

Criminal Law

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Office hours: Friday 1:15-2:15pm

Law 605
Fall 2013
Fri 10:40-12:05,
2:40-4:05

This course is an introduction to substantive criminal law. As a matter of general legal method, our focus throughout will be to understand the interaction of statute and common law. In contrast to most private law areas, criminal law is now overwhelmingly a code-driven field, albeit one that we continue to understand through the prism of appellate judicial opinions. At the level of professional judgment, the course is designed to expose students to the difficult practice of how appropriately to express public condemnation of, as well as justifications for, controversial and sometimes profoundly disturbing forms of human conduct. When must we indict, and how much punishment is enough? When ought we to push back against the power of the state to punish? These questions remain among the great and unresolved dilemmas in the criminal law. Finally, as an exercise in political and social analysis, the course aims to acquaint students with some of the major dilemmas facing American criminal justice today, including prosecutorial discretion and racial discrimination. It has now become commonplace for students of our criminal justice system to explain its strengths and weaknesses in terms of the character of our political institutions. How do you see those connections? These are the questions this course invites you to consider. We will not answer any of them definitively, but in the asking lies a good part of learning the language of the criminal law, which is the overriding objective of our semester.

We begin with a discussion of the boundaries of criminal liability and the justifications for punishment, before turning to the basic elements of criminal offenses. The course then takes up a series of four substantive offenses – drugs, rape, homicide, and theft by fraud – before resuming the so-called “general” part of the course with an analysis of the attribution of criminality for inchoate and group conduct and a discussion of the law of justification and excuse.

By the end of the course, you should be able to do the following:

- Quickly read a criminal case and reduce it to its essential facts and legal principles
- Analyze the elements of an offense and determine, based on a given set of facts, whether there is sufficient evidence to convict a defendant of that offense (this includes understanding the interplay between statutory and common law)
- Argue a criminal case from the perspective of both a prosecutor and a defendant
- Summarize the state of the law in selected areas of criminal jurisprudence
- Explain the basic building blocks of the criminal law to a client

Required Materials:

- Sanford H. Kadish, Stephen J. Schulhofer, Carol S. Steiker, and Rachel E Barkow, eds., *Criminal Law and Its Processes: Cases and Materials*, 9th ed. (Wolters Kluwer, 2012) (available for purchase at the USM Bookstore and on reserve at the Garbrecht Library) [hereinafter “CB”].
- Selections from the Model Penal Code are designated as “MPC” and can be found at the end of the casebook.
- Joshua Dressler, *Understanding Criminal Law*, 6th ed. (LexisNexis, 2012) [hereinafter “Dressler”].
- All other readings will be posted on the course Blackboard website. *Students must print and bring these website materials to the relevant class sessions.*

Teaching Assistant:

Beth Frazier is the teaching assistant assigned to this course. She will hold TA sessions in the 1L Room on Tuesdays from 4:20 to 5:20pm. You are all encouraged to attend. Beth’s office hours will be held on Mondays from 2:40 to 4:40pm or by appt., in the Law Library second floor study area. Her email is elizabethmfrazier@gmail.com.

A note about class preparation:

Because this class meets twice on Fridays (for morning and afternoon eighty-five minute blocks), it is critical that you prepare ahead of time for class. This means, in particular, that you should not leave all of the criminal law reading for a given week for the night before: your head will start to spin with too much criminal law! This may happen anyway on Fridays, but to get the most out of your learning experience, I strongly suggest the following: do the morning reading assignment before Thursday evening, and do not leave the afternoon reading assignment to the period between our class sessions on Fridays. You will need that time in between classes to take a break from our materials so as to return refreshed for the afternoon. Pace yourselves week by week as well as throughout the semester.

Assignments, evaluation, and attendance:

Three “mini” assignments are intended to complement the class discussions. First, as practice in learning the art of “stating” a case, I will ask everyone in the first week or two of class to summarize, on one side only of a three-by-five index card, the issue and the holding in one of our early cases. (I will explain what I mean by “issue” and “holding” in the first week of class.) These cards will be reviewed by TA Beth Frazier. The following week, we will repeat this same exercise using a different case.

Students who are still in need of additional practice beyond the second iteration will be asked to consult with me or Beth Frazier during office hours.

Second, beginning towards the end of Part One of the course, and then roughly every other week, a panel of students will be asked to comment on a problem relating to some set of materials covered in the course. I will issue each problem several days in advance of the date on which we will discuss it. All students in the course should think through the problems in advance and be prepared to comment on them, as I will not announce the members of each panel until we actually take up the problem at hand. Each student in the class can expect to participate in at least one panel discussion.

Third, the “reading” assignment for our September 20 morning class includes listening to the oral argument in *McKleskey v. Kemp*, a 1987 United States Supreme Court (SCOTUS) case we will discuss that day. You can find the oral argument podcast on the www.oyez.org website. All students should prepare a short, one-page, double-spaced comment on this oral argument and hand it in to me at the beginning of class. Your critique should not be a summary of the argument or the issues in the case. Rather, I am interested in hearing you reflect on what you will have learned about the practice of lawyering, and of oral advocacy in particular, by listening to the argument. You may, but need not, identify areas where the attorneys for either side could have done a stronger job in making their cases or responding to questions from the bench. The central purpose is to capture on the page how the experience of studying the oral dimensions of a case affects your understanding of the law.

Consistently robust or consistently lackadaisical participation can affect your final grade, which will be otherwise determined on the basis of a final exam as described below. This means that, while you will not be specifically graded on your day-to-day class participation or on either of the two exercises described above, your overall performance in all of these contexts may serve as a factor affecting the final grade by no more than one half-letter. Barring a medical or family emergency, students who miss more than four classes may be asked to withdraw from the course.

The final exam will be a three-hour, in-class, open book exam that runs from 1-4pm on Friday, December 20, 2013.

Amendments to the syllabus:

Please note that this syllabus is not a contract: while the list of topics is likely to remain stable, it is possible that I may take or swap out one or more topics depending on the pace of our march through the semester, interests of the class, current developments, and the scheduling of one or two guest speakers.

Schedule of Meetings and Readings:

Part One: The Boundaries of Criminal Law

1. Sept. 6 (am): Structure and Process; the Model Penal Code.
 - a. CB 1-19, 1191-1196
2. Sept. 6 (pm): What is Guilt? (Or, How to Prove a Criminal Case)
 - a. CB 31-33 (*In re Winship*), 36-41 (“Introductory Note” and *Patterson*)
 - b. Dressler 67-76 (stop at “[C]”), 79-83
3. Sept. 13 (am): Civil vs. Criminal Liability; Why Punish?
 - a. CB 80-87
 - b. Dressler 11-19
 - c. MPC 1.02, 1.04-1.05
4. Sept. 13 (pm): Why Punish? (Continued)
 - a. CB 101-104 (Unexpected Harm and Victim-Impact Statements), 190-195 (*Ewing*)
 - b. Dressler 19-25
5. Sept. 20 (am): Ultimate Punishment
 - a. CB 557-565
 - b. Listen to the SCOTUS oral argument in *McKleskey v. Kemp* at www.oyez.org (approx. 40-50 minutes)

Part Two: Elements of the Offense

6. Sept. 20 (pm): The Criminal Act
 - a. CB 205 (*Martin*), 207-209 (*Newton*), 218-222 (*Jones and Pope*), 235-8 (“Note on Possession” and *Barber*)
 - b. MPC 1.13(1-10), 2.01
 - c. Dressler, 85-90, 94-96, 100-115
7. Sept. 27 (am): Mens Rea (I) – Common Law and MPC Approaches
 - a. CB 243-246 (*Cunningham and Faulkner*), 250-252 (*Hazelwood*), 260-262 (*Jewell*)
 - b. MPC 1.13(11-16), 2.02(1-4)
 - c. Dressler, 117-144

8. Sept. 27 (pm): *Mens Rea* (II) – Mistake of Fact and Strict Liability
 - a. CB 266-267, 272-275, 284-290
 - b. MPC 2.03-2.05
 - c. Dressler 145-162 (stop at “[E]”), 163-165 (Model Penal Code)
9. Oct. 4 (am): *Mens Rea* (II) – Mistake of Law
 - a. CB 304-309 (*Marrero*), 313-316 (*Cheek*), 321-323 (*Lambert*)
 - b. Dressler, 167-180

Part Three: Four Substantive Offenses (Drugs, Rape, Homicide, and Fraud)

10. Oct. 4 (pm): Drugs
 - a. [*State v. Pigford*, 922 So.2d 517 \(La. 2006\)](#)
 - b. CB 1126-1130 (*Armstrong*)
 - c. Listen to Attorney General Holder’s Aug. 12, 2013 speech on mandatory minimum drug sentences, at <http://www.youtube.com/watch?v=oteyZs8Yvv4> (approx. 30 minutes)
11. Oct. 11 (am): Rape (I)
 - a. CB 343-347 (*Rusk*), 348-350 (*DiPetrillo*), 356-358 (*Mlinarich*)
 - b. Dressler, 567-570, 574-581 (stop at “[b]”)
12. Oct. 11 (pm): Rape (II)
 - a. CB 363-367, 376-377 (Notes 1 and 2), 389-395 (until end of “Note on the *Fischer Case*”)
 - b. MPC 213.0-213.1
 - c. Dressler, 581-583, 585-586, 589-596
13. Oct. 18 (am): Intentional Killing
 - a. CB 427-431 (*Carroll*), 432-434 (*Guthrie*), 437-442 (*Girouard and Maher*), 453-456 (*Cassassa*)
 - b. MPC 210.1-210.4
 - c. Dressler, 498-510
14. Oct. 18 (pm): Unintended Killing
 - a. CB 464-466 (*Welansky*), 469-471, 482-483, 486-487 (*Fleming*), 490-493 (*Serné*)
 - b. Dressler 510-512 (stop at “[B]”), 515-518 (stop at “[3]”), 524-530, 535-541

15. Oct. 25 (am): Theft by Fraud

CB 1058-1068 (*Hufstetler, Graham, Ashley, Nelson*)

MPC 223.3

Dressler, 543-548 (stop at “[3]”), 550-551 (“Fraud”), 555 (A.1), 556-557 (B.1-2), 559-565

Part Four: Causation and Attempt

16. Oct. 25 (pm): Causation

CB 571-581 (end of note 3), 583-595 (end of *Stephenson* case)

MPC 2.03

17. Nov. 1 (am): Attempt (1)

CB 607-631

MPC 5.01

18. Nov. 1 (pm): Attempt (2)

CB 631-655

MPC 5.02

Part Five: Complicity and Conspiracy

19. Nov. 8 (am): Complicity

CB 657-663 (end of *Hicks*), 664-665 (*Gladstone*), 674 (starting at “b.”)-677 (end of *Roebuck*), 679 (starting at note 5)-684 (end of *Luparello*), 686 (Note on *Pinkerton* doctrine), 687-690 (end of *Tally*), 693-696 (end of *Vaden*)

MPC 2.06

20. Nov. 8 (pm): Conspiracy (I)

CB 703-709 (end of *Interstate Circuit*), 711 (“Notes on the Overt Requirement”)-718, 723-725 (end of *Pinkerton*), 731 (starting at *Pinkerton* notes)-735

MPC 5.03

21. Nov. 15 (am): Conspiracy (II)

CB 735-758

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22. Nov. 15 (pm): Guest lecture on immigration and the criminal law by Professor Anna Welch, Maine Law Refugee and Human Rights Clinic

Readings tba

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Part Six: Justification and Excuse

23. Nov. 22 (am): Justification (I) – Self-Defense

CB 817-823, 827 (starting at “Notes on Deadly Force”)-840 (end of note 1), 863 (starting at note 4)-870 (end of *Peterson*)
MPC 3.04, 3.09, 3.11

24. Nov. 22 (pm): Justification (II) – Law Enforcement and Necessity

CB 880-904
MPC 3.02 and 3.07(2)(b)

25. Dec. 6 (am): Excuse – Insanity

921 (“Introductory Note”), 961-962 (notes 2-3), 964-970 (end of *M’Naghten’s Case*), 971-979 (end of *Lyons*), 980 (starting at “Notes on Changes in the Law”)-981 (end of note 1), 988-995
MPC 2.09 and 4.01-4.04

Conclusion

26. Dec. 6 (pm): Conclusion and Final Exam Preparation

Review Spring 2011-2013 final exams (available at the MyLaw portal site, my.law.maine.edu)