitation Period for the Execution of the Sentence .....                             | 1410 |

|                                                                                             |      |
|---------------------------------------------------------------------------------------------|------|
| 5. The Limitation Period for the Execution of the Sentence and Deprivations of Rights ..... | 1410 |
| IV. WITHDRAWAL OF THE COMPLAINT .....                                                       | 1411 |

#### BOOK FOUR

### THE APPLICATION OF CRIMINAL LAWS IN THE INTERNATIONAL SPHERE AND INTERNATIONAL CRIMINAL LAW

#### CHAPTER ONE APPLICATION IN TERMS OF PLACE

|                                                                                                       |             |
|-------------------------------------------------------------------------------------------------------|-------------|
| <b>§ 59. THE APPLICATION OF CRIMINAL NORMS IN TERMS OF PLACE .....</b>                                | <b>1415</b> |
| I. THE PRINCIPLE OF TERRITORIALITY (MÜLKİLİK) .....                                                   | 1415        |
| A. Concept .....                                                                                      | 1415        |
| B. The Concept of Territory .....                                                                     | 1417        |
| C. Determining the Place Where the Offence Was Committed .....                                        | 1420        |
| 1. In General .....                                                                                   | 1420        |
| 2. Problematic Cases in Determining the Place Where the Offence Was Committed .....                   | 1422        |
| a. Offences Remaining at the Stage of Attempt .....                                                   | 1422        |
| b. Offences Committed by Omission .....                                                               | 1423        |
| c. Offences Committed in Participation .....                                                          | 1423        |
| d. Transit Offences .....                                                                             | 1424        |
| e. Offences Committed via the Internet .....                                                          | 1425        |
| D. The Existence of a Judgment Rendered in a Foreign Country (The Principle of Non bis in idem) ..... | 1428        |
| II. THE PRINCIPLE OF PERSONALITY .....                                                                | 1430        |
| A. Concept .....                                                                                      | 1430        |
| B. The Principle of Personality with Regard to the Perpetrator .....                                  | 1431        |
| C. The Principle of Personality with Regard to the Victim .....                                       | 1432        |
| III. THE PROTECTIVE (REAL) PRINCIPLE .....                                                            | 1433        |
| A. Offences Committed in Connection with Official Duties (TCK Art. 10) .....                          | 1434        |
| B. Offences Committed to the Detriment of Türkiye (TCK Art. 12(1)) .....                              | 1435        |
| C. Offences against the Security of the State (TCK Art. 13(1)(b)) .....                               | 1435        |
| IV. THE PRINCIPLE OF UNIVERSALITY .....                                                               | 1436        |
| V. THE PRINCIPLE OF VICARIOUS JURISDICTION .....                                                      | 1437        |
| VI. SPECIAL ISSUES IN APPLICATION IN TERMS OF PLACE .....                                             | 1438        |
| A. Deduction .....                                                                                    | 1438        |
| B. Deprivations of Rights Arising from a Foreign Conviction .....                                     | 1439        |
| C. Taking Foreign Norms into Account .....                                                            | 1441        |
| 1. The Problem of the Applicability of Foreign Norms in Criminal Law .....                            | 1441        |
| 2. The Position in Turkish Law .....                                                                  | 1442        |
| <b>§ 60. EXTRADITION .....</b>                                                                        | <b>1443</b> |
| I. THE CONCEPT OF EXTRADITION .....                                                                   | 1443        |
| A. Concept and Legal Nature .....                                                                     | 1443        |
| B. The Relationship between Asylum and Extradition .....                                              | 1444        |
| C. The Relationship between Deportation and Extradition .....                                         | 1445        |
| D. The Relationship between Exchange and Extradition .....                                            | 1445        |
| II. THE SOURCES OF EXTRADITION AND THEIR RELATIONSHIP TO ONE ANOTHER .....                            | 1445        |
| III. THE CONDITIONS OF EXTRADITION .....                                                              | 1447        |

|     |                                                                                                                                |      |
|-----|--------------------------------------------------------------------------------------------------------------------------------|------|
| A.  | Conditions Relating to the Act .....                                                                                           | 1447 |
| 1.  | The Offence for Which Extradition Is Sought Must Be of a Certain Gravity and Satisfy the Requirement of Dual Criminality ..... | 1447 |
| 2.  | The Offence Must Not Have Been Committed to the Detriment of Türkiye or of a Turkish Citizen .....                             | 1448 |
| 3.  | Absence of a Bar to Proceedings in Respect of the Offence .....                                                                | 1448 |
| 4.  | The Request Must Not Concern an Offence Punishable by Death or by a Penalty Incompatible with Human Dignity .....              | 1449 |
| 5.  | The Offence Must Fall outside the Jurisdiction of Türkiye .....                                                                | 1450 |
| 6.  | The Offence Must Not Be an Offence of Opinion, a Political Offence, a Purely Military Offence or a Fiscal Offence .....        | 1450 |
| a.  | Offence of Opinion .....                                                                                                       | 1450 |
| b.  | Political Offence or Offence Connected with a Political Offence .....                                                          | 1451 |
| i.  | The Concept of Political Offence .....                                                                                         | 1452 |
| ii. | Acts Not Regarded as Falling within the Scope of Political Offences .....                                                      | 1452 |
| c.  | Purely Military Offence .....                                                                                                  | 1454 |
| d.  | Fiscal Offence .....                                                                                                           | 1454 |
| 7.  | Proportion between the Gravity of the Act and the Hardship That Would Result from Extradition .....                            | 1455 |
| B.  | Conditions Relating to the Perpetrator .....                                                                                   | 1455 |
| 1.  | Not Being a Turkish Citizen .....                                                                                              | 1455 |
| 2.  | Absence of Suspicion of Being Subjected to Discrimination in the Requesting State .....                                        | 1456 |
| C.  | Extradition and Exchange under Special Conditions .....                                                                        | 1457 |
| IV. | THE PROCEDURE OF EXTRADITION .....                                                                                             | 1458 |
| A.  | The Procedure Followed in Extradition Requests Made by Türkiye .....                                                           | 1459 |
| B.  | The Procedure to Be Followed in Extradition Requests Addressed to Türkiye .....                                                | 1459 |
| V.  | THE PRINCIPLE OF SPECIALITY (HUSUSİLİK) IN EXTRADITION .....                                                                   | 1462 |

## CHAPTER TWO

### INTERNATIONAL CRIMINAL LAW

|       |                                                             |      |
|-------|-------------------------------------------------------------|------|
| § 61. | INTERNATIONAL CRIMES .....                                  | 1465 |
| I.    | THE CONCEPT OF INTERNATIONAL CRIMINAL LAW .....             | 1465 |
| II.   | THE SOURCES OF INTERNATIONAL CRIMINAL LAW .....             | 1466 |
| III.  | INTERNATIONAL CRIMES .....                                  | 1466 |
| A.    | The Concept of International Crime .....                    | 1466 |
| B.    | International Crimes .....                                  | 1468 |
| 1.    | Genocide .....                                              | 1468 |
| 2.    | Crimes against Humanity .....                               | 1469 |
| 3.    | War Crimes .....                                            | 1470 |
| 4.    | Crimes of Aggression (Crimes against Peace) .....           | 1471 |
| § 62. | INTERNATIONAL CRIMINAL TRIALS .....                         | 1473 |
| I.    | THE FIRST EXAMPLES OF INTERNATIONAL CRIMINAL TRIALS .....   | 1473 |
| II.   | THE ROME STATUTE AND THE INTERNATIONAL CRIMINAL COURT ..... | 1475 |
| III.  | THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT .....  | 1477 |
|       | Bibliography .....                                          | 1481 |
|       | Index .....                                                 | 1539 |

---

This document is the table of contents of the book, translated from Turkish; page numbers refer to the printed book. Page of the book: [www.dulger.av.tr/en/publications/ceza-hukuku-genel-hukumler/](http://www.dulger.av.tr/en/publications/ceza-hukuku-genel-hukumler/)