

CRIMINAL PROCEDURE - Section 2
SPRING 2018
PROFESSOR HOLLEY
SYLLABUS - PART 1

COURSE BOOKS

1. CASEBOOK: Steven Saltzburg & Daniel Capra, American Criminal Procedure, Cases and Commentary, 10th Edition (West, 2014)
2. CASEBOOK SUPPLEMENT: (West, 2017)
3. Texas Code of Criminal Procedure (West 2017-2018)
4. Federal Rules of Criminal Procedure, 2018(in Casebook supp.)

CLASS CONTRACT AND BASIS FOR FINAL GRADE

1. In addition to your money, the course requires approximately Fifteen hours of study time per week. Cases are the primary authority to be studied, and lots of them. Students must not only read, but conceptually organize and synthesize these cases with regard to the doctrine they represent. Classes will focus first on this organization and synthesis process, and second, use of your work product to solve a series of problems. Effective class preparation is therefore very important.

Attendance is taken and a grade reduction will result if you exceed the maximum number of absences. Generally, there are no excused absences.

The course will provide you with the opportunity to acquire the skills and knowledge you need to pass thirty-five percent of the multi-state bar examination section on criminal law, and will facilitate your passing the short essay part of the Texas (and other state) Bar Examination section devoted to criminal procedure. The course will also provide you with the opportunity to acquire many of the foundation skills and knowledge

required to competently practice criminal law.

2. There will be two interim exams in this course. The grade you earn on each of these in-class exams will constitute twenty percent each (20%/total 40%) of your final grade.

The interim examinations will be on or about class day

Twenty-three, and on or about class day thirty-six of the semester.

3. Twenty percent (20%) of your final grade will be based on the quality of your class participation performance which will include multiple class participation grade quizzes and exercises.

4. Forty percent of your final grade will be determined by your performance on the final examination.

COURSE AND CLASS OUTLINE

Criminal Procedure is the study of the law at work - how criminal cases are actually processed in the State and Federal Criminal Justice Systems. In this class, the primary focus of our study will be on how the criminal justice process operates under the national constitution, and in the Texas State Courts, and in Federal Courts. When the information is provided by the casebook, you should also note the approach to a specific criminal process issue taken by most states. Criminal Procedure is one of the most volatile areas of legal study and practice. There are almost annually important changes in the law, and lawyers who fail to keep up and to develop a protocol for keeping up are at grave risk of disbarment and lesser professional failures.

Our goal is to examine each of the major steps in the processing of a criminal case. In both the state and the federal criminal justice systems, the courts and the legislatures must abide by the rules and protections provided by the United States Constitution as interpreted by the United States Supreme Court. You should seek to discover for each key step in the processing of a criminal case, whether there is a national constitution

provision(s) that specifically regulates that step, the nature of that regulation, and the key United State Supreme Court cases providing that regulation.

When we begin our study of key steps in the processing on a criminal case, we will begin with the authority the federal and state governments possess with respect to permissible techniques in the investigation of crime. Permissible investigative techniques are basically established by reference to the United States Constitution.

You should be aware, however, that each state has its own constitution, including Texas, and that a state constitution may provide protection to citizens being processed in the criminal justice system beyond that provided by the United States Constitution. Therefore, your second inquiry for each key step in the state criminal process, should be whether or not a state constitutional provision(s) regulates the nature of the conduct the government may engage in at that step.

Next for each key step in the processing of criminal cases in Texas and the Federal System, your inquiry should focus upon the statutory regulation of this step. We will focus our attention on the regulation of each key step in the criminal process by the Texas Code of Criminal Procedure, and the Federal Rules of Criminal Procedure.

Next for each key step in the processing of a criminal case in Texas and the Federal System, your inquiry should focus upon the common law and statutory interpretation appellate case law. Of greatest significance in Texas are the opinions of the Texas Court of Criminal Appeals. Finally, any relevant professional standards regulating the key step under study should be reviewed.

Among the most critical steps in the processing of a criminal case, in state or federal courts, and the sequence in which they are likely to occur include:

1. Criminal Investigation Stage---Especially those investigative

techniques which focus on the government seeking information directly from suspects, or their property, including searches.

2. Arrest of a suspect with or without a warrant.
3. Initial Judicial Appearances by the Suspect and bail.
4. The Decision to Charge - Charging Instruments
5. Arraignment, Pleadings, Motion Practice, Including Discovery.
6. Guilty Plea or Trial.
7. Sentencing.
8. Appeal and Collateral Attack.

CLASS OUTLINE - GENERAL

1. Introduction to "Criminal" Procedure and a few Preliminary matters - Jurisdiction, Venue, and Statute of Limitations.
 - A. Casebook & Related Supp. - Chapter 1, pp. 1-6.
 - B. Texas Code of Criminal Procedure (TCCP): 1.01-1.06, 3.02, Chpts. 4, 12, 13(survey).
 - C. Dates of Coverage: Week 1, Class day 2.
2. Investigation of Crime - Techniques Related to Search and Seizures.
 - A. Competent "Lawyering" with regard to "Search" and "Seizures"
A Lawyer's Search and Seizure Evaluation Includes the following steps:
Step 1 --- A person seeking 4th amendment protection must qualify for such protection. Hence such a person MUST prove:
 - i. He or She is a "PEOPLE"; and Ex.: U.S. v. Verdugo-

Urquidez,

ii. Has a "PERSONAL, PROTECTED INTEREST" that he or she has not expressly or by implication "waived"; and inextricably interrelated - the government's investigatory technique at issue is such that it is sufficiently intrusive of personal security or privacy to be fairly cast as a "search" and/or "seizure"

Ex.: U.S. v. Katz, at _____

iii. A U.S. "GOVERNMENT" has conducted the "search" and/or a "seizure".

Ex.: Katz at _____

Step 2 - If a person proves/satisfies all elements of Step

1 - The Government Must prove that its conduct was:

i. "reasonable"; and possibly in addition that it

ii. was done only after "probable cause"(or perhaps lesser proof standard of "reasonable suspicion") was proven; and/or

iii. that a properly prepared search and/or an arrest "warrant" was sought and validly obtained and authorized its Investigatory Technique(s) prior to the Government Engaging in those techniques; and/or

iv. there was a "particular" description of the place to be searched and the person or things to be seized.

Example: Katz, at ____.

Step 3- If the government proves it has satisfied the

applicable requirements of Step 2 - the issue will then turn to what is the scope of the search and seizure that can be undertaken by the government - ID Permissible Government Investigation and Impermissible Government Investigation Techniques = PGIT & IMPGIT(s)

Step 4- If the government fails to prove it has satisfied the applicable requirements of Step 2 - the issue will then turn to what remedies, including exclusion of seized evidence, are available to the person Identified in Step 1. Ex.: See Katz

B. Casebook & Supp. - Chapter 1 part 1 & Chapter 2

D1 - pp. 1-6, 33-44

D2 - pp. 44-65

D3 - pp. 65-95

D4 - pp. 96-127

D5 - pp. 127-149

D6 - pp. 149-179

D7 - pp. 179-214

D8 - pp. 214-243

D9 - pp. 243-272

D10 - pp. 273-303

D11 - pp. 304-336

D12 - pp. 336-368

D13 - pp. 368-396

D14 - pp. 396-431

D15 - pp. 431-459

D16 - pp. 459-485

D17 - pp. 485-527

D18 - pp. 527-562

D19 - pp. 562-595

D20 - pp. 595-626

D21 - pp. 626-645

C. TCCP: Chpts. 6-10 (skim), Chpts. 18, 14-15, 23-24, and Art. 38.23.

These Texas provisions will be discussed at the appropriate place in the c.b. assignments.

D. Federal Rules of Criminal Procedure (FRCP) –
R.4 & 41

E. Dates of Coverage: Weeks 1-8, Class days 2-22.

Interim Examination 1: Class day 23