Overview:

Criminal law is the branch of law concerning the redress of public wrongs. Crimes come in many forms. Some crimes (e.g., murder, battery, and trespass) are inherently wrongful acts and also violate the rights of individuals. Other crimes (e.g., driving without a license) are not inherently wrongful and are only wrongs to the community. Some crimes result in very harsh sanctions, including the death penalty or lengthy imprisonment and the loss of civil rights. Others result in small monetary penalties.

This class is an introduction to the basic principles of criminal law. The class is divided into five parts.

In the first part, we will ask the following questions. What justification do we have to punish others, and how far can we go in punishing them? What differentiates crimes from torts? Is it morally acceptable to execute convicted murders to deter others? We will examine different theories of criminal law, including retributivism and teleological theories.

After examining the foundations of criminal law, we will study the basic components of substantive criminal law. This will include the principle of legality, mens rea, actus reus, causation, and accomplice liability. Even though substantive criminal law differs widely across jurisdictions, understanding the components of criminal law aid in understanding the content of criminal law. We will also examine criminal law excuses, especially those related to mens rea.

In the third part of the course, we will study some substantive crimes. Specifically, we will examine murder, manslaughter, theft, embezzlement, and false pretenses. In examining these crimes, we will be asking what should trigger criminal liability and what is an appropriate punishment for these crimes.

The fourth part of the course will look at inchoate crimes, including attempt and solicitation. We will be asking the justification for punishing this conduct.
The final part of the course will examine criminal law defenses. Even if an action (e.g., killing) is prima facie wrong, sometimes the law allows such conduct (e.g., in self-defense). We will examine these doctrines. In the process, we will inquire into whether there are meaningful differences between justifications and excuses, which we will have studied earlier in the Term.

To be clear, you will not learn any particular jurisdiction’s criminal law in this course. Criminal law varies too widely across jurisdictions and over time to make that enterprise worthwhile. But you will learn the basic components of criminal law and the justification for the doctrine.

Requirements:
1. A final examination (part multiple choice, part essay)
2. Class participation (discretionary 1/3 letter grade)

Books for Class:
1. Dressler, CRIMINAL LAW (8th ed. 2019)
2. Ezorsky, PHILOSOPHICAL PERSPECTIVES ON PUNISHMENT (1st ed. 1972)
3. “PPA” = PHILOSOPHY & PUBLIC AFFAIRS (available on JSTOR through the library)
4. Other readings will either be handed out during class or posted on Blackboard (“BB”).

Office Hours:
Office hours will be on Monday, from 11:30 PM until 12:30 PM. I am also liberally available by appointment, especially in the afternoon or evenings. To schedule appointments, please e-mail me. And as exam time approaches, please come to see me whenever you need to.

Attendance:
Attendance is mandatory. The ABA prohibits students who miss more than 20% of classes from taking the exam.

Electronics Policy:
The use of computers or other electronic devices in class is prohibited. Studies have shown that students who use computers during class do not learn as well. It is also strictly forbidden to record (video or audio) any of the lectures.

Academic Integrity:
An important part of practicing law is having honor and integrity. Scalia Law School has adopted an honor code, which is available on the Honor Committee’s website (https://sls.gmu.edu/honor/). Students are prohibited from lying, cheating, or stealing, being an accomplice or accessory to someone else who is cheating, bringing a prohibited material or device to an exam, or failing to report an honor code violation if the person has reasonable cause to believe that a violation has occurred.

All exams in this class will be closed book. You may not bring your textbook, access the Internet, bring notes, or have another aid of any kind. The only things that you should bring to your exam is your word processor or pen and paper.
Cheating often occurs as an act of desperation by those who do not understand the material or have competing pressures preventing studying. The best way to prevent the temptation to cheat is to stay up to date on your assignments. If you have personal circumstances putting you under undue pressure, you should speak to me about your situation as soon as possible before the exam.

You are also strongly encouraged to ask me (or a member of the Honor Committee) if any questions arise.

**Disability Accommodations:**
George Mason University’s Office of Disability Services provides for the reasonable accommodation of students with disabilities. Course policies may be modified as appropriate. If you need an accommodation, please coordinate with that office.

**Modifications of the Syllabus:**
The schedule below is tentative. I may make modifications as the semester progresses. Among other things, I may narrow the readings or add new cases and interesting news stories that arise during the semester. I will also add relevant laws to discuss during lectures. I also reserve the right to modify the syllabus (including adding exams or quizzes) if I believe it is necessary to facilitate learning. The ultimate goal of this class is for you to learn the basic principles of criminal law, and I will be flexible in my approach.

**Snow Days/Unexpected Cancellations:**
If the law school has an unexpected closure, class will still be held on the regular schedule using the Blackboard virtual classroom (Tools/Blackboard Collaborate Ultra). Please set this up on your computer in advance, including downloading any necessary plugins.

**Foundations of Criminal Law and Criminal Responsibility**

1/22  **Introduction: Why Criminal Law**
- Henry M. Hart, “Aims of Criminal Law” and following notes, Dressler, pp. 1–5
- Dressler, pp. 31–36 (Introduction; Greenawalt excerpt, and notes following Greenawalt)
- Pearson & Magalhaes, *Latin America’s Mob Justice*, Wall Street Journal (Dec. 7, 2018) (note: for the link to work, you may need to be logged into the library or on campus).

**Start reading for January 24**

1/27  **Retributivism**
- Queen v. Dudley & Stephens, Dressler, pp. 51–53
- Coker v. Georgia, Dressler, pp. 74–80
1/29 Utilitarianism
Bentham, Introduction to the Principles of Morals and Legislation, Ezorsky, pp. 56–63
Sprigge, “A Utilitarian Reply to Dr. McCloskey,” Ezorsky, pp. 66–79.
Goldman, “The Paradox of Punishment,” 9 PPA 42 (JSTOR; BB link)
Ewing v. California, Dressler, pp. 82–92

2/3 Hybrid Theories/Moral Education Theory of Punishment
Rawls, “Rule Utilitarianism,” Ezorsky, pp. 82–92
People v. Superior Court (Du), Dressler, pp. 53–59, 60–61 nn.4–5
United States v. Gementera, Dressler, pp. 63–70

2/5 Deterrence Theories

2/10 Criminal Responsibility and Free Will
Greene & Cohen, “For the Law, Neuroscience Changes Nothing and Everything” (hyperlink)
Morse, “Neuroscience, Free Will and Criminal Responsibility,” pp. 251–74 (hyperlink)

The General Part of Criminal Law (plus some procedure)

2/12 Legality
Dressler, pp. 91–114; 19–29 (nullification)
MPC § 1.05 (Dressler, pp. 1014–15)

2/17 Statutory Interpretation and Trial by Jury
Dressler, pp. 7–13, 153–54
State v. Miles, Dressler, pp. 178–186
Patterson v. New York, Dressler, pp. 503–13
Apprendi v. New Jersey, 530 U.S. 466, 468–473, 476–490 (majority opinion); 523–544 (principal dissent); 557 (Breyer, J., dissenting) (BB)
1. Alleyne v. United States (BB)
2. Blakely v. Washington (BB)
3. United States v. Booker (BB)
Treat 1–3 like you would note cases. Read the syllabi or skim the case; make sure you understand the basic facts and holdings. But do not read the whole case.
MPC § 1.12, § 1.13(9), (10) (Dressler pp. 1003–1005)

2/19 Actus Reus
Dressler, pp. 129–53
MPC § 2.01 (Dressler p. 1006)
2/24  Mens Rea Generally
Dressler, pp. 157–78
MPC §§ 1.13, 2.02 (Dressler pp. 1005–1008)

2/26  Strict Liability
Dressler, pp. 186–205

3/2  Causation
Dressler, pp. 227–250
MPC § 2.03 (Dressler p. 1008–09)

3/4  Mistake
Dressler, pp. 205–26
Hart, The Rationale of Excuses, pp. 189–195
MPC § 2.04 (Dressler p. 1009–10)
Note: the Hart article complements pp. 601–24 in Dressler (3/16 reading). I am not sure if we will cover Hart on 3/4 or 3/16. But I recommend reading early since (1) we might cover on 3/4 and (2) it will be too much reading for 3/16.

3/9  No class. Spring break.

3/11  No class. Spring break.

3/16  Necessity and Duress
MPC §§ 2.09, 3.02 (Dressler pp. 1014, 1016)

3/18  Intoxication and Infancy
Dressler, pp. 625–633, 690–697, 718–723
MPC § 2.08 (Dressler p. 1013)
If behind, catch up; if caught up, start insanity (Dressler, pp. 633–645)

3/23  Insanity and Diminished Capacity
Dressler, pp. 633–664; 674–676
MPC § 4.01 (Dressler p. 1040)
Skim remaining sections in MPC Article 4

Group Liability

3/25  Accomplice Liability
Dressler, pp. 877–901; 911–920
MPC § 2.06 (Dressler p. 1010)
Specific Criminal Offenses

3/30  Intentional Murder
MPC §§ 210.0, 210.2 (Dressler p. 1039–40)

4/1  Manslaughter
Dressler, pp. 282–310
MPC § 210.3 (Dressler p. 1040)

4/6  Unintentional culpable homicide
Dressler, pp. 313–332; 341–60
MPC §§ 210.2(b), 210.4 (Dressler pp. 1040–1041)

4/8  Theft and Related Offenses
Dressler, pp. 947–972, 977–986
MPC Articles 222 and 223 (all sections) (Dressler p. 1054–1059)

Inchoate Crimes

4/13  Attempt
Dressler, pp. 749–50, 752–53, 757–788
MPC § 5.01 (Dressler p. 1034)

4/15  Attempt Defenses: Impossibility and Abandonment; Solicitation
Dressler, pp. 788–810; 817–822
MPC § 5.02 (Dressler p. 1035)

Justifications

4/20  Self-Defense and Related Defenses
Theoretical materials (read first): Dressler, pp. 497–503; 514–516
Doctrine: 517–533 (though n. 4), 540–542 nn.9–11, 568–79
MPC §§ 3.04–3.11 (Dressler pp. 1018–1027)

4/22  Self-Defense and the Reasonable Belief Requirement
Dressler, pp. 542–568

4/23  Catch-Up and Bar Review
We will complete anything not covered from the previous lectures
With any remaining time, I will give a basic overview of material not covered in class but appearing on the bar, including the common law and modern law of arson, assault, battery, burglary, conspiracy, and rape. (Note: we may cover some concepts incidentally to the cases discussed in class).

5/9  FINAL EXAM at 12:00 PM