

**ADVANCED CRIMINAL PROCEDURE**

**FALL SEMESTER 2019**

**PROFESSOR HOLLEY**

**SYLLABUS - PART 1**

**OFFICE: 221H OFFICE HOURS: M., W., F., 3-4:30 and by appointment**

**COURSE BOOKS**

1. CASEBOOK: Kamisar & LaFave, Et. Al.: Advanced Criminal Procedure, 15<sup>TH</sup> Edition 2018(West, soft cover) & 2019 supp.
2. Texas Code of Criminal Procedure (West 2019)
3. Federal Rules of Criminal Procedure (2019)(see casebook)

**COURSE OVERVIEW**

1. This Advanced Criminal Law/Criminal Procedure Course is about enhancing basic lawyering skills of persons preparing to practice law generally, but most particularly it is detailed guidance on entry level practice of criminal law.

The skills most emphasized are CURRENCY, DEPTH, & INTEGRATION OF CRIMINAL SUBSTANTIVE, PROCEDURAL, AND EVIDENCE RULES, AND POLICIES.

This is a survey course. It covers seventeen major topics.

It takes a macro look at these subjects via the course book.

It takes two brief micro looks at many of these subjects via the current federal and Texas rules on the topic.

Conceptual organization and mastery of these topics is the first goal students should achieve in this course. Classes will focus on this organization and synthesis process. Attendance is taken and a grade reduction may result if you exceed the maximum number of absences. More importantly, substantial credit can be earned by class participation.

The course will provide you with the opportunity to refine the skills and knowledge you need to pass the multi-state bar examination section on criminal law and procedure, and will facilitate your passing the portion of the Texas and other state Bar Examination sections devoted to criminal procedure and evidence. The course will also provide you with the opportunity to acquire many of the foundation skills and knowledge required to competently practice criminal law.

## **BASIS OF GRADE**

1. Class participation constitutes twenty percent of the grade in the course. An element of that participation will be presentations of key sequential points in the topics under discussion. A second element of that participation are bar exam exercises; many of which will reflect lawyer skills and issues tested on the Texas and other state bar examinations.
2. Thirty percent of the grade will be based on a take-home mid-term exam.
3. Fifty percent of the grade will be based upon your performance on a final examination.

## **COURSE COMPETENCIES –A NARRATIVE**

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 and 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.

Our goal is for each of you to learn 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. Your first criminal procedure course should have provided you with insight with regard to the national constitution's fourth, fifth, and sixth amendment protections. We will not comprehensively retrace that ground. You should learn for each key step in the processing of a criminal case, whether there is a national constitution provision that specifically regulates that step, the nature of that regulation, and the key United States Supreme Court cases providing that regulation.

Second, you should learn how to lawyer with the fact that each state, including Texas, has its own constitution, 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 key lawyering skill to be mastered at this stage is to determine and use for each topic studied whether a state constitutional provision provides greater protection to criminal defendants than that provided by the federal constitution.

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.

**Topics covered include:**

Chapter 1 overview – Please review prior to class day 1.

1. Assistance of Counsel/Effective Assistance of Counsel
  - a. c.b.: Chapters 4 & 5 + supp.
  - b. class days 1-4; August 19, 21, & 26, 28 2019
  - c. Texas Code of Criminal Procedure: Art. 26.01-26.06
  - d. Federal Rules of Criminal Procedure: Rule 44
  
2. Pretrial Detention and Bail
  - a. c.b.: Chapter 13 – Pre-trial Release + supp.
  - b. Class days 5 --- W. September 4, 2019
  - c. Texas Constitution Re Pre-Trial Right to Bail  
Texas Code of Criminal Procedure: Arts. 11.08-11.13, Ch. 17, Art. 22.01, & Art. 44.04
  - d. Federal Bail Reform Act of 1984
  
3. The Decision to Prosecute
  - a. c.b.: Chapter 14 + supp.
  - b. Class day 6 --- M., September 9, 2019
  
4. Charging Instruments --- Indictments/Information's/Complaints
  - a. c.b.: Chapter 17 + supp.
  - b. Class days 7 & 8 --- W. & M. September 11 & 16 2019
  - c. Texas Code of Criminal Procedure: Ch. 21 & Arts. 27.03, 27.08, 28.07-28.11
  - d. Federal Rules of Criminal Procedure: Rules 3 & 7.
  
5. The Grand Jury
  - a. c.b.: Chapter 16 + supp.
  - b. Class days 9 – W. September 18, 2019
  - c. Texas Code of Criminal Procedure: Chs. 19-20
  - d. Federal Rules of Criminal Procedure: Rules 6.
  
6. The Preliminary Hearing
  - a. c.b.: Chapter 15 + supp.
  - b. Class day 10 - M. September 23, 2019
  - c. Texas Code of Criminal Procedure: Ch. 16
  - d. Federal Rules of Criminal Procedure: Rule 5.1
  
7. Joinder and Severance re Charges and Defendants
  - a. c.b.: Chapter 19 + supp.
  - b. Class days 11 - W. September 25, 2019
  - c. Texas Penal Code: Ch. 3
  - d. Federal Rules of Criminal Procedure: Rule 8

8. Speedy Trial Right
  - a. c.b.: Chapter 20 + supp.
  - b. class day 12 - M, September 30, 2019
  - c. Texas Code of Criminal Procedure: Chs. 12 & 32 A
  - d. Federal Speedy Trial Act
  
9. Discovery and Disclosure
  - a. c.b.: Chapter 21 + supp.
  - b. class days 13-14 - W., M. , October 2 & 7 2019
  - c. Texas Code of Criminal Procedure: Ch. 39, focus on 39.14
  - d. Federal Rules of Criminal Procedure: Rules 12, 15-16.
  
10. A look at Identification

Class day 15 --- W., October 9, 2019

**TAKE HOME EXAM - Weekend of October 11-13, 2019**

Remaining Topics

12. Guilty Pleas and Plea Bargaining
13. The Impartial Tribunal: Impartial Judge and Jury
14. Double Jeopardy
15. The Trial
16. Sentencing
17. Appeal and Collateral Attack