### Course Policies: Fall 2021

## Criminal Procedure – Adversary System

Law # 6112, Class # 14760

Professor Lea Johnston Criminal Procedure – Adversary System

Office: 305 Holland Hall HH Room 355B

Phone: (352) 273-0794 T, W 10:30—11:55 a.m.

Email: JohnstonL@law.ufl.edu Office Hours: HH 305: W, 3:00-4:15 p.m.

 Office Hours: Zoom: Th, 9:15-10:00 a.m.

**Coverage and 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 and 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).

Canvas: Each student is expected to check our Canvas course site before each class. There you will find the syllabus, problems, supplemental readings, and other class materials. That is also where you can sign up for virtual office hours.

Recommended: Yale Kamisar et al., 2020 Supplement to Fifteenth Editions: Modern Criminal Procedure, Basic Criminal Procedure, and Advanced Criminal Procedure (West 2020).

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.

My Contact Information and Office Hours. I will hold two sets office hours each week. I will hold in-person office hours in my office (Holland 305) each Wednesday from 3:00 – 4:15 p.m. You are welcome to drop by or schedule a meeting during these hours. If you choose to meet with me in my office, you must wear a mask. If you are unwilling to wear a mask, we can meet at another location.

In addition, I’ll hold office hours by Zoom from 9:15 – 10:00 a.m. on Thursday mornings. \*\*Please sign up for a 15-minute slot on Zoom by Wednesday at 5pm so that I will expect you. If you don’t sign up for a meeting time the evening before, I won’t know to go to the meeting!

Class Structure**.** Our time will focus on case explications and discussion of problems, hypotheticals, and big-picture questions. It is essential that you prepare any assigned problems in advance of class.

Zoom. We will be utilizing Zoom in this course for virtual office hours and possibly participation by guest speakers. In addition, UF policy (and ABA rules) permit up to 1/3 of each in-person course to take place online. I reserve the right to conduct some portion of this course (up to that limit) in that manner, although I do not intend to do so at this time. This Zoom Guide for students may become useful to you: <https://www.law.ufl.edu/e-learning>; it is also available from UF Law’s Homepage. If some classes take place by Zoom, 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;
* 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.

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.

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**. Attendance is required. On the first day of class, I will circulate a seating chart. Your seat that day will be your seat for the semester. At the beginning of each class meeting, students must sign an attendance roster. Missing more than **four classes** is grounds for dismissal from the course.[[1]](#footnote-1) Please plan accordingly.

**Masks. Out of respect for your classmates and myself, masks are expected in my classroom.** **Please wear a mask at all times in the classroom.** To be clear, masks are strongly encouraged but not mandated. Choosing not to wear a mask will not affect a student’s grade in any way.

**Preferred Name and Pronouns.** It is important to the learning environment that you feel welcome and safe in this class and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible. I would like to acknowledge your preferred name and pronouns that reflect your identity; please let me know how you would like to be addressed.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.uﬂ.edu, click on the dropdown at the top right, and select "Directory Proﬁle." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for ofﬁcial UF records

**Classroom Preparation and Conduct.** Each student is required to be fully prepared to discuss the assigned material, including assigned problems, each day. Your grade may be lowered if I call on you and you are unprepared for class. Each student is entitled to email me, up to two times over the course of the semester, to inform me that they will be unprepared for class. I will only excuse those two days for lack of preparation.

**Discourse, Inclusion, and the Classroom Ethos.** As a law student and future lawyer, it is important that you are able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

**Class Recordings.** Students are allowed to record video or audio of class lectures for personal use. However, students may not publish recorded lectures without the written consent of the instructor. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. 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.

**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.

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, 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%3A%5CUsers%5Cnance%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5C70WP0DTB%5Cufl.bluera.com%5Cufl%5C). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

## Criminal Procedure – Adversary System

**FALL 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. Actual assignments for the first two weeks of class are included in a separate syllabus on Canvas. I will update the syllabus weekly.

**Week Topic**

**Week 1**

# INTRODUCTION

Overview

# THE RIGHT TO & PERORMANCE OF COUNSEL

The Right to Trial Counsel

**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

**DOUBLE JEOPARDY**

Reprosecution after Mistrial

**Week 12**

Reprosecution by Different Sovereigns

Reprosecution after Dismissal, Acquittal, & Conviction

**Week 13**

Double Jeopardy Problems

# EXAM REVIEW

1. University recognized religious holidays are exempt. Please provide me with advance notification of such absences. [↑](#footnote-ref-1)