Syllabus

I. Some Introductory Remarks

You are about to embark on the study of criminal law. If you are like most first year law students, you probably come to this class with a certain sense of comfort you did not bring to other courses. You have some intuitive sense of what a “crime” is, whereas when you started school last fall you were probably deeply uncertain about what “torts” were (perhaps some form of pastry?), and about whether “civil procedure” related to rules of court or the proper method of passing the crusty rolls at bar association lunches.

It therefore tends to come as a disheartening shock when, some two or three weeks into the semester, students realize that criminal law is one of the most doctrinally difficult, philosophically complex, and intellectually challenging courses in the first-year curriculum. Why is this so? A lot of reasons. Criminal law is the oldest kind of law we know of. Rules about what to do with murderers, rapists, thieves, and thugs have been necessary for as long as there have been human societies. And while you might think all that history would result in broad agreement on most of the important points, in truth modern lawyers are still arguing about the very same questions that perplexed the lawgivers of ancient Greece, Rome, and Israel, the societies of early Christian Europe, and the civilizations of sub-Saharan Africa. When is something a “crime” rather than a “tort” or an action in “contract”? Does the state of mind of the actor matter? Or is it sufficient that he or she acted and caused a harm? What does it mean to say that the actor “caused” the harm? What if the actor’s behavior was only one of a number of causes that combined to produce a harm? Is the degree of the harm decisive in assigning either liability or punishment, or is the primary factor the “blameworthiness” of the defendant, that is, the moral guilt of the defendant, perhaps measured by the fixity of his intention or willingness to do harm? For example, should all killers be treated alike, or are some killings more blameworthy than others? Are there ever any excuses for crime? If such excuses exist, should they exonerate the defendant completely from all punishment, or only mitigate its severity? And so forth....

The inherent difficulty in these questions is exacerbated by the fact that, unlike countries such as France or Great Britain which have a single criminal code for the entire country, the American legal system is divided into 52+ major jurisdictions (the states, the District of Columbia, plus the federal government, plus Puerto Rico, plus the American Virgin Islands, etc.), plus a host of cities, counties, parishes, and other local government subdivisions, each of which has adopted slightly different answers to almost every commonly occurring question in the criminal law. We’ll talk in class about how we can overcome the formidable obstacles to
learning “the criminal law” that all this diversity among jurisdictions presents.

Until then, some advice:

** You are going to be confused. Not because you are stupid, but because this is very difficult stuff. If past experience is any guide, some order will begin to appear around the end of February. For some the light dawns sooner, for others later. Don’t panic. If you apply yourself, the light will dawn.

** When you are confused, ask questions. In class or out doesn’t matter greatly (although in class is better because then your colleagues who undoubtedly have been struggling with the same problem will get the benefit of the answer). If you’re shy, or we run out of time in class, I’m almost always available in my office if I’m not teaching and I’ll be happy to respond to any reasonable inquiry. Likewise, I’ll be setting up regular times for optional review sessions and perhaps informal lunchtime gatherings throughout the semester to which you can bring general or specific questions.

** A good portion of the difficulty you may experience in this class (and perhaps in other first-year classes) will arise from the fact that the objective here is not to teach you a discrete body of rules that you will regurgitate back on an exam. It is, of course, very important that you acquire a solid knowledge of substantive criminal law. Of equal importance, however, is that you begin to think in the way good lawyers think. That is, you need to abandon the idea of learning as the passive absorption of information, and become accustomed to the notion that you are to examine legal materials and discover their meaning through careful study, analysis, and debate with yourself, your friends, and your professors. You are meant to discover that “the law” is not, in fact, a set of “rules” at all, but a dynamic, fluid argument both about what the rules are, and what they ought to be.

II. Grading

Your final grade will be calculated from three components:

90% Take-home essay-style final exam given at the close of the semester

10% One-hour mid-term quiz (multiple choice; not blind graded)

Class participation – You will not receive a specific numerical or letter grade for class participation. However, I reserve the right to increase or decrease final grades by 1/3 of a letter grade (e.g., upward from a B to a B+, or downward from a B to a B-) based on my assessment of class participation.
III. Preparation for class

I consider it essential to your learning process that you come to class each day prepared to participate in a discussion of the assigned material. By now you are familiar with the concept of “briefing” cases and so forth. Different people approach this problem in different ways and no one way is the “best.” What is key is that you come prepared ready to participate, because in the finest Paper Chase tradition, I will call on you and require you to air your views. For some, this will be a trying experience. Do try, however, not to take it too much to heart. Be assured that no one is trying to humiliate you. Remember instead that an important skill for any lawyer in any field is the ability to think clearly and speak cogently under pressure. What we do in class will be the merest baby steps towards your mastery of this skill. As with any skill, you have to start somewhere.

IV. Reading Assignments and Subject Matter

Generally, I will give out reading assignments on the last day of class each week for the following week. I do not give assignments earlier than that because I find some students, in an excess of zeal, will read far ahead and consider themselves “prepared” for class. However, when the time comes to discuss the material, the reading happened so long ago that the student doesn’t remember much about it.

Listed below are the materials required for this course and the reading assignments for the first week of class:

 Required Materials

The books required for this class are:
1) Dressler & Garvey, CASES AND MATERIALS ON CRIMINAL LAW, 7th. Ed.
2) Joshua Dressler, UNDERSTANDING CRIMINAL LAW, 8th Ed.
3) Sophocles, THREE THEBAN PLAYS, Robert Fagles, translator (We will read Oedipus the King. If you have another version, you need not buy this one. Also, the play is available online at http://classics.mit.edu/Sophocles/oedipus.html and at http://www.gutenberg.org/etext/31) That said, the Fagles translation is much easier to read, and you can get it online for a very modest price.
4) Supplemental photocopied materials to be distributed in class

READING FOR JANUARY 22-24, 2019

<table>
<thead>
<tr>
<th>Date</th>
<th>Assignments</th>
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<tr>
<td>Tues, Jan 22, 2019</td>
<td>An Introduction to the Basic Principles of Criminal Liability</td>
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<tr>
<td>Required reading:</td>
<td>1) OEDIPUS THE KING (in paperback titled Three Theban Plays);</td>
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<tr>
<td></td>
<td>2) Dressler &amp; Garvey, CASES AND MATERIALS, pp. 1- top of 6.</td>
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Thurs., Jan. 24, 2019

**Principles of Punishment**

Required reading: 1) OEDIPUS THE KING (in paperback titled *Three Theban Plays*); 2) Dressler & Garvey, *CASES AND MATERIALS*, pp. 31-50, up to, but not including nn. 1-2 on p. 50; 3) Assignment: Sentencing of Oedipus (on Canvas under “Course Documents”)

V. **Blackboard**

Throughout the semester, I will use the Canvas system on LexisNexis to provide you with announcements, weekly reading assignments, supplemental materials, and so forth. *You must self-enroll in the course on LexisNexis to access the material.* If you are not familiar with Blackboard, please follow the following instructions to get yourself enrolled:

You will need your LexisNexis password to enroll in the course, and to access materials in the course.

**Enrollment Instructions for LexisNexis Webcourses**

2. Scroll to Lexis Classroom in the right pane.
3. Click Add a Course.
4. Locate the professor's name.

Note: the professor's name only appears if the course is available and published.

5. Click the professor's name to see all the courses published by the professor.
6. Click the course name to enroll in the course.
7. Enter the course code if you are prompted. The course code for Criminal Law is XLLY3K

**Technical Questions or Problems?**
VI. Weekly Review Session

At least at the beginning of the semester, I am planning to schedule a regular review/question session each Monday morning (time to be announced later). Attendance at this session is purely optional. I’ll be available to answer any questions that may have troubled you about the preceding week’s material. If a fair number of students attend these sessions and find them useful, we’ll continue them. If not, we won’t.

VII. An Outline of the Course

You may find it useful in keeping track of where we’ve been and where we’re headed to keep the following list of topics we will cover in the approximate order we’ll cover them:

I. The Evolution of the Basic Principles of Criminal Liability (Oedipus and all that)

II. Introduction to the American Criminal Law System

III. Mental States (Mens Rea)
   - General considerations
   - Specific intent / purposefulness
   - Knowledge
   - Recklessness and negligence
   - Strict liability
   - The doctrine of mistake of fact and the law of rape
   - The doctrine of mistake of law

IV. The Requirement of an Act (Actus Reus)
   - Voluntariness
   - Omissions
   - Possession

V. The Requirement of Causation

VI. The Law of Homicide
   - Common law malice and “heat of passion”
   - Deliberate and premeditated homicides
   - “Depraved heart” or “extreme indifference” homicides
   - Unintended (reckless or negligent) homicides
   - Felony murder

VII. Limits on definition and proof of crime
   - Who has the power to define crime? (Principles of notice and legality)
   - Who must prove crime? (Presumptions and burdens of proof)
VIII. Punishment
   Punishment of non-capital offenses
   Capital punishment

IX. Defenses to crime: Justification and excuses
   Competence to stand trial (which is not actually a “defense”)
   Insanity
   Diminished capacity
   Intoxication
   Self-defense
   Duress and necessity

X. Property Crimes

XI. Attempt Crimes

XII. Group Crime
   Complicity (aiding and abetting)
   Solicitation
   Conspiracy

VII. Academic Honesty
Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course, for any violation, to law school or university disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

VIII. Americans With Disabilities Act
If you need accommodations because of a disability, if you have emergency medical information to share with me, or if you need special arrangements in case the building must be evacuated, please contact Denise Boessen in Room 203 or Assoc. Dean David Mitchell.

To request academic accommodations (for example, a notetaker), students must also register with the Office of Disability Services, (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696. It is the campus office responsible for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.