

---

## TABLE OF CONTENTS

---

<i>Table of Cases</i>	xi
<i>Table of Legislation</i>	xxi
<i>Table of International Treaties and Conventions</i>	xli
1 Introduction	1
I. The Comparator Jurisdictions	3
II. The Legal Framework	5
III. The International Dimension	7
IV. The Theoretical Lens	9
V. Structural Outline	10
2 Organised Crime: Defining, Measuring and Criminalising the Problem	12
I. Introduction	12
II. Defining Organised Crime	13
III. The Extent of the Problem	20
IV. Criminalising Organised Crime	23
Problems with the Legislation	26
V. What are Organised Crimes?	30
VI. New State Agencies	35
VII. Conclusion	39
3 The Theoretical Framework: Tensions in Criminal Justice	41
I. Introduction	41
II. Competing Demands in the Criminal Process	42
A. Public Protection	47
B. Risk	49
C. A State of Emergency	51
D. Adaptations	54
III. The Judiciary and Due Process – Dialogue Between the Arms of the State	55
IV. Conclusion	61
4 Investigating Organised Crime: Altering the Pre-trial Process	63
I. Introduction	63
II. Access and Disclosure Orders	65
III. Suspicious Activity Reports	70

viii *Table of Contents*

IV.	Surveillance	74
	A. Intrusive and Directed Surveillance	77
	B. Communications Surveillance	83
	i. Interception	83
	ii. Communication Records and Traffic Data	85
	C. Cross-border Surveillance	87
	D. Legitimacy and Legality of Surveillance	88
V.	Covert Human Intelligence Sources	91
	A. Encouraging Criminality?	96
	B. Entrapment	97
VI.	Controlled Deliveries	99
VII.	Detention	101
VIII.	Interrogation	104
	Inference-Drawing Provisions	106
IX.	Conclusion	109
5	Prosecuting Organised Crime: The Criminal Trial	111
	I. Introduction	111
	II. Procedural Law Changes	113
	A. The Admissibility of Interception Evidence	114
	B. Accomplice Evidence	117
	Benefits for accomplices	120
	III. Threats to Jurors and Witnesses	124
	IV. Threats to Jurors	125
	A. Restricting the Right to Trial by Jury	125
	i. Using Non-jury Trials for ‘Ordinary’ Crime	128
	ii. Non-jury Trials and Human Rights	132
	B. Alternative Protections for Jurors	137
	C. Concluding Comments on Non-jury Trials	139
	V. Threats to Witnesses	141
	A. Special Measures	141
	B. Previous Inconsistent Evidence	143
	C. Witness Protection Programmes	148
	D. Anonymous Witness Evidence	152
	VI. Conclusion	158
6	Punishing Organised Crime: The Post-Conviction Stage of the Criminal Process	160
	I. Introduction	160

II.	General Principles of Sentencing	161
III.	Sentencing Organised Crimes	162
	A. Aggravating Factors in Sentencing	172
	B. Concluding Remarks	173
IV.	Reduction of Sentences in Return for Assistance	176
V.	Confiscation of Property upon Conviction	180
	A. Restraint Orders	181
	B. Confiscation Orders	183
	C. Forfeiture Orders	188
	D. Challenges to Confiscation	188
	E. Effectiveness of Confiscation	192
VI.	Further Ancillary Orders	194
VII.	Conclusion	199
7	Beyond the Criminal Realm: Civil Asset Recovery	201
I.	Introduction	201
II.	The Irish Prototype	202
III.	The Proceeds of Crime Acts	204
IV.	Interaction between Confiscation and Recovery Powers	211
V.	Challenges to Civil Recovery	212
	A. Retrospective Punishment	212
	B. The Right to Private Property	213
	C. The Nature of the Process	214
VI.	Success of the Civil Process	221
VII.	Further Civil Orders	224
VIII.	Conclusion	226
8	Revenue Matters: Taxing Organised Crime	229
I.	Introduction	229
II.	Taxing the Profits of Illegal Acts	230
III.	Appeals against Tax Assessments	234
IV.	Challenges to Revenue Powers	235
V.	Interplay between Civil Recovery and Revenue Powers	237
VI.	Conclusion	238
9	Conclusion	240
I.	Introduction	240
II.	Explaining the Dominant Narrative	240
III.	Recalibrating the Criminal Justice Process	242
IV.	Key National Differences	244
V.	Concluding Remarks	246
	<i>Index</i>	249