

CRIMINAL LAW
Spring 2021
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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 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, please email me and I'll be happy to respond to any reasonable inquiry. Likewise, most days, I'll stay on Zoom after the ordinary ending time to answer questions. In addition, I'll be setting up regular times for optional review sessions 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.

COVID Times: *The inherent challenges of learning criminal law, or any other kind, are obviously enhanced in a period when epidemic disease prevents us from being together in person. Teaching and learning through a computer screen, even synchronously, is not nearly as effective as doing it the old-fashioned way. The entire faculty has been discussing the challenges of communicating in this strange, isolating environment.*

The fundamental problem is that teaching online, especially to a large group, is not a normal human way of interacting. If I can't see all of you, I can't assess whether I'm being clear and effective, or if something I've said has caused puzzlement or even alarm. If the only thing you can see of me is my head, you can't pick up the non-verbal cues that provide emotional context, nuance, or even, occasionally, humor in the classroom. What you get instead is a relentless diet of my glowering head in a small glowing box next to a shared PowerPoint slide. This is not, to say the very least, ideal.

I am going to try various things this semester to try to overcome the constraints of the on-line form. I hope you'll bear with me in this ongoing experiment. I hope particularly that you will feel free to make suggestions and provide feedback. I can't promise that I'll adopt every suggestion, but all will be welcome.

With that said, the undeniable reality is that this is an unsatisfactory way of learning together but, as graduate students of law, you are going to have to soldier through. You will inevitably be more alone in that project than you should be. So I strongly encourage you to reach out to me – and to your colleagues – outside of class if you need help either on the substance of the course or at a personal level.

II. Grading

Your final grade will be calculated from three components:

- 85% Take-home essay-style final exam given at the close of the semester
- 10% One-hour mid-term quiz (multiple choice; not blind graded)
- 5% Class participation – I am working on a number of participatory exercises and ungraded quizzes that, taken together with class-time discussion, will constitute a section of the overall grade. More on that in the first week of class.

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 I will call on you and require you to air your views. For some, this will be a trying experience. *And my experience over the last semester and a half suggests that it can feel even more trying in the weird world of Zoom class.* 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 in front of others. 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*, 8th. 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 19-22, 2021

Tues, Jan 19, 2021

An Introduction to the Basic Principles of Criminal Liability

- Required reading:*
- 1) OEDIPUS THE KING (in paperback titled *Three Theban Plays*);
 - 2) Dressler & Garvey, *CASES AND MATERIALS*, pp. 1- 5.

Thurs., Jan. 21, 2021

More on Basic Principles of Criminal Liability

- Required reading:*
- 1) OEDIPUS THE KING (in paperback titled *Three Theban Plays*);
 - 2) Dressler & Garvey, *CASES AND MATERIALS*, Appendix, Model Penal Code, secs. 210.0 – 210.4, 230.2 on pp. 1039-1041, 1061; and MPC Secs. 3.04, on pp. 1018-19;
 - 3) Excerpt from Isak Dinesen, *Out of Africa* (available on Canvas under “Course Documents / Readings on Oedipus and all that / Out of Africa – Excerpt”).

Fri., Jan. 22, 2021

Principles of Punishment

- Required reading:*
- 1) OEDIPUS THE KING (in paperback titled *Three Theban Plays*);
 - 2) Dressler & Garvey, *CASES AND MATERIALS*, pp. 31-49, up to, but not including n. 1 on p. 49;
 - 3) Assignment: Sentencing of Oedipus (on Canvas under “Course Documents”)

V. LexisNexis Canvas

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

1. Log into the LexisNexis® Law School Home page at <http://www.lexisnexis.com/lawschool/>.
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 should be 77FETR.* If for some reason that doesn't work, let me know.

Technical Questions or Problems?

Please contact the UMC Law Help Desk at umclawhelpdesk@missouri.edu, or at 573-884-7800.

VI. 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 have emergency medical information to share with me, or if you need special arrangements in case the building must be evacuated, please inform me immediately. Please talk to me privately outside of class by calling or emailing me. (Obviously, the evacuation consideration is unlikely to arise this semester so long as we are learning synchronously online. However, medical conditions can affect on-line learning and you should feel free to share such information with me to the extent you feel appropriate.)

If you need academic accommodations because of a disability, please contact Associate Dean Ben Trachtenberg or Registrar Denise Boessen who will work with you to determine an appropriate response to your needs.

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.