# Criminal Law

**Law 5100**

**Sections 14HA(15158) & 510J(28080)**

**3 credits**

Professor Lea Johnston

305 Holland Hall; (352) 273-0794; JohnstonL@law.ufl.edu

# Course Policies & General Syllabus: Fall 2020

Section 5 Section 6

Holland 345 Holland 270

M, T, W 9:30 – 10:25 a.m. W, Th, F 11:00 – 11:55 a.m.

[Zoom link for M/T/W class](https://ufl.zoom.us/j/94888008631?pwd=YmVHaVAwV3BLUW5BZEROaTFOY1BSZz09) [Zoom link for W/Th/F class](https://ufl.zoom.us/j/91549158295?pwd=dGllYy91UGxDcGROZEZEYjF6SWNiZz09)

 (passcode: murder) (passcode: larceny)

Office Hours: Wed, 2:30-4:30

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

1. Course Coverage.This course will cover the basic principles of substantive criminal law, including the elements of a crime, justifications for punishment, and defenses. We will review one crime, homicide, in depth. We will also cover complicity and accomplice liability. Along the way, we will focus on the rationales justifying the existence of the criminal justice system and the infliction of punishment. We will also consider the racial and social justice implications of the substantive criminal law.

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

* Learn how to read a case for a) the key facts, b) the legal question or issue, c) the rule(s) and holding, and d) the reasoning and analysis;
* Identify ambiguities in a case’s rules, synthesize those rules into the broader framework of rules from other cases, and apply that body of case law to novel factual situations;
* Conduct strong legal analysis: from a given fact pattern, identify a pertinent legal issue, articulate the relevant rules, apply those rules to relevant facts, and reach a well-supported legal conclusion;
* Deduce, from a given fact pattern, strategies to defend a client from a given criminal charge;
* Deduce, from a given fact pattern, a strategy to adduce sufficient evidence on each element of a crime so as to establish that crime beyond a reasonable doubt;
* Articulate and defend the values underlying criminal law;
* List the elements of various common law crimes and defenses;
* Trace the evolution of fundamental criminal concepts, such as mens rea, from their common law to modern incarnations; and
* Identify and consider racial and social justice implications of criminal law.

3. Assessment of Student Learning and Grade. Given the fluid nature of the pandemic and the possibility that an increasing number of students will participate online, I am adding more writing assignments and assessments than usual to facilitate your engagement and provide ways to assess your mastery.

Your grade in the course will reflect the following:

* 60% of grade: cumulative final exam
* 25% of grade: midterm exam
* 15% of grade: completion (in a manner demonstrating good faith effort) of assigned problems, discussion questions, and quizzes

In addition, I will take any noncompliance with our Classroom Safety Protocol (see Section 11) 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.

4. Required & Suggested Instructional Materials.Section numbers in the tentative syllabus refer to sections of the Dressler & Garvey case book. The suggested treatise complements our case book**.**

Required — Joshua Dressler & Stephen P. Garvey, Criminal Law Cases and Materials (8th ed. 2019) – Casebook Plus Hardcover (includes a hardcover copy of the casebook along with a virtual “learning library” of resources)

Suggested — Joshua Dressler, Understanding Criminal Law (8th ed. 2018).

**Secondary Sources:**

If you want additional explanation, I suggest consulting these treatises:

Wayne R. LaFave, Criminal Law (6th ed. 2017)

Paul Robinson & Michael T. Cahill, Criminal Law (2d ed. 2012)

Additional practice problems may be found here:

Kathryn Christopher & Russell Christopher, Criminal Law: Model Problems and Outstanding Answers (2012)

 5. 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. You must remain within that modality for the entirety of the semester unless extenuating circumstances arise.[[1]](#footnote-1) However, given the fluidity and serious nature of the pandemic, extenuating circumstances may arise often. In particular, anyone with cold symptoms must stay home and participate online (see Section 11). Policies pertaining to remote participation can be found below.

**Section 5 Class Meetings:**

In Person: Our class will meet on M, T, W from 9:30 to 10:25 a.m. in Holland 345.

Online: Our class will meet on M, T, W from 9:30 to 10:25 a.m. via the Zoom platform. The link for our class meetings is <https://ufl.zoom.us/j/94888008631?pwd=YmVHaVAwV3BLUW5BZEROaTFOY1BSZz09> (passcode, murder). It will be the same meeting link throughout the semester. These meetings will not appear on your Canvas calendar.

**Section 6 Class Meetings:**

In Person: Our class will meet on W, Th, F from 11:00 to 11:55 a.m. in Holland 270.

Online: Our class will meet on W, Th, F from 11:00 to 11:55 a.m. via the Zoom platform. The link for our class meetings is <https://ufl.zoom.us/j/91549158295?pwd=dGllYy91UGxDcGROZEZEYjF6SWNiZz09> (passcode, larceny). It will be the same meeting link throughout the semester. These meetings will not appear on your Canvas calendar.

 6. My Contact Information. I can be reached by email at JohnstonL@law.ufl.edu. You may also post questions about the course on our Frequently Asked Questions group discussion page, which I will check weekly. I will hold meetings with students (office hours and privately) in my [personal meeting room](https://ufl.zoom.us/j/3264166176?pwd=U2NzZ2V6QmhUemQ1dnRueldZQlhVQT09) (passcode: lucky).

 7. Class Structure & Technology**.** Our synchronous time will focus on case explications and discussion of hypotheticals, big-picture questions, and problems. 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 virtual office hours (but not our classes).

**Zoom.** We will be utilizing Zoom in this course for online participation in class, virtual private meetings and office hours, and occasional review sessions. 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.

For office hours: You will be notified of office hours via email and the e-Learning calendar. This notification will include a link to access the scheduled meeting. Once the meeting is created, you will see the Zoom meeting under the To Do list on the Canvas course homepage. When you click on the Zoom item in the To Do list, the e-Learning Calendar will open with a link to join the meeting. As an alternative, you can also click on “Zoom Conferences”, then “Join” to join the meeting.

For class meetings: Your e-Learning calendar in Canvas will not include our classes. To participate in our class through zoom, you’ll need to use the relevant link:

**Section 5 Class Meetings** (M, T, W from 9:30 to 10:25 a.m.)The link for our class meetings is <https://ufl.zoom.us/j/94888008631?pwd=YmVHaVAwV3BLUW5BZEROaTFOY1BSZz09> (passcode, murder).

**Section 6 Class Meetings** (W, Th, F from 11:00 to 11:55 a.m.)The link for our class meetings is <https://ufl.zoom.us/j/91549158295?pwd=dGllYy91UGxDcGROZEZEYjF6SWNiZz09> (passcode, larceny).

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.

I expect every online student to attend the synchronous zoom classes so we can participate together. However, if you experience connectivity problems, you may request access to recordings of the classes.

\*\*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.

**Dressler Quizzes.** As a review device—and to assess your comprehension of the material—I will assign certain quizzes created by the author of our case book. Completion of these quizzes (but not your performance on them) will be reflected in your final grade. To access these quizzes and receive credit for their completion, follow these steps:

* Go to eproducts.westacademic.com
* Sign in or create an account.
* Click the Redeem Code button and enter this course code:
	+ CRSE-947X-LNRX-5VYA-RFMG

Need Help? If you get an error when you attempt to redeem the course code, you may need to update your eProducts account with your school email address. For help, contact West at 1-877-888-1330 (option 4) or support@westacademic.com.

About the Course Code. By registering the course code, you connect your quiz results to this course. I will have the option to view your progress and scores on these quizzes. If you have questions about the information West provides, please refer to the eProducts user agreement.

**CALI.** As a supplemental learning device, I suggest lessons developed by the Center for Computer-Assisted Legal Instruction (CALI). You must register and create an account at this website: <https://www.cali.org/>. The current CALI student code is FLORUVstu73. In my opinion, these lessons are extremely effective.

 8. Class Preparation, Participation, and Experience**.** Consistent with the American Bar Association Standard 310, you should expect to spend **at least** **six hours** per week preparing for this three-hour course.

I have high expectations for the learning environment we create together. I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. I expect each of you to attend class prepared. Preparation includes completing the assigned reading, working through the assigned problems and/or discussion questions, reviewing notes and/or reading material from the prior class, and watching any assigned video.

As referenced, the syllabus includes problems and discussion questions related to the assigned material. **I expect you to come to class prepared to discuss how you might address these questions.** The syllabus will note (in yellow highlighting) when a problem or discussion question has been assigned, and this will be evident in the “task list” for each module of the course on Canvas. The syllabus and task list will also note whether you must submit your answer prior to class through Canvas, or merely prepare the problem in advance of class discussion. A portion (15%) of your grade will reflect your good faith effort in working through these materials, as well as the Dressler quizzes. These problems and discussion questions will be graded as “complete” or “incomplete” based on my assessment of your good faith effort. I will provide individualized feedback, using a rubric with a point system, on some problems.

To ensure meaningful participation from all class members and to help you build lawyering skills, I will cold-call students using the Socratic Method. Students who do not feel prepared to answer may ask to be called on later that class or write a poem on that day’s material for presentation in the next class. (For one student’s account of his poetic moment, see https://digital.law.fordham.edu/issue/fall-winter-2020/a-rhyme-and-a-reason/).

I will also, at times, ask for volunteers. Please be mindful of any privileged identities you may hold and help to create environments for everyone to contribute. Speak up when you have something to share, but also create an environment for others to share. This can mean letting others speak even if you don’t get to share your view and being aware of the impact you are having on others’ ability to contribute.

At the end of this document is a tentative syllabus with topics to be covered in the course, as well as potential assignments. Actual assignments for the first two weeks of class are included in a separate syllabus (“actual syllabus”). I will update the actual syllabus weekly on our course’s Canvas page.

 9. Attendance Policy. Attendance is required. Missing more than six classes without approval from Dean Rachel Inman is grounds for dismissal from the course.[[2]](#footnote-2)

Method for taking attendance: in-person students. You will have a QR code at your desk that you will scan when you sit down. At the beginning of class, the TA or I will announce the password for the day. Enter that into the attendance system.

Method for taking attendance: online students. At the beginning of class, go to this website -- [www.law.ufl.edu/attendance](http://www.law.ufl.edu/attendance) -- and enter the password that the TA or I announce for the day. Also, online students must remain on video, where their images can be seen, for the entirely of each class to count as “present” for that day.

Attendance entries will be date- and time-stamped at the moment of entry. Be aware that it is a serious violation of the Academic Honesty Policy to sign in for another person or to have others sign you in.

 10. Office Hours**.** Individual office hours are held virtually each week by appointment. Office hours for both sections will be held on Wednesday, from 2:30-4:30. You may sign up, individually or in groups (up to 4 students), for a 20-minute slot through your Canvas calendar. Office hours will be held in my personal meeting room available at this link, <https://ufl.zoom.us/j/3264166176?pwd=U2NzZ2V6QmhUemQ1dnRueldZQlhVQT09> (passcode: lucky).

 11. Classroom Safety Protocol; Response to COVID-19 Symptoms.

 In response to COVID-19, UF Law has instituted the following policies and requirements to maintain your learning environment and to enhance the safety of our in-classroom interactions:

* 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.
* Our class will have a teaching assistant (TA) to assist with attendance and oversee compliance with classroom safety protocols. Follow your TA’s guidance on how to enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing cold, flu, or COVID-19 symptoms (https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html), you must not come to campus or, if you are already on campus, you must immediately leave campus. At the time this document was generated (see website above for a current list), these symptoms include:
	+ Fever or chills
	+ Cough
	+ Shortness of breath or difficulty breathing
	+ Fatigue
	+ Muscle or body aches
	+ Headache
	+ New loss of taste or smell
	+ Sore throat
	+ Congestion or runny nose
	+ Nausea or vomiting
	+ Diarrhea
* If you leave campus due to experiencing symptoms, please use the UF Health screening system and follow the instructions about when you are able to return to campus. https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/.
* I will provide you with course materials, and you will be given a reasonable amount of time to make up work. https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/.

As mentioned in Section 3 above (Assessment of Student Learning and Grade), 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. Noncompliance 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.

 12. Exams**.** There will be two exams in this course, which together will account for 80% of your total grade. The remainder (15%) will be awarded for good faith completion of all assigned problems, discussion questions, and quizzes (on Canvas and by Dressler).

**Midterm Exam:** The midterm examination (25% of final grade) will be an open book, limited space examination. It may contain multiple choice, short answer, and/or traditional law school essay questions. The exam will focus on material discussed in class, but all material and concepts covered in the course up to the date of the exam may be tested to some degree. Exams will be graded anonymously by exam number.

**Final Exam:** The final examination (60% of final grade) 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. Four past exams and best student answers can be found in the “past exams” folder in the files section of Canvas. The law school policy on delay in taking exams can be found at https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form.

**Review of Final Exam.** How to receive a copy of your exam: **After February 1, 2021**, students who wish to review their exams can do so by requesting a copy of their exams from my assistant, Sherrice Smith, ssmith@law.ufl.edu. I will post the exam questions, along with a model answer and best student answers, on Canvas in the past exams folder.

How to ask questions about your exam: I expect that the model answer and best student answer will address most students’ questions. I am happy to address any remaining questions by email. Before contacting me, please review your exam and compare it to the model answer. I will not re-grade exams.

**Grading Policy:** I adhere to the College’s posted grading policy (https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/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 |
|   |   |

 13. Accommodations for Students with Disabilities**.** Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Dean Rachel Inman when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester**.**

14. 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.

 15. Course Evaluation**.** I will ask for feedback mid-semester to determine the effectiveness of instruction. At the end of the semester, students will be asked to provide feedback on the quality of instruction by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

 That’s it! I look forward to having each of you in class this semester.

# Criminal Law

**Professor Johnston, Fall 2020**

# Tentative Syllabus

This tentative syllabus sets forth material I anticipate covering this semester. We likely won’t have time to cover all listed items, however. Actual assignments for the first two weeks of class are included in a separate syllabus (“actual syllabus”). I will update the actual syllabus weekly on our course’s Canvas page.

CB = Joshua Dressler & Stephen P. Garvey, Criminal Law Cases and Materials (8th ed. 2019)

|  |  |  |
| --- | --- | --- |
| **Subject** | **Topics** | **Assignment** |
|  **-- Principles of Punishment –** |
| **Criminal Justice Process** | Introduction“Crime”Sources of lawPresumption of innocence & “Beyond a reasonable doubt” | **Read course policies & tentative syllabus*** **Take syllabus quiz on Canvas (7 pts)**

**CB: 1.A.-D1** (p.1-13)**Hamilton Project, Ten Economic Facts about Crime and Incarceration in the United States** (pp.1-15)(on Canvas)**Do by end of week: Make a Video! (on Canvas discussion page) (1 pt)** |
| **Theories of Punishment** | “Punishment”RetributivismUtilitarian justifications* Deterrence
* Rehabilitation
* Incapacitation

Breakouts: 2 case hypotheticalsPrison abolition* Treatment of case hypotheticals?
 | **CB: 2.A** (pp.33-51)**The Nation, What Is Prison Abolition?** (on Canvas)**Complete Theories of Punishment assignment on Canvas prior to class (answer discussion questions; think through problems) (5 pts)** |
| **-- Actus Reus --** |
| **Voluntary Act** | Voluntary vs. Involuntary: * Utter, MPC 2.01(1),(2)
* Hypos

Wrinkle 1: multiple conduct elementsWrinkle 2: time framing (Decina) | **CB 4.A** (pp.130-41)**Analyze Voluntary Act Problem: Nighttime Snack prior to class (5 pts)*** *Do your best! I’ll provide feedback*
 |
| **Omissions (Negative Acts)** | Legal duty to act: 6 ways to create – Jones Breakouts: live-in boyfriend problemBeardsleyMPC 2.01(1), (3) | **CB 4.B1, 4.C** (pp.141-48, 153-55)**Analyze Omission Problem: Live-in Boyfriend prior to class (5 pts)****Optional Omission Problem: Heroin** (if submit, I’ll email opinion from case)Optional, supplemental reading: Cooper et al, *We must tear down the ‘blue wall of silence.’ Here’s how civil lawsuits could help*., Wash. Post. (June 17, 2020)(on Canvas) |
| Test your knowledge! Take Dressler & Garvey Quiz on Chapter 4and Actus Reus Quiz on Canvas (13 pts). |
| **-- Mens Rea --** |
| **Nature of “Mens Rea”** | 2 meanings of “mens rea”Evolution of mens rea in common law: Cunningham | **5.A-B.1** (pp.157-68) |
| **CL: General Issues in Proving Culpability** | “Intent”: Conley (CL, MPC)Specific vs. general intent crimesTransferred intent | **After class, before next Monday at 5pm, analyze and submit Common Law Principles: Mens Rea Problems (5 pts)** |
| **MPC: General Issues in Proving Culpability** | MPC 2.02* Default rules
* Differences between MR states

Issues of proofProblems in notes 1-3 on pages 172-73 | **CB 5.B.2** (pp. 169-73)**Watch MPC 2.02 videos prior to class****Before class, prepare Problems 1-3 on pages 172-73** (\*for problem 2B, see definition section in § 210.0) (no need to submit)**After class, test your knowledge: take the quick MPC mens rea quiz on Canvas (10 pts)****Supplemental, optional problems: MPC Mens Rea Practice Materials on Canvas** |
| **Strict Liability Offenses** | Exceptions to “guilty mind” requirement:* Public welfare offenses
	+ Morissette: lessons
	+ Staples: lessons
* Moral wrong, lesser crime (Garnett)
 | **CB 5.C (186-205) & notes 5-6** **on p.208-210** |
| **Mistake and MR – Mistake of Fact** | People v. Navarro* Rule for general intent crimes
* Rule for specific intent crimes

MPC 2.04(1)(a)* Table of MOF & MR states

Roadmap for handling MOF in CL jurisdiction | **CB 5.D.1****Supplemental, optional problems: CALI lesson “Mistake Under the Model Penal Code: Mistake as to Elements of Offenses”**  |
| **Mistake and MR – Mistake of Law** | CL maxim – Marerro, MPC 2.02(9)Rationale for doctrineExceptions to the maxim: in limited circumstances, a belief that one’s conduct does not constitute a crime should afford a defense. * satisfaction of an attendant circumstance
	+ statutory element of intentional unlawfulness – Weiss; MPC 2.04(1)
	+ satisfaction of law other than that defining the defense (ex: bigamy)
* reasonable reliance on official source: MPC 2.04(3),(4)
 | **CB: 5.D.2: 210-19 (to end of n.2)** **Supplemental, optional problems: CALI lesson “Mistake as to the Law Defining the Offense”**  |
| Test your knowledge! Take Dressler & Garvey Quiz on Chapter 5To assist in your review, complete the Practice Exam Questions: Advanced Mens Rea Short Answer/Essays on Canvas (no need to turn in)**-- END OF MATERIAL TESTED ON MIDTERM EXAMINATION –** |
| **-- Causation --** |
| **Actual Cause** | Only for result crimes! Two tests: Velazquez* Dominant test: but-for (see MPC 2.03(1)(a))
* Exception: substantial factor

Nuances: Oxendine & notes* But-for:
	+ Acceleration (hastening result)
	+ Aggravation (nonlethal injury -> lethal injury)
* Substantial factor (acting independently, 2+ commit an act that alone would be sufficient to bring about prohibited result)
	+ Test: was D’s conduct a “substantial factor” in bringing about the result?
 | **CB: 6.A****Prepare problems in note 2 on p.232**  |
| **Midterm Examination (take any time over a 24 hour period)** |
| **Proximate Cause** | RationaleSix factors: Rideout* \*Foreseeability: coincidental vs. responsive intervening act
* De minimus
* Intended consequences
* Omission
* Apparent safety
* Voluntary human intervention
 | **CB: 6.B****Review problem on Canvas prior to class (no need to submit)****Supplemental, optional problems on actual & proximate cause: CALI lesson “Homicide (Causation)”***\*note: you are not responsible for the year-and-a-day rule* |
| **-- Criminal Homicide --** |
| **Overview** | ReviewOverview of homicide sectionCL definitions: * “murder”
* “malice aforethought”
* “manslaughter”

Varying state statutory approaches | **CB 7.A.1-3** |
| **-- Intentional Killing --** |
| **First Degree Murder: Deliberation-Premeditation** | Common formulation for first degree murderTwo interpretations: GuthrieSensible? Midgett; ForrestMPC approach: MPC § 210.2 | **CB 7.B.1****Answer & submit discussion question on Canvas prior to second class (5 pts)** |
| **Voluntary Manslaughter: Heat of Passion (CL)** | “Manslaughter” & relationship to malice aforethought* 2 forms: voluntary, involuntary

Voluntary manslaughter: 4 rules of provocation (Girouard)Traditional circumstances of provocation (Girouard)When is provocation “adequate”? Reasonable person standard. (Girouard)* Are words adequate provocation?
 | **CB: 7.B.2.a****Prepare problem in note 6 on p.289 and problem 2 on p.293**  |
| **Voluntary Manslaughter: Reasonable Person Standard (CL)** | Camplin: * traits relevant to gravity
* traits relevant to self-control
 | **CB: 7.B.2.b****Answer & submit discussion question on Canvas prior to class (5 pts)** |
| **-- Unintentional Killing --** |
| **Reckless Murder** | CL: “depraved heart murder” – Knoller* “implied malice”
* examples
* what differentiates R murder from R manslaughter

MPC: 210.2(1)(b) | **CB: 7.C (pp.313-22)** |
| **Involuntary Manslaughter – Unjustified Risk-taking** | Criminal negligence: Williams (\*although this case involved civil N!)Concurrence of elementsFactors to consider in reasonable person standard | **CB: 7.C (pp.322-29)****Prepare problem posted on Canvas for discussion in class (no need to submit)** |
| **Felony Murder** | Introduction: ways to conceptualize, rationalesCL approach: FullerMPC’s approach: § 210.23 modern limitations: inherently dangerous felony; felony merges with homicide; homicide not in furtherance of the felony1st limitation: inherently dangerous felony* 2 approaches: manner, abstract (Howard)
 | **CB: 7.D.1.a-c.ii****Prepare problem 5 on pp.347-48** |
|  | 2nd limitation: felony merges with homicide – Smith* Ireland approach
* Burton approach

3rd limitation: homicide not in furtherance of the felony – Sophophone* Killings committed after felony has ended
* Killings by individuals resisting the felony
* Frolics or killings that do not further the felonious plan
 | **CB: 7.D.1.c.iii-iv****Prepare the problem in note 5 on p.353**  |
|  | Review of felony murder doctrine. Practice! | **Prepare 2 problems posted on Canvas for discussion in class (no need to submit)** |
| Test your knowledge!Take Dressler & Garvey Quiz on Chapter 7Take Practice Exam Questions: Homicide Essays on Canvas (no need to turn in).Explore applicable theories of liability/forms of homicide in the cases described in this New York Times article: *They Shared Drugs. Someone Died. Does That Make Them Killers*: https://www.nytimes.com/2018/05/25/us/drug-overdose-prosecution-crime.html (no need to turn in). |
| **-- Affirmative Defenses --** |
| **Categories of Defenses** |  | **CB: 9.A. (\*only p.497-500)** |
| **-- Justification Defenses --** |
| **Principles of Justification**  |  | **CB: 9.C.1 (\*only p.513 to top of p.514)**  |
| **Self-Defense** | Elements: Peterson* Link to necessity

Initial aggressor limitation: Peterson* Clarification (fighting words, etc)
* MPC 3.04(2)(b)(i)

Imminent (CL) v. immediately necessary (MPC)Retreat requirement: Peterson* Only “deadly force”
* Rationales for & against
* CL – castle exception; perilous exception
	+ vs. stand-you-ground laws
	+ vs. MPC 3.04(2)(b)(ii)
 | **CB: 9.C.2.a****Prepare problems in note 2 on p.522** |
| **Self-Defense – “Reasonable Belief”** | “Reasonable belief” standard – Goetz* objective component
* “in the D’s situation”
* excluded traits

How should we deal with implicit bias?MPC approach to self-defense: §§ 3.04, 3.09(2)  | **CB: 9.C.2.b.i. (stop at p.540)****Prepare problem on Canvas for discussion in class (no need to submit)** |
| **Necessity** | RationaleElements: Nelson* Compare to those under common law & MPC § 3.02
 | **CB: 9.C.5.a****Prepare problem 6 on pp.586-87** |
| **-- Excuse Defenses --** |
| **Principles of Excuse** |  | **CB: 9.D.1** |
| **Duress** | Defense at common law: Contento-PachonMPC § 2.09 | **CB: 9.D.2.a (\*\*skip notes 4&5 on pp.610-12 and end after n.7 on p.613)****Supplemental, optional problems on duress: CALI lesson “Excuses I: Duress, Entrapment, Mistake” -- questions 8-16 plus next 2 slides** *\*note: all other questions in this lesson—except those on entrapment—provide a great review of mistake of fact and mistake of law.* |
| Test your knowledge! Take Dressler & Garvey Quiz on Chapter 9 |
| **-- Complicity & Accomplice Liability --** |
| **Accomplice Liability — General Principles** | Derivative liabilityWorking terminology under CL: Ward* Modern understanding

Introduction to AR and MR: HoseltonMPC § 2.06 | **CB: 11.A.1-2****Prepare problems in note 3 on pp.884-85** **Supplemental, optional problems on accomplice liability: CALI lesson** **“Accomplice Liability – Definitional Issues”***\*note: do not need to know information on misdemeanors* |
| **Accomplice Liability — Mens Rea** | Background: conspiracy & complicity liabilityMR necessary for accomplice to be held liable for principal’s crime: Lauria* Intent to further/promote crime

Wrinkle: when underlying crime involves unintentional result element: Riley* Intent to promote conduct; same culpability as principal for result element
 | **CB: 11.A.3 (stop at p.894)****Prepare problem****2 on p.887 and problem 2 on p.893****Supplemental, optional problem on accomplice liability mens rea: see Canvas assignment** |
| **Accomplice Liability — Actus Reus**  | Qs to answer today:* How great must encouragement be to satisfy the AR of accomplice L?
* Did the encouragement have to actually have an effect?
* Must the encouragement have been a but-for cause of the target crime?
* How does the CL differ from the MPC in this area?

V.T.: passive behavior Wilcox (& Helmenstein): aid & assistMPC § 2.06Genoa: don’t forget commission of underlying crime!MPC § 5.01 | **CB: 11.A.4 (\*stop at end of Genoa on p.909)****Prepare problem 3 on p.903****Supplemental, optional problems on accomplice liability: CALI lesson “Accomplice Liability – Actus Reus Requirement”** |
| Test your knowledge! Take Dressler & Garvey Quiz on Chapter 11. For additional practice, see the essay questions on Johnston’s 2018 Exam. |

1. Extenuating circumstances warranting a temporary change to remote participation include, but may not be limited to, exposure to someone with COVID-19, experiencing symptoms of COVID-19, and receiving a positive test of COVID-19. Extenuating circumstances warranting a permanent change to remote participation include, but may not be limited to, contracting COVID-19; learning that a housemate, partner, or dependent (with whom you will continue to be in contact) has contracted COVID-19; and learning that you or one of those individuals is a member of a group at particularly high risk for developing a severe response to COVID-19. [↑](#footnote-ref-1)
2. University recognized religious holidays are exempt. Please provide me with advance notification of such absences. [↑](#footnote-ref-2)