

**Criminal Law (5303)**  
**Summer 2024**

MTW 6 – 8:45 pm  
Online: Zoom link TBA

Professor Ten Cate  
Email: [itencate@central.uh.edu](mailto:itencate@central.uh.edu)

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**COURSE POLICIES**

**1. Course Description**

This course covers substantive criminal law, meaning the legal rules our legal system enforces through (the threat of) punishment. Criminal procedure, which includes the investigation and adjudication of suspected criminal conduct, is taught in upper-year elective courses.

**2. Learning Outcomes**

This course has four main learning outcomes. First, and most obviously, you will gain foundational knowledge and understanding of substantive criminal law. We will explore the basic elements of all crimes (e.g., actus reus, mens rea, causation, and concurrence); specific elements of certain crimes (e.g., homicide, sexual offenses, theft); and defenses to criminal liability (e.g., necessity, self-defense, mistake).

Second, you will develop skills in legal analysis and reasoning, with an emphasis on interpreting and applying statutory law. Every jurisdiction in the United States has enacted statutes that govern criminal liability. Some jurisdictions have codified common law. Others, including Texas, have adopted statutes based on the Model Penal Code. In this course, we will closely read statutory texts and cases that interpret them.

Third, you will refine other lawyering skills, including how to read cases, how to argue, and how to effectively communicate legal analysis.

Lastly, we will situate criminal law in the broader societal and cultural context in which it exists. We will examine the most common rationales for criminal punishment, critiques of those rationales, and the realities of enforcement. We will also reflect on the ethical and professional obligations of different actors, including prosecutors, defense attorneys, judges, and legislators.

### 3. Sensitivity Caution

The criminal law course covers emotionally difficult subjects. Many cases and scenarios involve people who inflict grave harm on others. On the flip side, punishment often imposes harsh conditions and violence on those who are found guilty. We will read and discuss materials that address troubling subjects including murder, sexual assault, discrimination based on identity, and police violence. I will do my best to be sensitive, and I ask that each of you do the same. Let me know if you have concerns about participating in discussion of a particular topic, or if you would like to discuss your classroom experience.

### 4. Course Materials

- **Required.** CYNTHIA LEE & ANGELA P. HARRIS, CRIMINAL LAW: CASES AND MATERIALS (4th ed. 2019).
  - Be sure to obtain the correct edition. Because the final exam will be closed book, you are free to purchase the book in printed (new or used) or eBook format.
  - If you decide to purchase a new book or eBook, note that **you can get 15% off the listed price of this book** (and any other books purchased from [www.westacademic.com](http://www.westacademic.com)) by using the code WAHOUSTON upon checkout. I don't know how this discounted price compares to what other sellers charge.
- **Recommended.** JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW (8th ed. 2018).
- **Canvas.** I will post additional materials on Canvas.

### 5. Grades and Assessments

**Final Exam.** Your grade for this course will be based on a three-hour proctored exam, subject to potential adjustment as indicated below. The exam will take place in-person from 6 – 9 pm on Tuesday, August 6. will consist of multiple-choice and essay questions. It will be modified closed book. You will have access to an unannotated version of the Model Penal Code (which I will provide) but nothing else. During the exam, you will be allowed to write notes on your exam or on scrap paper. You may not consult with others once the exam has started.

**I will discuss the exam in class.** To ensure that all students have access to the same information about the exam, I will not discuss it in nonpublic settings, including office hours. I am, however, happy to discuss practice questions in office hours.

**Adjustments.** I may raise or lower your grade by up to one-third of a letter grade (e.g., from B to B+) based on exceptionally strong or poor performance throughout the semester. In deciding whether to adjust grades, I consider professionalism, class participation, and timely completion and quality of any ungraded assignments.

## 6. Attendance and Participation

**Attendance.** As a requirement for accreditation of law schools by the American Bar Association, regular and punctual class attendance is necessary. To fulfill this requirement, UHLC mandates that students be present for 80% of the regularly scheduled class meetings. I will keep track of attendance. If you arrive more than ten minutes late or leave more than ten minutes early, I will mark you as absent. Each evening consists of two class sessions. If you miss more than five class sessions, I will notify the Office of Student Affairs.

**Participation.** I expect you to be prepared for every class. As a practical matter, this means that (1) you have read the assigned materials and are ready to discuss them; and (2) you have the materials available during class in case we refer to them. If, for any reason, you are not prepared for a class, please email me at least two hours before class (barring an emergency that prevents you from doing so) and I won't call on you that day. Being unprepared more than twice during the semester may affect your grade.

**Engagement.** During class, I will “cold call” on students and take volunteers. Each student's participation is important. Class is a more enriching experience when all students are engaged, and you will learn more if you participate. For these reasons, I expect that everyone will speak multiple times throughout the course, and I also expect that students will take care not to dominate the discussion. Please treat each other with respect and assume that your classmates offer their views in good faith, even if you vigorously disagree with those views.

**Chatham House Rule.** To encourage robust discussion, the Chatham House Rule applies in my classroom. Under this rule, “participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” This also means that you may not post online or otherwise share recordings, screenshots, classmates' remarks, or any other class content.

## 7. Etiquette for Synchronous Zoom Class Meetings

To make this course as effective as possible for yourself and for your classmates, please follow the guidelines below.

- Access the Zoom link at least a few minutes before the scheduled class time. If you run into difficulties, email me at [itencate@central.uh.edu](mailto:itencate@central.uh.edu).
- I strongly encourage you to turn on your camera, and I reserve the right to require on-camera participation. Doing so increases individual engagement, improves everybody's experience, and enables me to get to know you. This resource may be useful: <https://uh.edu/online/students/remote-learning/index>.
- If you want to ask a question, click the “raise your hand” button. When I say your name, unmute your microphone and talk. After the question is answered, mute your microphone again.

- Assume you will always be visible and audible to others, so act and dress accordingly.
- I want to create a safe and comfortable learning experience for all students, and I expect you to treat class sessions like professional meetings. Do not engage in behavior that violates privacy laws, rules, and norms. Among other things, do not “pin” fellow students or make or disseminate recordings or screenshots, including on social media. Violations will be taken seriously and may negatively affect your grade due to professionalism concerns. Additional information is included below, under “Recording of Class.”

## **8. Communications Outside the Classroom**

**Office Hours.** If you have questions about the materials we are studying, the best place and time to ask them are in class or during office hours. I will hold office hours on Mondays and Wednesdays from 4 – 5:30 pm. In addition, I will usually be available for a few minutes right after class ends. If you’d like to schedule a meeting at another time, email me and provide your availability on Monday – Wednesday.

**Email.** I don’t intentionally ignore inquiries or requests from students, but I sometimes inadvertently miss them. If, during the teaching period, I don’t reply within two business days to an email from you that requires a response, don’t hesitate to send me a reminder. I generally don’t respond to substantive questions by email; instead, I will invite you to come to office hours or schedule a meeting.

## **9. Names and Pronouns**

I want to address each of you in a manner that corresponds to your identity. Feel free to reach out if you want to make me aware of your name (including the correct pronunciation), pronouns, or if you have concerns about how I or your classmates address you.

## **10. Teaching Evaluations and Feedback**

I read teaching evaluations carefully for guidance on what goes well and where I can improve. I also welcome your thoughts on these things throughout the course. You should always feel free to reach out if you have suggestions or concerns.

## **11. Honor Code**

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code’s provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

## **12. AI Generated Text**

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as “generative” large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term “assessment” means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless of whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination unless specified as an exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course.

## **13. Mental Health and Wellness Resources**

The University of Houston has a number of resources to support students’ mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit [uh.edu/caps](http://uh.edu/caps), call 713-743-5454, or visit a Let’s Talk location in-person or virtually. Let’s Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed. The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment. The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

The Texas Lawyers’ Assistance Program (TLAP) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP’s website provides links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>.

**Need Support Now?** If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

#### **14. Title IX / Sexual Misconduct**

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

#### **15. Reasonable Academic Adjustments/Auxiliary Aids**

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713)743-5400, or emailing [jdcenter@Central.UH.EDU](mailto:jdcenter@Central.UH.EDU).

#### **16. Recording of Class**

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 Justin Dart, Jr. Student Accessibility Center. 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. Classes may be recorded by the instructor. Students may use instructor’s recordings for their own studying and notetaking. 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.

#### **17. Syllabus Changes**

I may need to modify the course syllabus. If I do, I will announce any changes as soon as possible.

## **COURSE OUTLINE**

This outline provides a guide to the topics I expect to cover in our course. Please read the materials in the order in which they are listed in the syllabus. For the Lee / Harris (LH) readings, make sure to also read the corresponding section(s) of the Modal Penal Code (MPC). The MPC is included as an appendix in the LH book and also posted on Canvas in the “supplemental reading materials” module. On occasion, I may add or remove reading materials. For this reason, I advise you not to read more than one week ahead.

### **INTRODUCTION TO CRIMINAL LAW**

#### **Mon. 7/8 Introduction to the Course**

- Please complete [this survey](#) before our first class meeting
- Review the syllabus
- LH preface, 1-4 (introduction / aims of criminal law)

#### **Theories of Punishment**

- LH 6-12 (introduction, *Regina v. Dudley and Stephens*)
- Kent Greenawalt, *Punishment*, J. CRIM. L. & CRIMINOLOGY 343 (1983) (Canvas)
- Materials on alternatives to criminalization and punishment (Canvas)

Be prepared to discuss the *Dudley and Stephens* case and to articulate the gist of each theory of punishment. Read everything else quickly, but with attention. The Greenawalt article and additional materials will be posted in the “supplemental reading materials” module.

#### **Criminal Law in Context**

- LH 38-45 (burden of proof / standards of review)
- LH 45-57 (roles of counsel and the jury)

Be prepared to discuss the *Curley* and *Williams* cases. Read everything else quickly, but with attention.

#### **Bodies of Criminal Law**

- LH 5-6 (sources of criminal law)
- MPC (skim the entire code to get a sense of its structure)
- LH 65-73 (statutory interpretation)

Identify the methods of statutory interpretation discussed in *Dauray*.

**Tues. 7/9 Constitutional Limits**

- LH 75-83 (Fourteenth Amendment due process / the vagueness doctrine)

Be prepared to discuss the *Papachristou* and *Kolender* cases.

**ACTUS REUS**

**Tues. 7/9 The Voluntary Act Requirement  
(cont'd)**

- LH 147 (introduction), 153-161 (voluntary act requirement)
- MPC §§ 1.13, 2.01, 2.05

Read the assigned MPC provisions (located in the back of LH) closely. Be prepared to discuss the *Martin* and *Decina* cases. Read the other parts of LH quickly, but with attention.

**Omissions and the Duty to Act**

- LH 161-176 (omissions / establishing the duty to act)
- Excerpt from Zachary D. Kaufman, *Protectors of Predators or Prey: Bystanders and Upstanders amid Sexual Crimes*, 92 S. CAL. L. REV. 1317 (2019) (Canvas)

Be prepared to discuss *Beardsley*, *Howard*, and *Pestnikas*. Read everything else quickly, but with attention.

**MENS REA**

**Wed. 7/10 Introduction**

- LH 197-211 (introduction / history / problems of statutory interpretation)
- MPC § 2.02

**Intent**

- LH 211-217 (intent / knowledge)
- LH 217-228 (special problems in intent)

Read these materials closely and be prepared to discuss the cases. Pay special attention to the differences between the Common Law and MPC approaches. We will spend part of the class going over multiple-choice questions.



## **Strict Liability**

- LH 228-233 (strict liability crimes)
- MPC §§ 2.02(1), 2.05, 1.04

In reading the *Morisette* case, consider when common law courts read a mens rea into a statute and when they construe it as imposing strict liability.

## **MISTAKE**

### **Mon. 7/15 Mistakes of Fact and Law**

- LH 253-256, 260-61 (start at the last paragraph on p. 260) (introduction / mistakes of fact / *Navarro* / note)
- LH 261-268, 275-282, 289-292 (mistakes of law)
- MPC § 2.04

## **CAUSATION AND CONCURRENCE**

### **Mon. 7/15 Causation and Concurrence (cont'd)**

- LH 301-318 (causation / concurrence)
- MPC § 2.03

## **CRIMINAL HOMICIDE**

### **Tues. 7/16 Homicide: Definitions and Categories**

- LH 319-323 (introduction / definitional issues / categorizing homicides)
- MPC §§ 210.0, 210.1

#### **Degrees of Murder**

- LH 323-330, 335-339 (first vs. second degree murder)
- MPC § 210.2(1)(a)

#### **Voluntary Manslaughter**

- LH 342-357, 360-364, 370-377 (provocation / “reasonable person” / MPC)
- MPC § 210.3

**Wed. 7/17 Depraved Heart Murder**

- LH 377-389 (depraved heart murder)
- MPC § 210.2(1)(b)

**Involuntary Manslaughter**

- LH 389-401 (involuntary manslaughter)
- MPC § 210.4

**Mon. 7/22 The Felony Murder Rule**

- LH 401-416 (inherently dangerous felony limitation / res gestae requirement)
- LH 420-431 (merger doctrine / agency rule)
- Watch [“Why Did I Serve 16 Years for Murder When I Didn’t Kill Anyone”](#) (6 minutes)
- MPC § 210.2(1)(b)

**SEXUAL OFFENSES**

**Tues. 7/23** Sexual offenses will not be tested on the exam, but we will cover recent developments. If you are unable to attend class, I require that you complete a writing assignment. For class, prepare as follows:

- Skim MPC §§ 213.0, 213.1 in the MPC section of the casebook.
- Watch [“Model Penal Code: Sexual Assault and Related Offenses”](#) (4 minutes).
- Review Erin Murphy, *Article 213 of the American Law Institute’s Model Penal Code, in SEXUAL ASSAULT: LAW REFORM IN A COMPARATIVE PERSPECTIVE* (Tatjana Hörnle, ed. 2023) (Canvas):
  - Read Part IA with attention.
  - Skim Part II.
  - Skim Parts III.A. and III.B.
  - Read Part III.C. with attention, especially subsection 2 (about consent).
- Review the revised MPC (appendix to the Murphy chapter):
  - Read section 213.0 closely, especially the definition of consent.
  - Skim the other sections, except read sections 213.6 and 213.7 closely.

## **THEFT OFFENSES (Common Law only)**

### **Wed. 7/24 Larceny, Embezzlement, False Pretenses**

- JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW (2018) Ch. 32 (Canvas)

#### **Aggravated Theft**

- LH 585-602 (burglary / robbery)

**\*\* Submit your practice essay answer on Canvas by 6 pm on Sun. 7/28.  
This assignment is mandatory but ungraded. \*\***

## **ATTEMPT**

### **Mon. 7/29 The Actus Reus Requirement**

- LH 801-807 (introduction / actus reus)
- MPC § 5.01

#### **The Mens Rea Requirement**

- LH 814-816 (mens rea)

#### **The Defense of Impossibility**

- LH 822-824 (impossibility)

## **ACCOMPLICE LIABILITY**

### **Mon. 7/29 The Actus Reus Requirement (cont'd)**

- LH 833-837 (introduction / actus reus)
- MPC § 2.06

#### **The Mens Rea Requirement**

- LH 837-841 (mens rea)

#### **The Natural and Probable Consequences Doctrine**

- LH 845-852 (natural and probable consequences)

## CONSPIRACY

### **Tues. 7/30 The Agreement**

- LH 853-861 (agreement)
- MPC § 5.03(1)-(2), (5)-(7)

### **Mens Rea**

- LH 861-865 (mens rea)
- LH 873-877 (Pinkerton Rule)

## DEFENSES

### **Tues. 7/30 Justification defenses (cont'd)**

- LH 603-611 (introduction / self-defense)
- MPC §§ 3.04, 3.11
  
- LH 638 (introduction re. defense of others)
- MPC § 3.05
  
- LH 642-653 (defense of habitation / property)
- MPC § 3.06
  
- LH 657-659 (necessity)
- MPC § 3.02

### **Wed. 7/31 Excuse Defenses**

- LH 675-681 (duress)
- MPC § 2.09
  
- LH 687-691 (don't read the dissent beginning at 692), 695-698 (intoxication)
- MPC § 2.08
  
- LH 700-710 (insanity)
- MPC § 4.01

## **EXAM WEEK**

**\*\* Submit any questions for the Q&A on Canvas by 6 pm on Sun. 8/4. \*\***

### **Mon. 8/5 Q&A and Office Hours**

During this last class meeting, I anticipate spending approximately an hour on review based on student questions. During the remaining part of the class time, I will hold office hours.

### **Tues. 8/6 Exam from 6 – 9 pm**

Good luck!!!!