Purpose of the Course

The purpose of this course is to introduce students to the substantive and procedural aspects of criminal law through the study of key cases and concepts. Substantive criminal law entails such matters as: the basic ends and purposes of the criminal sanction (theories of crime, punishment, responsibility, and the processes of the criminal justice system); specific crimes (e.g., homicide, sexual assault, attempts, conspiracy, and the like); the basic elements of criminal culpability (*mens rea, actus reus, causation, corpus delicti*); criminal defenses (e.g., self-defense, duress, insanity, diminished capacity, justification, necessity, excuse, consent, mistake of fact or law, etc.); and the basic legal concepts or standards regarding evidence and proof of guilt (e.g., guilt beyond a reasonable doubt, presumptions or inferences of fact, admissibility of evidence). Overall, substantive criminal law concerns the matter of society’s holding individuals accountable or blameworthy for their illegal actions, and the norms and standards that govern this accounting. Because this assessment involves often delicate judgments of a factual and moral nature, it is one of the most interesting and controversial activities in the social order. It can make for high drama, or, at least, a highly interesting and challenging class. In dealing with substantive criminal law, we will also address the underlying and operative principles of criminal law and justice in the context of the constitutional and democratic order. We will see how different philosophical and theoretical perspectives influence where one draws the line between culpability and non-culpability. This approach will help us to understand the actual law in operation, and help us to critically evaluate the operation of criminal law in America.

The last part of the course will treat procedural criminal law, which deals with such matters as investigations and police practices, and disposition of the defendant in pretrial and trial processes. We will deal primarily with police investigation and interrogation practices, focusing on entrapment, search and seizure law, and the interrogation of suspects.

The primary method of study will be the analysis and discussion of the cases and materials in the text, which will be provided by the instructor (“Downs Text”) to the class via the class list email service. We will study the cases through lecture and guided discussion. Lecture will be important, as I will layout the background and frameworks for analysis and discussion. In addition, despite the size of the class, there will be class participation. You might be called upon. As you will discover, the questions with which we will deal are often open to interpretation, so there will often be two or more sides that have to be taken seriously. Those of you who are looking for a course in which memory and regurgitation are all that are needed have come to the wrong class. Much of what we will deal with involves shades of gray, requiring tentative judgments that are always open to challenge. Consequently, we will place a premium on maintaining an open, yet critical
mind. All viewpoints are not only welcome, but also encouraged. If you are afraid to express an informed opinion because it might be controversial, you will be doing a disservice to the class. Learning in this context requires debate and give-and-take.

We will also read three paperbacks that will illuminate key aspects of criminal law: A Crime of Self-Defense: Bernard Goetz and the Law on Trial, by George Fletcher; No Crueler Tyrannies, by Dorothy Rabinowitz; and The Killing of Bonnie Garland, by Willard Gaylin. The books will be dealt with in lecture and (especially) in the sections, and will be part of the exams. They are also on reserve at Helen C. White. In addition, I will assign cases sent to you through the class list when we get to Fourth Amendment and Fifth Amendment issues.

Course Requirements

Students will be evaluated on the basis of two midterm exams, and a final exam.

The first midterm exam (35% of the final grade) will consist of a hypothetical case that you will answer as if you were a judge or an advisor to a judge, and a few short identifications. The hypothetical question will be handed out in class on Tuesday, March 4, and you will write it in class a week later, on Tuesday, March 11. On March 11 you will also answer five short identifications that you will not be given ahead of time. During the test students will not be allowed to use books or notes, but may bring to call one 3 x 5 note card with notes on it.

The second midterm exam (30% of the final grade) will take place in class on Tuesday, April 22. It will consist of 30-40 multiple-choice questions based on material in the readings (casebook and paperbacks) and lecture. The exam will be cumulative from the beginning of the course to that point in the class.

The final exam (35% of the final grade) is scheduled on Thursday, May 9, 2:45-4:45. This exam will consist of a hypothetical question and an essay question, each of which will count 50% of the final exam grade. These questions will not be given to you until the actual time of the exam (that is, they will not be given to you in advance). I once allowed papers for extra credit, but abandoned that practice in 1991 after a man I encountered one night on Willy Street informed me that he had written about twenty papers for my students. I never caught those responsible, but I harbor little doubt that they will not fare well in the event there is an afterlife.

Section attendance and participation Students are expected to attend section. Excellent attendance and/or exceptional participation (based on quality) will be considered if a student’s overall grade is otherwise on the borderline. That is, excellent section performance will resolve grade ambiguity in a student’s favor. Every three absences from section will result in a reduction of the final grade by one notch (e.g., AB to B, or BC to C).
Given the size of the class, no one will be exempted from taking the exams at the assigned times except in three situations: an emergency situation exists that is proved by appropriate documentation; you must attend an official university session or event that is documented (e.g., as a varsity athlete, ROTC cadet, etc.); or if there is a compelling reason that you discuss with me the first week of class. Nothing associated with spring break will constitute an emergency in any respect unless it fits one of these categories.

Grading. Grading will be based on a strict curve, which means that sizable numbers of students can expect to receive grades below a ‘B.’ The computer posting of a grade at the end of the term is final unless an administrative or clerical error has occurred.

Assignments. I anticipate that most of the following sections will take three to five classes, though the actual rate of progress will be determined by the nature of the class and the material under discussion. (Some will take longer.) I will post what will be covered on the board, a week or two in advance as we go along.

I. Substantive Criminal Law

1. Introduction: The Basic Concepts of Culpability and the Principles of Criminal Law.

Read: Downs Text I: Basic Concepts of Culpability

Recommended Readings (for those who want to pursue more reading, not required or expected):
Harvey A. Silverglate, Three Felonies a Day: How the Feds Target the Innocent (2009)
Walter F. Berns, For Capital Punishment (1979)
Phil Fennel, Criminal Justice in Europe (1995)
Jerome Hall, General Principles of Criminal Law (1960)
Herbert Packer, The Limits of the Criminal Sanction (1968)
George P. Fletcher, Rethinking Criminal Law (1978)
Richard Herrnstein and James Q. Wilson, Crime and Human Nature (1985)
Michel Foucault, Discipline and Punish (1979)
Bruce Springsteen, Nebraska (1982)
2. **Attempts and Other Uncompleted Criminal Acts and Group Criminality: Windows into the Underlying Assumptions of Criminal Law.**

   **Read:** Downs Text II: Inchoate Crimes.


3. **Basic Legal Concepts Regarding Proof of Guilt.**

   **Read:** Downs Text III: Standards of Criminal Adjudication


4. **Homicide: Murder, Felony Murder, Manslaughter, Self-Defense and Justifiable Use of Deadly Force.**


5. **The Mental Elements of Crime; and Punishment.**

   **Read:** Downs Text V: The Mental Element of Crime; Gaylin, *The Killing of Bonnie Garland*


II. Procedural Criminal Law

1. **Entrapment.**

**Read:** Downs Text VI: Entrapment; Rabinowitz, No Crueler Tyrannies


2. **Fourth Amendment Search and Seizure.**

**Read:** Downs Text VII: Fourth Amendment Search and Seizure


C. Confessions.

**Read:** Downs Text VIII: Fifth Amendment and Self-Incrimination