

**CRIMINAL LAW: FALL 2022**

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**CANVAS: <https://vermontlaw.instructure.com/courses/999>**

**Class Meetings: Mondays and Wednesdays 11:20-12:35**

**Oakes Hall Classroom 110**

**Office Hours: Waterman Hall, Room 218; Tuesdays, (sign up via Canvas or take your chances), or by appointment, or call anytime EXCEPT Thurs/Fri between 9 and 5:30**

**TEXT:** *Criminal Law: Cases, Controversies and Problems* (2<sup>nd</sup> edition 2022 West Academic Publishing) by Joseph E. Kennedy.

**SUPPLEMENTAL READING/VIEWING/LISTENING:**

- *Understanding Criminal Law* by Joshua Dressler (8<sup>th</sup> Edition)
- Materials identified in the syllabus for a given class

**\*\*NOTE THERE IS READING AND VIEWING TO BE COMPLETED PRIOR TO THE FIRST CLASS\*\***

**Please make sure to log on to Canvas prior to our first class.**

**GRADING:**

- Attendance, class participation, professional conduct including preparedness, timeliness, clarity, follow through 15%
- 4 quizzes/assignments, 5% each 20%
- 4 short writing assignments, 5% each for the 1<sup>st</sup> 3, 10% for the 4<sup>th</sup> 25%
  - Opportunities to revise will be provided for the first three writing assignments
- final exam 40%

**EXPECTATIONS and COMMITMENTS:** Consider this to be a plea agreement – in return for certain actions by you, I will commit to certain actions myself.

**You will:**

- Attend class, on time.

- If you need to miss class for any reason, please provide advanced written notice.
- Participate in class, in a professional manner.
  - I will call on you if I need to, but prefer organic and *respectful* discussions. If any discussion makes you uncomfortable for any reason, please come talk to me – especially if it is something that I said that caused the discomfort. Conversely, the class is expected to receive all viewpoints that are expressed courteously with respect and courtesy.
- Sign the attendance roster and please take your seat prior to 11:20 am.
- For the first two weeks, sit in the same seat you occupied for the first class (so that I can put names to faces). If you are comfortable doing so, please send to me a selfie or brief video introduction to help me with this process.
- Not access your phone or the internet during class unless asked to do so as part of the class.
- Complete the assignments for each class, prior to that class, and come prepared to participate in class discussions. This is your class – the more people participate the more useful I can be.
- If you have any technology questions, or more likely notice that I do, raise them as early in the semester as possible so that we can address them as soon as possible.

**I will:**

- Start and end on time.
- Hold every class as scheduled EXCEPT for that on October 31, which will be held on Thursday, November 3rd at the normal time.
- Be accessible in or near the classroom for at least 15 minutes prior to and after each class.
- Keep my office days (with the exception of weeks when there is no class on Monday).
- Be available to you at virtually all other times via phone or email between the hours of 6:00 am and 10 pm, 7 days a week, and by appointment, *except* for Thursday and Friday from 9:00 am – 5:30 pm.
  - If you call and I am not able to pick up, please send a text or email and I will get back to you as soon as I can; let me know in that text or email either when you *are*, or when you *are not* available for a return call.

- Provide at least 2 weeks notice for any changes to the syllabus assignments that may be needed; listen to suggestions in this regard (gratefully received).
- Provide edits and suggestions and an opportunity to revise for a potentially better grade for each of the first three writing assignments.
- Return each quiz and writing assignment promptly to allow adequate time for study/consultation/revision prior to the next quiz or writing assignment.
- Respectfully listen to your concerns and questions and do my best to address both.
- Come prepared for each class.

### **WHAT YOU SHOULD EXPECT TO LEARN:**

1. How criminal law differs from civil law.
2. A basic understanding of how criminal law evolved and its societal foundations, including philosophical/jurisprudential bases governing criminal responsibility.
3. A basic understanding of how a criminal case proceeds from investigation through sentencing.
4. Black letter criminal law you will need for the Bar Exam.
  - Note: Creating a living outline through this course will help you (1) recall this material in 2-3 years when you sit for the bar, and (2) pass your final.
5. How to identify the elements in a statutory offense.
6. Theories of punishment and sentencing in the U.S., including "creative" sentencing/restorative justice.
7. How to assess a criminal case from a variety of perspectives.
8. Anything you are curious enough to ask about (re criminal law).

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### **WRITING ASSIGNMENT #4:**

As the following representative questions suggest, the study of criminal law is frequently philosophical in nature:

- *What should distinguish criminal law from civil law?*
- *What is the purpose/role of criminal law in civil society?*
- *How should we punish those who violate criminal law?*

- *How do you balance the rule of law with prosecutorial discretion/human nature/mercy/unusual circumstances?*
- *What is the role of the courts and juries in interpreting and applying criminal law?*
- *How should inherent biases be addressed in defining or enforcing criminal laws?*
- *Is it fair to hold someone criminally responsible even if the person did not intend to commit the violation? If so, under what circumstances and why?*
- *Is a violent crime or drug crime more or less deserving of criminal punishment than a financial or white collar crime?*
- *Are environmental crimes more or less criminal in nature than crimes against persons or property?*
- *Where does civil disobedience fit in a society under the rule of law and criminal law in particular?*

By its nature, criminal law speaks to profoundly vital social questions. Such questions, and the cases we will explore for more mundane aspects of criminal law, will touch on sensitive topics. I encourage open discussion, follow the basic tenet of "there are no stupid questions," and hope that in addition to learning black and white law for the bar exam, you will come to identify, and be drawn to, the grey areas. I look forward to exploring these questions with you.

For your fourth, and final writing assignment, over the course of the semester you will read or listen to at least one of the following and then use it to illustrate and support your answer to any one of the questions above, in *no more than 5 pages*, in legible font, double spaced. Spellcheck and grammar check. Bonus points for including at least two case citations:

*The Once and Future King* by T.H. White

*Empire of Pain: The Secret History of the Sackler Dynasty* by Patrick Radden Keefe

*The Monkey Wrench Gang* by Edward Abbey

*In Cold Blood* by Truman Capote

*Live from Death Row* by Mumia Abu-Jamal

*Cop in the Hood: My Year Policing Baltimore's Eastern District* by Peter Moskos

*Letter From Birmingham Jail* by Martin Luther King, Jr.\*

*The Lizard King* by Bryan Christy

*Stolen World: A Tale of Reptiles, Smugglers, and Skulduggery* by Jennie  
Erin Smith

*Tree Thieves: Crime and Survival in North America's Woods* by Lyndsie Bourgon

*The Ciderhouse Rules* by John Irving

\* This should be read as a companion to either of the two books listed immediately above this one.

Please let me know your selection of book/recording no later than September 9th.

## **ASSIGNMENTS**

### **1 - Week of August 27 (two classes)**

#### **Class #1 – Aug. 29**

- What is a Crime?
- Sources of Criminal Law
- The Life of a Criminal Case
- Intro to Burden of Proof
- The Role of the Jury

**Text: Kennedy: 1-11, 53-56,**

**29 “CrimTube: Inside the Jury Room”**

**<https://archive.org/details/InsidetheJuryRoom>** (1 hr.  
video)

**Supplement: Chapter 1, 3.01, 3.03**

**ASSIGNED:** *Short Writing Assignment #1 (Due by 4:00 pm, Monday, September 12): “Law without enforcement is just good advice” – Abraham Lincoln. In no more than 3 double-spaced pages (less is more), argue in either agreement or disagreement, and be sure to define what you believe constitutes “enforcement” for the purpose of your argument. State your hypothesis, elaborate on your supporting argument, and state your conclusion. Please spell check and proofread. Bonus points for including a case citation, properly blue booked. Because the practice of law is a collaborative process,*

*this is a small group assignment – groups will be determined during class and further instructions provided.*

**Class #2 – Aug. 31**

- Philosophies of Punishment/Proportionality

**Text: Kennedy: 31-39, (omit the practice problem), 41-46, 48-51**

<https://bjs.ojp.gov/media/image/45506> (one page chart)

**Supplement: 2.03, 2.04, 2.05, Chapter 6**

**Cases:** *The Queen v. Dudley and Stephens*  
*Powell v. Texas*  
*Rummel v. Estelle*  
*Solem v. Helm*  
*Harmelin v. Michigan*  
*Ewing v. California*

**2 - Week of September 5 (one class on September 7th)**

**Class #3 – Sept. 7**

- Statutory Interpretation
  - Plain Meaning
  - Legislative History
  - Rule of Lenity
- Constitutional Limits
  - Bill of Attainder
  - Ex Post Facto
  - Due Process
  - Vagueness

**Text: Kennedy: 56-top of 57, 73-102**

**Supplement: Chapter 5**

**Cases:** *John L. Yates v. U.S.*  
*State of Vermont v. Rebekah S. VanBuren*  
*United States v. Apollo Energies, Inc., 611 F.3d 679*  
*(10<sup>th</sup> Cir. 2010)*

*United States v. CITGO Petroleum Corp.*, 801 F.3d 477  
(5<sup>th</sup> Cir. 2015)

### **3 - Week of September 12 (two classes)**

#### **Class #4 – Sept. 12**

- Burden of Proof

**Text:**           **Supplement: Chapter 7**

**Cases:**       *In re Winship*  
                  *Mullaney v. Wilbur*  
                  *Patterson v. New York*  
                  *Martin v. Ohio*

***DUE: First Writing Assignment Due no later than 4:00 pm***

#### **Class #5 – Sept. 14**

- Actus Reus

- Voluntary Act
- Omission

**Text:**           **Kennedy: 119-146 (omitting discussion questions)**

**Supplement: Chapter 9**

**Cases:**       *Robinson v. California*  
                  *Martin v. State*  
                  *People v. Decina*  
                  *People v. Grant*  
                  *Jones v. United States*

***In Class Quiz #1 – Short answer – covering Weeks 1 and 2 -  
Philosophies of Punishment/Sources of Criminal Law/Life of a  
Case/Statutory Interpretation***

### **4 - Week of September 19 (two classes)**

#### **Class #6 – Sept. 19**

- Mens Rea

- Willful/Purposeful
- Knowing/Deliberate Ignorance
- Conditional Intent

**Text:** **Kennedy: 169-203**  
**Supplement: 10.04(A) through (C)**

**Cases:** *Regina v. Faulkener*  
*State of Vermont v. James Riley*  
*State v. Richardson*  
*Anthony Douglas Elonis v. U.S.*  
*Francois Holloway, aka Abdu Ali v. U.S.*  
*U.S. v. Jewell*  
*U.S. v. Miller*  
*U.S. v. McKittrick, 9<sup>th</sup> Cir. opinion*  
<https://caselaw.findlaw.com/us-9th-circuit/1286007.html>  
*and government's cert. opposition brief*

### **Class #7 – Sept. 21**

- Mens Rea con't.
  - Reckless/Wanton Disregard
  - Negligent
  - Strict Liability

**Text:** **Kennedy: 212-246**  
**Supplement: 10.04(D) through 10.06, 11.01 through 11.03**

<https://www.forbes.com/sites/wlf/2016/03/23/federal-law-enforcers-true-intentions-whats-behind-their-opposition-to-mens-rea-reform/?sh=5534ce565993>

**Cases:** *Regina v. Prince*  
*Dean v. U.S.*  
*Morissette v. U.S.*  
*U.S. v. Michael H. Weitzenhoff; Thomas W. Mariani*  
*People v. Ryan*

### **5 - Week of September 26 (two classes)**

#### **Class #8 – Sept. 26**

- Causation

**Text:** **Kennedy: 461-484**



**Supplement: Chapter 14**

**Cases:** *Regina v. Martin Dyos*  
*State v. Echols*  
*Commonwealth v. Root*  
*People v. Kevorkian*

**In class exercise:** *Break out the elements/crimes in 18 U.S.C. 542*

**ASSIGNED:** *Writing Assignment #2 (Due by 4:00 pm, Wednesday, October 12)*

**Class #9 – Sept. 28**

- Intro to Mistakes and Excuses
  - Mistake of Fact
    - Relationship to Knowing
  - Mistake of Law

**Text:** **Kennedy: 253-274**

**Supplement: Chapters 12 and 13**

**Cases:** *People v. Navarro*  
*People v. Marrero*  
*U.S. v. Dennis Moran*

**6 - Week of October 3 (two classes)**

**Class #10 – Oct. 3**

- Mistakes and Excuses (con't)
  - Justification
  - Self-Defense
  - Defense of Others

**Text:** **Kennedy: 633-643 “The Problem of Racial Fear”, 644-646, bottom of 650-653, 671, 679-685, bottom of 692-698**

**CrimTube 698:**

<https://www.youtube.com/watch?v=HSHXZ-tCXBg>

**(1.40 hour video)**

**Supplement: optional 197-210, 211-258**

**Cases:** *People v. Goetz*

*The People v. Kelsey Dru Gleghorn*

**In Class Quiz #2 – Multiple Choice - Weeks 4 and 5 - Burden of Proof/Mens Rea/Causation**

**Class #11 - Oct. 5**

- Mistakes and Excuses (con't)

- Duress/Necessity

**Text: Kennedy: 653-665, 699-715**

**Supplement: 22.03, 22.04[B]-[D], 22.05 23.03, 23.06, 23.07**

**Cases:** *State of North Carolina v. Judy Ann Laws Norman*  
*United Illinois v. Unger*  
*United States v. Juan Manuel Contento-Pachon*  
*Regina v. Dudley and Stephens (redux)*

**7 - Week of October 10 (one class on October 12)**

**Class #12 – Oct. 12**

- Mistakes and Excuses (con't)

- Insanity/Diminished Capacity

**Text: Kennedy: 717-760, Practice Problem 22.2**

**Supplement: 25.03, 25.06, 25.07, 26.01**

**Cases:** *Eric Michael Clark v. Arizona*  
*Colorado v. Robert Paqual Serravo*  
*United States v. Robert Lyons*

**DUE: Writing Assignment #2, no later than 4:00 pm**

**8 - Week of October 17 (two classes)**

**Class #13 – Oct. 17**

- Mistakes and Excuses (con't)

- Defense of Property
- Law Enforcement
- Intoxication

**Text: Kennedy: 672-679, 277-285, 291-299**

**Supplement: Chapters 20, 21, 24**

**Cases:** *State of New Mexico v. Cecil Boyett*  
*State v. Cameron*  
*Commonwealth of Pennsylvania v. Karen Smith*

**Class #14 - Oct. 19**

- Entrapment
- Outrageous Government Conduct
- Religious Freedom Restoration Act

**Text:** N/A

**Cases:** *Sherman v. United States, 356 U.S. 369 (1958)*  
*United States v. Sandia, 188 F.3d 1215 (10<sup>th</sup> Cir. 1999)*  
*United States v. Stenberg, 803 F.2d 422 (9<sup>th</sup> Cir. 1986)*  
*United States v. Dion, 762 F.2d 674 (9<sup>th</sup> Cir. 1985)*  
*United States v. Hugs, 109 F.3D 1375 (9<sup>TH</sup> Cir. 1997)*  
*42 U.S.C. 2000bb – 2000bb-4*  
*Gonzales v. O Centro Espirita Beneficente Uniaso Do Vegetal, 546 U.S. 418 (2006)*  
*United States v. Winddancer, 435 F.Supp.2d 687 (M.D. Tenn. 2006)*  
*United States v. Haas, 141 F.3d 1181 (9<sup>th</sup> Cir. 1998)*  
*United States v. Friday, 525 F.3d 938 (10<sup>th</sup> Cir. 2008)*

**9 - Week of October 24 (two classes)**

**Class #15 – Oct. 24**

- Homicide
  - Common Law Origins and Statutory Reform
  - Intentional Killings; Degrees of Murder

**Text:** **Kennedy: 301-305, 307-314, 315-330**

**Supplement: 31.01-31.03**

**Crimtube 306:**

**<https://www.youtube.com/watch?v=TxKxj0ZWEcY>**

**Cases:** *Robert Francis, Warden v. Raymond Lee Franklin*  
*State v. Bingham*  
*Watson v. U.S.*  
*Commonwealth v. Carroll*

**ASSIGNED:** *Writing Assignment #3 - Practice Problem 13.1, No More than 3 pages, Due No Later Than 4 pm, Monday, November 7.*

**Class #16 - Oct. 26**

- Homicide: Manslaughter

- Voluntary Manslaughter

**Text:** Kennedy: 331-350, 357-363

**Supplement:** 3.07

**Cases:** *Illinois v. Walker*

*Girouard v. Maryland*

*Brooks v. State*

*State v. Gounagias*

*People v. Ellena Starr Nesler*

*People v. Casessa*

**In Class Quiz #3** – *Multiple Choice, weeks 5-8, Causation, Mistakes and Excuses*

**10 - Week of October 31 (two classes: no class on Halloween, make up Nov. 3)**

**Class #17 – Nov. 2**

- Homicide: Manslaughter

- Unintentional killings

**Text:** Kennedy: 369-387, bottom of 388-389, 393-405

**Crimtube 407:**

<https://www.youtube.com/watch?v=x1-axqBZdNk>

**Supplement:** 31.08, 31.09

<https://m.youtube.com/watch?v=acUFdP7N1vw>

- Is the definition of mens rea correct?
- What mens rea is held by the witness? What defenses would she have?
- With what type of homicide could the witness be charged?

**Cases:** *People of the State of Colorado v. Nathan Hall*

*State of Washington v. Williams*

*People v. Marjorie Knoller*

*Kansas v. John P. Doub, III*

**Class #18 – Nov. 3**

- Felony Murder
  - Policies Behind the Doctrine
  - Basic Rule and Variations
  - Limits

**Text:**           **Kennedy: 409-420, 425-56**

**Supplement: 31.06**

**Cases:**       *West Virginia v. Paul Emerson Sims*  
*People v. Archie Fuller*  
*Hines v. The State of Georgia*  
*The People v. Linda Lee Smith*  
*The People of the State of New York v. Gladman*  
*People v. Cavitt*  
*State v. Martin*  
*Kansas v. Sanexay Sophophone*  
*U.S. v. Earl E. Walker*

**11 - Week of November 7 (two classes)**

**Class # 19 – Nov. 7**

- Possessory Crimes
  - Drug Possession
  - Digital Possession

**Text:**           **Kennedy: 146-168**

**Supplement: 9.03[C]**

**Cases:**       *The State v. Joe Frank Matarazzo*  
*United States v. Rafael Angel Zavala Maldonado*  
*State of South Dakota v. Todd David Linson*  
*State of Oregon v. Barry Lowell Barger*

**Prepare to discuss Practice Problem 5.2**

**Class #20 – Nov. 9**

- Crimes Against the Person
  - Battery
  - Stalking
  - False Imprisonment
  - Kidnapping

**Text: Kennedy: 807-808, 818-825**

**Cases:** *The State of New Hampshire v. Frank Simone*

***DUE: Writing Assignment #3, no later than 4:00 pm***

**12 - Week of November 14 (two classes)**

**Class #21 – Nov. 14**

- Crimes Against the Person (con't)
  - Assault
  - Rape
    - Elements

**Text: Kennedy: 808-817, 765-772**

**Supplement: Chapter 33 (for both classes this week)**

**Cases:** *Commonwealth v. Albert J. Henson*

*The People of the State of Illinois v. William J. Conley*

**Class #22 – Nov 16**

- Rape (con't)
  - Consent
  - Acquaintance and Marital Rape

**Text: Kennedy: 773-805**

**Cases:** *Rusk v. State*

*The People of the State of New York v. Eric Dorsey*

*Commonwealth of Pennsylvania v. Robert A. Berkowitz*

*In the Interest of M.T.S.*

**13 - Week of November 21 (two classes)**

**Class #23 – Nov. 21**

- Property Crimes

- Larceny
- Embezzlement
- Obtaining Property by False Pretenses
- Forgery/Check Kiting
- Robbery
- Burglary

**Text:**       **Kennedy: 827-861**

**Supplement: Chapter 32**

**Cases:**     *Commonwealth v. James O. Mills*

*Lear v. State*

*State of Maine v. Dale Thibeault*

*State of Minnesota v. Peter Allen Colvin*

#### **Class #24 – Nov. 23**

- Introduction to Title 18, United States Code
  - Smuggling
  - Partial Birth Abortion
  - False Statements

**Text:**       **18 U.S.C. 545, 554, 1531, 1001 (compare to 16 U.S.C. 3372(d), 3373(d))**

#### **14 - Week of November 28 (two classes)**

##### **Class #25 – Nov. 28**

- Conspiracy

**Text:**       **Kennedy: 495-516, 521-526, 530-535**

**Supplement: 29.02, 29.07[A] through [D], 29.08**

**Cases:**     *Commonwealth of Pennsylvania v. Charles Azim*

*United States v. Fitz*

*People v. Swain*

*People v. Lauria*

*United States v. Diaz*

*United States v. Recio*

**Prepare to discuss Practice Problem 17.0**

## Class #26 – Nov. 30

- Liability for the Crimes of Others

**Text: Kennedy: 579-591, bottom of 598-middle 604, 606-626, 628-630**

**Crimtube 628:**

<https://www.youtube.com/watch?v=aPTEyCpRI4o>

**Supplement: Chapter 30 (optional)**

**Cases:** *State v. Ochoa*  
*State of West Virginia v. Kevin Dwayne Hoselton*  
*State ex rel. V.T.*  
*The People v. Timothy Mark Beeman*  
*The State of Washington v. Christine Hopkins*  
*State of Maine v. William Linscott*  
*State of New Hampshire v. Paul Formella*

***Prepare to discuss Practice Problem 19.1***

***In Class Quiz #4 – Multiple Choice, Weeks 11-13, Crimes Against Person and Property***

## 15 – Week of December 5 (two classes)

### Class #27 – Dec. 5

- Attempt
- Aiding and Abetting/Solicitation

**Text: Dec. 5 - Kennedy: 539-577, 485-494**

**Crimtube 486:**

[https://www.youtube.com/watch?v=8\\_ykqWcDXXM](https://www.youtube.com/watch?v=8_ykqWcDXXM)

**Crimtube 575 [only if you are a Monty Python fan]**

**Supplement: 27.01-27.04 (the rest of Chapter 27, and Chapter 28 are relevant but optional)**

**Cases:** *People v. Murray*  
*United States v. Jackson, Scott & Allen*  
*South Dakota v. Lyerla*  
*People v. Staples*  
*People v. Dlugash*  
*People v. Thousand*

***DUE: Writing Assignment #4, no later than 4:00 pm***



**Class #28 – Dec. 7**

- General Review and Crimes Bingo