

Welcome to Criminal Law! This is a difficult, challenging course, but it also is an important, interesting course, one that will repay the hard work you and I will put into it.

This is a list of readings from the casebook and other sources. The list is not exhaustive. There will be certain other readings and projects, including certain individual projects, and it may at times become necessary to deviate from the syllabus. I will attempt to let you know sufficiently in advance if this occurs.

Certain readings are set out in CAPITAL letters. These cases or readings are to be emphasized. Others are in lower case; this indicates that our treatment of the case will be by lecture, and it accordingly indicates that you should not concentrate on that case as heavily as upon other readings. I hope that this device will help you manage the reading better!

I. FOUNDATIONS

A. Statutes: They Are the Key

-Text, Notes 1, 3, 4 (12-13); PEOPLE V. LATOUR (“bank” robbery) (14); Notes (15)

B. Two Types of Crime Elements: Mens Rea; Actus Reus

-Text (21-22); United States v. Zandi (22) (possession); Notes (24); PROBLEM 1B (25) (flying while intoxicated)

C. Proof Beyond a Reasonable Doubt

-United States v. Zandi (26); Notes (26); PROBLEM 1C (27) (flying again)

D. The Process of a Criminal Case

-Text (28-32); Notes (32)

E. What Competencies are Needed?

-DECOTIIS & STEELE ARTICLE (844); Notes (849)

F. A Real-Life Exercise

-SIMULATION EXERCISE No. 1 (burglary charge) (33-35); also, APPENDIX B, CASE FILE 1 (893-95) (burglary charge)

II. HOMICIDE

A. “Mapping” Homicide Laws

-Note 3 (37); Chart or “Map” (38)

B. The Traditional “Pennsylvania Pattern”

1. Malice, Aforethought, Premeditation, Etc.

-Text at § 2.02 (39); CAL. PENAL CODE SECTIONS (39-40), Notes (41-42)

2. Intentional Murder: First or Second Degree?

-Commonwealth v. Carroll (43); NOTES (46); PEOPLE V. ANDERSON (47); NOTES 1, 5-7 (52-53); People v. Perez (53); PROBLEM 2A (I dare you to kill him)

End Class 1

-Text (55); People v. Conley (56); NOTES (57-58)

3. “Heat of Passion”: Voluntary Manslaughter

-CAL. PENAL CODE 192(a) (40); Notes (c)-(d) (61-62); PROBLEM 2B (66) (passion in Carroll)

4. “Depraved Heart”: Unintentional Murder

-CAL. PENAL CODE 188 (39); Notes 1-2 (67); NOTE (3) ON UNITED STATES V. FLEMING (69) (drunk driving murder); Notes 4-5(70)

5. Involuntary Manslaughter and Criminally Negligent Homicide

-Notes 1-2 (75-76); PROBLEM 2C (81) (thriller skier)

C. Model Penal Code Homicide

-Text (82-83); NOTES (83-84); State v. McCown (87) (omission of “malice”)

D. Texas’s Homicide Laws

-TEX. PENAL CODE § 19.01-.02, .04-.05; NOTE 3 (95); Notes (92); LAY V. STATE (93) (Texas murder law); NOTES 4-5 (96)

-Note on How to Read Cases (photocopied handout 1); STATE V. RIVERA (handout) (stabbing/shooting); STATE V. MARTINEZ (handout)(not manslaughter); NOTES (handout)

E. Different Kinds of Felony Murder

-Notes 1, 3; STATUTES (104-105); STATE V. ANDERSON (105) (shotgun); Notes (109); Note on Merger (109); Commonwealth v. Kilburne; Note (1) on Causation (112); PROBLEM 2E (127) (cocaine sale and gun battle)

-Commentary to Model Penal Code (118); Roth & Sundby article (119); Crump article (120); CRUMP ARTICLE (124) (“good” and “bad” felony murder laws)

End Class 2

F. A Real-Life Exercise

-SIMULATION EXERCISE NO. 2 (132) (Texas; heat of passion jury argument); Note on Explaining the Charge (handout 7); CRUMP TEXT (handout 7)

III. CRIME ELEMENTS: ACTUS REUS AND MENS REA

A. Counting the Elements - and Proof BRD

-Note 4 (138); Notes 1, 2, 4-8 (138-40); PROBLEM SET 3A(143-45)

-PAGES 230-239 ON THE LOGIC OF STATUTES

B. Actus Reus

1. The “Five Elements”: Act, Circumstances, Etc.

-Notes (142-143)

2. Voluntary Act

-PROBLEM 3B (146); STATE V. SOWRY (147) (marijuana in jail); Note 1 on State v. Alvarado (148); Note 4 on Case Illustrations (149)

3. Omission as Actus Reus

-Notes 1-2 (149); NOTE 6 (152); PROBLEM 3C (158) (overdose; dumping)

4. Possession

-Note 1 (159); UNITED STATES V. ZANDI (159) (constructive possession); Notes (160)

5. Circumstances

-Notes (167); COMMONWEALTH V. NOEL (167) (intoxicated horsemanship)

6. Harm

-Notes 1, 3 (168)

7. Causation

-Notes 1-3 (including State v. Rivera) (169) (stabbed and shot); PROBLEM 3D (176) (first four paragraphs only) (street racing)

C. Mens Rea

IMPORTANT ADVICE AND DISCLAIMERS

(1) *The Syllabus Involves a Lot of Skipping Around.* Here and there, my coauthors see the subject differently from me. That's always the way it is with coauthors. I think the book is the best available and I'm proud of it, but it is too encyclopedic. Sometimes, the introductions aren't "introductions"—they try to cover every detail. Also, there are notes, problems, and whole sections that cover obscure subjects.

The result is that I use the book, since it's the best I can use, but I assign only the readings that I think are useful. I've tried to keep the readings going in order through the book, but that's not always possible, and there are some assignments that are a few, or occasionally many, pages before or after. And all of the readings involve chopped up pieces—again, because I want to assign only what's useful.

(2) *A Suggestion: Mark the Assigned Items with a Highlighter or Tab.* One way to deal with this problem, both while reading and in class, is to mark the assigned items with a highlighter or tab. From experience, I know that it can be distracting to follow in class when items are fragmented. Unfortunately, it is the best that we can do. I strongly suggest the highlighter/tab-marking approach.

(3) *Compression.* This course is squashed into five weeks. This means a lot of hours each night of class, and it means a lot of pages of reading per class. For example, the first week is the equivalent of an amazing *nine* hour-long classes (which officially are less than an hour, actually). And every week after that is the equivalent of *nine* hour-long classes, too. I have had trouble making the syllabus under these conditions. You will have trouble, no doubt, keeping to the assignments at times. But this is always the situation during a half-summer course—always. It's shoehorned into a too-short time.

(4) *Trying to Select the Best Material and to Cover the Subject Adequately.* My philosophy is to try to assign you the best readings I can. Your time is valuable, and you spend a lot of time reading in a law school course. I have mud-wrestled with this syllabus. The secretaries are weary of re-doing it. But another philosophy of mine is that the professor should spend a lot of time before ever stepping into the classroom. Also, I want to cover this subject adequately. It's a very, very important subject. Even if you don't concentrate on practicing criminal law, it will come up in your law practice. Besides, you should be in a position to evaluate our process and lead others to improve it. And if you do practice criminal law, I want you to be competent.

(5) *Supplementation to Cover Texas Law, Too.* Some professors concentrate on California law, and that's heavily what's in the casebooks. Some professors do that even in Texas, where almost all of our students end up in Texas. Just between you and me, California criminal law is primitive and dysfunctional. (Keep our secret and don't tell any Californians I said so.) The Texas Penal Code is one of the best in the country. We will cover a lot of general law from other states, including California, but it would be irresponsible not to cover a big chunk of Texas law. I have included supplementary materials in a photocopied Handout that you will have received along with this syllabus, and I have included a photocopy of many sections of the Texas Penal

Code, which we will study.

(6) *Pay Attention to the Difference between Capitalized and Noncapitalized Assignments in the Syllabus.* The syllabus is set up with some readings that are printed in all-capitals, which signals that you should be ready to answer questions about those readings. Other readings are in lower case, meaning that they are to be read, but with less emphasis. I will either treat the lower case materials as introductions that will simplify other readings, or I will explain the readings myself before asking questions about them. Please pay attention to this system of differential emphasis. Occasionally I hear from a student who says, “I can’t read in different ways and I emphasize everything.” That’s unwise, not only for this course, but also because lawyers absolutely must be able to read some items with word-by-word concentration and read other (sometimes massive) items more quickly.

(7) *Tear This Page Out—You Won’t Need It After Absorbing This.* Many students stick the syllabus into the book to keep it there and have it handy. It’s easier without this page, so tear it out. In any event, you’ll want to have the syllabus each time you do the reading.

1. Varieties of Mens Rea; Proof
 - Notes 1-2 (178); PROBLEM 3E (178) (bigamy)
2. General or Specific Intent; Traditional Approaches
 - Note 1 (180-81); UNITED STATES V. KIMES (182) (assault on officer)
 - Notes 1-2 (183)
3. Model Penal Code
 - MPC § 2.02 (185) (Note: Texas is similar, except that it uses “Intentionally” rather than “Purposefully”); NOTES 1, 3, 4, 5; PROBLEM 3F (188) (bumped car)
 - UNITED STATES V. LYNCH (191) (archeological resource); Notes (192)

End Class 3

- Notes (193-94); PEOPLE V. HALL (194) (skier)
- 4. Transferred Intent, Different Crime, and “Ostriches”
 - Note 1 (199)
 - Note (200); Note 1 (201); UNITED STATES V. HEREDIA (marijuana ostrich); NOTE 5 (208)
- 5. Strict Liability Crimes
 - Notes (209); PEOPLE V. HOSKAY (210) (“public place”); Note 2 (215)

D. Real World Exercises

- SIMULATION EXERCISE NO. 3 (228) (indictment); APPENDIX B, CASE FILE NO. 2 896-914 (murder case, only through 914); SIMULATION EXERCISE NO. 4 (228)(charge on murder)

IV. THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT

A. The Burden is a Constitutional Requirement

- Note 1 (245); In re Winship (247); Note 1 (248); Note 1 (253)

B. Elements, Defenses, and Affirmative Defenses

- TEX. PENAL CODE 2.01-.04; Note 1 (251-52)

C. Explaining the Burden

- Notes 1-2 (257); PROBLEM 4B (258) (attorney’s definition)
- Note 1 (first paragraph only) (261); NOTE 2

D. The Policy Debate

- VOLOKH ARTICLE, n GUILTY MEN (263); Notes (264); PROBLEM 4C (265) (murder acquittal); Note 2 (266); Problem 4D (Note 1 only) (267) (“We’re sorry”); Note 1 (269); NOTES (269-70) (ethics)

E. Particular Kinds of Evidence

1. Circumstantial Evidence
 - STOGSDILL V. STATE (273) (murder); NOTES (278-79)
2. Eyewitness Testimony
 - NOTES (280-81); Note 1 (284)

F. Real-World Examples

- Handout (8-9) (sample prosecution voir dire); SIMULATION EXERCISE NO. 5 (291) (defense voir dire); Simulation Exercise No. 6 (292) (motion/acquittal)

V. ASSAULT, SEXUAL ASSAULT, AND RELATED OFFENSES

A. Assault

- Introductory Notes 4-5 (294); TEX. PENAL CODE § 22.01; 22.02; 22.04; 22.05; 22.07 (assault; aggravated assault; injury to a child; deadly conduct; terroristic

threat); PROBLEM 5A (298) (differing assaults)

End Class 4

B. *Stalking and Harassment*

-TEX. PENAL CODE § 42.071; Tex. Penal Code § 42.07(a)

C. *Domestic Violence*

-Notes 4, 6, 7, 8 (307-08); PROBLEM 5D (311) (Warren Moon)

D. *Sexual Assault (or “Rape”)*

-Note 1 (313); Notes 1-3 (315); Notes 1, 4-7 (326-27); REYNOLDS V. STATE (328) (recklessness or negligence); Note 1 (329)

-TEX. PENAL CODE § 22.011(a-b); PROBLEM 5F (351) (Kobe Bryant)

-Rucker v. State (354) (held, not aggravated); TEX. PENAL CODE § 22.021 (amended); Note 2 (356)

VI. GENERAL DEFENSES

A. *Burdens of Proof: Types of Defenses*

-NOTES (bottom of 367-68); Note on Justification and Excuse (368); Notes on Alibi (369-70)

B. *Justification*

1. Self-Defense

-Preliminary Notes (375-78); Notes on Deadly Force, Etc. (378-79); TEX. PENAL CODE § 9.31-.32; PROBLEM 6A (379) (George Zimmerman); PROBLEM 6B (389) (Hockey Dad)

2. Defense of a Third Person

-Note 2 (395-96); TEX. PENAL CODE § 9.33; PEOPLE V. RANDLE (396) (shooting after too-long beating)

3. Defense of Property

-Notes 1-4 (400-401); TEX. PENAL CODE § 9.41-.42; reconsider PEOPLE V. RANDLE (396)

4. Law Enforcement (Arrest)

-Notes 1-2 (404-05); reconsider PEOPLE V. RANDLE (396)

5. Public Duty

-Tex. Penal Code § 9.21; Notes 1, 3 (411-12)

6. Necessity

-Text [H] (413); COMMONWEALTH V. LENO (414)

C. *Excuse*

1. Duress

-Notes 2-3 (419-20); UNITED STATES V. CONTENTO-PACHON (drug carrier)

2. Entrapment

-Notes 3-4 (427-28); TEX. PENAL CODE § 8.06; PROBLEM 6E (434) (car sting)

3. Insanity

-Notes (c)-(d) (435); Note 1 (a)-(d) (four tests)

-M’NAGHTEN’S CASE (439); TEX. PENAL CODE § 8.01

End Class 5

-Parsons v. State (439); DURHAM V. UNITED STATES (480); Notes 1, 3 (447); PROBLEM 6F (446) (stoning children); Summary (448)

-Notes 1-2 on Commitment (448-49)

D. Voluntary Intoxication

-Tex. Penal Code § 8.04 (no defense)

E. Mistake

-Text [E] (461) (different uses)

1. Of Fact

-Note 2 (467); PEREZ V. STATE (467) (rape of a child)

2. Of Law

-TEX. PENAL CODE § 8.03(b); UNITED STATES V. ALBERTINI (477, in note) (protester; court opinion later reversed)

F. A Real-World Example

-SIMULATION EXERCISE NO. 7 (484) (charge); We will do Exercise 8, the trial, later.

VII. THEFT AND RELATED PROPERTY CRIMES

A. Introduction to Four Offenses

-Note 1 (485); Note 4 (486)

B. Historical Offenses

1. Larceny

-Notes on Formal Requirements (486-87); PEOPLE V. MEYER (488) (chained coat); Notes (488-89); Note on Other Formal Requirements (first paragraph only; 7 elements) (489); PROBLEM 7A (492) (laptop)

2. Larceny by Trick

-KING V. PEAR (493) (inspecting horse)

3. Theft by False Pretenses: Title, Not Possession

-Note 3 (495); PEOPLE V. PHEBUS (496) (switched prices)

4. Embezzlement

-Note 2 (504); PROBLEM 7C (505) (employee takes \$)

C. Federal Crimes: Mail Fraud; Bank Theft

-Notes (499); BELL V. UNITED STATES (500) (stolen check)

-Skilling v. United States (503) (honest services)

D. Modern Consolidated Theft Laws

-PROBLEM 7D (507) (baseball ticket checks); TEX. PENAL CODE § 31.01 (2, 3, 4) (deprive, effective consent, appropriate); § 31.02-.03 (a-b); PROBLEM 7E (510) (switched prices)

-Notes on Receiving (514); TEX. PENAL CODE § 31.03(b)(2), (c)(1-2)

-Notes on Belief (517); PROBLEM 7H (518) (bank error)

E. Other Crimes

-TEX. PENAL CODE § 32.21(a-b) (forgery); Tex. Penal Code § 34.42(b) (business practices)

-NOTE 5 ON UNITED STATES V. DREW (523) (MySpace); Note 3 on Identity Theft (524)

VIII. PROPERTY-AND-PERSON CRIMES

A. Robbery

-State v. Holmes (530) (keeping jewels); NOTES 1-2 (531); TEX. PENAL CODE § 29.02-.03; PROBLEM 8A (532) (carjacking; block)

B. Extortion

-Notes 1 (537), 4 (538) [Note: in Tx., theft covers; see § 31.02].

C. Burglary and Criminal Trespass

-Notes 1-2 (543); TEX. PENAL CODE§ 30.02, .05; RECONSIDER
SIMULATION EXERCISE IN APPENDIX B1 (893-96) (STATE V. BATES)
(burglary - but is it?)

IX. SENTENCING

A. Utilitarianism, Kantianism, and Sentencing: Goals

-Notes 1-2 (553); Notes (554); NOTES AND QUESTIONS (555); PROBLEM 9B (555) (organ donor)
-Notes on Approaches (556-57); Problem 9C (557) (sentence lengths)
-Beccaria Text (558); NOTES 1-3 (561) (deterrence); J.Q. Wilson Text (562) (incapacitation); Note 2 (564); Notes 1-4 (565-66) (rehabilitation); Note 2, 3 (567); Kant Text (568); NOTES (568-670); Note 4 (571); Note 5 (572);
DURKHEIM TEXT (571) (retribution/condemnation)

End Class 6

-UNITED STATES V. BERGMAN (573) (lenient); UNITED STATES V. OLIS (552) (harsh); Note on Revision (576)

B. Constitutional Limits

-Notes on Cruel and Unusual (582)

C. Sentencing Options

1. Probation

-Notes 1, 2, 4, 5, 6, (588-89); PROBLEM 9F (590) (sign); Notes on Probation Revocation (591); PROBLEM 9H (591) (polygraph)

2. Fines, Restitution, Diversion, Community Service

-Note 3 (593) (fines); Notes 1-2 (bottom 593) (restitution); Notes 1-2 (594) and STATE V. CURRY (594); Notes on Community Service (595)

3. Incarceration

-Notes 1-2 (595-96)

4. Civil Remedies

-Notes (597) (fines, penalties)

D. The Sentencing Hearing

-Notes on Sources (598); Notes on Hearing (598-99)

E. Parole

-Notes (600); McDERMOTT v. McDONALD (600) (Due Process?)

F. Discretionary or Determinate Sentencing?

1. Discretionary Sentencing

-WILLIAMS V. NEW YORK (602) (discretion); NOTE 3 (603) (Davis)

2. Determinate Sentencing

-Crump Text (604); Note 4 (605)

G. The Federal Sentencing Guidelines

-NOTES (606-07); SENTENCING TABLE (608); NOTE ON STEPS (608-11); NOTES (611-12)

-Notes (613); UNITED STATES V. GEEVERS (613); Note 1 (top of 615)

-Note 1 on Preponderance (616); UNITED STATES V. BOOKER (preponderance unconstitutional; advisory); Notes 1-2 (619)

H. Sentencing Issues in Real Life

-Simulation Exercise 10 (641) (rape case)

-SENTENCING COMMISSION OVERVIEW (967) (near end of book)

-SIMULATION EXERCISE 12 (642) (compute juke box sentence); RELEVANT

GUIDELINES (within Appendix D, 963-66)

-Simulation Exercise 11 (642) (Smith) (PSI); Report in Case File No. 4 (923)

End Class 7

I. *The Death Penalty*

-Furman v. Georgia (622); GREGG V. GEORGIA; Notes 1-2 (624-25)

-Notes on Statutes (626-27); TEX. PENAL CODE § 19.03 (627); TEX. CODE CRIM PROC. 37.071 (628-29); NOTE 1 (629); Notes 3-4 (630)

-Note 3 (634) (insanity); Note 4 (634-35) (juveniles, mentally handicapped)

J. *Capital Sentencing in Real Life*

-SIMULATION EXERCISE 14 (644) (capital penalty hearing); Case File 5 (933)

X. *PREPARATORY (OR INCHOATE) CRIMES*

A. *Introduction*

-Notes 1-2 (645)

B. *Attempt*

-Notes on Statutes (648); Notes 1, 2, 5, 6 on Elements (648-50); Problem 10A (650) (bottle as weapon); UNITED STATES V. WILLIAMSON (attempted [assault]); Tex. Penal Code 15.01 (a), (d)

-Notes on Impossibility (656-58); PROBLEM 10B (663) (HIV)

C. *Solicitation*

-Notes 1, 3 (666-67); TEX. PENAL CODE § 15.03(a-b); GANESAN V. STATE (672) (murder solicitation)

D. *Conspiracy*

-Notes 3-4 (677-78); Notes 1-2 (679-80); STATE V. PACHECO (680) (deputy murder plan)

-Note on Intent to Agree (687); NOTE ON UNITED STATES V. FALCONE AND DIRECT SALES (688) (sugar for moonshine, morphine)

-Notes 1-3 on Overt Act (694); NOTE 4 ON PACHECO (694-95)

-Notes on Renunciation (699-700)

-TEX. PENAL CODE § 15.02(a), (c); PROBLEM 10E (701) (distributing heroin)

-Text on Procedure (702-03)

End Class 8

XI. *MULTIPLE PARTIES TO COMPLETED CRIMES*

A. *Pinkerton Liability*

-Note 3 (705); TEX. PENAL CODE § 7.02(b); PINKERTON V. UNITED STATES (706); PROBLEM 11A (709) (prostitution; extent?)

B. *Parties to Completed Crimes*

1. Historically

-Note 2 on Principals and Accessories (710)

2. Aiding and Abetting

-PEOPLE V. MOORE (715) (encouraging firearm crime)

3. MPC and Texas

-Notes (726); TEX. PENAL CODE § 7.02(a)(1, 2, 3); Rivera v. State (727); PROBLEM 11B (720) (map) (consider Texas law)

-NOTES ON INNOCENT AGENT AND LEGAL DUTY (728)

C. *Post-Crime Liability*

-Tex. Penal Code § 38.05(a) (hindering); § 36.05 (tampering); Note 2 (730)

(nonreporting)

D. *Organization Liability*

-TEX. PENAL CODE § 7.22, .23, .24; PROBLEM 11E (732) (throwdown prisoners)

E. *RICO*

-Notes 1-3 (733); Statute (734); SEDIMA V. IMREX CO. (735) (inflated bills)

-NOTE 2 ON DEFRIES CASE (739) (forfeiture)

XII. CONTRABAND AND TERRORISM

A. *Kinds of Crimes*

-Notes (745-46); Statute (746-50) (read to understand the structure of the statute); PROBLEM 12B (751) (Rohypnol)

-Notes on Possession (754-55); STATE V. WEBB (755) (insufficient evidence)

B. *Terrorism*

-Note on Enactments (764); PROBLEM 12F (769) (bomb advice?)

XIII. LEGALITY AND JUSTIFICATION OF CRIMES

A. *Fair Warning*

-Note 1 (775); Note 3 (777); ROGERS V. TENNESSEE (777)

-Notes 1-2 (778); People v. Kevorkian (780)

B. *The Rule of Lenity*

-Note 1 (781); NOTE 4 ON UNITED STATES V. SYKES (783) (armed career criminal)

C. *Notice, Vagueness, Overbreadth*

-Note 1 (785); Note 4 (787); Lambert v. California (788) (felony, registration); LANZETTA V. NEW JERSEY (789) (gangster); NOTE 1 ON NASH V. UNITED STATES (796)

D. *Justification: Should It Be a Crime?*

-Notes (8-10, front of book); PROBLEM 1A (10) (helmet law)

E. *Noncrimes*

-Notes 2-3 (807)

End Class 9

XIV. PERSPECTIVES

A. *Noncriminal Crime Reduction*

-Notes on Licensing (bottom of 814); NOTES ON PHYSICAL CHANGES (815); Notes on Police Presence (816)

B. *Victims' Rights*

-Notes (820); NOTE 3 ON N.G. CASE (823) (intrusive discovery)

-NOTE ON COMPENSATION (824)

-NOTE ON VICTIM PARTICIPATION (826)

-Payne v. Tennessee (630) (impact statements) (earlier in book)

C. *Guilty Pleas*

-Notes (834); NEWMAN V. UNITED STATES (834); Note 3 on all defendants (835)

-Note on Pressure (838-39) (numbers); Problem 14B (839) (deciding); Note 1 (840) (court time)

-Notes 1, 4 (841); TULLOS V. STATE (842) (variance)