

CRIMINAL LAW
106-002 and 106-003
Spring 2022
Craig Lerner
Syllabus
(January 4, 2022)

Class Schedule:

Section 2 meets Monday and Wednesdays at 9:50 to 11:15.
Section 3 meets Mondays and Wednesdays at 1:50 to 3:15.

Required course material:

The principal reading material is drawn from Kadish, Schulhofer, and Barkow: *Criminal Law and its Processes* (10th ed. 2017). You will also be responsible for studying those sections of the Model Penal Code that correspond to the assigned material. The MPC is reprinted as an appendix in the casebook. I will supplement the casebook readings with other materials throughout the semester.

Attendance:

The ABA prohibits students who miss more than 80% of classes from taking the final exam. On the morning of each class, please report your attendance to Jane Barton, jbarto1@gmu.edu, with the following text: "I attended Professor Lerner's Criminal Law Section [2 or 3] on [Date]. [Name]."

Classroom participation:

Students are expected to be prepared every class. I reserve the option of raising or lowering grades based on class participation.

Many of the readings involve sensitive and controversial topics. You should expect to hear opinions in class that are contrary to your own beliefs. You are encouraged to formulate reasoned responses and refutations. Students are free to speak their minds on relevant subject matter, and they are expected to do so in a professional manner.

Electronics Policy:

Many studies have shown that students who take notes by hand perform better than students who use computers. Students are encouraged to consider this option, but it is not a requirement. What is prohibited is any use of a phone or the Internet during class. If

students need to use the Internet or have access to a phone during class for a special reason, they should contact me before class.

Recording Policy:

Recording of the class in any way is prohibited.

Learning Objectives:

By the end of this course, students should:

- understand the fundamental policies of criminal law;
- know how to analyze and interpret criminal statutes;
- be able to distill rules from case law;
- become familiar with some of the basic principles of the Model Penal Code;
- recognize how statutes, common law, and the Model Penal Code have contributed to the development of American criminal law; and
- develop an ability to argue both sides of legal and policy debates.

Final exam:

The exam is on May 10 at noon.

Office hours:

I will stay after class most days. Let's wait to see what the university policy is for in-person meetings. I will probably arrange a Zoom office hour when I have a better sense of a convenient time for most students. Please also feel free to email me at clerner@gmu.edu to arrange a time to talk, either via Zoom or in-person.

Reading assignments (tentative):

This will be adjusted over the course of the semester. All page numbers below are from Kadish, Schulhofer, and Barkow: Criminal Law and its Processes (10th ed. 2017). I will supplement these assignments over the course of the semester with other material.

January 19/Class 1: 89-132 (purposes of punishment)

January 24/Class 2: 202-221 (proportionality) and 38-43 (beyond a reasonable doubt)

January 26/Class 3: 157-163 and 185-193 (legality) and 221-234 and 1072-1075 (actus reus)

January 31/Class 4: 234-258 (omissions)

February 2/Class 5: 258-279 (mens rea)

February 7/Class 6: 279-287 (mens rea) and 287-294 and 300-303 (mistake of fact)

February 9/Class 7: 303-325 (strict liability)

February 14/Class 8: 325-350 (mistake of law)

February 16/Class 9: 443-451 and 176-185 (homicide statutory frameworks) and 451-462 (premeditation)

February 21/Class 10: 462-490 (provocation)

February 23/Class 11: 490-509 (recklessness and negligence)

February 28/Class 12: 509-517 (recklessness and negligence) and 517-530 (felony murder)

March 2/Class 13: 530-552 (felony murder)

March 7/Class 14: 603-626 (causation)

March 9/Class 15: 626-641 (causation) and 641-651 (attempts)

March 21/Class 16: 651-672 (attempts)

March 23/Class 17: 672-690 (attempts)

March 28/Class 18: 869-887 and 903-919 (self-defense)

March 30/Class 19: 919-945 (self-defense)

April 4/Class 20: 945-954 (necessity) and 985-1001 (duress)

April 6/Class 21: 1004-1011 and 1075-1081 (intoxication) and 1018-1030 (insanity)

April 11/Class 22: 1030-1046 (insanity)

April 13/Class 23: 1046-1061 (insanity)

April 18/Class 24: 691-727 (group liability)

April 20/Class 25: 727-733 (group liability) and 766-779 (conspiracy)

April 25/Class 26: Catch up and go over practice exam questions

Topic Outline

- I. Purposes of Punishment: pages 89-132
- II. Defining Criminal Conduct
 - A. Proportionality: 202-221
 - B. Beyond a Reasonable Doubt: 38-43
 - C. Principle of Legality: 157-163 and 185-193
 - D. Actus Reus
 - 1. Voluntary acts: 221-234 and 1072-1075
 - 2. Omissions: 234-258
 - E. Mens Rea
 - 1. Common law: 258-273
 - 2. Model penal code: 273-287
 - 3. Mistake of fact: 287-294 and 300-303
 - 4. Strict Liability: 303-325
 - 5. Mistake of law: 325-350
- III. Homicide
 - A. Statutory Frameworks: 443-451 and 176-185
 - B. Intended Killings

1. Premeditation: 451-462
 2. Provocation: 462-490
 - C. Unintended Killings
 1. Creation of Homicidal Risk: 490-517
 2. Felony Murder: 517-552
- IV. Significance of Resulting Harm
- A. Causation
 1. Foreseeability: 603-619
 2. Subsequent human acts: 619-641
 - B. Attempts
 1. Introduction: 641-644
 2. Mens Rea: 644-651
 3. Preparation: 651-676
 4. Impossibility: 676-690
- V. Exculpation
- A. Justification
 1. Protection of human life: 869-887 and 903-930
 2. Protection of property and law enforcement: 930-945
 3. Necessity: 945-954
 - B. Excuse
 1. Introduction: 982-984
 2. Duress: 985-1001
 3. Intoxication: 1004-1014 and 1075-1081
 4. Insanity: 1018-1061
- VI. Group Criminality
- A. Introduction: 691-695
 - B. Mens Rea: 695-727
 - C. Actus Reus: 727-733
 - D. Conspiracy: 766-779