

# **CRIMINAL LAW**

**SECTION 2**

**SPRING 2018**

**PROFESSOR**

**DANNYE HOLLEY**

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## THE PROFESSOR

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**LOCATION:** 223H  
**OFFICE HOURS:** Monday, Wednesday, Friday  
2-4 p.m.  
(All other times by appointment)

**CURRICULUM VITAE:** [Click Here](#)

## **BASIS OF THE GRADE**

The grade for the course will be based upon:

1. Class Participation: 10%\*

A. Basis of this component of the grade will be total class participation grade points ranking. These points can be earned based upon:

\*1. Quality and Quantity of Statutory Rules-concepts-and policies you are able to assert (verbally and in writing) accurately answering the assigned Syllabus questions that are the daily class focus. Each day 1 person will be assigned and 1 student will be chosen at random to present an answer to each syllabus question assigned for the day. Assigned students must present their answers in writing. Other students will be called on to comment on the answers, and finally the entire class will be called upon to demonstrate their understanding of the rules, policies, and related problems by “responding”. Every student in the class should, prior to class, identify the main idea of each of the sources assigned for the day. Unprepared students who are called upon at any point in class lose three class points. Students called upon at the beginning of class can earn up to ten class points. Pre-assigned students can earn a maximum of ten points, and can lose five points if unprepared.

2. Accuracy in answering assigned essay and objective questions in approximately 10 pre-class and in-class assessment quizzes and exercises which are dispersed throughout the semester.

3. Quality of analysis of prepared “diagrams” of individual crimes and answers to questions which test the elements of individual crimes.

\* Please note that if a student is unprepared for two consecutive classes or if three students who are called upon consecutively in a class are all unprepared, each such unprepared student will be required to word process the answer to the question(s) on the subject matter being covered. Failure to submit the answers by the next class day will result in a 5 point reduction on the student's final Professor Grade. An unprepared student who writes an unsatisfactory paper will receive a 3 point reduction on the student's final Professor Grade. Please also note that the more you are absent the more your class participation grade is likely to suffer.

2. Two Interim Examinations:

a. Exam 1 = 10%

b. Exam 2 = 10%

3. A Cumulative Professor Examination: 20%

4. A Cumulative Comprehensive Course Wide Examination: 50%

## **COURSE BOOK**

The casebook in the course is George Dix, *Criminal Law, Seventh Edition*, a 2015 West Publication. Paperbound copies of the 2017 Texas Penal Code have been ordered and constitute the second required text for the course. The LaFare hornbook on Criminal Law is a useful aide, especially to achieve some depth on the create on and element evolution of specific crimes. A suggested reading is Packer, "The Limits of the Criminal Sanction".

## **YOUR STORY - PERSONAL PROFILE**

This document provides us an opportunity to get to know each other a little better. The goal is to capture your story to date, as well as your aspirations. Please answers to the following questions about yourself, and submit them no later than the end of the first week of class:

1. Who are you, and what do you do?
2. Why did you enroll in law school this year?
3. Do you believe skills are needed to be a competent practicing lawyer? How do these skills compare to those of a practicing physician? Have you ever read a source written by the legal profession identifying those skills?
4. Criminal Law is currently covered on the \_\_\_\_ part of the bar exam of most states?

## NOTES FROM THE PROFESSOR

This is the course in Substantive Criminal Law. It is a statutory or code course. An excerpt from the 2002 edition of the “Nutshell” on the Uniform Commercial Code identifies a crucial shared characteristic of the common law and statutes:

“If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective is nonsense.” Karl Llewellyn, *The Common Law Tradition* 374(1960).

“The Act should be construed in accordance with its underlying purpose and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, and also of the Act as a whole” “Comment 1 to the UCC section 1-102” **IN OTHER WORDS EXCELLENT LAWYERS EMBODY THE SKILL AND KNOWLEDGE THAT GOOD LAWYERING INVOLVES MULTI-LEVELS OF INTEGRATION OF LEGAL CONCEPTS AND DOCTRINES AND THAT POLICY MATTERS.**

The course includes: the definitions, working rules, and rationales for the general elements of all crimes and attempts at all crimes, the historical evolution, definitions, working rules, and rationales of specific crimes, the historical evolution, definitions, working rules and rationales of the law of “parties” (including the inchoate crimes of solicitation and conspiracy) to crimes, the justifications and defenses to crimes, and if time permits an introduction to the definition and trends in sentencing, and constitutional restraints on the definition of conduct as criminal. In addition to your money, to take advantage of the opportunities this course offers to perform successfully on sixty-five percent of the multi-state bar examination devoted to criminal law and to build the foundation to competently practice criminal law, you must do the following:

1. First, you must be able to critically read and DEMONSTRATE orally, visually, and in writing an understanding of the penal code and cases interpreting the penal code. You must be able to identify law statements, policy justifications, and craft working legal rules from the statutes, cases, and other authority studied. Your level of understanding must be such that **YOU CAN READ A LAW AND SEE A FACT (i.e. SEE A CLIENT'S CASE).**

2. Second, you must be able to critically read and understand the code and cases well enough to be able to isolate key facts, and their interrelationship. Once this task is completed you must be able to use the product to **CREATE THE CORRECT LAW WITH AUTHORITY**, i.e. develop detailed working rules that will in turn enable you to **READ A FACT (a new client's case), SEE A LAW, and hence COMPETENTLY RESOLVE A NEW CLIENT'S CASE.**

3. Third you must organize/model your knowledge of criminal law. Once you have accomplished the first two goals, my contribution is the sequence of questions I have prepared for each chapter of the casebook. The answers to these questions constitute the **SYNTHESES - THE “Big Picture”**, and hence the outline that I want prepared for this course. Each class day will be centered on your answers to these **SYLLABUS QUESTIONS.**

Chapters 1 and 3-4 of the casebook begin with an overview of the American Criminal Justice

System - the context in which key substantive criminal law decisions are made. The initial decision that a society must make in developing a criminal justice system - what conduct to define as criminal - is commonly referred to as the criminalization decision? We will study the reasons and the legislative process commonly employed in the United States today to make the criminalization decision. We also study at length an overview of how the national and state constitutions protect the rights of individuals, and thereby place limits on the rights of the legislature/the courts to make conduct criminal. Finally, chapter four presents a verbal and visual description of the basic elements of a crime and the defenses that arise from those elements as well as defenses that can be pled even if the prosecution proves those elements. In other words, it is a preview of the remainder of the course.

We begin with a set of handout materials and turn next to the first fifteen pages of the casebook, and then to chapter 4 as discussed above.

Class discussion begins by study a set of handout materials which includes:

1. A Criminalization View of the Criminal Justice System.
2. Excerpts from the "Law of Dissent and Riot".
3. Excerpts from "Legislative Politics and Criminal Law".
4. "A response to an inquiry concerning the criminalization decision making process in Idaho".
5. A Survey of states which have recently revised their Penal Codes.
6. Commonwealth v. Keller.
7. Class Criminalization Problem.

The focus of these materials will help you to compare and contrast your experience with common law courses to this dominantly statutory course. Also use these materials to help answer the first nine of the following syllabus questions.

## SYLLABUS QUESTIONS

I. Key Syllabus Questions - Handouts and Casebook Chapter One - pp. 1-15, and casebook and Texas Penal Code, Related Assignments, and class coverage days:

A. Key Syllabus Questions - Handouts and Casebook Chapter One - pp. 1-15:

1. Traditional common law crimes could be divided into 4 categories. Identify those 4 categories, and list the traditional crimes that fall in each category.\*

\* See Basis of Grade - Element 2, and description of the crime drafting project on page 9 of this syllabus.

2. Who historically had authority to make the decision to make conduct criminal?

3. Identify the main idea of Commonwealth v. Keller.

4. The decision to make conduct criminal is called the \_\_\_\_\_ decision?

5. Who currently has authority to make the decision to make conduct criminal?

6. Who is the “plaintiff” in criminal cases? Why?

7. What lawyering skills are critical to performance in criminal cases?

8. What considerations play a significant role in the decision to make conduct criminal in most states in the United States?

9. Why did criminal common law become codified?

10. What is the Model Penal Code?

11. How did the Model Penal Code differ significantly from actual penal codes that predated it?

12. What changes did the Model Penal Code adopt with respect to general matters of criminal liability? Identify the general matters with respect to criminal liability identified by the Model Penal Code?

13. Based on what you know so far, how many CHAPTERS would you expect to find in the general part of a criminal code emulating the Model Penal Code?

14. Draft a time line accurately demonstrating the relationship between the common law of crimes, the first penal codes, the Model Penal Code, and the Revised Penal Codes of Texas, New York, and Illinois!

15. Describe the influence of the Model Penal Code on the revision of penal codes in the states, and that of the federal government!

16. Based on your answers to 1-15, at minimum how many parts and chapters would you expect to find in a Modern Penal Code?

17. What is the rule of lenity? What does it have to do with the principle that criminal statutes should be strictly construed?

18. What are the policy considerations that justify these two rules? Why have modern codes modified or sought to eliminate these two rules? Do you agree that justification exists for such changes?

B. Casebook Assignment: Chapter 1 - pages 1-15.

C. Texas Penal Code Assignment: Chapter 1.

D. Class Handout Materials pp. 1-18.

E. Dates of Coverage: Classdays 2 and 3 - Wed. & Fri. January 10 & 12, 2018.

II. Key Syllabus Questions - CHAPTER IV - GENERAL PRINCIPLES OF CRIMINAL LIABILITY & AN OVERVIEW OF THE REMAINDER OF THE COURSE, and casebook and Texas Penal Code Related assignments, and class coverage days:

A. CHAPTER IV - GENERAL PRINCIPLES OF CRIMINAL LIABILITY & AN OVERVIEW OF THE REMAINDER OF THE COURSE:

19. Identify the four types of elements that could arguably be present in a crime?

20. Which three of these types do the casebook author characterize as “Actus Reus”?

21. If a crime has three objective elements how many elements must the prosecution prove presumptively to prove guilt beyond reasonable doubt?

22. “Diagram” the basic relationship between these four element types. Note: See pp. 15 of this syllabus for an example.

23. “Diagram” the Arizona crime reprinted on pp. 135.

24. “Diagram” the federal crime reprinted on pp. 135.

B. Casebook Coverage: pp. 131--135.

C. Texas Penal Code Coverage: Chapter Six.

D. Dates of Coverage: Classday 4, Wed. Jan. 17, 2018.

III. Chapter V - General Principles of Criminal Liability: Conduct-Act-Possession-Omissions:

A. Chapter V Syllabus Questions:

25. Are states constitutionally required to include within the definition of every crime an act (Actus Reus)?

26. Are states constitutionally required to include within the definition of every crime a volitional act?

27. Do most revised penal codes include a provision that requires every crime be defined to include a volitional act?

28. If a volitional act is required as an element of every crime, upon whom does the law place the burden of proving whether the act was volitional or involuntary?

29. What do revised penal codes recognize as involuntary acts?

30. What is the appropriate time span to consider in evaluating if an accused has engaged in a volitional act?

31. Under what circumstances was an omission recognized by the common law as an adequate substitute for an act in the definition of a crime?

32. Under what circumstances is an omission recognized by revised penal codes as an adequate substitute for an act in the definition of a crime?

33. Identify three possible “defenses” to liability based upon an omission.

34. Under what circumstances is "control" or possession recognized by courts as an adequate substitute for the act element in the definition of a crime?

35. Identify three possible “defenses” to liability based upon control or possession.

B. Casebook Coverage: pp. 163-210  
D5 - 163-180,  
D6 - 180-198,  
D7 – 198-210.

C. TPC: 1.07(a) 1, 34, and 39; 6.01.

D. Dates of Coverage: Classdays 5-7, Fri. Jan.19, Mon. Jan. 22, & Wed. Jan. 24, 2018.

CLASSDAY 8 - Fri. Jan. 26, 2018 – Problem Project 1 – Problems testing precisely the elements of Specific Crimes - Common Law Larceny, and Common Law Larceny by Trick\*

CLASSDAY 9 - Mon., Jan. 29, 2018 - Problem Projects 2 - Problems testing precisely the element of Specific Crimes - Common Law Larceny by False Pretense and Embezzlement\* See Description of Diagramming the Elements of Crimes at the end of this Syllabus - \*\* Distribute Diagram of Texas Penal Code Theft - Project 5 - Compare with Projects 1-4.

## V. CHAPTER VI GENERAL PRINCIPLES OF CRIMINAL LIABILITY THE STATE OF MIND MENS REA CULPABILITY

### A. Chapter VI Syllabus Questions:

Be prepared to define legal terms, restate statutory rules, related law doctrines, and the fact->laws that guide lawyering with these terms, rules, and doctrines, with authority and policy justifications to support answers to the following questions about the requirement of a culpable state of mind with respect to most key elements of most crimes.

36. Are states constitutionally required to include within the definition of every crime a culpable mental state for at least the key elements of that crime?

37. Do most revised penal codes include a provision that requires the definition of each crime in the code to include a culpable mental state for at least the key elements of the crime? For all elements of the crime?

38. What are the names of the culpable mental states recognized in most revised codes?

39. What are the 4 definitions of the mental states recognized in most revised codes?

40. True or False! These mental states have a hierarchial relationship to each other?

41. How are these definitions based upon the accused mental state in relation to the three types of objective elements potentially present in all crime - conduct/acts (or omissions, or possession), circumstances, and results? Write the twelve definitions.

42. True or False! Presumptively a crime with two conduct elements, two circumstance elements, and a result element means that the prosecution must prove beyond reasonable doubt ten elements to secure a conviction?

43. How do the culpable mental states recognized in most revised codes compare to the culpable mental states historically recognized at common law?

44. "General Intent" is equivalent to what culpable mental state defined in the Model Penal Code?

45. "Specific Intent" is equivalent to what culpable mental state defined in the Model Penal Code?

46. What guidelines do most recently revised codes require that courts and other lawyers use when it is unclear what, if any, culpable mental state is required for a crime or for a specific element of a crime?

47. What other guidelines have courts created/recognized/employed when it is unclear what, if any, culpable mental state is required for a crime or for a specific element of a crime?

48. Upon whom is the burden of proof to establish the a culpable mental state, once it is determined which culpable mental state is required?

49. Is it possible for the definition of a crime to contain more than one culpable mental states because a different mental state is required for different elements of the same crime?

50. Do most revised penal codes require that the accused actually have knowledge of the existence of a statute defining the crime before he or she can be convicted?

51. Have the courts ever made such knowledge a constitutional requirement for conviction of a specific crime?

52. What policy justifications have courts found for concluding that it was the legislator's intent to dispense with a culpable mental state requirement for all or at least an element of a crime? To dispense with all culpable mental state save perhaps negligence?

Begin Syllabus Questions Related to Requisite Culpable Mental State "Defenses" -- in truth often simply basis for arguing the prosecution cannot sustain her burden of persuasion and prove beyond reasonable doubt that the accused had all of the requisite culpable mental states.

53. As a defense attorney when you raise a "defense" that because of historical precedent could be termed "Mistake of Fact", aren't you almost always making an argument about the appropriate RCMS for at least an element of the crime charged, followed by a challenge to the sufficiency of the prosecution's case if your argument is accepted?

54. As a defense attorney when you raise a "defense" that because of historical precedent could be termed "Mistake of Law", aren't you almost always making an argument about the appropriate RCMS for at least an element of the crime charged, followed by a challenge to the sufficiency of the prosecution's case if your argument is accepted?

55. Identify the Several Different and Distinct defense arguments that historically may have been termed "Mistake of Law"!

56. Among these arguments which do revised penal codes recognize as valid defenses? Why?

57. What was the Common law rule with respect to voluntary intoxication's impact on criminal liability? What is the current Texas rule? Why?

58. Most revised penal codes contain a provision that recognizes that voluntary intoxication can negate the ability of the prosecutor to prove the culpable mental states of \_\_\_\_\_ and \_\_\_\_\_, but not the culpable mental states of \_\_\_\_\_ and \_\_\_\_\_? Why?

59. The common law and revised codes recognize involuntary intoxication as a “defense”? Under what circumstances, if any, may intoxication be equated with insanity?

B. Casebook Coverage: pp. 327-467 & 637-647

D10 327-338,

D11 311-338-349

D12 350-370,

D13 380-406,

D14 406-427, 637-647

D15 428-448,

D16 449-467

C. TPC: 6.02-6.03, and 8.02, 8.03, and 8.04.

D. Dates of Coverage: Classdays

10. W. Jan 31, 2018

11. F. Feb. 2, 2018

12. M. Feb. 5, 2018

13. W. Feb. 7, 2018

14. F. Feb. 9, 2018

15. M. Feb. 12, 2018

16. W. Feb. 14. 2018

CLASSDAY 17- F. Feb. 16, 2018 - Interim Exam 1 Spring 2018.

#### CRIME “DIAGRAM” DEFINITION

CRIME “DIAGRAM” PRECISELY DETAILED THE ELEMENTS THAT ARE THE DEFINITIONS OF SPECIFIC CRIMES. “DIAGRAMS” IDENTIFY AND CONCEPTUALLY CORRECTLY ORGANIZE THE OBJECTIVE ELEMENTS OF IMPORTANT CRIMES WITH THE ATTENDANT CULPABLE MENTAL STATES FOR BOTH THE COMMON LAW, AND THE TEXAS PENAL CODE. WE WILL BEGIN WITH A SEQUENCE OF DIAGRAMS ON CRIMES AGAINST PROPERTY. FOLLOWED BY A SERIES OF DIAGRAMS ON CRIMES AGAINST PERSONS, BEGINNING WITH THE HOMICIDE CRIME. WE WILL THEN PROCEED TO MAKE SPECIAL READING ASSIGNMENTS, AND CLASS PROJECTS TO DIAGRAM THE CRIMES OF ASSAULT, INCLUDING “SEXUAL ASSAULT”, FALSE IMPRISONMENT, AND KIDNAPPING. IN CONJUNCTION WITH ASSAULT AND KIDNAPPING PLEASE READ PP 237 241. THE

APPLICABLE T.P.C. PROVISIONS THAT ARE TO BE USED AS THE BASIS FOR THE DIAGRAMS, ARE 22.01, 22.011, 22.02, AND 22.021 WITH RESPECT TO ASSAULT AND "SEXUAL ASSAULT"; AND 20.01 20.04 WITH RESPECT TO FALSE IMPRISONMENT AND KIDNAPPING. DIAGRAMS SHOULD ALSO IDENTIFY HOW MANY WAYS IT IS POSSIBLE TO PROVE EACH OF THESE CRIMES. THIRD, DIAGRAMS SHOULD ALSO IDENTIFY THE MOST CONTROVERSIAL (I.E. CURRENTLY -2000-07 MOST FREQUENTLY LITIGATED ELEMENT OF THE ASSIGNED CRIME). FINALLY, EACH STUDENT WILL BE ASSIGNED TO DRAFT A MULTI-STATE QUESTION AND IDENTIFY THE ELEMENT(S) OF THE CRIME THAT THE QUESTION IS DESIGNED TO TEST. DRAFT QUESTIONS MUST BE REVIEWED WITH ME AT LEAST THREE CLASS DAYS PRIOR TO PRESENTATION, AND AFTER FINAL APPROVAL, POST THE FINALIZED PROBLEMS ONE CLASS DAY PRIOR TO DISCUSSION.

AN ILLUSTRATION OF A DIAGRAM OF ASSAULT AS DEFINED IN TPC 22.01 (a) (1):

ACT = RCMS

ANY ACT<-----> RECKLESSLY.  
[WHICH CAUSES ID RESULT]  
CIRCUMSTANCE =

TO ANOTHER (INCLUDING SPOUSE) -----> RECKLESSLY

RESULT =

BODILY INJURY (1.07 (7)) ----->RECKLESSLY.

## ATTENDANCE

### ATTENDANCE:

The Student Rules and Regulations do **not** provide for excused absences under any circumstance(s).

Students are provided a certain number of absences per class, per semester that may be used/taken for any reason whatsoever. The allowed absences follow this formula: [number of credit hours x 2] – 1, (Example: 3(hrs.) x 2 = 6 – 1 = 5 allotted absences for a three hour course for the entire semester).

Once the allotted number of absences are exceeded, a student's grade may be reduced. To this affect, a list of each student's name and the number of absences is submitted to the Office of the Dean at the end of each semester. As such, a scale is applied in order to calculate the grade reduction so that the rule is implemented in a uniform manner.

## ACCOMMODATIONS

If you require special accommodations, please fill out the necessary forms with the Dean's office. Your application and documentation will remain confidential. Your prompt attention will allow the law school to accommodate you, as soon as it has been made aware of your situation.

Please see:

[http://www.tsulaw.edu/student\\_affairs/docs/Accommodations\\_Handbook\\_2016-2017.pdf](http://www.tsulaw.edu/student_affairs/docs/Accommodations_Handbook_2016-2017.pdf)



## ACADEMIC CALENDAR

### THURGOOD MARSHALL SCHOOL OF LAW

Orientation	Monday-Friday	August 14-18, 2017
<b>First Day of Class</b>	<b>Monday</b>	<b>August 21, 2017</b>
Last Day to ADD/DROP	Friday	August 25, 2017
<b>Labor Day (NO CLASSES)</b>	<b>Monday</b>	<b>September 4, 2017</b>
<i>Purge of all unpaid course selections</i>	Wednesday	September 27, 2017
<b>Mid Term Examinations</b>	<b>Mon – Fri</b>	<b>October 23-27, 2017</b>
<b>Thanksgiving Holiday</b>	<b>Thurs – Fri</b>	<b>November 23-24, 2017</b>
Last Day of Classes	Thursday	November 30, 2017
Last Day to Drop a Class	Thursday	November 30, 2017
First Year Professors' Grades due	Thursday	November 30, 2017
<b>*Legislative Tuesday</b>	<b>Friday</b>	<b>December 1, 2017</b>
<b>*Legislative Wednesday</b>	<b>Saturday</b>	<b>December 2, 2017</b>
<b>*Legislative Thursday</b>	<b>Monday</b>	<b>December 4, 2017</b>
<b>*Legislative Friday</b>	<b>Tuesday</b>	<b>December 5, 2017</b>
Reading Day (NO CLASS)	Wednesday	December 6, 2017
Final Examinations	Thursday- Friday	December 7 - Dec. 15, 2017
Commencement	Saturday	December 16, 2017

**\*Legislative Days are make-up days from Hurricane Harvey August 28 – September 1, 2017**

#### SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

School Opens	Tuesday	January 2, 2018
First Day of Class	Monday	January 8, 2018
<b>Last Day to ADD/DROP</b>	<b>Wednesday</b>	<b>January 10, 2018</b>
<b>M L K Holiday (No Classes)</b>	<b>Monday</b>	<b>January 15, 2018</b>
<i>Purge of all unpaid course selections</i>	Wednesday	February 7, 2018
Mid Term Examinations	Mon – Fri	March 5– 9, 2018
Spring Break	Mon – Fri	March 12 – 16, 2018
<b>Spring Break (University Closed)</b>	<b>Mon-Wed</b>	<b>March 12- 14, 2018</b>
<b>Good Friday (No Classes)</b>	<b>Friday</b>	<b>March 30, 2018</b>
Last Day of Classes	Wednesday	April 25, 2018
Last Day to Drop a Class	Wednesday	April 25, 2018
First Year Professors' Grades due	Wednesday	April 25, 2018
Reading Period ( <b>No Classes</b> )	Thur. – Sun	April 26 - 29, 2018
Final Examinations	Mon- Fri	April 30 – May 11, 2018
Hooding Ceremony	Friday	May 11, 2018
Commencement	Saturday	May 12, 2018

**Please note that the calendar events and /or dates are subject to change.**

Approved 5/31/2017 \* Updated 11/14 /2017

## **POLICIES & PROCEDURES**

Please reference the Thurgood Marshall School of Law Student Rules and Regulations Handbook.