



HAMLINE UNIVERSITY
School of Law
COURSE SYLLABUS

Faculty: **Professor Marie A. Failing**

Course: **Criminal Law**

Semester: **Fall 2011**

Meeting Schedule: **Monday, Wednesday, Friday, 12:00-12:50**

Room: **101**

Textbook	Primary Text	Recommended not required
Author	Joshua Dressler	Joshua Dressler
Title and 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 most of the same material as your text. It 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 everything 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 how they should shape the criminal law.
2. To learn the basic “building blocks” of Criminal Law, that is, to learn the basic legal

“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 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 most common 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 reach 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.; and
6. Construct your own outline of the course, including its themes, rules and applications, and learn that material for the examination.

One assumption of this course is that you will bring strong writing skills to the written work in this course—e.g., grammar, punctuation, organization (including topic sentences and transitions), etc. If this is a challenge for you, please seek out your Legal Research and Writing instructor for guidance about mastering these skills.

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 of your attendance for the preceding period at the end of September, at the end of 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. (For example: "I have missed no classes for the months of August and September," or "In the preceding period, I missed class on September 8. I did case briefs for this assignment and got class notes from another student.")

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 me or classmates.

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 group, you should:

- a. Select a leader who will be responsible for making sure that the problem answers 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. Note: You need only send in a record for the problems that you complete during class time, but you are encouraged to finish the problems outside of class if your group can.
- 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 contact information (e.g., email addresses) to each member of the group.
- 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. You may want to meet in the classroom, a library study room, or lounge area. The library study rooms may be reserved for days you need them.

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 will send them back to the group, and if I see common patterns of concern, I usually mention them in class. These responses are NOT graded or a part of your grade.

Policy on Laptop Use in Class: The New York Times recently 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

Self-assessment and group course review. During early October, your small group will meet with Prof. Failing for 30-40 minutes to discuss whether you are meeting the learning outcomes for the class, and whether you feel prepared to tackle a criminal law problem of the type you might get on the final exam. Please complete the attached self-assessment and turn it in at least 24 hours before your small group review session. This self-assessment and group review will not be graded.

Please sign up for a group course review during the offered times.

Attendance certification and completion of problems: Although neither your attendance certification nor your small group problems are graded or considered in your grade, each is required to pass the course. If you have difficulty with either of these, please see me.

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, which is collated by the Registrar's office before the identity of exam-takers is released to me.

Learning Outcomes Self-Assessment

Name: _____

Please check your level of preparedness for each outcome. You should also note your plans to try to improve on this skill or knowledge base if you check “okay” or “needs work.” You should check “good” if you believe that you have mastered this skill or know this material(at least so far) and can confidently exercise or recite it. You should check “okay” if you can perform this skill or know this material most of the time, but not all of the time. Check “NW” or “needs work” if you are not sure about what this skill requires or most of the time cannot exercise it, or if you do not feel you know this material.

Note any concerns you have about being prepared in this area in the “comments/plans” section or on the back or a separate sheet of paper.

Outcome	Good	OK	NW	Comments/Plans
I understand the theories of punishment and basic philosophy of criminal law				
I can use the theories of punishment (and other policies) to decide how a legal rule should be interpreted				
I know the basic legal rules in each area we have studied so far				
I can spot the relevant legal rules when I read a case				
I can compare alternative legal rules and make arguments about which				

one is better				
I can identify important facts relevant to the legal rule in each case				
I can identify the arguments the court makes in the cases to explain why the rule should be applied as it is.				
I can criticize court rationales in the cases				
I can make my own arguments about why the case should be decided in a certain way				
I am able to brief cases in a way that helps me in class				
I am able to spot my areas of weakness				
I can outline the legal rules and important points				
I can decide when it is time to seek help and can identify resources to help me				

Criminal Law Reading Assignments

* Indicates that you will have some small group problems to do in conjunction with this assignments

I WHAT IS A CRIME, WHY DO WE PUNISH, HOW DO CRIMES DEVELOP?

- 8/22 Introduction, 1-9, 19-23, 48-51
- 8/24 *Theories of Punishment, 30-48, 57-61
- 8/26 Legality and Vagueness, 92-113
- 8/29 Larceny, 916-926
- 8/31 Larceny, 927-941
- 9/2 *False Pretenses and Embezzlement, 941-950
- 9/5 LABOR DAY—NO CLASS**

II. GENERAL ELEMENTS OF CRIMES

- 9/7 Actus Reus, 127-141 (taught by Prof. Derik Fettig)
- 9/9 Mens Rea, 149-170 (taught by Prof. Derik Fettig)
- 9/12 Strict liability, 175-193
- 9/14 Mistake of fact and law, 194-205, re-read 156-159
- 9/16 *Mistake of law, 205-213
- 9/19 Causation, 214-232

III. HOMICIDE: MENS REA AS KEY: READ IN PREPARATION 235-238 (AND BROWSE STATE STATUTES 238-247)

- 9/21 Homicide/Premeditation, 247-264
- 9/22 Voluntary Manslaughter, 264-289
NOTE: THIS CLASS IS ON Thursday at 11 a.m. instead of on Friday at 12:00 p.m.
- 9/26 Involuntary Manslaughter, 295-315
- 9/28 Felony Murder, 315-334
- 9/30 Felony Murder Limitations, 334-345 (we may do problems)
- 10/3 Proportionality, 69-91
- 10/5 The Death Penalty, 345-369 **Oral Argument** (volunteers requested)

IV. RAPE: MENS REA/ACTUS REUS IN TENSION: READ IN PREPARATION 385-395 (AND BROWSE STATE STATUTES 396-404)

- 10/7 Rape, 404-422
- 10/10 Rape, 422-447
Group Conferences this week (TBA)
- 10/12 Rape, 453-469, 475-79

V. DEFENSES TO CRIME: READ IN PREPARATION 480-486, 497-499, 579-583

- 10/14 Self-Defense, 500-524
- 10/17 **Video:** Defending Our Lives
Read 525-546
Group Conferences this week (TBA)
- 10/19 Defensive Force, 549-559 and be prepared to discuss 525-546

V. DEFENSES TO CRIME (CONT.)

10/21 **NO CLASS—FALL BREAK**

10/24 Necessity, 560-579

10/26 Duress, 583-603

10/28 *Intoxication and Infancy, 603-611, 672-679

10/31 Insanity, 611-631, 650-652

11/2 Insanity and Diminished Capacity, 631-642, 656-670

VI. INCHOATE AND GROUP CRIMES: ATTEMPT, SOLICITATION, CONSPIRACY, ACCOMPLICE: READ IN PREPARATION 729-732

11/4 Attempt, 732-749

11/7 Attempt, 750-765

11/9 Attempt and assault, 765-770, 786-792

11/11 *Impossibility 772-786

11/14 Solicitation and Conspiracy, 792-809

11/16 Conspiracy, 809-824

11/18 Conspiracy, 824-838

11/21 *Conspiracy, 838-847

11/23-25 **NO CLASS--THANKSGIVING**

11/28 Accomplice liability, 848-866

11/30 Accomplice liability 866-879

12/2 Accomplice and Vicarious liability, 880-83, 890-904

12/5 REVIEW