

Criminal Procedure
Professor David Kwok
Spring 2020
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Overview

Criminal procedure addresses the rules governing state and federal actors in the enforcement of criminal law. We will study police procedure in the investigatory and accusatory process, and we will consider the defendant's rights to counsel and more broadly in the adjudication process. This class is designed in response to Texas's decision to adopt the Uniform Bar Examination for administration beginning in February 2021.

Class will meet on Mondays and Wednesdays from 1:00pm to 2:30pm.

Textbook

Marc L. Miller, et. al., Criminal Procedures: Cases, Statutes, and Executive Materials (6th ed.)

Attendance Policy

You should attend class sessions and arrive on time. If you arrive late, out of respect for the other students and the class environment, please try to minimize the disturbance. The Law Center attendance policy requires attendance of 80% of all scheduled (or makeup) classes or a student risks being dropped from the class.

I will take attendance by distributing a roll sheet at the beginning of each class. Each student should personally initial by his or her name for that class session. It is your responsibility to ensure that you have initialed the roll sheet before you leave the classroom each day. Students who do not sign the roll sheet are deemed to have been absent. You may not sign the roll sheet if you miss more than 15 minutes of class.

Please note that you are responsible for managing your absences from class and ensuring that your total number of absences does not exceed the threshold for the class. Even if you have notified me that you will be absent, that absence still uses one of your available absences. An absence is an absence, regardless of the reason, except for absences covered by the University and Law Center religious holiday policy.

Students who exceed six (6) absences will be reported to the Associate Dean. In addition, if a student exceeds the threshold by one absence, the student will take a grade reduction of 1/3 of a letter grade. Each additional absence will result in an additional report to the Associate Dean and an additional 1/3 of a letter grade drop.

Participation

I will call on students both to discuss cases and to comment on the issues we are discussing. Participation in the class discussion helps all of us in the learning process. Professional conduct is expected during class. Such professionalism includes respect for your fellow students in timeliness, preparation, and addressing different points of view. As we are all in the process of learning, the classroom discussion involves some risk-taking in considering new ideas and different arguments. Such possibilities can be combined with respect for the rest of the class.

If you are not prepared for a particular class, be sure to email me at least 10 minutes before the start of class, and I will refrain from calling on you. You may pass twice without any negative effect to your final grade. If you are unprepared for class when I call on you, you will be marked absent for the day.

Students with poor class participation will have their final grade dropped by 1/3 of a letter grade. The decision to drop a grade for participation is at my discretion and is non-negotiable. A drop for class participation can result from a combination of unpreparedness, not paying attention in class, and absences (even if you are within the six-absence limit).

In exceptional circumstances, a student may go up a 1/3 of a letter grade for making a substantial contribution to the class. Note that volunteering every class does not constitute a substantial contribution—quality, not quantity matters.

Learning Outcomes

Upon successful completion of this course, the student will be able to:

1. Understand the US Supreme Court doctrines and state law variations governing topics such as police arrest, search and seizure; confessions; identification; right to counsel; double jeopardy; and guilty pleas.
2. Articulate and evaluate the competing policy arguments regarding proposed criminal procedure reforms.
3. Apply criminal procedure rules and doctrines as they arise in various fact scenarios.

Assessments

Besides the aforementioned attendance and participation policies, your final grade will be primarily determined by your performance on an in-class final examination. The examination will be closed book.

Preferred Name / Pronoun / Prefix

I will work to honor your request to address you by a particular name, pronoun or prefix (i.e., “Dr.”, “Ms.”). Please advise me of this preference early in the semester so that I may make appropriate notes in my records.

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) 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.

Office Hours: 2:30-3:30pm, or you may contact me via email to schedule an appointment.

Initial Assignment Schedule

Jan 13

Introduction & what is a search?

Read: 3-56

Jan 15

What is a seizure?

Read: 56-70

Jan 22

Reasonable suspicion

Read: 70-106

Jan 27

Brief searches & warrants

Read: 106-143

Jan 29

Warrants & probable cause

Read: 143-162

Feb 3

Probable cause & warrantless searches

Read: 162-203

Feb 5

Consensual searches

Read: 203-222

Feb 10

Searches of persons

Read: 223-243

Feb 12

Searches of houses and other places

Read: 243-271

Feb 17

Other searches

Read: 271-296

Feb 19

Arrests

Read: 296-326

Feb 24

Exclusionary rule

Read: 326-361

Feb 26

Limitations to exclusionary rule

Read: 361-383

Mar 2

Challenges and alternatives to exclusionary rule

Read: 383-409

Mar 4

Enhancement of the senses

Read: 411-435

A second assignment schedule will be distributed.