

**Law 106, Section 001
Criminal Law**

TR: 9:50–11:15 AM
Spring Semester 2022:
January 18 through April 25

Robert Leider

Office: Hazel Hall 306
Office Hours: Thursday, 11:30 AM to
12:30 PM, and by appointment
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Exam: Tuesday, May 10 at 12:00 PM

“The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events, which the compass of a day may bring forth, will teach us (upon a moment’s reflection) that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a willful disobedience may expose us, is a matter of universal concern.” – William Blackstone

Overview:

Criminal law is the branch of law concerning the definition and 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 offenses (e.g., driving without a license) are not inherently wrongful and are only “wrongs” because the community has defined them to be such. Some offenses 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 three parts.

In the first part, we will examine different theories of criminal law, including retributivism and teleological theories. As we do, 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?

After examining the foundations of criminal law, we will study the general part of substantive criminal law. This will include the principle of legality, mens rea, actus reus, causation, and accomplice and attempt liability. We will also examine justifications and excuses, including self-defense, defense of others, and insanity. In the process, we will inquire into whether there are meaningful differences between criminal law justifications and excuses.

In the third part of the course, we will study some substantive crimes in depth. 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. We will learn other common law crimes at different points throughout the semester as they appear in the cases we study.

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.

Learning Outcomes:

By the end of this course, you should be proficient in criminal law, both doctrinally and as an academic subject. You should also develop your legal reasoning skills.

Doctrinal Knowledge. You are expected to know criminal law doctrine as it relates to the components of criminal law (e.g., mens rea, actus reus, causation). You are also expected to know the elements of crimes and defenses that we study in class.

Legal Reasoning. You are expected to develop your legal reasoning skills. In response to hypotheticals with novel fact patterns, you must be able to reason from analogy and apply general principles of criminal law.

Academic Knowledge and Reasoning. You are expected to learn and evaluate the philosophical and policy justifications underlying criminal law, including what acts should be made criminal, what punishments are proportionate, and why we excuse or justify certain conduct. You must be able to critically analyze these justifications and offer your own scholarly thoughts.

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 (either edition)
3. "PPA" = PHILOSOPHY & PUBLIC AFFAIRS (available on JSTOR through the library)
4. COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE
5. Other readings will either be handed out during class or posted on Blackboard ("BB").

Office Hours:

Office hours will be after class on Thursdays, from 11:30 AM until 12:30 PM. (Once a month, Thursday office hours will conflict with faculty meetings; I will adjust those office hours, as necessary.) I am also liberally available by appointment. To schedule appointments, please e-mail me. Office hours will be held on **Zoom**. I will set up a meeting room and a waiting room. I will monitor the waiting room every few minutes.

Zoom office hours information

Meeting ID: 930 0421 6280

Pass code: 685481

Link:

<https://gmu.zoom.us/j/93004216280?pwd=RjU2dzNwaUxmUndZVUQwWFBYTFZTQT09>

Attendance:

Attendance is mandatory. The ABA prohibits students who miss more than 20% of classes from taking the exam. I will take attendance during each class. Those attending class are required to abide by all university policies on in-person attendance, including COVID-19 protocols.

Please do **not** attend class if you have any cold or flu-like symptoms. Given current circumstances, we want to keep our community as healthy as possible and limit the spread of any

illnesses. For those who experience any symptoms of illness during the semester, I will liberally authorize the use of online/hybrid classes. Please e-mail me if you need such accommodations. I am also trusting that you will act responsibly in both directions—staying home if you may be sick, but not abusing the privilege of taking classes online because you do not want to attend in person that day.

If online classes become necessary, I will take attendance using the attendance report for each class. If your name will not be on the attendance report (e.g., you had to phone in), please e-mail me that you attended and include how you will appear on the attendance report (e.g., the phone number you used).

When holding class online, I encourage individuals to have their cameras on during class. In an online environment, we must all work to build a classroom community. That is easier when you can see your classmates' faces. That said, I do not require that your camera be on, so please feel free to turn off your camera if you have a reason (e.g., children running around in the background). (Should too many students keep their cameras off, I reserve the right to require people to stay on camera.) Please mute your microphone when you are not speaking.

Electronics Policy:

When class is in person, I prohibit the use of computers or other electronic devices. Studies have shown that students who use computers during class do not learn as well.

Obviously, prohibiting electronics is not possible if class is held online. But I encourage you to simulate a no-computer environment the best you can by taking handwritten notes in a notebook and avoiding online distractions. You will likely learn more through taking handwritten notes and then consolidating those notes into a computer outline. Criminal law is also a major bar subject. It is much better to learn criminal law now during class than to cram for it the summer after you graduate. And if you take notes on a computer, you will not have access to those notes when we meet in person unless you print them out.

Recording Policy:

I strictly forbid anyone to record (video or audio) any of the lectures. This is both to protect intellectual property and the privacy of class discussion.

My general policy is not to record class lectures, even when students face an occasional absence. I also recognize, however, that students may face special circumstances at this time, which may result in longer term absences or distractions. Given this, I will record a lecture where there is a reasonable necessity for doing so, if arrangements are made with me in advance. I will make that lecture available for a limited time. Lectures will be deleted after the affected student has a reasonable opportunity to view it. Recording, copying, or disseminating the lecture in any way is prohibited.

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 are your word processor and a pen.

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. If you need an accommodation (including modification of any course policy), please coordinate with that office. Please also do so as early as possible; accommodations can take time to process. Please note that I am not authorized to grant accommodations.

Unexpected Cancellations:

If the law school has an unexpected closure (e.g., a snow day), **class will still be held on the regular schedule** using the Blackboard virtual classroom. We will hold class online on an extended basis if the university discontinues in-person classes for any reason, including because of the pandemic.

Online Classroom (when necessary):

Unless otherwise noted, all online class sessions (including hybrid sessions) will meet on Blackboard Collaborate Ultra. Sign into Blackboard and click the "Virtual Classroom" tab.

Unexpected Server Problems:

If Blackboard Collaborate Ultra becomes unavailable during class, we will use Zoom. Please make sure you have all your accounts set up and download any necessary plugins. Should we need to use Zoom, I will e-mail instructions for a classroom and password. Should both services fail or my Internet goes down, we will reschedule class.

In emergency circumstances, I will send updates by e-mail to your GMU account, so please monitor your e-mail. And if you run into problems, it is helpful to me if you e-mail me right away. If you have significant trouble logging on, there is a good chance other students are, too. The earlier I know of problems, the faster I can correct them with minimal class disruption.

When scheduling activities, please try to leave yourself some buffer after class. If we run into unexpected problems, I would much rather hold class a little later than reschedule entirely.

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. Please use the syllabus on Blackboard; that syllabus is kept current and will reflect any changes that occur.

Winter Break Reading:

Before the semester begins, please read COURTROOM 302, pp. 3–170. If you have the time, I recommend reading the whole book. It is a fast read. We will discuss the book on the first day of class and periodically throughout the semester.

Foundations of Criminal Law and Criminal Responsibility

1/18 Introduction: Why Criminal Law

COURTROOM 302, pp. 3–170

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)

Feinberg, *Expressive Function of Punishment*, Ezorsky, pp. 25–34

Bazelon & Medina, [*He's Remaking Criminal Justice in L.A. But How Far Is Too Far?*](#), N.Y. TIMES (Nov. 17, 2021). (You get free access to the *N.Y. Times* through GMU.)

1/20 Retributivism

Kant, *Justice and Punishment*, Ezorsky, pp. 102–106.

Michael Moore, Selected Readings on the *Moral Worth of Retribution* (BB)

Nussbaum, *Equity and Mercy*, 22 PPA 83, 83–96, 109–122 (JSTOR; BB)

Queen v. Dudley & Stephens, Dressler, pp. 51–53

1/25 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.

Ewing v. California, Dressler, pp. 80–90

1/27 Hybrid Theories/Moral Education Theory of Punishment

Rawls, *Rule Utilitarianism*, Ezorsky, pp. 82–92

Goldman, *The Paradox of Punishment*, 9 PPA 42 (JSTOR; BB link)

People v. Superior Court (Du), Dressler, pp. 53–59, 60–61 nn.4–5

Plato, *Punishment as Cure*, Ezorsky

Hampton, *The Moral Education Theory of Punishment*, 13 PPA 208, 208–221; 232–235 (JSTOR; BB link)

United States v. Gementera, Dressler, pp. 63–70

- 2/1 Deterrence Theories
 Quinn, *The Right to Threaten and the Right to Punish*, 14 PPA 327.
 Nino, *A Consensual Theory of Punishment*, 12 PPA 289.
Coker v. Georgia, Dressler, pp. 74–80
- 2/3 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)
 Nita A. Farahany, [Neuroscience and Behavioral Genetics in US Criminal Law: An Empirical Analysis](#), 2 J. L. & BIOSCIENCES 485, 485–88 (skim introduction); 491–508
 (Results—read more carefully)
Detrich v. Ryan, 619 F.3d 1038, 1044 (facts), 1063–64 (9th Cir. 2010)

The General Part of Criminal Law (plus some procedure)

- 2/8 Legality
 Dressler, pp. 91–114; 19–29 (nullification)
 MPC § 1.05 (Dressler, pp. 1014–15)
- 2/10 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)
 4. *Ramos v. Louisiana* (BB)
 Treat 1–4 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)
- 2/15 Actus Reus
 Dressler, pp. 129–53
 MPC § 2.01 (Dressler p. 1006)
- 2/17 Mens Rea Generally
 Dressler, pp. 157–78
 MPC §§ 1.13, 2.02 (Dressler pp. 1005–1008)
- 2/22 Strict Liability
 Dressler, pp. 186–205; Wasserstrom, *Strict Liability in the Criminal Law*, Ezorsky (1st
 ed.), pp. 196–212 (also accessible on BB)
 Optional: COURTROOM 302, pp. 236–259 (“What Really Happened”), 340–41

- 2/24 Causation
Dressler, pp. 227–250
MPC § 2.03 (Dressler p. 1008–09)
- 3/1 Accomplice Liability
Dressler, pp. 877–901; 911–920
MPC § 2.06 (Dressler p. 1010)
- 3/3 Attempt
Dressler, pp. 749–50, 752–53, 757–788
MPC § 5.01 (Dressler p. 1034)
- 3/8 Attempt Defenses: Impossibility and Abandonment; Solicitation
Dressler, pp. 788–810; 817–822
MPC § 5.02 (Dressler p. 1035)
- 3/10 Mistake
Theoretical materials (read first): Dressler, pp. 497–503
Dressler, pp. 205–26
MPC § 2.04 (Dressler p. 1009–10)
- 3/22 Necessity and Duress
Theoretical materials (read first): Dressler, pp. 513–516, 601–05; Hart, *The Rationale of Excuses*, Ezorsky (1st ed. only), pp. 189–195 (or on BB, read Part IV, pp. 16–22)
Dressler, pp. 580–588, 594–597, 598 n.3, 605–25
MPC §§ 2.09, 3.02 (Dressler pp. 1014, 1016)
- 3/24 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)
- 3/29 Insanity and Diminished Capacity
Dressler, pp. 633–664; 674–676
Kahler v. Kansas, 140 S. Ct. 1021 (2020) (BB or Westlaw)
MPC § 4.01 (Dressler p. 1040)
Skim remaining sections in MPC Article 4
- 3/31 Self-Defense and Related Defenses
Dressler, pp. 517–533 (though n. 4), 540–542 nn.9–11, 568–79
MPC §§ 3.04–3.11 (Dressler pp. 1018–1027)
Read facts of the Kyle Rittenhouse case and be prepared to discuss in class
- 4/5 Self-Defense and Defining the Reasonable Person
Dressler, pp. 542–568

Specific Criminal Offenses

- 4/7 Intentional Murder
Dressler, pp. 251–56, 254–63 (skim), 264–282, 360–377 (death penalty)
MPC §§ 210.0, 210.2 (Dressler p. 1039–40)
- 4/12 Voluntary Manslaughter
Dressler, pp. 282–310
MPC § 210.3 (Dressler p. 1040)
- 4/14 Unintentional culpable homicide
Dressler, pp. 313–332, 341–60, 394–401 (death penalty limitations)
MPC §§ 210.2(b), 210.4 (Dressler pp. 1040–1041)
- 4/19 Theft and Related Offenses
Dressler, pp. 947–972, 977–986
MPC Articles 222 and 223 (all sections) (Dressler p. 1054–1059)
- 4/21 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).
- 5/10 **FINAL EXAM at 12:00 PM**