

**Criminal Procedure II: Adjudication**  
**Law 389-001**  
**David A. Lord**  
**Spring, 2023**

**I. Class Schedule**

This class will meet on Wednesdays from 6:05 p.m. to 9:00 p.m. We will have two breaks during each class. Please note that there is no class on Wednesday, February 1, due to an out-of-town teaching commitment on my part. In lieu of class that day, a pass/fail assignment to view criminal court proceedings (discussed later in this syllabus) is required. The activity does not have to be done specifically on that week, but must be completed at some point over the course of the semester. There is also no class on Wednesday, March 15, 2023, due to Spring Break.

**II. Learning Outcomes**

By the end of the course, students will have acquired the following skill-set:

- (A) A broad understanding of the legal issues and controlling cases that govern the adjudication of criminal cases.
- (B) The basic skill set to understand how to make appropriate arguments for either the prosecution or defense at various proceedings in a criminal case.
- (C) An understanding of the controversies and debates in constitutional law that pertain to the adjudication of criminal cases.
- (D) An ability to apply case law in this field to individual fact patterns and make cogent arguments on contested legal issues.

**III. Contact information and availability**

My email address is [dlord1@gmu.edu](mailto:dlord1@gmu.edu). I would welcome you to contact me with any questions or concerns and am happy to schedule a meeting, as needed, throughout the Spring term.

**IV. TWEN**

I will create a TWEN page for this course where the PowerPoint lectures from class will be available. These will be of substantial use to you in preparing for the exam. I will also post supplemental material for use in the practical exercises throughout the semester.

**V. Required Texts and Supplemental Materials**

The required text for this class is *American Criminal Procedure: Adjudication – Cases and Commentary, 12<sup>th</sup> Edition* by Stephen A. Saltzburg and Daniel J. Capra (ISBN-978-1-647408-645-9). Please note that this is a soft-bound, book with an olive-green cover.

I am mindful of the many time constraints facing law students. As a general rule, approximately 60 pages of reading have been assigned per class. Some classes have more, others less. I may cover additional cases and principles that are not in the assigned reading. If you are absent from a class, you may contact me about any extraneous material that may be covered. A PowerPoint set of slides will be available for each lecture and will be posted on TWEN after the relevant class.

## **VI. Classroom Participation and Attendance**

In terms of reading, every student is expected to be thoroughly engaged in class discussions about the cases. However, to reduce anxiety and improve the quality of case presentation, the cases that we plan on discussing each class will be identified in the prior session and each case will be assigned to a particular student (with the exception of our first class session of course). That student will be responsible for summarizing the facts and holding as well as offering their view of the issues. However, all students are expected to engage in conversation about the cases and are responsible for reading the decisions.

You will note that this text in many ways is part case-book and part hornbook. As a result, some of the cases that we will be discussing offer only a cursory summary in the casebook and the student assigned the case may need to access the full text of the decision online.

Please note that it is Mason's policy that if a student is absent for *any* reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session. (AR 4-1.1.) Missing three sessions of this course would result in this provision being triggered. Please also note that while missing less than 3 courses would not result in your being precluded from receiving credit from the course, any absence will factor into class participation.

Class participation will consist of attendance, engagement in class discussion, and preparation for the class activities and case preparation discussed above. If a student is deemed to have exceptional class participation, they will be eligible to have their final grade increased one level (for example, from a B to a B+ or from a B+ to an A-), assuming it does not cause a violation of the university's mandatory curve. Additionally, if a student's performance on one of the pass/fail assignments in the course (court attendance or practical exercise) exceeds expectations, that may be factored into whether they receive such an increase.

## **VI. The Final Exam and Evaluation**

There are four components to the student's final grade:

- A. Class participation (please see Section V, above).
- B. Court attendance: Over the course of the semester, each student is expected to attend proceedings in a criminal court on at least one occasion and to write a one-page paper on what they observed and the extent to which any of the topics we have discussed in class played a role in what was happening that day in Court. I'm happy to help provide assistance in identifying court proceedings that you could attend if you are

uncertain how to go about doing this. Additionally, if you work a full-time job or have other scheduling constraints that make this assignment impractical or would create an undue hardship, I will work with you to find an alternate assignment to stand in place of this. It may involve interviewing criminal practitioners about one of the topics that we discuss this week. However, to be eligible for an alternate assignment, please contact me within the first month of class to let me know that you need this kind of accommodation. This will be a pass/fail assignment (but see the notation under the class participation section for exemplary performance). This is worth 20% of your overall grade. This assignment must be received by the final day of class.

- C. Practical Exercise in Class: Each student will be expected to participate in at least practical class exercise over the course of the semester which will involve making an oral argument on a motion relevant to one of the topics we cover. This may include a bond motion, a pretrial evidentiary or discovery motion or a sentencing argument. Early in the semester students will be assigned a date, topic, and whether they are to represent the prosecution or defense during this exercise. This will be a pass/fail assignment (but see the notation under the class participation section for exemplary performance). This is worth 20% of your overall grade.
- D. The final exam will take place on May 9, 2023 at 6:00 p.m. and students will have three hours to complete it. The exam will be open book. Half will consist of multiple choice and true/false questions. The additional portion will consist of an essay in which you are provided a fact pattern and asked to assess the constitutional and legal issues in it. The final exam will be worth 60% of your overall grade.

## **VII. Detailed Class Schedule**

### Class 1, January 18

Topic: Introduction – The screening and charging process/prosecutorial discretion

Reading: Saltzburg and Capra, pp. 982-1056 (74 pgs.)

### Class 2, January 25

Topic: Bail and pretrial detention

Reading: Saltzburg and Capra, pp. 1057-1101 (44 pgs.)

### Class 3, February 1

No in-person class. Do watching of court proceedings as an alternative.

Class 4, February 8

Topic: Discovery and Brady

Reading: Saltzburg and Capra, pp. 1101-1164 (63 pgs.)

Class 5, February 15

Topic: Guilty Pleas and Plea Bargaining

Reading: Saltzburg and Capra, pp. 1165-1212 (47 pgs.)

Class 6, February 22

Topic: Pretrial Motions, including speedy trial, joinder/severance, and burden shifting/proof issues

Reading: Saltzburg and Capra, pp. 1213-1298 (85 pgs.)

Class 7, March 1

Topic: Jury trials

Reading: Saltzburg and Capra, pp. 1299-1366 (67 pgs.)

Class 8, March 8

Topic: Sentencing

Reading: Saltzburg and Capra, pp. 1547-1580; 1626-1640 (47 pgs.)

Address guidelines in lecture

**March 15 – Spring Recess No Class**

Class 9, March 22

Topic: Double Jeopardy

Reading: Saltzburg and Capra, pp. 1641-1731 (89 pgs.)

Class 10, March 29

Topic: Presence, competence and the right to counsel

Reading: Saltzburg and Capra, pp. 1416-1486 (70 pages)

Class 11, April 5

Topic: Self Representation, post-trial motions, and direct attack/appeal

Reading: Saltzburg and Capra, pp. 1526-1547; 1737-1775 (59 pgs.)

Class 12, April 12

Topic: Habeas proceedings

Reading: Saltzburg and Capra, pp. 1775-1853 (78 pgs.)

Class 13, April 19

Topic: Review