

CRIMINAL LAW
106-001 and 106-003
Spring 2023
Craig Lerner
Syllabus
(January 2, 2023)

Class Schedule:

Section 1 meets Tuesdays and Thursdays at 1:50 to 3:15 and
Section 3 meets Tuesdays and Thursdays at 9:50 to 11:15.

Required course material:

The principal reading material is drawn from Kadish, Schulhofer, and Barkow: *Criminal Law and its Processes* (11th ed. 2022). Please note that I am not using the 10th edition. There is very little new material in the 11th edition, but the pages numbers are jumbled, so it would be a nuisance cross-referencing assignments. My recommendation is to get the 11th edition.

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:

I will take attendance. The ABA prohibits students who miss more than 20% of classes from taking the final exam.

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 9 at noon. My expectation is that it will be closed-book.

Office hours:

I will stay after class most days. After we've met and I get a sense of when students are available, I will set up office hours. Please also feel free to email me at clerner@gmu.edu to arrange a time to talk.

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 (11th ed. 2022). I will supplement these assignments over the course of the semester with other material.

January 17/Class 1: 8-48 (purposes of punishment)

January 19/Class 2: 234-248 (proportionality) and 146-151 (beyond a reasonable doubt)

January 24/Class 3: 190-195 and 216-223 (legality) and 248-261 and 990-992 (actus reus)

January 26/Class 4: 261-280 (omissions)

January 31/Class 5: 284-304 (mens rea)

February 2/Class 6: 304-312 (mens rea) and 312-319 and 325-329 (mistake of fact)

February 7/Class 7: 329-349 (strict liability)

February 9/Class 8: 350-375 (mistake of law)

February 14/Class 9: 461-469 and 207-215 (homicide statutory frameworks) and 469-480 (premeditation)

February 16/Class 10: 480-506 (provocation)

February 21/Class 11: 506-524 (recklessness and negligence)

February 23/Class 12: 524-532 (recklessness and negligence) and 532-544 (felony murder)

February 28/Class 13: 545-556 and 558-565 (felony murder)

March 2/Class 14: 567-594 (causation)

March 7/Class 15: 594-601 (causation) and 601-611 (attempts)

March 9/Class 16: 611-637 (attempts)

March 21/Class 17: 637-644 (attempts) and 803-820 (self-defense)

March 23/Class 18: 837-856 (self-defense)

March 28/Class 19: 856-867 (self-defense) and 876-885 (necessity)

March 30/Class 20: 904-922 (duress) and 924-933 and 992-998 (intoxication)

April 4/Class 21: 938-951 (insanity)

April 6/Class 22: 951-972 (insanity)

April 11/Class 23: 972-982 (insanity) and 651-663 (group liability)

April 13/Class 24: 668-691 (group liability)

April 18/Class 25: 707-721 (conspiracy)

April 20/Class 26: Catch up and go over practice exam questions. (If time permits, I might include some material on theft offenses.)

Topic Outline

I. Purposes of Punishment

II. Defining Criminal Conduct

A. Proportionality

B. Beyond a Reasonable Doubt

C. Principle of Legality

D. Actus Reus

1. Voluntary acts

2. Omissions

E. Mens Rea

1. Common law

2. Model penal code

3. Mistake of fact

4. Strict Liability

5. Mistake of law

III. Homicide

A. Statutory Frameworks

B. Intended Killings

1. Premeditation
2. Provocation

C. Unintended Killings

1. Creation of Homicidal Risk
2. Felony Murder

IV. Significance of Resulting Harm

A. Causation

1. Foreseeability
2. Subsequent human acts

B. Attempts

1. Introduction
2. Mens Rea
3. Preparation
4. Impossibility

V. Exculpation

A. Justification

1. Protection of human life
2. Protection of property
3. Necessity

B. Excuse

1. Introduction
2. Duress
3. Intoxication
4. Insanity

VI. Group Criminality

A. Introduction

B. Mens Rea

C. Actus Reus

D. Conspiracy