

COURSE SYLLABUS

Faculty: **Professor Marie A. Failing**

Course: **Criminal Law**

Semester: **Fall 2010**

Meeting Schedule: **Tuesday and Thursday, 9:30-10:45**

Room: **105**

Textbook	Primary Text	Recommended not required
Author	Joshua Dressler	Joshua Dressler
Title/edition of text	Cases and Materials on Criminal Law, 5 th ed.	Understanding Criminal Law, 5 th ed.
Publisher/year	Thomson Reuters (West) 2009	LexisNexis 2009
ISBN	9780314206459	9781422429877

NOTE ON BOOKS: The Dressler treatise (Understanding Criminal Law) is NOT required, and we will not be doing any work from it directly. It is suggested as an optional aid because it covers basically the same material as your text, and is a helpful companion piece if you are trying to understand a concept or see how it applies to specific problems, especially if you still find yourself “at sea” after class. You are encouraged NOT to read the treatise until you have done what you can to understand and work through the regular assignment. Rather, it should be used when you are having a hard time grasping a topic, or as a way to review topics and evaluate your understanding of how legal rules you will be learning apply to *particular fact situations*.

Learning Outcomes for the Course:

The goals of our course will be:

1. To discover, learn and evaluate the philosophical and jurisprudential assumptions that underlie Criminal Law (in our shorthand, “theories of punishment.”) We will be trying to discover how these theories explicitly and implicitly affect how courts decide cases, and how the use of particular theories makes a difference in the resolution of a case. We will also discuss what we think of the validity of these theories and where they lead the law.
2. To learn the basic “building blocks” of Criminal Law, to learn the basic “problems” that those in the field of Criminal Law regularly confront, and to learn the most common options in the form of legal rules that different states have developed to “solve” those problems.
3. To learn how to make an argument about why a case should come out in a particular way, and to learn how to make such an argument from various points of view (e.g., as a

prosecutor, as a defense attorney, as a judge), marshalling the case facts, the legal rules, the theories of punishment and other policy concerns.

4. To identify the types of policy concerns that inform the law of criminal punishment and evaluate their assumptions and the values that underlie them.
5. To work on applying the legal rules to factual situations and making valid judgments about how particular cases should come out.
6. To practice some of the necessary skills and habits of an independent professional who works in conditions of uncertainty, e.g., to learn to organize materials and “answers” to problems on your own without significant supervision, patterns or validation for that organization (as lawyers do when they organize cases for trial), to learn to evaluate your own level of learning and understanding and deciding when to seek guidance in texts or persons (as lawyers do when they research legal problems), to learn to work steadily, conscientiously, and with perseverance.

At the end of the course, you should be able to:

1. Spot the criminal law issues that arise in a criminal law problem;
2. Identify the alternative legal rules, principles, and definitions that apply to resolve those issues;
3. Identify the theories of punishment and policies that help to define, limit, and justify these alternative rules;
4. Compare and contrast the alternative rules, and make a good argument about which of the alternative rules is the most sound, based on the theories and policies;
5. Apply the legal rules to the facts to make a persuasive argument about what result the courts should come to when the rules are applied to particular fact situations to resolve the legal “problem.” This involves such basic lawyering skills as understanding which facts are important to the resolution of a problem, and which facts are not, knowing how to compare cases to each other through analogical reasoning, etc.;
6. Understand the priority of legal issues in a legal problem—e.g., which legal issues you have to resolve first and which later, which are the most important issues in a problem, etc.; and
7. Construct your own outline of the course, including its themes, rules and applications, and learn that material for the examination.

Course Expectations:

HUSL Policies on attendance, lateness and preparation

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor’s specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

Attendance Policies in this Course: Please keep your own attendance and turn in a record at the end of September, October, and by the last day of class, by email to me or in writing. If you have missed no classes, your certification should indicate that you have missed no class for the previous period. If you have missed class, indicate which days you have missed and what you did to make up the assignment. **Should you miss more than six (6) class hours for ANY reason, it is YOUR responsibility to contact me immediately thereafter to see if you can make up what you have missed. Excessive absences may result in your being withdrawn from class.**

Punctuality/Preparation Policies in this Course:

Reading and briefing the assignment: You are responsible for reading and briefing or otherwise working through the entire assignment for the day, and for knowing that material, even if we do not cover it in class. This means reading the assignment thoroughly, briefing cases and/or taking notes; learning the rules or principles described in the cases/notes, thinking about how criminal law rules and policies apply to the reading and previous readings, and identifying questions you have about the reading so that you can answer them through the class discussion, your own preparation, or consultation with the professor or colleagues.

Participating in class: You should be prepared to participate in class (being called on and as a volunteer), including reciting cases, offering your views and arguments on various issues, and when you are not speaking, participating silently by following along with the discussion, formulating your own arguments and evaluating others' arguments. Similarly, when the class breaks into small groups to discuss problems, you are expected to participate vigorously in your small group.

If you are not prepared when you are called on in class, please submit a written brief of the case for which you are called on and your views about the issues that we discuss regarding this case in class

You are also responsible, with your group, for completing the problems assigned in class. You will be part of a small group for the term. In the group, which will meet occasionally in class during the semester, you will practice your skills by applying the legal rules and principles you are learning to new fact situations, testing your understanding, and giving you a chance to extend your discussion about how these cases should be resolved, something that we do not have sufficient time to do in class. Many of the problems will not have "right" answers and some will probe difficult controversies in the law; but the problems will require you to come up with an answer that is sound given existing case law.

In the first meeting of your small groups, you should:

- a. Select a leader who will be responsible for making sure that the problem answers (for the problems you were able to finish in class) are emailed by the recorder to the professor by 3 p.m. the day before the next class period. The leader is also responsible for communicating with the group about any questions the group may have or issues that may arise about the problems.

- b. Select a recorder for your first discussion, the person who will take notes on the discussion and formulate a response to the problems based on the discussion, to be sent to me. That task may rotate, or one person may volunteer for the job for the entire term, as the group prefers.
- c. If you wish, identify a way you can communicate with each other, e.g., through an email list, by setting up a time to get together to talk about the problems each week, through phone conference calls, etc. Get the appropriate information (e.g., email addresses) to each member of the group and the professor.
- d. Figure out a protocol for how you would like to resolve the problems, get them in writing, and get them to me.
- e. Figure out a regular meeting place for the meetings that will occur class time to discuss the problems.

Once the problem responses are in, if I have any feedback on specific group responses (i.e., corrections to legal statements, etc.), I will communicate with the recorder who submits the responses, who send them back to the group. These responses are NOT graded or a part of your grade.

Policy on Laptop Use in Class: The New York Times this summer reported that “[h]eavy multitaskers actually have more trouble focusing and shutting out irrelevant information. . . . [and] experience more stress. . . . [E]ven after the multitasking ends, fractured thinking and lack of focus persist.” During this class, your entire focus should be on Criminal Law unless you have an emergency. Therefore, your laptop use should be limited to retrieving or taking notes and information related to the day’s assignment.

Other Classroom Policies:

Grading Components

Final Examination: With the exception of a possible grade raise for class participation, your entire grade in the class will be based on a closed-book, 3.5 hour final examination during finals period. Samples of past examinations and exam answers are available in the library and on the exam homepage on the library website.

Grade raises may be given for outstanding frequent participation in class and on assignments, as determined by the instructor. (Frequency of participation alone is not a basis for a grade raise.) Typically they range from .2 to .6 added to your exam score.

Reading Assignments:

I. WHAT IS A CRIME, WHY DO WE PUNISH?

8/24 Theories of crime/punishment 1-5, 30-49

Intro to the class and discussion of theories about why people commit crime and the theories of punishment. Problems - application of the theories of punishment to cases.

8/26 Proportionality, legality and vagueness 69-77, 92-113

II. COMMON LAW DEVELOPMENT OF CRIMES/STATUTORY SOLUTIONS

8/31 Larceny 916-932

9/2 Larceny and Theft 933-950 (Problems) (note: official class may end early due to convocation)

III. GENERAL ELEMENTS OF CRIMES

9/7 Actus Reus 127-148 (Problems)

9/9 Mens Rea 149-170, 175-177, 184 (n.2)-186

9/14 Mens Rea: Mistake of Fact and Law, 194-213

9/16 Causation 214-234

IV. HOMICIDE: “LEVELS” OF MENS REA (READ 235-247)

9/21 Murder 247-264

9/23 Voluntary Manslaughter 264-289

9/28 Involuntary Manslaughter 295-315 (Problems)

9/30 Felony murder 315-345

10/5 The Death Penalty 345-369 (Appellate Argument/Death Penalty)

V. RAPE: MENS REA/ACTUS REUS IN TENSION (READ 385-397)

10/7 Forcible Rape 404-434

10/12 Sexual Assault 434-447, 453-469, 475-479

VI. DEFENSES TO CRIME (READ 480-486, 497-499, 579-583)

10/14 Self-Defense 500-523

10/19 *Video*: Defending Our Lives, 524-546
Defense of Others 549-553

10/21 **BREAK**

10/26 Defense of Property, Necessity 553- 575 (Problems)

- 10/28** Duress and Intoxication, 583-597, 603-611 (NOTE: This class may need to be rescheduled.)
- 11/2** Insanity 616-642, 650-52
- 11/4** Diminished Capacity/Infancy/Cultural Defenses 656-679, 715-28 (Problems)
- VII. INCHOATE AND GROUP CRIMES: ATTEMPT, SOLICITATION, CONSPIRACY, ACCOMPLICE LIABILITY (READ 729-732)**
- 11/9** Attempt 732-740, 745-764
- 11/11** Attempt and Impossibility 772-792
- 11/16** Solicitation and Conspiracy 792-816,
- 11/18** Conspiracy 816-847
- 11/23** Accomplice liability 848-868
- 11/25 THANKSGIVING BREAK**
- 11/30** Accomplice liability 868-883,890-900
- 12/2 REVIEW**