

## **Criminal Law, Spring 2018**

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**Office Hours— Monday 3:00-4:00 or by appointment.**

**Drop-ins are welcome, too.**

### **Required Materials:**

Joshua Dressler, *Cases and Materials on Criminal Law* (7th edition) and

Two photocopied packets: (1) Criminal Law Readings; and (2) Texas Penal Code.

*Note:* The book entitled “Understanding Criminal Law” by Dressler is a supplementary aid. Students usually want to buy this book, so I order it as a “recommended” text in order for the book stores to stock enough copies for everyone.

### **Introductory Comments**

This substantive criminal law course aims to provide you with four basic competencies to equip you to practice criminal law, and these skills will serve you well as lawyers in whatever field you may choose. First, the course will familiarize you with *blackletter criminal law*: the elements of various *offenses*, e.g., robbery, rape, murder, etc., and *defenses*, e.g., insanity, self-defense, etc. Most students probably approach the course thinking that this is all that the course will involve, but this is really only a small part of what we will do.

A second area of competency this course will provide is the skill of *statutory analysis*. Using the Texas Penal Code as our focal point, you will learn to deconstruct a criminal statute in order to identify each element. This skill will enable you to apply any modern American criminal statute you may encounter in your practice.

Third, this course will prepare you to address the most fundamental *ethical and philosophical* issues regarding the punishment of human beings for wrong doing. We will consider the goals of the criminal justice system in imposing punishment. Do we seek to exact retribution? To deter others? To promote rehabilitation? In addition, we will learn that prosecutors have a different set of ethical obligations than all other lawyers. Whereas defense attorneys and all other lawyers have an ethical obligation to represent their clients zealously, a prosecutor’s role is to promote justice for all— including the defendant. We will study the rules of professional conduct that apply to prosecutors and defense attorneys.

A fourth thing this course will do is to introduce you to some of the *practice skills* you will need to handle criminal law cases as a lawyer. Such skills include, for example, making oral arguments for trial or appellate courts based on substantive criminal law issues. You will be asked to play the role of a prosecutor or defense attorney and present arguments to the judge.

In real life, the best lawyers bring all four competencies to bear in every case— they are generally familiar with blackletter criminal law, they can analyze and research the pertinent statutes that apply to their clients' cases, and they utilize their practice skills within the bounds of their ethical obligations. They are also in tune with the fundamental philosophical issues of punishment that typically come into play when prosecutors decide what charges, if any, to seek and at sentencing upon conviction.

This course will provide you with a fair mix of all these approaches. We will cover quite a lot blackletter law, but we will not confine our study to the mere recitation of the elements of offenses or defenses. Rather, we will also consider the fundamental questions of what purposes the punishment of wrongdoing should serve, and we will consider these questions in the context of problems designed to show you how the punishment issues play out in the real, day-to-day work of prosecutors, defense attorneys, judges, and jurors. Through in-class exercises and classroom discussion you will be asked to play the role of prosecutor or defense attorney and make the kinds of decisions that real lawyers make everyday. In addition, you will be introduced to the different ethical obligations that apply to prosecutors as compared to defense attorneys. It is my hope that these exercises will bring the course to life for you in a way that a simple lecture cannot.

### **Open Door Policy**

I would appreciate your feedback about how you think the course is going. You may send me emails, come by to see me in person, or leave notes in my faculty box. I prefer to hear your concerns early in the course rather than simply at the end when the school administers formal evaluations. My door is always open to you. I also LOVE talking to students about their career prospects, planning second-year schedules, their course outlines, questions from class, and any other matters that may concern them. Please drop in, drop me a line, or give me a call.

### **Grading**

Your final grade will be determined from one three-hour essay exam given at the end of the semester.

### **Final Exam**

The final exam will consist of two fact patterns, followed by a series of questions for each fact pattern. You will be tested on your knowledge of the Texas Penal Code. The final exam will be OPEN BOOK. You may be asked to demonstrate the following skills on the essay part of the exam:

- (1) Analyze a statute that you will not have studied in class in order to demonstrate your statutory analysis skills, applying the rules of interpretation found in the Texas Penal Code and Texas case law.
- (2) Evaluate the facts of a case and apply them to the applicable Texas Penal Code provision(s). You may be expected to discuss both offenses and applicable defenses.
- (3) Comment on whether or not as a prosecutor you would bring charges in a particular case, and, if so, what charges and why. You will be graded based on your ability to effectively communicate your reasoning, which should demonstrate a clear understanding of the facts, the law, the theories of punishment, and the rules of professional conduct. You need not try to guess how I might decide the case and should feel absolutely free to make decisions according to your own values and experiences.
- (4) Comment on the approach you would take as defense counsel in representing an individual described in a fact pattern. You should address all viable defenses including possible attacks on the prosecutor's case-in-chief, as well as possible affirmative defenses, constitutional arguments, and any other that may apply. You will be asked to decide which, among all the viable defenses, would likely be most effective.

### **Classroom Administration**

You are expected to be prepared to discuss the lecture material that I assign for each day of class. I will call on you at random to discuss the facts, issues, findings, and holdings in the main cases. I will not accept sloppy recitations, so please be prepared to give a clear recitation of the facts of the case and discuss the court's decision.

In addition, I will divide the class into two larger groups, Group 1 and Group 2. From time to time, you will be asked to prepare to argue a motion or present oral arguments on a case we will be studying. I will assign the firms in each group alternately to play the role of prosecution or defense.

During class discussions, I will assume that you understand the terminology in the materials that you have read. Thus, I recommend that you refer to a good legal dictionary if you do not understand a legal term, phrase, or word that appears in the assigned reading.

### **Audio Recordings**

I will audio record our class sessions. These will be available by the day after each class on the UHLC website. See the "Student" page and find the link for "Class Recordings."

## **Computer/Tablet/Cellphone Use in the Classroom**

**During class, your computers or tablets must be used only for taking notes. Use of e-mail, texting, or the internet is not allowed.** Sanctions for violating this provision can include adjusting a student's final course grade downward or suspending a student's right to use a computer in this class, and such sanctions may be imposed without warning at my sole discretion. If you have a genuine emergency that requires you to engage in non-course communication during class, please leave the room to do so.

## **Absences**

Any student missing more than 5 classes will be dropped from the course. It is likely that you will have to miss class for medical, religious, family, or other reasons. Therefore, use your permitted absences wisely. I take attendance by passing out an attendance sheet at the beginning of each class.

## Readings and Homework Assignments for Criminal Law

**Note:** Readings from Dressler's Criminal Law text are indicated by "casebook" and readings from the photocopied materials are indicated by "photocopies." The Texas Penal Code (TPC) is included in the photocopied materials as well. The Model Penal Code (MPC) is found in the appendix to your casebook.

### 1/22 Introduction to the Criminal Justice System

Photocopies:

"Chapter 1, Process and Purposes" [You should learn the basic vocabulary (e.g., grand jury, indictment, arraignment, etc.) and general steps of the process from arrest through appeals, but not other specifics].

"The Shelley Grant Pre-sentence Investigation Report"

#### **Homework due on Day 1:**

**Due before 1/17 by email or by hardcopy submitted in class.** Please submit a 1-page discussion of how you, as a judge in New York, would sentence Shelley Grant. Explain your reasons and what goals you hope to accomplish by imposing the sentence on her. This is a mandatory, albeit ungraded, assignment. It cannot help your grade, but the failure to show a good faith effort in completing the assignment in a timely and good faith manner will negatively impact your final grade.

### 1/24 Goals of the Criminal Justice System: Why Punish?

Photocopies: "A Healing Circle in the Innu Community of Sheshashit" Casebook: pp. 31-51

TPC: § 1.02

### 1/29 Statutory Clarity and Statutory Interpretation

Casebook: pp. 1-12 (at pp. 10-11, read only notes 1 & 2) & pp. 107-121

Photocopies: Note 8 on "Selective Enforcement"

### 1/31 The Act Element; Voluntary Act Requirement

Casebook: pp. 133-143

Model Penal Code (MPC): §§1.13(9), 2.01 (1), (2) TPC:  
§§ 1.07(1); 6.01(a)

### 2/5 Omissions

Casebook: pp. 143-156

Photocopies: Excerpt from Grotti v. Texas MPC:  
2.01(3)

TPC: §§ 1.05(a), 1.07(1), 1.07(30), 6.01(b),(c)

**In-class exercise:**

Group 1 for the prosecution; Group 2 for the defense. Assume you are litigating the case of *Barber v. Superior Court*. Assume that the doctors are charged only with murder. Please prepare to argue a motion to the trial court to dismiss the charge of murder pending before Dr. Barber and his co-defendant. The defense will first argue that the facts the government intends to prove (which would have been stated in the indictment) are not sufficient to support a murder charge. The prosecution will then take the opposite position.

**2/7 Mens Rea; Issues of Proving Culpability at Common Law**

Casebook: 157-168

TPC: § 6.04(b)

**2/12 Model Penal Code Approach to Mens Rea**

Casebook: 168-178

TPC: §§ 6.02, 6.03

Photocopies: Reed v. Texas

Photocopies: Elements Exercise

**2/14 Statutory Interpretation and Strict Liability Offenses at Common Law**

Casebook: 185-197

**In-class exercise:** Group 1 for the defense; Group 2 for the prosecution. Prepare oral arguments to be given before the United States Supreme Court in the *Staples* case. Both sides should begin with, “May it please the Court, my name is \_\_\_\_\_ and I represent (the United States or Mr. Staples). Then the defense should explain to the Court the facts of the case, the defendant’s claim on appeal, and why the Court should reverse the conviction. The prosecution goes second. Prosecutors should also summarize the facts, if necessary, and refute the defendant’s claim in arguing for the Court to uphold the conviction. You should look up and study *United States v. Freed*, 401 U.S. 601 (1971), in preparing your arguments. Please limit your arguments to 7 minutes.

A representative of the UH Law Center Blakely Advocacy Institute will “judge” your arguments.

**2/19 Strict Liability: Common Law “Statutory Rape” and TPC “Indecency with a Child”**

Casebook: 198-205, 496-500

Photocopies: Roderick Johnson v. Texas

TPC: § 21.11

**2/21 Mistakes of Fact; Mistakes Under TPC**

Casebook: 206-210 Photocopies:  
Granger v. Texas TPC: §§ 2.03,  
2.04, 8.02

**2/26 Mistake (or Ignorance) of Law**

Casebook: pp. 211-227  
TPC: § 8.03

Photocopies: Julio Marrero Aftermath

**2/28 Ethical Duties of Prosecutors**

Photocopies: “Chapter 2: The Charging Decision”  
Ethical Dilemmas for Prosecutors  
Indictment of Colyandro, Ellis, and DeLay (Texas)

In the “Ethical Dilemmas” materials:

Please pay close attention to the ABA Model Rules of Professional Conduct: Preamble & Rule 3.8. In the National Prosecution Standards, please focus on Standards 1-1.1, 1-1.2, 4-2.1 through 4-2.4, 4-3.1 through 4-3.5. In the Criminal Justice Standards, please focus on Standard 3-1.2, 3-4.4

**Study Question:** After reviewing the materials on Ethical Dilemmas for Prosecutors and the chapter on The Charging Decision, what guidance, if any, can you find in any of the ethical codes or from the chapter that might inform the prosecutor’s decision to charge Marrero?

**3/7 Causation**

Casebook: 229-249  
TPC: §§ 6.04  
Photocopies: Henry v. Texas

**Homework due by email by 3/19:**

This is a mandatory, albeit ungraded, assignment. It cannot help your grade, but the failure to show a good faith effort in completing the assignment in a timely manner will negatively affect your final grade.

I will email a practice midterm. It is a 1-hour, open-book test. You should take the exam under simulated exam conditions and then email it to me.

**3/19 Murder under the TPC/ “Heat of Passion” Killings**

Casebook: 285-303  
Photocopies: Medina v. Texas; Wesbrook v. Texas  
TPC §§ 1.07(26); 19.01(b)(1), (2); 19.02(a)(1), (2), 19.02(d); 19.03; 19.06

**3/21 Unintentional Killings**

Casebook: 316-333

TPC: §§ 19.04, 19.05

**Homework due by email before class or by hardcopy in class on 3/26:**

This is a mandatory, albeit ungraded, assignment. It cannot help your grade, but the failure to show a good faith effort in completing the assignment in a timely manner will negatively affect your final grade.

Assume you are a prosecutor in Texas. Please submit the following:

- (1) Using the Colyandro, Ellis, and DeLay indictment as a guide, draft an indictment of Henry Rose (p. 250 in the casebook) (assuming this was a Texas case). Keeping in mind the ethical duties of prosecutors, select the most appropriate charge(s) that you would ask a grand jury to bring against Rose. As a general rule, an indictment should include the elements of the charged offense, the date of offense, a reference to the fact that the crime occurred within the jurisdictional boundaries of the governmental entity bringing the charge (here, the county), and a bare-bones statement of the facts. (Prosecutors typically refrain from including unnecessary facts as this can create problems later if a witness testifies to a slightly different version of the facts at trial.) You should refer to the Colvandro, Ellis, and DeLay indictment for the other language about the role of the grand jury and the basic format.

You may charge any applicable homicide or assault statute or the following provision of the Texas Transportation Code:

§ 550.021. ACCIDENT INVOLVING PERSONAL INJURY OR DEATH.

(a) The operator of a vehicle involved in an accident resulting in injury to or death of a person shall:

- (1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible;
- (2) immediately return to the scene of the accident if the vehicle is not stopped at the scene of the accident; and
- (3) remain at the scene of the accident until the operator complies with the requirements of Section 550.023.

(b) An operator of a vehicle required to stop the vehicle by Subsection (a) shall do so without obstructing traffic more than is necessary.

(c) A person commits an offense if the person does not stop or does not comply with the requirements of this section. An offense under this section is punishable by:

- (1) imprisonment in the institutional division of the Texas Department of Criminal Justice for not more than five years or confinement in the county jail for not more than one year;
- (2) a fine not to exceed \$5,000; or
- (3) both the fine and the imprisonment or confinement.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

- (5) In a separate statement, please briefly indicate: (1) What was your reasoning in

selecting the charge that you selected? (2) What provisions of the ABA Model Rules or National Prosecution Standards guided your decision? (3) What punishment do you think would be most appropriate, if any? (4) What purpose(s) would you aim to achieve?

**3/26 Felony Murder Rule & The “Merger Doctrine” in Texas’s Version of the FMR**

Casebook: 333-345

Photocopies: Garrett v. Texas, Reshawn Johnson v. Texas, Lawson v. Texas

TPC §§ 19.02(b)(3), 19.03(a)(2)

**3/28 Common Law Rape**

Casebook: 407-20, 427-453

**Trial of Robert Berkowitz:** For the next class, we will hold the “trial” of Berkowitz. Group 1 for the prosecution; group 2 for the defense. Prepare: (1) proposed jury instructions that you will submit that the court can use to explain the Pennsylvania law regarding the rape charge; and (2) closing arguments (15 minutes maximum) in the Berkowitz case. On that day, I will also assign a group of students to serve as jurors, and one student will preside as judge.

**3/30 Friday Make-up Class: Rape/Sexual Assault—The Trial of Robert Berkowitz**

Casebook: 454-64

Photocopies: “Students protest rape case verdict”

**4/2 Rape & Sexual Assault under TPC**

Casebook: 477-490

TPC: §§ 22.011, 22.021

Photocopies: Mull v. Texas

**4/4 Conspiracy**

Casebook: 836-844 Photocopies:

Highfill v. Texas

TPC §§ 7.02(b), 15.02, 15.04, 15.05

**4/9 Conspiracy—Mens Rea & Actus Reus**

Casebook: 844-864 Photocopies:

Williams v. State

**4/11 Defenses; Self-Defense**

Casebook: 501-504, 521-533

TPC §§ 1.07(a)(31), 2.03, 9.02, 9.05, 9.31, 9.32, 9.41, 9.42, 28.03

Photocopies: Cammer v. Texas

**4/16 Self-Defense**

Casebook: 533-575

**Oral Arguments in State v. Norman:** Please be prepared to present oral arguments to the North Carolina Supreme Court. Group 1 for the defense, Group 2 for the prosecution.

**4/18 Necessity and the Relationship between Necessity and Self-Defense**

Casebook pp. 52-54, 586-594, 601-608

TPC § 9.2

Photocopies: Bowen v. Texas; Williams v. Texas, Spakes v. Texas

**4/23 Intoxication & Insanity**

Casebook: pp.637-663 (begin at note 3 on p. 637) TPC

§§ 2.04, 8.04, 8.01

Photocopies: Mendenhall v. Texas

**4/25 Insanity**

Casebook: 663-676 Photocopies:

Bigby v. Texas

**Review Session: TBA**

**5/7 Exam 9-12**