

Criminal Law

University of Florida Levin College of Law
Spring 2024
Law # 5100, Class # 30600, Section 3, 3 Credits

Prof. Elizabeth Katz

Office: 339 Holland Hall / <https://ufl.zoom.us/j/3098440635>

Email: katz@law.ufl.edu

Office phone: 352-273-0814

Office Hours: Mondays 2:40-3:20 PM & Wednesdays 2:00-3:20 PM. See details below about how to sign up. Additional times available by email appointment.

Class Meeting Time: Mondays & Wednesdays, 10:30 - 11:55 AM

Class Location: Holland Hall 270

Teaching Assistants:

Austin Baldwin, cbaldwin2@ufl.edu

Maria Fahmy, mfahmy@ufl.edu

Chase Robinson, crobinson7@ufl.edu

Course description. This course focuses on substantive criminal law: the rules and prohibitions that our legal system enforces using criminal punishment. Topics include homicide, theft, rape, conspiracy, complicity, attempted crimes, and defenses. The class also considers how criminal law is made and why criminal sanctions are used. This course does not cover procedural criminal law, such as the rules governing warrants, criminal trials, and sentencing. While we cover some basic procedural matters, procedure is primarily covered in upper-level electives.

Learning outcomes. By the end of this course, you will be able to:

- Understand the fundamentals of substantive criminal law doctrine;
- Identify the elements of various common law crimes and defenses;
- Engage with historical, philosophical, and policy considerations at work in substantive criminal law doctrine; and
- Hone the ability to interpret cases and statutes to craft legal arguments.

Class readings. The required casebook is Joshua Dressler and Stephen P. Garvey, *Criminal Law Cases and Materials* (9th ed. 2022), ISBN 978-1636596891. Additional materials will be posted on Canvas.

Your time is most productively spent reading the casebook and participating in class discussion. If you are interested in using a study aid, I recommend the one offered by our casebook's coauthor: Joshua Dressler, *Understanding Criminal Law*. This study guide is not an assigned material and may not be accessed during the exam.

Note on subject matter. In this class we will be studying difficult material, such as cases involving murder, child abuse, rape, and racial discrimination. It is essential for everyone in the class to communicate with the thoughtfulness, sensitivity, and care that these topics warrant. If you have concerns about particular subjects or class discussions, please meet with me in office hours.

Attendance. ABA standards require regular and punctual class attendance. Attendance is an essential function of legal education and a primary obligation of each student. Each student is allowed three unexcused absences. If a student exceeds three unexcused absences, their grade will be lowered by one-third of a letter grade (for example from B+ to B) for each additional absence. If a student exceeds six unexcused absences, they will be dropped from the course.

All absences for religious holidays and illness are excused. Please do not attend class if you are ill. The TAs and I will work with you to catch up.

Attendance will be tracked using this online "[pass form](#)." To register an absence (regardless of whether it is excused or unexcused), complete the form by 8:30 AM on the day the class is meeting. Failure to register an absence in advance will count as two absences unless there are severe extenuating circumstances. Do not email me about the absence unless there is a specific question or issue that we need to discuss.

Participation. All students should arrive prepared to participate in class discussions. Being prepared means completing and carefully considering the assigned materials.

During class, I will "cold call" students randomly (using a spreadsheet that generates a list of names) and take volunteers. I expect that everyone will speak multiple times throughout the semester. Learning in this class is a collaborative process. Each student's contributions will be valuable for our discussion. The topics covered in Criminal Law often evoke vigorous debate, and the most productive discussions develop from students sharing contrasting opinions respectfully. Each class member is entitled to respect and a presumption that their views are being offered in good faith.

Exceptions and modifications to the cold call policy:

- If you know in advance that you will be unprepared to participate in class, or that cold calling would be counterproductive to your learning for the specific topic or cases we are covering that day, complete this "[pass form](#)" by 8:30 AM on the day the class meets. You do not need to provide any explanation, though the form provides an optional space if you prefer to share additional information. Your completion of this form will ensure I do not use class time calling on students who are unavailable to participate. Do not email me about your use of the pass form unless there is a specific question or issue we need to discuss.
- If you realize when cold called that you are unexpectedly unable to participate, you may simply say "pass."
- If you find that being "on call" each class is counterproductive to your learning, please speak with me during office hours.

ABA out-of-class requirements. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Each weekly class is approximately 3 hours in length, requiring at least 6 hours of preparation outside of class.

Office hours and communication. I hope to meet with all of you during office hours this semester. Office hours discussion topics can include course materials, criminal law issues in the news, career advice, clerkships, or whatever else you find interesting and productive. I will answer questions by email if they are short or related to class logistics. I will do my best to respond to all questions within one business day. Substantive course-related questions typically are best addressed in office hours.

To make an appointment for office hours, sign up on Canvas. (Drop-ins are welcome when times are not reserved.) The default Canvas sign-up is for a 20-minute meeting; you can sign up for multiple consecutive slots to reserve a longer time. You are welcome to come alone or in groups. For group meetings, one member of the group can sign up through Canvas to reserve the time. Please be respectful of your classmates and cancel your appointment promptly if you are no longer able to attend.

To sign up on Canvas, go to the "Calendar" page and select our course from the "Calendars" list on the right side of the screen. If you don't see any office hours appointments, you will need to refresh the view. Select the box on the right side that says "Find Appointment" (if it says "Close," select it and then choose "Find Appointment"). Available office hours should now appear on your calendar to select.

If you cannot meet during my regular office hours, I would be glad to find an alternative time. Please email me and include several options when you are available to meet. Office hours appointments can be in person or on Zoom with advance notice.

Grading. Your grade in this course will be based primarily on an in-class four-hour, limited open book examination at the end of the semester. The exam will be comprehensive—everything assigned for class or discussed during class may be tested. The exam may include essay, short answer, and multiple choice questions. The questions will be designed to test your understanding of legal rules and principles, as well as your ability to apply them in new contexts and to critically analyze legal problems. During the exam you will be permitted to use your casebook, any materials I post to Canvas (EXCEPT videos or recordings), and any notes and outlines prepared by you or with a substantial contribution by you. You may not use any other materials, such as the internet or commercial outlines and treatises. (You should download any permissible materials you store in the cloud prior to the exam.) I will share more information about the exam at appropriate points during the semester.

To compute your course grade, your final exam score may be adjusted for poor attendance (as described above) and/or based on your participation. Exceptional participation may result in increasing a borderline grade to the next level if the mandatory grading rules permit this adjustment (for example from B+ to A-). Your course grade may be lowered for poor participation by up to one full letter grade (for example from A to B). The following conduct constitutes poor participation: (1) frequent or excessive lateness; (2) regular use of the pass form to opt out of cold calls (unless you've discussed an accommodation with me); (3) repeated failure to use the pass form when unavailable for cold calls; (4) use of laptops or other electronic devices in a manner that distracts other students; and (5) uncivil, disrespectful, or insensitive commentary or behavior that chills classroom discussion.

Student Recordings of Class. Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Universal UF Levin College of Law Policies. Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link:
<https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

Syllabus

The syllabus indicates the order in which we will cover the topics in this course. I may adjust the syllabus to accommodate our pace, incorporate relevant news items, or in response to unforeseen developments. I will inform you promptly of any changes. If we do not complete material on the designated day, you should expect that we will return to it the following class.

“CB” refers to our main casebook (Dressler & Garvey). “Ristroph CB” refers to a new open casebook by Alice Ristroph, *Criminal Law: An Integrated Approach*. Assigned portions are linked at the appropriate places below, and [the full casebook is available here](#). Other materials are posted to Canvas and/or linked.

When the syllabus or a casebook reading references a section of the Model Penal Code (MPC), you should review that section in the back of the casebook.

Pre-Semester Tasks

- Read the syllabus
- So that I can get to know you better, complete this survey by January 15: <https://forms.gle/RVB2utHN57Ee6p7T7>
- If you aren't familiar with PollEverywhere, review the instructions (Canvas)

Introduction

1. The Nature of Criminal Law & Criminal Law Sources (January 17)

- Kevin McMunigal & Daniel Medwed, *Overview of the Criminal Justice System* (Canvas)
- Introductory Materials, CB 1-6
- Modern Role of Criminal Statutes & Principle of Legality, CB 95-109, 115 note 9
- Commonwealth v. Cass, 392 Mass. 799 (1984) (Canvas)

2. Principles & Theories of Punishment (January 22)

- CB 34-44, 47-56, 605-09 (do not read the notes on 609)
- Allegra McLeod, *Prison Abolition and Grounded Justice* (excerpt on Canvas)

3. Criminal Law Procedures; How Much (and What) Punishment Should Be Imposed? (January 24)

- Procedural Context and Trial by Jury, CB 6-13 (through note 4), 18-29
- Sentencing and Incarceration
 - Sentencing Procedures, CB 63-64 (only note 5)
 - Overview of the Federal Sentencing Guidelines (Canvas)

- The Sentencing Project, *Mass Incarceration Trends* (Canvas)
- Jerry Metcalf, *The Everyday Chaos of Incarceration*, Marshall Project, March 1, 2018 (Canvas)
- Ben Lambert, *Former CT Nurse Who Replaced Patients' Painkillers with Saline Gets Weekends in Prison*, New Haven Register, May 25, 2021 (Canvas) (For an extended treatment of this case, see [The Retrievals](#) podcast produced by the New York Times and Serial. The podcast is not assigned for this course.)
- Alternatives to Incarceration
 - CB 64-73 (through note 4)
 - *Restorative Circle Process* (watch to 5:30): <https://www.youtube.com/watch?v=ttXjAHytMc0>
 - Optional: Paul Tullis, *Can Forgiveness Play a Role in Criminal Justice?*, New York Times, Jan. 4, 2013 (Canvas)
- Eighth Amendment
 - Civics 101 Podcast on the Eighth Amendment: <https://www.civics101podcast.org/civics-101-episodes/ep112>

Actus Reus

4. Voluntary Act (January 29)

- CB 133-45
- Status Crimes, Ristroph CB 55-62
- Social Harm, CB 157-59

5. Omissions (January 31)

- CB 146-57

Mens Rea

6. Introduction to Mens Rea (February 5)

- Nature of Mens Rea, CB 161-65
- Model Penal Code Approach, CB 173-77; MPC §§ 1.02(3) & 2.02
- Problems in Statutory Interpretation, CB 182-89

7. Issues in Proving Culpability (February 7)

- Intent, CB 165-73
- Willful Blindness, CB 177-82
- U.S. v. Jewell (Canvas)

- MPC § 2.02(7)
- Possession of Dangerous Objects and Substances, Ristroph CB 274-83

8. Strict Liability & Vicarious Liability (February 12)

- *Elonis v. United States* and notes (Canvas)
- CB 190-201, 207-08 (only note 2)
- *Commonwealth v. Mash* (Canvas)
- MPC § 2.05
- Vicarious Liability, CB 943-49

9. Intoxication & Mistake (February 14)

- Refresh on CB 171-73 note 7
- Intoxication, CB 637-45
- Mistake of Fact, CB 208-13
- Mistake of Law from *McMunigal & Medwed* (Canvas)
- MPC § 2.04

Property Crimes

10. Introduction & Larceny (February 19)

- Ristroph CB 152-70
- *Commonwealth v. Liebenow* (Canvas)
- CB 986 notes 3 & 4; 988 note 1; 995 note 1; 998 note 1; & 999-1000 (through note 1)

11. Robbery, Burglary, & Arson (February 21)

- Robbery
 - Ristroph CB 190-201
 - CB 988-90 note 2
- Burglary
 - *U.S. v. Eichman* and *State v. Thibeault* (Canvas)
 - Ristroph CB 181-82 notes 3 through 5
- Arson
 - Ristroph CB 201-08 (skip note 1 on 207)

Homicide

12. Causation, Introduction to Homicide Crimes, & Intentional Killings (February 26)

- Causation, CB 231-49, 253-55
- Introduction to Homicide, CB 257-60
- MPC § 210.0-210.4
- Intentional Killings, CB 281-93

13. Voluntary Manslaughter (February 28)

- CB 293-300, 305-21
- Dandridge v. Commonwealth (Canvas)
- People v. Yeager (Canvas)
- Trans Woman's Killer Used the "Gay Panic Defense." It's Still Legal in 42 States: <https://www.youtube.com/watch?v=XrbDpePgYkM>

14. Unintentional Killings: Unjustified Risk-Taking (March 4)

- CB 324-42
- People v. Hall (through note 2) (Canvas)
- Taylor v. State (Canvas)

15. Felony Murder (March 6)

- CB 342-63, 368-73 (including section on misdemeanor manslaughter rule)
- Paul Butler, *Prosecutors won a conviction in the killing of Duante Wright. Is this good news or dangerous precedent for racial justice?*, Washington Post, Dec. 29, 2021 (Canvas)
- *Why Did I Serve 16 Years for Murder When I Didn't Kill Anyone?*, New York Times Opinion, watch here: <https://www.youtube.com/watch?v=jKGy8TIGMDI>

[Spring Break]

Rape & Related Sexual Offenses

16. Introduction; Force, Non-Consent, and Resistance (March 18)

- Read this first: Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, pages 2332-37 (Canvas)
- Introduction, CB 417-31 (skip Dressler excerpt on 428-29)
- Sample Statutes, CB 431-39 (start becoming familiar with varied modern approaches)
- Force, Non-Consent, and Resistance, CB 439-56

- Compare: MPC Article 213 (original 1962 version – see Canvas) with revised MPC Article 213 (available on CB 1067-1080)

17. Redefining and Abandoning Force (March 20)

- CB 460-83
- Rape Shield Laws, CB 497-501

18. Mens Rea; Use of Fraud or Intoxicants (March 25)

- Mens Rea, CB 490-95 (through note 4)
- Statutory Rape, CB 201-08, 501-05
- Consent Obtained by Fraud or Intoxicants, CB 483-90
- State v. Jones and surrounding notes (Canvas)

Inchoate Offenses

19. Introduction to Inchoate Offenses & Attempt (March 27)

- CB 763-800 (through note 4) (skip note 2 on 779-80, note 1 on 782-84, and note 2 on 793-94)
- MPC § 5.01, 5.05

20. Attempt Defenses, Solicitation, & Introduction to Conspiracy (April 1)

- Attempt Abandonment, CB 818-22 (and review MPC § 5.01(4))
- Solicitation, CB 825-30 (and MPC § 5.02)
- Conspiracy: General Principles, CB 831-39 (and MPC § 5.03)

21. Conspiracy (April 3)

- Mens Rea & Actus Reus, CB 839-53
- Bilateral or Unilateral, CB 859-64
- Withdrawal / Renunciation, CB 881-83 (through note 1)

Liability for the Conduct of Another

22. Accomplice Liability (April 8)

- Introduction CB 893-904
- Natural and Probable Consequences Doctrine, CB 911-15
- People v. Russell and notes, Ristroph CB 386-92 (a few notes reference cases you have not read, but you should be able to glean the major takeaways without that additional reading)
- Actus Reus, CB 915-17, 919-924, 926-28
- MPC § 2.06

Defenses

23. Introduction to Defenses & Self-Defense (April 10)

- Introduction, CB 507-14, 521-24
- Self-Defense, CB 536-48, 534-536 (notes 8-10), 554-556 (note 7) (read in this order)
- Defense of Others, CB 580 notes 2 & 3
- Excerpt from Cynthia Lee & Angela Harris, *Criminal Law Cases and Materials* (readings on racial bias in self-defense / stand your ground laws) (Canvas)
- David Graham, *The Subway-Crime Death Spiral*, Atlantic, Apr. 14, 2022 (Canvas)
- MPC § 3.04

24. Self-Defense (continued) & Related Defenses (April 15)

- Initial Aggressor, CB 524-34 (through note 7)
- Imminence & Battered Spouse Syndrome, CB 556-75
- Defense of Habitation/ Property, CB 580-86 (through note 6)
- Law Enforcement Defenses, CB 586-88 (note 7)
- Shaila Dewan, *Can Self-Defense Laws Stand Up in a Country Awash in Guns?*, New York Times, Nov. 13, 2021 (Canvas)
- Optional: Elizabeth Flock, *How Far Can Abused Women Go to Protect Themselves?*, New Yorker, Jan. 20, 2020 (Canvas)

25. Necessity & Duress (April 17)

- Necessity, CB 589-613
- Duress, CB 617-30
- HLR 2022 Student Comment on *United States v. Dingwall* (Canvas)

26. Entrapment, Insanity, & Severe Environmental Deprivation Defense (April 22)

- Do not read this material on entrapment until after I let you know on April 17 whether we will have space to include it. Entrapment (from Lee & Harris) (Canvas)
- Insanity, CB 645-66, 674-76 notes 3 & 4, 681-82 (through note 1)
- Shelley Murphy, John Ellement, and Sonel Cutler, *Prosecuting the unthinkable: Experts question handling cases where mothers are accused of killing their children*, Boston Globe, Jan. 31, 2023 (Canvas)
- Severe Environmental Deprivation Defense, CB 747-51