

CRIMINAL LAW: SPRING 2020

REQ7140.01

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(preferred pronouns: he, him, his)

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TWEN SITE: Criminal Law Spring 2020 – “VLSCLS20”. Please register ASAP.

REQUIRED READING:

- CRIMINAL LAW: CASES AND MATERIALS (8TH ed. 2017 Wolters Kluwer)
John Kaplan, Robert Weisberg, Guyora Binder
- UNDERSTANDING CRIMINAL LAW (8TH ed. 2018 Carolina Academic Press)
Joshua Dressler

RECOMMENDED LISTENING

- SERIAL PODCAST: SEASON 3 (<https://serialpodcast.org/>)

CLASS TIME AND OFFICE HOURS

Class meets from 12:45pm until 2:00pm Monday and Wednesday in Oakes 007. We will start and end on time. Office hours will follow immediately after class and as arranged by email appointment.

COURSE REQUIREMENTS

Lively classroom discussion is encouraged. Please remember, though, that some areas of criminal law are particularly sensitive and you should moderate your comments accordingly.

1. All members of the classroom community, including the professor, are expected to treat each other with respect. If at any point during the semester, I say or do something you find disrespectful, my hope and expectation is you will speak with me. I pledge there will be no adverse consequence for sharing your concern.
2. Classroom attendance is required. Please be sure to sign the attendance roster every class. Students are expected to read and abide by the VLS attendance policy as set out in the student handbook.
3. I will modify reading assignments during the semester as time and interest necessitate. I will post additional class materials on The West Education Network (“TWEN”) website. You should log on to the TWEN site and enroll in Criminal Law Spring 2020: “VLSCLS20”. I will notify you of changes to the Syllabus via your VLS email which you are expected to check regularly.
4. You are not permitted to use your phone or access the internet during class.
5. The final grade for the course will be based on your performance on the final exam and three (3) quizzes. There may be some adjustment either up or down in the final grade based upon the quality of your classroom participation.

COURSE OUTCOMES

At the end of this course, students who remain engaged throughout the semester will understand:

1. The systemic tension between the branches of government and how that tension influences criminal law;
2. The elements or building blocks of crimes and the policy choices that are evident in the selection of offense elements;
3. The theories of punishment in this country and what differentiates punishment from other collateral consequences;
4. How criminal law has evolved and/or changed over time;
5. The challenges of deciding whether “justice” exists in the criminal legal system;
6. How to discuss criminal law topics in a respectful and ethical fashion, recognizing the extreme sensitivity of many areas of criminal law;
7. How to assess criminal law exam questions in a manner consistent with the bar exam;
8. How to demonstrate professionalism through consistent, timely arrival to class and active, thoughtful participation throughout the semester.

CLASSROOM EXPECTATIONS AND VALUES

1. Show sensitivity to the subject matter and to each other
2. Remember that no one else has had your exact life experiences and you have not had the same experiences as others
3. Be open to new ideas
4. Be courageous
5. Help create an environment where it is OK to make a mistake
6. Be willing to express concern if something that is said is troubling to you
7. Work toward being resilient
8. Be respectful of others, listen without interrupting
9. Come to class prepared to engage with the material and each other
10. Others?

OVERVIEW OF TOPICS

- I. **JUST PUNISHMENT**
 - A. Utilitarianism, Retributivism, and Beyond
 - B. Proportionality
 - C. Sentencing Guidelines

- II. **THE ELEMENTS OF THE CRIMINAL OFFENSE**
 - THE CRIMINAL ACT**
 - A. Actus Reus
 - B. Omissions
 - C. Possession
 - D. Harm
 - E. Voluntariness
 - F. Status Crimes
 - G. Legality
 - H. Specificity

 - THE GUILTY MIND**
 - A. Guilty Mind
 - B. Categories Of Culpability
 - C. Mistake and Mens Rea Default Rules
 - D. Mistake Of Law
 - E. Capacity

- III. **HOMICIDE**
 - INTENTIONAL HOMICIDE**
 - A. Intentional Murder
 - B. Premeditated Murder
 - C. Voluntary Manslaughter

 - UNINTENTIONAL HOMICIDE**
 - A. Involuntary Manslaughter
 - B. Reckless Murder
 - C. Causation
 - D. Felony Murder

- IV **JUSTIFICATION AND EXCUSE DEFENSES**
 - A. Defensive Force
 - B. Choice of Evil --Necessity
 - C. Duress
 - D. Mental Illness as a Defense

ASSIGNMENTS WITH STUDY PROMPTS

1. First Class: Course Materials – Articles and Clips

Listen to:

TedTalk: Adam Foss

https://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system?language=en

Podcast: Rumble Strip: The Defense

<http://www.rumblestripvermont.com/2015/09/the-defense/>

Podcast: Stay Tuned with Preet

<https://www.wnycstudios.org/story/crime-and-punishment-judge-jed-rakoff>

TedTalk: Bryan Stevenson

https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice

2. Introduction and Elements of Offenses

Text: Introduction: 1-19 and A note on the Model Penal Code: 1125 to 1128

TWEN: Course Materials- MPC Folder- The American Model Penal Code: A Brief Overview

Prompt: What general questions do you have about the criminal justice system? What are the most important components of a fair criminal justice system?

3. Offense Elements Criminal Justice System Overview

Dressler: Chapter 1: Criminal Law – An Overview and Chapter 3: Sources of the Criminal Law and Chapter 4: Constitutional Limits on the Criminal Law

Text: Just Punishment, 21 – 31

Prompt: What should happen to Jones and Green (29-31)? Why?

4. Punishment

Dressler: Chapter 2: Principles of Criminal Punishment

Text: Kansas v. Hendricks, 63-65

Text: Beyond Utility and Desert; 72-76

TWEN Course Materials – Articles and Clips: 21 Principles for the 21st Century Prosecutor

Prompt: What is punishment? What are the broad theories of why we punish in this country?

5. Punishment (modify to eliminate the constitutional cases)

Text: Proportionality, 88-93

Text: Modern Guidelines Sentencing, 97-113 (you do not need to know the specifics of the federal sentencing guidelines).

TWEN Course Materials – Articles and Clips- Navajo Justice

TWEN Course Materials – RLS Essays

Myths and Misconceptions

Vermont Sentencing Commission

Prompt: What are the limits on the scope of punishment? What sentencing approach is the most fair?
Full judicial discretion, guided, mandatory sentencing?

6. The Criminal Act

Text: 115- 119

Text: Actus Reus, 119 -124

TWEN: Cases: State v. Sawyer (attempt)

Text: Omission 124-130

Prompt: What values are advanced by requiring proof of a criminal act?

Prompt: Should there be other duties to act?

7. The Criminal Act

Text: Possession, 130-142

Text: Harm, 142-151

Prompt: Do possession laws advance a beneficial social interest?

Prompt: What laws have now been stricken for violating the “harm principle?” What existing laws should be stricken for violating the “harm principle?”

8. The Criminal Act

Text: Voluntariness, 151-159

Text: Status Crimes, 159-169

Prompt: How does the voluntariness principle honor personal autonomy?

9. The Criminal Act

Text: Legality, 169-180

Dressler: Chapter 5: Legality

Prompt: Is the requirement for prior notice an illusory benefit for the average citizen?

10. Quiz and Review Class – Punishment and The Criminal Act

11. The Guilty Mind

Text: The Guilty Mind, 199-201

Text: Requirement of a Guilty Mind, 202-224

Prompt: Is it fair to have strict liability crimes? How has the thinking about the mens rea requirement changed over time?

12. The Guilty Mind

Text: Categories of Culpability, 224-240

Prompt: Try creating your own mens rea ladder modeled after the one on page 232.

Prompt: What did Faulkner say at the critical time in the case? Please email your thoughts to me by 6pm the night before class. Have fun with this.

13. The Guilty Mind

Text: Mistake and Mens Rea Default Rules, 241-258

Prompt: What benefit to the criminal justice system is obtained by having default rules of statutory construction?

14. The Guilty Mind:

Text: Mistake of Law, 258-271

Prompt: When will a mistake provide an allowable defense to a charge?

15. The Guilty Mind

Text: Mistake of Law as an Excuse, 272-277

Text: Capacity, 277-288

Prompt: What is the difference between a claim that negates mens rea and one that offers a justification or excuse?

Prompt: Should intoxication be allowed to negate mens rea?

16. Mens Rea Quiz and Review

17. Homicide: Intentional Killing

Text: Homicide Offenses, 341-357 (This is background reading. You do not need to know the details of the particular statutes)

Text: Intentional Murder, 359-365

Text: Premeditated Murder, 365-380

Prompt: What is the dividing line between First and Second Degree Murder? Should we have this dividing line?

18. Homicide:

Text: Voluntary Manslaughter, 380-405

Prompt: Does the doctrine of provocation serve a valid social purpose? Should we dispense or amend the principle of mitigation?

19. Homicide: Unintentional Killing

Text: Involuntary Manslaughter, 423-438

Text: Reckless Murder, 438-450

Prompt: What is the difference in recklessness between manslaughter and a depraved heart killing?

20: Homicide: Unintentional Killing – Felony-Murder

Dressler: Chapter 14: Causation

Dressler : Felony Murder, Section 31.06

Prompt: Does the felony murder rule serve a useful deterrent function? Should it be preserved in its broadest form or narrowed? How would you limit the scope of felony-murder?

21. Justification and Excuse – Defensive Force

Text: Distinguishing Justification and Excuse, 549-556

Text: Defensive Force, 557-588

Text: Tennessee v. Garner, 595-598

Prompt: Are we properly regulating police use of force? Should citizens have a duty to retreat?
Should we promote “stand your ground” laws?

22. Justification and Excuse

Text: Choice of Evils – Necessity, 605-616

Dressler: Necessity and Duress, Chapters 22 and 23

Prompt: Which party should bear the burden on issues of justification and excuse?

23. Justification and Excuse: Insanity or Legal Responsibility

Dressler: Insanity (includes discussion of Competency), Chapter 25.

Prompt: What should the burden of proof be on the issue of legal responsibility/insanity?

24. Homicide-Justification-Excuse Quiz and Review

25. Mens Rea Puzzle

26. Joint Class with Other Section

27. Review Final Exam Instructions and Strategies

28. Final Class: Prompt: What are the unifying themes/principles of criminal law?