### Course Policies: Spring 2021

## Criminal Procedure – Adversary System

Law # 6112, Class # 15481, 27723

Professor Lea Johnston Criminal Procedure – Adversary System

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[Zoom link for office hours](https://ufl.zoom.us/j/3264166176?pwd=U2NzZ2V6QmhUemQ1dnRueldZQlhVQT09) (passcode: lucky)

**Coverage & Course Objectives.** This course examines the adjudicatory phase of criminal procedure, beginning after arrest and continuing through sentencing. We consider federal constitutional provisions and rules of procedure, the policies underlying those requirements, and their impact on the roles of prosecution and defense counsel. We also study Florida law where it differs significantly from the norm. At each stage of the process we ask the ultimate question: do we have a legitimate system of criminal justice that is accurate and fair, respects notions of limited government, and is reasonably efficient?

**Student Learning Outcomes.** After completing this course, students should be able to:

* Identify the steps in the adjudicatory process and the constitutional principles and legal rules which inform them;
* Identify and establish, from a given fact pattern, possible violations of procedural rules and statutes governing the process of criminal litigation;
* Recognize inequities (race, gender, social class, etc.) and disparate outcomes within the criminal legal system, learning how to sensitively address and challenge them;
* Describe the power of prosecutors and the constitutional and statutory limits on that power;
* Articulate the right to counsel as well as counsel’s role and scope in a defense;
* Demonstrate an understanding of the strategies and tactics used by the actors in our criminal legal system and the relationship between prosecutors, defense lawyers, and the court;
* Collaborate with classmates to explore and challenge the procedural rules which shape criminal legal outcomes; and
* Review, reflect on, and think critically about the operation and legitimacy of the criminal legal system with respect to individual rights and liberties.

**Assessment of Student Learning and Grade.** I will assess your attainment of competency in these learning outcomes through an in-class examination at the end of the semester.

**Required & Suggested Instructional Materials.** Page numbers in the syllabus refer to the Advanced Criminal Procedure case book.

Required:

* Yale Kamisar et al., Advanced Criminal Procedure (15th ed. 2019).
* Yale Kamisar et al., 2020 Supplement to Fifteenth Editions: Modern Criminal Procedure, Basic Criminal Procedure, and Advanced Criminal Procedure (West 2020).

Canvas: Each student is expected to check our Canvas course site before each class. There you will find:

* Syllabus (updated weekly)
* Problems
* Supplemental readings

Secondary Sources: To the extent you have questions on any topic, I suggest consulting this treatise:

* Wayne R. LaFave et al., Criminal Procedure, which can be found on Westlaw.

Selection of Class Modality **(in person or remote).** This course will offer an in-person and a remote option that will occur synchronously at our assigned class time. Online participation will occur through the Zoom platform. You must select which modality you prefer by the end of the first week of class. Students are expected to remain within that modality for the entirety of the semester, but, given the fluidity and serious nature of the pandemic, any in-person student can choose to go online at any time. No advance notice is necessary.

Online: The link for our class meetings can be found on your Canvas calendar. It will be the same meeting link throughout the semester.

Class Structure & Technology**.** Our synchronous time will focus on case explications and discussion of problems, hypotheticals, and big-picture questions. The syllabus will set forth the topics we will cover in each class, as well as assigned reading, assigned problems and discussion questions, and suggested supplemental materials. I may provide occasional supplemental asynchronous lecture material to support your in-class experience.

Canvas.I will use Canvas to (1) schedule virtual office hours; (2) distribute assignments and practice problems; (3) post links for videos; (4) distribute quizzes, practice tests, and sample exam questions; and (5) make announcements. Your e-Learning calendar in Canvas includes our classes and virtual office hours.

Zoom. We will be utilizing Zoom in this course for online participation in class, virtual private meetings, and office hours. Given how much we will be using this technology, please take the time to familiarize yourself with it by reviewing this Zoom Guide for students -- https://www.law.ufl.edu/e-learning -- which is available from UF Law’s Homepage. Please test your speaker and microphone before the first class.

To ask a question on Zoom, please physically raise your hand so it can be seen in the video. It will be easier for me to see your actual raised hand than the small blue “participant” hand that zoom enables. Note: the chat function will be disabled so I can remain focused on class.

\*\*Each class will automatically be recorded, so be prepared for that. Recording our classes is crucial to allow a flexible excused absence policy and, of course, self-care in the age of COVID-19. As our classroom is an open environment for members of the class, you do not have a reasonable expectation of privacy in the classroom relative to having your likeness, voice, or the general vicinity of your seat captured by the video and audio devices that are used for these purposes.

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

When you join a Zoom meeting, please use the following rules of video conferencing etiquette:

* Use your own name (preferred first name, last name) and do not change it;
* Choose a stationary location (meaning you must Zoom in from a computer, not from your phone);
* Choose a location where there are minimal disruptions (e.g. roommates talking and pets jumping on you);
* Do not change your background;
* Dress appropriately for video conferencing;
* I will mute you upon entry to the class, but it is your responsibility to be “present” for the class to be counted for attendance purposes. You must “show video” and yourself for the active portions of the class when we are not on breaks;
* Please turn off any cell phones and other electronic devices;
* Close any other computer programs, websites, and email so you can give your classmates and speakers your full attention; and
* Do not Zoom in the same room as someone else in the class. Unfortunately, Zoom “parties” create horrible feedback noises.

Other helpful tools to help you master zoom technology:

* Zoom Student Quick Start Guide: https://video.ufl.edu/conferencing/zoom/.
* Zoom tutorials and a help desk: https://support.zoom.us/hc/en-us.

Faculty and Student Zoom Support.Students can contact UF’s e-Learning Support Staff with specific questions at 352-392-4357. Students may also call our IT Department for online teaching support at 352-273-0760.

Google document. I plan to take notes on an evolving google document during class. (My handwriting is awful.) I will provide a link to that document through an announcement. If you would like to see these notes during class, please bring your laptops to class or, if you are online, please open the google doc in a separate window.

Kahoot!Occasionally, I may assess your learning by asking you to complete an online quiz during or before class using Kahoot!. To access these quizzes, go tohttps://kahoot.it and then enter the game pin that I provide.

**Workload and Assignments.**  ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Criminal Procedure-Adversary System has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. This requirement will be met through your completing the assigned reading in the case book, supplemental materials that I post on Canvas, and assigned practice materials. Assignments will be posted in Canvas and available prior to the start of class.

**Class Attendance and Participation**. Attendance is required. Missing more than four (4) classes is grounds for dismissal from the course. In addition, each absence above the allotted number, regardless of reason, may lower your grade by half a letter. I may count tardiness (i.e., not being in your seat as the hour class begins) as an absence. It is the policy of UF Law to excuse absences for religious observances and to provide, without penalty, the rescheduling of required work that may fall on religious holidays. I do so exclusively through the above allotment of four absences.

I will bring my very best effort to every class, and I expect you to do the same. So, arrive for class on time, be prepared and ready to begin, and remain for the duration. You may use an absence to attend class but “pass” when called upon (at a rate of one absence per pass). I will also let you pass two other times without using an absence. However, your total number of passes (from whatever source) cannot exceed three (3). If you fail to notify me before class, in person or by email, of your desire to take a pass, and in my sole judgment you evidence poor recollection of the assigned materials when called upon, you will lose a pass. You will also disappoint me.

Please bring the insights you have gained from assigned readings/recordings, and be prepared to share these. Students participating remotely must be on video in order to be counted as in attendance and should be prepared to participate in class discussion on the same terms as if they were physically in the classroom. The ABA requires that remote participants are actually in attendance and engaged with course material. Further information about UF Law's attendance policy is available [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies#:~:text=co%2Dcurricular%20activities.-,Attendance,regular%20and%20punctual%20class%20attendance.&text=UF%20Law%20policy%20permits%20dismissal,of%2012%20credits%20per%20semester.).

**COVID Safety Protocol.** Some students will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.

* You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
* This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
* Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
* Be mindful of how to properly enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus.  (See <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.)
* Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>).

**Accommodations for Students with Disabilities.** Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the Disability Resource Center. Click [here](https://disability.ufl.edu/students/get-started/) to get started with the Disability Resource Center. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

**The Honor Pledge.** UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honesty and integrity. On all work submitted for credit by students at the university, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel (i.e., Dean Rachel Inman). If you have any questions or concerns, please ask me or Dean Inman.

**Information on Grading.** For this course, you will earn three (3) total credits.

Cumulative Exam. Your grade will be based primarily on a final exam. The final examination will be a cumulative, open book, limited-space examination. It will likely contain multiple choice, short answer, and traditional law school essay questions. The exam will focus on material discussed in class, but all material and concepts covered in the course may be tested to some degree. Exams will be graded anonymously by exam number. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form)

Quality of class participation. Extra credit (up to 0.75 grade points on your final grade) may be given for high quality class participation and preparation. Negative credit may be given for lack of preparation or poor attendance.

Compliance with classroom safety protocol. I will take any noncompliance with our classroom safety protocol into account when grading students and when determining if a student may remain in the course. In particular, you must wear a mask at all times when in a University building, including our classroom. In addition, if you have fever or other cold or flu symptoms, you must stay at home and contact UF Health.

Noncompliance with our Classroom Safety Protocol may result in my lowering your grade by up to two letter grades (so, from a B to a D). Students who fail to wear masks or follow other safety protocols will be referred to the University Office of Student Conduct and Conflict Resolution and will no longer be permitted on the UF campus. UF Law will also report your noncompliance to the relevant state board of bar examiners.

This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). Grades carry the following point equivalents:

|  |  |
| --- | --- |
| **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |
|  |  |

**Health and Wellness Resources.** Your mental and emotional health are important. Here are some important resources of which you should be aware.

* *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu,](mailto:umatter@ufl.edu) 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

**Online Course Evaluation.** Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\nance\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\70WP0DTB\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

## Criminal Procedure – Adversary System

**SPRING 2021 TENTATIVE COURSE OUTLINE**

This tentative outline sets forth the material I hope to cover this semester, although it’s unlikely we will have time to cover all listed items. Reading and viewing assignments will be posted in Canvas and may be supplemented periodically throughout the semester.

**Week Topic**

**Week 1**

# INTRODUCTION

Overview

# THE RIGHT TO & PERORMANCE OF COUNSEL

The Right to Trial Counsel

**FIRST DAY ASSIGNMENT:**

Welcome to Criminal Procedure - Adversary System. Our course is organized into modules, which can be found on our course's Canvas website. For the first day of class, please prepare the assignment listed in Module 1 (overview) and perhaps start on the first assignment in Module 2 (right to and performance of counsel). If we reach Module 2, I suspect we'll only cover case book pages 64-73. Please purchase our case book, Yale Kamisar et al, Advanced Criminal Procedure (15th ed.). See you soon!

**Week 2**

Right to Assistance of Experts

Right to Proceed Pro Se

Effective Assistance of Counsel

Conflicts of Interest

**Week 3**

Disqualification of Counsel

Client Control

# THE COMMENCEMENT OF FORMAL PROCEEDINGS

Pretrial Release

Bail

**Week 4**

Preventative Detention

The Decision to Prosecute

Prosecutorial Discretion

Challenging the Charging Decision

**Week 5**

Grand Jury Review

Grand Jury Review

Challenges Related to Grand Jury

**Week 6**

Pretrial Issues

Joinder & Severance

Speedy Trial

**Week 7**

**DISCOVERY**

For the Defense

For the Prosecution

**Week 8**

**NEGOTIATED PLEAS**

Risks of Plea Bargaining

Perspectives and Unrealized Expectations

Judicial Involvement

Professional Responsibility

**Week 9**

The Effect of a Guilty Plea

**TRIAL BY JURY**

The Right to a Jury Trial

**Week 10**

Jury Selection

Venire

Petit Jury

**Week 11**

Right of Confrontation

Rights to Remain Silent and Testify

Closing Arguments

**Week 12**

**DOUBLE JEOPARDY**

Reprosecution after Mistrial

Reprosecution by Different Sovereigns

Reprosecution after Dismissal, Acquittal, & Conviction

**Week 13**

Double Jeopardy Problems

# EXAM REVIEW