

**Corrected Copy 1/12/20**

**Criminal Law, Spring 2020**

**Professor Sandra Guerra Thompson**

**email: [sgthompson@Central.uh.edu](mailto:sgthompson@Central.uh.edu)**

**122 BLB, 713-743-2134-office**

**Office Hours—Monday 2:30-3:30 or by appointment.**

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

**Required Materials:**

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

One photocopied packet: Criminal Law Readings.

*Note:* The book entitled “Understanding Criminal Law” by Dressler is a supplementary aid that may be helpful. A copy is in the library on reserve.

**Introductory Comments**

This substantive criminal law course aims to provide you with four basic competencies to equip you to practice criminal law (or whatever other field of practice you may choose) and to prepare you to take the Bar Exam. 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. In particular, you will be tested on the blackletter law that is tested on the Uniform Bar Exam.

A second area of competency this course will provide is the skill of *statutory analysis*. Using traditional common law statutes as our focal point, you will learn to deconstruct a criminal statute in order to identify each element. This is a core competency that criminal lawyers should possess.

Third, this course will prepare you to address the fundamental *ethical* and *philosophical* issues regarding the punishment of human beings for wrongdoing. 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 criminal defense attorneys and other lawyers have an ethical obligation to represent their

clients zealously, a prosecutor's role is to promote justice for all members of society, 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 hearings.

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, you will be asked to play the role of prosecutor or defense attorney and make the kinds of decisions that real lawyers make every day. It is my hope that these exercises will bring the course to life for you in a way that a simple lecture cannot.

### **Grading and Final Exam**

Your final grade will be determined from one three-hour exam given at the end of the semester. The final exam will consist of multiple-choice questions similar to those you will see on the Uniform Bar Exam as well as one essay exam. You will be tested on your knowledge of the traditional common law offenses and defenses that we study in class. The final exam will be CLOSED BOOK.

### **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.

### **Video Recordings**

The class sessions will be video recorded. I will send the link to the recordings by email.

### **Computer/Tablet/Cellphone Use is During Class**

**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.

### **Classroom Feedback and 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.

### **Counseling and Psychological Services**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No

appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

## Readings and Homework Assignments for Criminal Law

**Note:** Readings from Dressler's Criminal Law text are indicated by "casebook" and readings from the supplementary materials are indicated by "Supplement on Blackboard." The Model Penal Code (MPC) is found in the appendix to your casebook.

### 1/13 Goals of the Criminal Justice System: Why Punish?

Supplement on Blackboard: "The Shelley Grant Pre-sentence Investigation Report;" and "A Healing Circle in the Innu Community of Sheshashit"  
Casebook: pp. 31-51

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

**Due on 1/13 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.

### 1/15 Statutory Clarity and Statutory Interpretation

Casebook: pp. 1-12 (at pp. 10-11, read only notes 1 & 2) & pp. 107-121  
Supplement on Blackboard: Note 8 on "Selective Enforcement"

### 1/22 Proportionality of Punishment (Eighth Amendment law)

Casebook: 73-96

### 1/27 The Act Element; Voluntary Act Requirement

Casebook: pp. 133-143  
Model Penal Code (MPC): §§1.13(9), 2.01 (1), (2)

### 1/29 Omissions

Casebook: pp. 143-156  
MPC: 2.01(3)

#### **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.

**2/3      Mens Rea; Issues of Proving Culpability at Common Law**

Casebook: 157-168

**2/5      Model Penal Code Approach to Mens Rea**

Casebook: 168-178

**2/10     Strict Liability Offenses at Common Law**

Casebook: 185-205, 496-500

**2/12     Mistakes of Fact and Mistake (or Ignorance) of Law**

Casebook: 206-227

Supplement on Blackboard: Julio Marrero Aftermath

**2/17     Ethical Duties of Prosecutors**

Supplement on Blackboard: “Chapter 2: The Charging  
Decision” Ethical Dilemmas for  
Prosecutors

Sample Indictment (of Eddie Ray Routh, in Erath County, Texas)

In the “Ethical Dilemmas” materials, please pay close attention to these provisions in the ABA Model Rules of Professional Conduct: Preamble [1]-[9] & 3.8. In the National Prosecution Standards, please focus on Standards 1-1.1-2-6.3, 4-1.1-4-4.1. In the Criminal Justice Standards please focus on Standards 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?

**2/19     Causation**

Casebook: 229-252

**2/24     Murder and Premeditation; Manslaughter: “Heat of Passion” Killings**

Casebook: 253-256, 273-303

**2/26     Unintentional Killings**

Casebook: 316-333

**3/2      Felony Murder Rule and Misdemeanor Manslaughter Rule**

Casebook: 333-364

**3/4 Basic Definitions: Larceny, Burglary, Battery, Robbery, Kidnapping & Arson**

Casebook: 972-975, 979-80, 164 n. 1, 820-823, 967 n. 5-6, 161 n. 3

MPC (in book's appendix): Sections 212.1, 220.1 & MPC Articles 221, 222

**3/16 Discussion of Midterm**

**Homework:** On March 4<sup>th</sup>, you will receive a midterm examination to take at home under exam conditions, closed book and timed. We will discuss the exam during this class.

**3/18 Rape**

Casebook: 407-20, 433-453

**3/23 Rape**

Casebook: 464-490

**3/25 Attempt**

Casebook: 769-799, 816-23

**3/30 Solicitation & Conspiracy**

Casebook: 830-844

Supplement on Blackboard: Highfill v. Texas

**4/1 Conspiracy—Mens Rea & Actus Reus**

Casebook: 844-870

**4/6 Accomplice Liability**

Casebook: 891-918, 929-934

**4/8 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.

**4/13 Necessity and Duress**

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

**4/15 Intoxication & Insanity**

Casebook: pp.634-663

**4/20 Insanity**

Casebook: 663-676

**4/22 Review Session**

**5/6      Exam 9:00 a.m.-12:00 noon**