

Criminal Law Syllabus

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CRIMINAL LAW

ASSIGNMENTS

Fall 2010

Required Casebook: Joshua Dressler, CRIMINAL LAW (5th Ed.) West 2009.

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Class Session	Assignment
1.	<p>Joshua Dressler, CRIMINAL LAW (4th Ed.) (hereafter referred to as Casebook)</p> <ol style="list-style-type: none">1. Read for background pp. 1-292. Be prepared to discuss pp. 531-41.3. Be prepared to discuss your views about<ol style="list-style-type: none">a. The proper goals of the Criminal Justice System.b. The extent to which the US criminal justice system is effective in accomplishing any of those goals.c. Why the U.S. incarceration rate (700 hundred per hundred thousand citizens) is six to ten times higher than the incarceration rates in other industrialized nations.d. Should Judy Norman be punished? If you were prosecutor would you prosecute? If you were a juror would you convict? If you were a judge what sentence would you give? If you were a legislator would you recommend any new legislation?
2.	<ol style="list-style-type: none">1. Read for background Casebook pp. 30-48.2. Be prepared to discuss Casebook pp. 48-623. How is the criminal justice system different from the civil system?4. What is criminal punishment?5. Is Harlan right? Is it better to let a guilty person go free rather than convict one innocent person?
3.	<ol style="list-style-type: none">1. Be prepared to discuss Casebook pp. 69-812. Are you a retributivist or a utilitarian?3. Should the punishment fit the crime or the criminal?4. Describe the Supreme Court's legal approach to resolving an Eighth Amendment issue?5. For the answer to Note 6, p 75 see <i>Kennedy v. Louisiana</i>, www.supremecourtus.gov/opinions/07pdf/07-343.pdf

4. Casebook 81-91
 1. Are you a retributivist or a utilitarian?
 2. Should the punishment fit the crime or the criminal?
 3. Is proportionality a good thing? Why?
 4. Is proportionality required by the Constitution?
 5. Describe the Supreme Court's legal approach to resolving an Eighth Amendment issue?
 6. Can the legislature pass a law mandating 30 years in prison for driving under the influence of alcohol?

5. Casebook pp. 92-105
 1. What is the Principle of Legality?
 2. Should Mochan be punished? What crime did he commit?
 3. What is the issue in *Keeler*?
 4. What is the process the California Supreme Court uses to interpret the statute in *Keeler*?
 5. Does the majority or the dissent have the better legal interpretation of the statutes in *Keeler*?

6. Casebook 105-19
 1. What are the issues in *Banks*? How does the North Carolina Peeping Tom statute provide fair notice? Why is it not overbroad?
 2. Should Minnesota pass a "Peeping Tom" statute? Why?
 3. Is the Municipal Ordinance found at note 2, p. 115 constitutional?

7. Casebook pp. 127-42
 1. Martin "manifested a drunken condition in public by using loud and profane language." Why shouldn't he be punished?
 2. What is *Actus Reus*? Must all crimes include a voluntary act? Why?
 3. The court in *Utter* says that it is the function of the jury to weigh evidence and determine credibility of witnesses. Why was the jury not permitted to address the issue of "conditioned response"?
 4. Beardsley brings Blanche into his apartment, gets drunk with her, she becomes ill, and he does not get medical care

for her. Why shouldn't we punish Beardsley? Should we punish the young man? Skoba?

8

Casebook pp. 142-53

1. Review the principle of legality. Has the *Barber* court violated the principle of legality?
2. In *Barber*, the court characterizes the doctors' actions as an "omission." Why? Why shouldn't we punish the doctors?
3. What is mens rea?
4. What does malicious mean in *Cunningham*? Why is *Cunningham's* conviction quashed?

9.

Casebook pp. 153-63

1. What does "intent" mean? What is specific intent? General intent?
2. What are the common law elements of battery? Larceny? Rape? Burglary?
3. Review the model penal code definitions of negligence, reckless, knowing and purposeful.
4. Review notes and questions on p.161.

10.

Casebook pp. (reread pp 160-63); Read pp. 164-70

1. Review notes and questions on p.161.
2. Why is Sandra Nations, who did not check the child's ID and lied about it in court, not guilty?

11.

Casebook pp. 119-26; 170-75

1. Describe the judicial role in applying statutes.
2. In *Muscarello*, does the majority or the dissent have the better argument? Why?
3. Is *Flores-Figueroa* decided correctly. Explain the court's reasoning?
4. How would *Flores-Figueroa* be decided if the Model Penal Code were applicable

12. Casebook pp. 175-86
1. Address note 3 on p. 175.
 2. Are there limits on the legislative power to create strict liability crimes?
13. Casebook pp. 186-98
1. Is statutory rape a strict liability crime?
 2. How is the common law doctrine of mistake of fact different from the model penal code approach?
14. Casebook pp. 199-213
1. Is mistake of law different from mistake of fact?
 2. The trial judge and one appellate judge interpreted the statute the same way Marrero did. How can we punish Marrero in the face of such doubt about the reach of the statute?
 3. Marrero consulted his criminal law prof. What if he had retained a lawyer and relied on the legal advice of the lawyer?
 4. Is ignorance of the law ever a defense?
15. Casebook pp. 214-232
1. Review the notes on p. 219.
 2. How did the *Kibbe* case get to the United States Court of Appeals?
 3. Why isn't Blake, who was speeding and did not apply his brakes, the legal cause of Stafford's death?
 4. If the accident occurred during the race would you then say Valaquez caused the death? What if Alvarez also killed a pedestrian during the crash? Would Valquez then have caused the death.
16. Casebook pp. 235-253
1. What is the common law definition of murder?
 2. Why do some states provide categories or degrees of murder?
 3. Are some murders more serious than others? Which are the most serious? Which are the least serious?
 4. Is the New York Court in *Eulo* violating the principle of legality?

Additional assignments will be provided

Introductory Remarks

CRIMINAL LAW

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Fall, 2010

Welcome to your first year of legal education at Hamline University School of Law. I am your Criminal Law teacher this year. In addition to Criminal Law, I teach Civil Procedure, Evidence, Torts, and Seminars focusing on ADR and on jury trials. I have also taught Contracts, Agency, Criminal Procedure and Legal Writing. My office is located on the bridge connecting the two buildings in Room 209E. I am usually in my office 8:00 A. M. to 4:00 P.M. In addition to this class I teach M, W and F at 9:00. If you have questions, feel free to drop in any time I am in my office. If I am unable to meet with you at that time, I will tell you, and we will find a better time. If you want to be sure to meet with me, I suggest that you contact me and make an appointment. I prefer not to meet with students the hour before I am teaching a class. I do check e-mail messages every morning.

The Criminal Law course addresses substantive criminal law. The course includes

common law concepts as well as statutory interpretation. The materials will introduce you to some constitutional law concepts as well. We will address constitutional limitations on the legislature's power to define crime and to punish citizens, as well as issues involving constitutional rights of the accused. The criminal procedure and evidence classes address Fourth, Fifth and Sixth Amendment rights of the accused. This course focuses on the conflict between individual liberty and the government's legitimate need to control or to punish behavior. In our democratic society, under what circumstances is it appropriate for the government to impose on its citizens the coercive power of denunciation, incarceration or death?

GOALS OF THE COURSE

The study of law will be a continuing process throughout your professional career. To some extent you have already begun the process in your study of history, current events, philosophy, economics, and other disciplines. You have a great deal to learn, a short time in law school, and an even shorter time in my course. Thus, there are many goals of this course.

Lawyers are problem solvers. A primary goal of this course will be to assist you in developing your personal analytical ability to look at a problem (a rule of law, an issue, or an argument), identify the various alternative solutions, ascertain the strengths and weaknesses of each, and determine your opinion as to the best approach to resolving the problem. In the context of the Criminal Law course I invite you to develop your personal views on the appropriate goals of our criminal justice system and how substantive laws and procedural rules can advance these goals. Once you develop

your personal analytical framework, you will have some basis for evaluating the various court decisions and legislative responses we will study in the course.

We will, of course, spend some time on simple case analysis. What were the key facts in the case? What issue did the court address? What substantive rules of law did the court use? What was the holding and the rationale of the decision? The bulk of the class time, however, will be spent analyzing the rationale given and the policy choices made by the courts. Because most of the criminal law is codified we will focus on how to interpret statutes and on the role of the legislature and courts in controlling or punishing behavior in our democratic system of government. We also will study a few constitutional cases, so you will be introduced to constitutional analysis and principles of federalism.

To apply basic criminal law principles you first must learn and be able to recollect the black letter law. You must learn the elements of the common law crimes such as murder, manslaughter, burglary, larceny, rape, mayhem, kidnapping, assault, conspiracy and solicitation, as well as defenses such as self-defense, insanity, mistake, duress, impossibility and necessity. You must also learn how the Model Penal Code, a model set of statutes, adopted in part by many states, has altered the common law approach. The focus of the course, and the exam, though will not be on your ability to memorize these rules, but on your ability to use these rules to resolve legal issues.

CLASSROOM DISCUSSION

I do not believe that there is any teacher at Hamline who uses a true Socratic

method of dialogue with students. The teaching method will vary in your classes. I will give some short lectures and have some question and answer periods. Much of the course will be conducted through an instructor led class discussion of various questions and points raised primarily by me, but not infrequently by you. Because my goal is to give you the opportunity to develop your personal views, it is not useful for me to tell you my views. I will spend the class time asking about your views and your reasons for advancing them. Simply because I, or someone else, question you about the basis of your views, you should not construe this as a negative comment or necessarily as disagreement with your views.

The classroom is a place to explore your views, and test your theories. Not all of your theories will hold up under careful scrutiny. Not everyone will agree with your views even when they are fully defended. Furthermore, although some of your views will be justifiable, the level of your personal analysis may preclude you from fully articulating the justification. When this happens (and it will happen to most of you), do not be concerned, this is part of the learning process. I will continually ask you for legal support for your views. You must learn to develop this legal support from the text and rationale of the statutes or constitution or from the holdings and dicta in the cases.

On the one hand, I will be quite demanding. I will strive for accuracy in reporting the details of cases, and frequently will ask you questions calling for sophisticated analysis. When I ask you a question I will demand a specific answer to the question I ask, not a generalized statement about the subject matter of my question. On the other hand, I understand that you are beginning law students and as individuals will develop your

analytical skills at varying speeds. I also understand, as will your classmates, that the temporary anxiety attached to speaking in a class might occasionally block your ability to respond even to the simplest of questions. Again, don't worry. All I ask, and all you should ask of yourself, is a good faith effort.

Most of your development will take place outside the classroom when you prepare for class and discuss issues with your colleagues. Many of the class sessions are designed to raise questions rather than to resolve them, with the expectation that you will think about the issues raised and discuss them with your colleagues. In addition to out of class discussion, I encourage you to read broadly. The casebook provides numerous citations to articles, other cases, or treatises. Learn how to find these materials and make use of them. Professor Dressler has authored a short treatise entitled: *UNDERSTANDING CRIMINAL LAW* that might provide assistance to you.

NUTS AND BOLTS

You will not benefit from class discussion unless you are present and well prepared for class. Furthermore, if you are not well prepared and are called upon to participate, the whole class will suffer. You need to prepare for class, come to class, and be willing to participate in the discussion. You should review the school's attendance policy. In my view missing more than 10 percent of the scheduled classes is excessive and may result in lowering your grade or being dismissed from class.

We do not have an excused absence policy with the exception of absences caused by religious holidays or clinical appearances. The attendance policy contemplates that

you may miss some classes throughout the semester. I assume when you miss class that you have a good reason for missing. You are not required to let me know why you miss. If, because of illness or other reason you expect to miss more than 10 per cent of the classes, you should speak with me.

You must come to class on time. It is disruptive and unfair to me and your classmates to wander into the classroom in the middle of a discussion. If you must leave before class is completed please do not disrupt the class again by returning in the same class session. Coming to class late will be treated as an absence.

Throughout the semester you will have projects due in other classes, in particular in legal writing. You will be given ample advance notice of the assignments in this class and in your other classes. You will be able to fulfill all of your obligations if you budget your time. The fact that you choose to spend your time on some other class or paper is not an acceptable excuse for missing or being unprepared in my class. If you are to be a successful lawyer, you must learn to budget your time and meet all of your many obligations.

I ask that you do not tape record the class sessions without my permission. I will accommodate legitimate needs based on illness, disability or other factors. Please let me know what I can do.

You will have a three hour closed book examination in December. The examination will be based on the types of problems, cases and issues we discuss in the classes. Your grade in the course will be determined by this examination. I reserve the right, however, to adjust a final examination grade ½ letter grade if your classroom participation is consistently outstanding, or consistently poor. Extensive absences

detract from your classroom participation. Rarely have I lowered a grade and usually will raise grades for two or three students who are truly outstanding.

I encourage you not to worry too much about the examination process. I understand that modern educational theory focuses predominantly on defining objectives, teaching to those objectives and testing to see if the student learned or the teacher taught the objectives properly. I do not follow that approach. My goal in teaching is to assist you in developing the basic analytical skills and disciplines that will allow you to grow into a competent, ethical and effective practicing lawyer. Much of what we focus on in class will not directly show up on a written examination, but may well form the foundation for a successful practice of law. You will not be a fully competent lawyer after my class, but you should be well on the way. The further along the way to understanding how to take general criminal law principles extracted from common law cases or statutes, and then to apply these principles to resolve legal problems, the better you will do on the exam.

COMPUTER USE POLICY

You may bring and use your computers in class in a manner consistent with University Policies and in a way not to disrupt your class mates. Checking websites or emails unrelated to the class can be distracting to other students. The class sessions are designed to encourage you to think, analyze and use the criminal law principles to solve problems. I encourage you not to use your computer simply to type a transcript of the proceedings.

IN CLOSING

You have heard much about a perceived glut of lawyers in our society. Nobody has argued, however, that we have too many good lawyers. There is plenty of room at the top for lawyers who are thorough, conscientious, and creative. There are not too many lawyers who listen and understand their client's problems, and who understand the full breadth and limits of the law in order to respond to those problems. We strive to educate good lawyers. To a large extent our ability to succeed is in your hands. The quality of your education depends on you. If I can help, please let me. I look forward to working with you on this journey.