

UNIVERSITY of
HOUSTON

LAW CENTER

CRIMINAL LAW
SYLLABUS

Semester: Summer 2023

Course Number: 5303

Credits: 3

Location: Online

Time: July 12 – August 9, 2023, on Mondays, Tuesdays, and Wednesdays @ 6:00 PM – 8:45 PM

Exam: August 10 or 11, 2023

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Office Hours: Via Zoom on Thursdays @ 3:00 PM – 6:00 PM and by email appointment

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I. COURSE INFORMATION

A. COURSE DESCRIPTION

This course examines *substantive* criminal law in the United States: rules and prohibitions that our legal system enforces using criminal punishment. (*Procedural* criminal law, such as rules governing criminal trials, is addressed in upper-level criminal procedure electives.) This course considers not just *what* the substance of the criminal law is, but also *how* criminal law is made and *why* criminal sanctions are used. Our inquiry requires close attention to criminal statutes' text, judicial decisions interpreting those statutes, and realities about how criminal law is enforced.

B. LEARNING OUTCOMES¹

First, this course will provide you with a basic understanding of how criminal law—a significant part of our legal system—functions in the United States. At the end of this course, you will be able to identify the basic legal principles and substantive rules underlying American criminal law, including the rationales for criminal punishment, the basic elements of crimes, doctrines regarding criminal liability, and defenses raised by the accused. You will also be able to describe and assess the role of policy considerations in historical and philosophical treatments of criminal law.

Second, this course will help you develop skills that are useful to all lawyers—reading judicial opinions, learning basic vocabulary, and understanding how to make good legal arguments (and to avoid bad ones). Unlike other first-year courses, criminal law includes a significant focus on statutory interpretation. Knowing how to read statutes—and understanding how judges use statutes to build judicial doctrines—is an important skill throughout the law, and we will work to hone that skill.

¹ This section complies with ABA Standard 302: Learning Outcomes.

C. CLASS SURVEY

So that I may get to know you better, by July 1 please fill out the Google form available at [this link](#).

D. SOURCES OF LAW

This class is about the criminal law. But there is not one body of “the” criminal law. Instead, there are:

- different bodies of criminal law for every state,
- a narrower body of federal criminal law that covers the whole United States, and
- the Model Penal Code (MPC), written by legal scholars and published by a private organization called the American Law Institute, which isn’t itself the law anywhere but which has influenced the law in a number of jurisdictions. (The MPC is sort of like the “Restatements” of law that you may have encountered in some of your other courses.)

For any given legal issue, we will mostly learn the dominant or majority rule (that is, the rule followed by most jurisdictions). Sometimes, though, we will study alternative approaches—such as where the common law and the MPC diverge. In those situations, you will be expected to be able to compare and contrast the different approaches. We will also read some cases dealing with federal constitutional limits on criminal punishment; these constitutional limits will, of course, apply to any criminal prosecution in the United States, whether state or federal.

E. CONTENT CAUTION

In this course we will study difficult material. Criminal law is the mechanism our society uses to deal with the gravest wrongs. We will read and discuss cases that address troubling topics such as cannibalism, murder, child abuse, racial discrimination, police violence, and rape. I will do my best to be sensitive, and I ask you to do the same.

Learning how to dispassionately discuss troubling subject matter is part of being a lawyer. Moreover, to genuinely understand the law, one must comprehend how the law works (or, sometimes, doesn’t work) when applied to society’s most difficult situations. Please let me know privately if you have concerns about participating in discussion of a particular topic.

F. GRADING²

- Elements used in grading: Exam, Attendance, Preparation, and Participation.
 - **Exam (80%)**: Your grade will be based primarily on an exam at the end of the semester.
 - This exam will be modified open book.
 - You **must use only** material for this course. Accordingly, you **may** consult the coursebook, other assigned readings, slides and other course materials that you downloaded from Canvas, your class notes, and any outline or other materials that you helped to prepare.
 - You **must not use** any other materials. Accordingly, you **must not** consult the Internet, commercial outlines (including JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW), or other people.
 - All answers must be exclusively your own work. You may not consult with others about the exam once the exam period has started.

² This section complies with ABA Standard 308: Academic Standards.

- The exam will include a variety of question formats. The questions will be designed to test your understanding of legal rules and principles learned in the course, as well as your ability to apply them in new contexts and to critically analyze legal problems.
- I will discuss the exam in class at an appropriate point. I won't talk about the details of the exam in nonpublic settings where the whole class doesn't have the option to be present (such as in office hours), though you can ask me about practice questions.
- **Attendance, Preparation, and Participation (20%):**
 - Attendance: You are expected to attend every class session. I will keep track of attendance. Late arrivals may be treated as absences.
 - Preparation and Participation: Preparation for and participation in class discussion are necessary both for your own understanding of the material and for the benefit of your classmates. I expect you to be prepared for every class, which means (1) having read and being ready to discuss the material assigned and (2) having the assigned material available in case we make reference to particular parts. If, for any reason, you are not prepared for a class, please let me know at least 2 hours in advance via email and I will not call on you that day. Being unprepared more than twice during the semester will affect your grade.
 - In-class engagement: During class, I will both “cold call” students randomly and take volunteers. (When volunteering over Zoom, please use the blue hand raise icon.) I expect that everyone will speak multiple times throughout the course. Learning in this class is a collaborative process. Each student's contributions will be important and valuable building blocks for our discussion. The topics covered in this course often evoke vigorous debate, and the most productive discussions develop from students sharing contrasting opinions in a respectful manner. Each class member is entitled to your respect, and to a presumption that their views are being offered in good faith—even if they are views with which you sharply disagree.
 - Technology: To avoid distractions during class, please do not use laptops or any other electronic devices (including phones) for anything other than class purposes and please silence your cell phone. You should not use class time to check email, engage in text conversations, browse the Internet, or otherwise use electronic devices in a manner that distracts you or others from class.
 - Grading: While your grade is mostly based on the exam, exceptional performance in class discussion can raise your grade one-third of a grade (e.g., B+ to A-) and poor performance can lower it one-third of a grade (e.g., A- to B+).

G. ZOOM POLICIES

The default settings for in-class Zoom use are microphones off and cameras on. There are several reasons for the cameras-on policy. Some of these reasons are to help me, which in turn makes the class run more smoothly and efficiently. Seeing your faces helps me gauge comprehension and engagement, which in turn informs whether I devote more of our class time to a particular issue or move on to other material.

The cameras-on policy is also helpful for many students. It discourages distraction and provides practice for how lawyers must act in virtual meetings. Seeing each other also helps foster a sense of community.

I realize there may be times when it is necessary for you to turn off your camera temporarily because of technology glitches, situations in your home, or personal reasons. You may do so at your discretion. If you need to turn off your camera on a regular basis or for a full class, please check in with me to confirm that during these times you will be (or were) present and following along with the class.

The Zoom chat feature should be reserved for quick communications, such as “What page is that on?” “I’m having trouble hearing you,” or “Good point.” Longer and more substantive comments should be shared orally to ensure we are having a unified, cohesive discussion.

H. RECORDINGS

UHLC will record class sessions with audio and video for the sole and limited educational purpose of allowing students to stream the recorded sessions for review or to enable students who missed a class to view the class presentation. Your contributions to class discussion, whether voluntary or while on call, will be included in the recording. Your continued registration in this class indicates your acquiescence to such recordings for the purposes described above. Any recordings created will be deleted and destroyed shortly after the class concludes.

You, as students, may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Students may use the instructor’s recordings for their own studying and notetaking. The instructor’s recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

I. STUDENTS WITH DISABILITIES

Per [the UHLC Student Handbook](#): “Students with disabilities needing modification to existing academic requirements should contact the Center for Students with DisABILITIES (“CSD”). Modifications that do not fundamentally alter the nature of the program and are not unduly burdensome will be considered. For more information, please visit: <https://uh.edu/csd>. UHLC is committed to ensuring that all students with disabilities are reasonably accommodated and are able to compete on a level playing field with all other law students. Accordingly, UHLC works closely with CSD to provide accommodations on law school exams, as deemed appropriate and necessary by CSD. UHLC recommends contacting CSD to begin the accommodations process at least one month prior to the start of the semester to ensure that students are timely accommodated.

Per [the UH Faculty Handbook](#): “The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments / auxiliary aids for students who have a disability. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments / auxiliary aids to students who request and require them. If you believe you have a disability requiring an adjustment / auxiliary aids, please contact the Center for Students with DisABILITIES at 713-743-5400 or <http://www.uh.edu/csd/>.”

J. STUDENT HEALTH

Physical or mental health problems can adversely affect a student’s academic performance. Students may wish to seek counseling from the University Office of Counseling and Testing at (713) 743-5454, or from the University of Houston Medical Health Service Center at (713) 743-5151.

Per [the UH Faculty Handbook](#): “[The University of Houston’s] Counseling and Psychological Services (CAPS) can help students who are having difficulty 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 (http://www.uh.edu/caps/outreach/lets_talk.html), a drop-in consultation service at convenient locations and hours around campus.”

K. COMMUNICATION AND OFFICE HOURS

My primary means of communicating with you outside of class will be by email and by posts on Canvas. You are expected to check your email and are responsible for any announcements or assignments sent via email or posted on Canvas.

I am happy to answer questions by email if they are short or related to class logistics. I will do my best to respond to all questions within three business days. Substantive course-related questions are typically best addressed in office hours. During office hours I’m also happy to provide career advice and discuss clerkships, law firms, public service, or anything else you find interesting and productive.

When emailing me about meeting or for any other purpose, please include the abbreviated bracketed course name—[CL]—at the beginning of a descriptive subject header. For example, if emailing me a note that you have to miss a class because of a religious holiday, your subject header would be something like: “[CL] Missing Class for Religious Holiday.”

I will hold office hours in a dedicated Zoom room at the times listed at the beginning of this document. You may schedule appointments via email and you may do so alone or in groups. Please be respectful of your classmates by promptly cancelling any appointment you do not intend to keep.

If you cannot meet during my regular office hours, you are welcome to set up an alternative time by sending me an email. Your email should include several options listing your preferred times.

L. COURSE EVALUATIONS

Your feedback about the course is important and greatly appreciated. You will have two opportunities to provide feedback formally: a mid-term evaluation and a final evaluation. In addition, please email me or visit my office hours to provide any additional feedback informally.

M. CHATHAM HOUSE RULE ON DISCUSSION AND ATTRIBUTION

Classroom discussions are subject to the Chatham House rule: participants are free to use the information received, but neither the identity nor the affiliation of the speakers, nor that of any other participant, may be revealed. This rule, which applies to students and any guest speakers, is meant to encourage frank discussion and allow students and guest speakers to try out arguments. Robust but respectful debate is encouraged. You may not post online or otherwise share recordings, screenshots, classmates' remarks, or any other class content. If you have any questions or concerns about class discussions—or feel in any way uncomfortable speaking in class for any reason—please contact me.

N. COURSE MATERIALS

- **Required Book:** CRIMINAL LAW: CASES AND MATERIALS (Joshua Dressler & Stephen P. Garvey eds., 8th ed. 2019). Please be sure to obtain the correct edition and please do so in hard copy rather than as an electronic book to prevent any problems with accessing it during the exam if you want to.
- **Recommended Book:** JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW (8th ed. 2018). If you choose to acquire this study aid, again, please be sure to obtain the correct edition.
- **Canvas:** I may post some course materials to Canvas.
- **Online:** Some course materials are available online. For those materials, I provide a hyperlink in their listing below.

O. RESOURCES FOR ONLINE LEARNING

The University of Houston is committed to student success and provides information to optimize the online learning experience through our [Power-On website](#). Please visit this website for a comprehensive set of resources, tools, and tips, including: obtaining access to the Internet, AccessUH, and Canvas; requesting a laptop through the Laptop Loaner Program; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance, contact: UHOnline@uh.edu.

P. SYLLABUS CHANGES

The syllabus indicates the order in which we will cover the topics in this course. I may adjust the syllabus to accommodate our pace, to incorporate relevant news items, or in response to unforeseen developments. Notice of such changes will be announced as quickly as possible through email.

II. SCHEDULE

This syllabus features 13 class sessions. Unless otherwise noted, page numbers refer to the required book.

Class Session	Date	Topic(s)	Assignment(s)
INTRODUCTION AND PRINCIPLES OF PUNISHMENT			
1	Wednesday, July 12	<ul style="list-style-type: none"> • Course Overview • Introduction • Nature, Sources, and Limits of the Criminal Law • Criminal Law in a Procedural Context: Pre-Trial • Criminal Law in a Procedural Context: Trial by Jury • Proof of Guilt at Trial • Jury Nullification • Introduction: Initial Thoughts and Hard Statistics • Theories of Punishment 	<ul style="list-style-type: none"> • Syllabus • 1-51
2	Monday, July 17	<ul style="list-style-type: none"> • The Penal Theories in Action • The Queen v. Dudley & Stephens • Proportionality of Punishment 	<ul style="list-style-type: none"> • 51-90 • 594-97 • Restorative Circle Process (15-minute video)
MODERN ROLE OF CRIMINAL STATUTES AND ACTUS REUS			
3	Tuesday, July 18	<ul style="list-style-type: none"> • Principle of Legality • Statutory Interpretation • Actus Reus: Voluntary Acts • Actus Reus: Social Harm 	<ul style="list-style-type: none"> • 91-141 • 153-55 • MPC § 2.01(1-2, 4) (1006)
4	Wednesday, July 19	<ul style="list-style-type: none"> • Actus Reus: Omissions (“Negative Acts”) • Bad Samaritan laws 	<ul style="list-style-type: none"> • 141-53 • MPC § 2.01(1, 3) (1006) • Texas Penal Code §§ 38.17, 38.171 • Vermont Statute title 12, § 519 • Nevada Statute § 202.882 • California Penal Code § 152.3 • Zachary D. Kaufman, Protectors of Predators or Prey: Bystanders and Upstanders amid Sexual Crimes, 92 S. CAL. L. REV. 1317, 1318-48, 1355-61 (2019) • Zachary D. Kaufman, Digital Age Samaritans, 62 B.C. L. REV. 1117, 1117-39, 1176-92 (2021) • Zachary D. Kaufman, Police Policing Police, 91 GEO. WASH. L. REV. Appendix (forthcoming)

MENS REA			
5	Monday, July 24	<ul style="list-style-type: none"> • Nature of “Mens Rea” • General Issues in Proving Culpability 	<ul style="list-style-type: none"> • 157-86 • MPC §§ 2.02, 2.03(2) (1006-09)
6	Tuesday, July 25	<ul style="list-style-type: none"> • Strict Liability Offenses • Mistake and Mens Rea 	<ul style="list-style-type: none"> • 186-226 • 492-95 • MPC §§ 2.04, 2.05 (1009-10)
CAUSATION & CRIMINAL HOMICIDE			
7	Wednesday, July 26	<ul style="list-style-type: none"> • Actual Cause (Cause-in-Fact) • Proximate Cause (“Legal” Cause) • Criminal Homicide: Overview: Homicide Statistics • Criminal Homicide: Overview: Common Law Origins and Statutory Reform • Degrees of Murder: The Deliberation-Premeditation Formula 	<ul style="list-style-type: none"> • 227-47 • 251-54 • 270-82 • MPC §§ 2.03, 210.0 – 210.4 (1008-09, 1039-41) • Texas Penal Code § 19.01
8	Monday, July 31	<ul style="list-style-type: none"> • Manslaughter: “Heat of Passion” Killings • Unintentional Killings: Unjustified Risk-Taking • Unintentional Killings: Unlawful Conduct (The Felony-Murder Rule and the Misdemeanor-Manslaughter Rule) 	<ul style="list-style-type: none"> • 282-89 • 313-60 • “Why Did I Serve 16 Years for Murder When I Didn’t Kill Anyone” (6-minute video)
RAPE AND RELATED SEXUAL OFFENSES			
9	Tuesday, August 1	<ul style="list-style-type: none"> • Overview • Rape (Sexual Assault) Statistics • Social Context • Proposed Model Penal Code Sexual Offense Provisions • Actus Reus • Mens Rea 	<ul style="list-style-type: none"> • 403-13 • 423-73 • 479-87 • MPC Article 213 (1047-51) • Texas Penal Code §§ 22.011, 22.021 • Model Penal Code: Sexual Assault and Related Offenses (4-minute video)
INCHOATE OFFENSES			
10	Wednesday, August 2	<ul style="list-style-type: none"> • Overview • Attempt • Solicitation 	<ul style="list-style-type: none"> • 749-88 • 817-22 • MPC §§ 5.01, 5.02, 5.04, 5.05 (1034-38)
LIABILITY FOR THE CONDUCT OF ANOTHER			
11	Monday, August 7	<ul style="list-style-type: none"> • Accomplice Liability 	<ul style="list-style-type: none"> • 877-926 • MPC § 2.06 (1010-12)

GENERAL DEFENSES TO CRIMES		
12	Tuesday, August 8	<ul style="list-style-type: none"> • Categories of Defenses • Structure and Underlying Theories of Justification Defenses • Self-Defense • Defense of Others • Necessity: General Principles
		<ul style="list-style-type: none"> • 497-503 • 513-49 • 568-71 • 580-88 • MPC §§ 3.01, 3.02, 3.04, 3.05 (1016-20)
13	Wednesday, August 9	<ul style="list-style-type: none"> • Principles of Excuse • Duress • Intoxication • Insanity • Cultural Defense
		<ul style="list-style-type: none"> • 601-53 • 738-48 • MPC §§ 2.08, 2.09, 4.01 (1013-14, 1027-28)