CRIMINAL LAW: FALL 2022
Elinor Colbourn (she/her)
Vermont Law School
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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


SUPPLEMENTAL READING/VIEWING/LISTENING:
- Understanding Criminal Law by Joshua Dressler (8th 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 1st 3, 10% for the 4th 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).

_____________________________________________________

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
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
  o Philosophies of Punishment/Proportionality
    Text: Kennedy: 31-39, (omit the practice problem), 41-46, 48-51
    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
  o Statutory Interpretation
    • Plain Meaning
    • Legislative History
    • Rule of Lenity
  o 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 (10th Cir. 2010)
United States v. CITGO Petroleum Corp., 801 F.3d 477 (5th 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, 9th Cir. opinion*  
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  

**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
  o Intro to Mistakes and Excuses
    • Mistake of Fact
      o 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
  o Mistakes and Excuses (con’t)
    • Justification
    • Self-Defense
    • Defense of Others
  CrimTube 698: https://www.youtube.com/watch?v=HSHXZ-tCXBg
              (1.40 hour video)
  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
       Supplement: Chapters 20, 21, 24
Class #14 - Oct. 19
  o Entrapment
  o Outrageous Government Conduct
  o 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 (10th Cir. 1999)
  * United States v. Stenberg, 803 F.2d 422 (9th Cir. 1986)
  * United States v. Dion, 762 F.2d 674 (9th Cir. 1985)
  * United States v. Hugs, 109 F.3d 1375 (9th Cir. 1997)
  * United States v. Haas, 141 F.3d 1181 (9th Cir. 1998)
  * United States v. Friday, 525 F.3d 938 (10th Cir. 2008)

9 - Week of October 24 (two classes)

Class #15 – Oct. 24
  o Homicide
    * Common Law Origins and Statutory Reform
    * Intentional Killings; Degrees of Murder

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
  o 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
  o 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
Class #18 – Nov. 3
  o 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
  o 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
  o 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
  o Crimes Against the Person (con’t)
    • Assault
    • Rape
      o 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
  o Rape (con’t)
    • Consent
    • Aquaintance 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
  o 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
  o 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
  o 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
  o 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
  o Attempt
  o Aiding and Abetting/Solicitation
    Text: Dec. 5 - Kennedy: 539-577, 485-494
    Crimtube 486:
      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
  o General Review and Crimes Bingo