

Boyd School of Law, UNLV
Fall 2005

CRIMINAL LAW
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Office Hours By Appointment

SYLLABUS

**Text: Text: Ronald N. Boyce, Donald A. Dripps, Rollin M. Perkins,
CRIMINAL LAW AND PROCEDURE: CASES AND MATERIALS (9th ed. 2004).**

ADMINISTRATION:

Coverage: As you will see below, our purpose in this course is to provide you the mechanism to think clearly and critically within the ambit of substantive criminal law. We will cover the basic principles of this subject, but coverage is not the pre-eminent goal. Criminal law is an excellent mechanism to teach legal thinking and to prompt you to think critically about your own predilections that might hamper clear thought. See more on this below on what I expect you to learn.

Attendance policy: You must be present, unless you have a valid excuse. It is difficult to receive a good grade in my courses if you are not in class, because this is where much of the subtlety in the course develops. We are dealing with how to think in the subject arena more than providing simple rules. I will take attendance into account for class participation. Also, I will take roll and **9 absences** will result in being dropped from the class.

I take **class participation** into account in my grading to the following extent. I reserve the right to increase or decrease your final grade by one grade (e.g., from a B to an A, or from a B to a C), as the case warrants. If a person has shown the ability to analyze and solve problems in the subject matter to a degree *significantly better* in participation than shows-up in their examination, I will boost that person accordingly. This generally only will occur when the persons raw-score is on the margin of a grade division.

The examination: The final examination will be of a traditional law school type; you will solve several hypothetical problems in writing. The date and time of our examination is not posted at the time of this writing. It is possible that I will include some short answer questions.

What I expect you to learn ~~ or a few ruminations on where we'll go and what we'll consider. The bulk of our time will be spent on learning how to think critically in the criminal law arena. My goal is to help you to pursue an understanding of not only criminal law, but also of the function of the criminal law in our personal moral, philosophical, and legal lives. It is to help you see how criminal law is related to parts of the U.S. Constitution, including some of the Bill of Rights. This will take place in a subject about which you will have strong feelings.

The actual substantive subject matter generally is current and critical to the lives of everyone. We are in difficult times that call for careful focus on aspects of ourselves, government, and society that are often harsh, sad, complex, difficult and which require care so as not to erode our basic principles and constitutional

republic. Some think that criminal law is exotic or is only for those who are going to prosecute or be defense attorneys. This is not true. Criminal law teaches us about ourselves and about the nature of our society. We often have complex and sometimes contradictory (yet nearly always passionate) reactions to issues that are raised when crime occurs and is prosecuted. So, this course has to do, not only with the substantive rules of criminal law, but also with law in general and its impact on personal well being and on the nature of our society. The course is more intimate and personal than you would expect, plus it considers so much more wide-ranging and different material than most people think. When seen in light of our own moral, religious, cultural or social philosophies and the Constitution, Criminal Law becomes interesting and very practical for every person and absolutely necessary to every competent attorney.

Thus, the course is a wonderful opportunity for us to challenge our own prejudices and predispositions. Doing this helps us learn to think clearly and to develop skills that promote our values and to resolve difficult problems relating to crime, as we learn more about our own law, Constitution, philosophy and basic principles. It helps us learn how to read statutes and cases. This takes place in a manageable context that is one for which we have such empathy that the ideas become more real and understandable, because we care deeply about them.

Becoming a lawyer is a process; a process of becoming. It is no magic act that occurs when you spend three years, receive a diploma, and pass the bar examination. It requires taking specific and serious steps in what might be called experimental learning. If any of you have become fluent in a language different from your native tongue, you have already experienced a similar process. Becoming a lawyer is really quite analogous. You do need to immerse yourselves in the process of becoming. Becoming a lawyer is also analogous to becoming a marathon runner. Trying to become someone fluent in a new language or trying to become a marathon runner by taking shortcuts only thwarts the process. You prevent yourselves from taking the steps required to become something or someone different from what you were before. You become capable of speaking a foreign tongue or running a marathon, because you have *taken the steps necessary to become one*. This course just provides the rudiments, but will give you the means to continue your development throughout your life.

My method: The process in law school and in this course is one of both cognitive learning and experimental learning. You certainly must learn the “rules,” such as they might be, pertinent to Criminal Law or whatever class you may take. This is the extent of what most people think that the law is. But it is the easy part. We are not involved in learning by rote merely to regurgitate, although gaining a cognition of the “law” is necessary. In reality, however, one cannot really know what a “rule” or “law” is, until one understands how it works. Thus, we run a gauntlet of “becoming a lawyer,” so to speak.

In this course our vehicle and your universe is Criminal Law. You will need to be prepared (fully and carefully) prior to class. This is the initial cognitive learning. Then, we together in class will challenge all of what you have “learned.” That is, we will stretch and pull at the concepts. We will see how they work in similar, but different situations. We will do what is necessary for you to develop your own understanding of the boundaries of the “rules.” I will not hide my own biases, but I will take positions that I may not actually believe in. This will be to pique your interest, understanding and conscience. It will be to get you worked-up enough to think deeply about the issues.

In essence, we will take you to look at what you originally may have felt that you had “learned” and help you to look at it through a prism placed at a different angle. This way, you will have “experimented” with the cognitive knowledge to gain a sense of what it really means in the legal context. I am going to raise seemingly “controversial” issues and I will try to challenge your sensibilities (whatever they are), not for the purpose of controversy, but to enable us all to consider issues in depth and to allow us to break beyond our preconceived notions to develop an analytical skill that will allow us to promote whatever values we hold. To shy away from this is too timid to allow quality learning.

This is necessary for you to become a *compleat lawyer* ~ ~ *this is not a misspelling, but a goood word* . Sometimes, as we rise the upper division in law school, we still think that policy or philosophical discussions are irrelevant or a matter of “hiding the ball.” They may think that there is a magic rule to solve the problem neatly, so they just “want the rule.” Well, there is no simple rule. Your medium is ambiguity; language, even legal language, is inherently ambiguous. The classroom discussion is the arena in which you may ruminate on the subtleties of a law, rule, or situation. You owe it to yourselves and to your future clients to think deeply about the issues presented and to go through the process. You may find that it is intellectually empowering and will provide you with an intellectual and problem solving capacity that is most fulfilling. If you let it, it will allow you to be a good lawyer, rather than one who can only win easy cases.

The following tentative syllabus is set up by subject and reading sections. You will be better off to read at least the indicated portion at one sitting and we will discuss the topic, as much as possible, not necessarily in one class, but as an entity. ***We will certainly modify this syllabus as we go along. We will go as far as we can.*** The indicated coverage is quite optimistic to think that we might make it in a detailed way to the end, but we’ll try.

Your ***“STANDING ASSIGNMENT”*** is generally to stay 20-25 pages ahead of where we left off on the previous class. Some days will take longer to cover, because the material teaches something that is tougher to incorporate. As we get on in the semester, more and more of the skills (and the basic principles) will be developed and will apply to new material, so we will be able to move faster.

If you have a ***documented disability*** that requires assistance, you will need to go to Disability Services (DS) for coordination in your academic accommodations. The Disability Services Office is located within Learning Enhancement Services (LES), in the Reynolds Student Services Center (SSC), room 137. The DS phone number is 895-0866 or TDD 895-0652.

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TENTATIVE SYLLABUS

Course Materials: BOYCE, DRIPPS, & PERKINS, CRIMINAL LAW & PROCEDURE: CASES & MATERIALS (9th ed. 2004).

Ch. 1 Criminalization, Definition & Classification.

Nature & Purpose of Criminal Law	pp. 1-2
Classification	pp. 97-98
Standard of Proof	pp. 8-17
The Principle of Legality (also, beginning of homicide)	pp. 17-21

Ch. 2: Offenses Against the Person p. 120

Homicide	pp. noted below
Insert from Ch. 6: Actus Reus, Generally	pp. 448-453
Insert from Ch. 7: Mens Rea, Generally	pp. 605-607
Homicide	pp. 120-226

Assault & Battery	pp. 226-248
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Ch. 10: Special Defenses

Public Authority	pp. 913-915
Self Defense	956-960, 964-65, 978-996
Defense of Others	996-997

In Ch. 9: Impelled Perpetration	pp. 859-864
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Loose Ends: We will consider the following at some point during the course of the semester, most likely after we consider voluntary manslaughter. I will let you know for sure when it comes time.

Ch. 6: Actus Reus, Generally pp. 448-453

Ch. 7: Mens Rea, Generally (perhaps after manslaughter) pp. 605-628; 641-656

Ch. 3: Offenses Against Habitation – Burglary (discuss via hypotheticals) pp. 298-330

Ch. 6, Imputability p. 448

Attempt: hypotheticals & portions of pp. 455-483

Negative Acts hypotheticals & portions of pp. 492-510

Parties to a Crime hypotheticals & portions of pp. 548-569

Conspiracy hypotheticals & portions of pp. 510-540

Causation hypotheticals & discussion

Ch. 4: Offenses Against Property [not likely in any depth]

Larceny: pp. 334-387

Embezzlement: pp. 392-396

False Pretenses: pp. 396-413