

CRIMINAL LAW (WINTER/SPRING 2008): SECTIONS 1, 3, & 4 (LASSITER)

Professor: Christo Lassiter Office: Rm 408. Hours: Afternoons RF. Telephone: 556-0096.

Required reading: (on reserve)

1. Moenssens, Bacigal, Ashdown, and Hench, CRIMINAL LAW, CASES AND COMMENTS (7th ed. 2003) [hereinafter CB] (assignments indicated below).
2. Lon Fuller, *The Case of the Speluncean Cave Explorers*, 62 HARV.L.REV. 616 (1949).
<http://www.nullapoenade/stud/explorers.html>
3. Additional cases and statutes to be assigned, time permitting.

Recommended reading: (on reserve)

1. Wayne R. LaFave and Austin W. Scott, Jr., HORNBOOK ON CRIMINAL LAW (4th ed. 2003).
2. Additional materials to be assigned, time permitting.

Class: Rm 118. Time: MTW 1330-1420.

Class Attendance and Tardiness. Prompt class attendance is mandatory. Students seeking an excused absence must do so by submitting a signed typewritten or e-mail request to me in advance. The sanction for absences and tardiness ranges from grade reduction to exam disqualification, which may result in the grade of "UWF." The reasons behind my attendance policy are three in number 1) a good deal of learning occurs in class; 2) mandatory attendance promotes professional responsibility; and 3) an attendance policy is required by the law school's accrediting bodies.

Class Participation: Students who are unable to participate in class discussion on any given day may so inform me by providing me with a signed, typewritten or e-mail statement to that effect prior to class, but you still must attend class, unless separately excused. As with absenteeism and tardiness, lack of preparedness may result in sanctions including a grade reduction. Otherwise, every class day, every student is fair game for class discussion at my selection.

Course Objective. There are three major sources for substantive criminal law. These are the common law, the Model Penal Code [sometimes hereinafter MPC], and modern statutory provisions. The common law consists of judicial decisions determined absent a specific statute. There is also a common interpretive law consisting of judicial decisions which apply statutory provisions and prior common law to new fact patterns. The Model Penal Code originated in the 1960's and represented an effort by leading academicians and practitioners to formalize reform of criminal law. The MPC actually created new norms especially in defining the relevant state of the criminal mind, and many of the MPC norms have been accepted by state legislatures. Finally, there are modern

criminal statutes, which are influenced by experience with the common law and the MPC.

The purpose of this course is for students to learn the elements of the major felonies and misdemeanors at common law and reforms found in the MPC. Students are expected to develop an appreciation of significant doctrines and trends in the jurisprudence of criminal law. However, the class room focus is designed less to help you learn specific legal holdings and more to help you learn how to perform **legal analysis**. Learn black letter law and you will know the law for today. Learn to think like a lawyer, and you will make the laws for tomorrow.

Teaching Methodology. I will use three teaching methodologies: lecture, problem solving, and the Socratic method. The Socratic method, as I understand it, is premised upon the tenet that knowledge is an inner virtue; it may be culled from within by introspective critical reasoning rather than having information set out before one for rote memorization. Under the Socratic method, the teacher elicits from the student an assertion of what the student believes to be a true statement. The teacher then engages the student by a series of questions-- whittling away at what is wrong, half wrong, not always right and irrelevant--until the inquiry is sufficiently narrowed and a transcendental principle may be formulated. *See generally* Plato's *Meno* (Benjamin Jowett trans., MacMillan 1949). The study of appellate decisions, i.e., the Case Method is popular in modern legal education. The application of the Socratic method to the Case Method as employed in legal education works in the following way. The student is responsible for learning the rules of law which are to be discussed on a given day. The rules may be extracted from the assigned cases, a Hornbook, or the TWEN lectures. In class, I will immediately set out to question your understanding of the rules and their application to the factual setting in the assigned cases. I will test your understanding by expanding the application of the rules to additional hypothetical fact patterns. The purpose of the questioning is to help the student recognize the essence of the legal principle under discussion and to enable the student to apply the principle in various factual settings. The overall objective is to help students develop an analytical understanding of legal decision making.

Criticism of the Socratic method abounds from adherents to critical legal studies because the Socratic method exposes the undeveloped mind to an analytically rigorous study of the rule of law. Legal methods are taught. Cultural anecdotes are analyzed, not embraced. The method focuses on the resolution of specific disputes on an individual and objective basis rather than on subjectively determined group rights. Moreover, the Socratic method does little to confirm a false sense of self-esteem as it exposes, rather than hides, flaws in thinking. While student generated discussion on topics of interest to you is encouraged, my objective for classroom performance is neither to help you discover latent political instincts, nor to lead cheers for dilettantes. Rather my objective is to help you develop your ability to think like a lawyer. This means helping you develop an ability to identify legal issues, to call upon appropriate legal principles, and to apply said legal principles to various factual scenarios. It also means knowing where to start a legal argument and what is worthwhile to say and not say. Most importantly, thinking like a lawyer means developing the analytical ability to persuasively argue why your argument is a sensible application or extension of the law and to explain why the exact opposite of your argument is not more sensible. The legal profession places a premium on this analytical ability. It is not enough that your argument be the result of exhaustive preparation, intelligence and virtue. No matter how "right" and "just" may be

the argument which you provide to the court, you may discover that opposing counsel poses another "right" and "just" argument, which happens to be exactly opposite your argument, if not altogether something else entirely. You will win because you listen, analyze and argue better than the other side. Classes tend to be hard, intense, and provocative. Precious little of the Socratic method is pretty.

The problem solving method involves written hypothetical questions, which are to be answered under realistic conditions. While the Socratic method hones analytical ability, the problem methodology is the surest approach to developing an ability in legal expression. Students who respond to interactive teaching methods and who learn best by doing, may find the problem solving method helpful. I will assign problem sets on a weekly basis. The problem sets will be posted using TWEN.

Finally, I will make extensive use of the lecture method. The lecture method is the best approach for setting out legal paradigms as well as quickly setting out the cornerstones of debated issues. The weekly problem sets contain a lecture component. In addition to questions and answers, the problem sets begin with a lecture which summarizes the past week's materials and concludes with a second lecture which extends the lessons learned to additional, more complex issues. The lectures will be posted using TWEN. **TWEN materials are highly recommended.**

Exam. The exam will be closed book. It will consist of three traditional essays: 120 minutes; short essay on a doctrinal question: 30 minutes; and short answer questions: 30 minutes; and reading time: 60 minutes. The date, time, and place are set by the administration.

Exam Objective. The pedagogical aim of my examination is to generate a dialogue between you and me on questions of criminal law. To the extent that your end of the dialogue exhibits an appreciation of criminal law issues and answers, you will score points. I will measure your performance by the extent to which you demonstrate an advance on criminal law jurisprudence beyond that of a hypothetical person with your presumed intelligence positioned to sit for the exam without benefit of this course, *i.e.*, a client.

Question and answer session. I will entertain student requests for an question and answer session at or near the conclusion of this course.

Grades. Grades will be based upon the final examination. Outstanding work on problem sets, class participation, and attendance may be taken into account to raise scores falling significantly below demonstrated performance in class. Likewise poor class participation or attendance may be taken into account to lower scores. I expect to submit grades to the registrar no later than 30 May 2008. An exhaustive, diagnostic analysis of the exam results will be available at my secretary's desk. I will be available for consultation about the exam, this course, law school or life in general.

Assignments:

1. 15 Jan **PART ONE: FIVE VARIABLE MODEL OF CRIME PLUS THREE CONSIDERATIONS**
 - I. Introduction
 - II. **Actus Reus** (skill thinking)
 - A. Acts of Commission.
 - B. Negative Defenses to Acts of Commission.
 1. Unconsciousness. CB at 16-22 (*Hinkle*).
 2. Unknowing. CB at 22-28. (*Fox*).
 3. Status. CB at 324-334 (*Robinson v. California*) and 1186-1197 (*Powell v. Texas*). **Note: Preview of Part Four Defenses: Constitutional Defenses**
2. 16 Jan
 4. The defense of automatism. CB at 1198-1204 (*Fulcher*).
 - C. Acts of Omission. CB at 28-36 (*Miranda, Konz*).
 - D. Negative Defenses to Acts of Omission.
3. 17 Jan MPC Art. 2.01: Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act.

TWEN: Lecture/problem set #1.
4. 22 Jan III. **Mens Rea** (moral culpability)
 - A. Scienter. CB at 37-47 (*Trinkle, Rucker*).
 1. General intent.
 2. Specific intent.
5. 23 Jan B. Transferred Intent. CB at 47-50 (*Sagner*).

6. 24 Jan C. Negative Defenses to *Mens Rea*.
1. Mistakes/Ignorance of Fact. CB at 77-88 (*Hernandez*); *People v. Cash*, 419 MI 230, 351 NW.2d 822 (1984); CB at 82-88 (*Kantor*).
 2. Mistakes/Ignorance of Law. CB at 88-93 (*Weiss*).
- MPC Art. 2.04. Ignorance and Mistake.
- TWEN: Lecture/problem set #2.
7. 29 Jan 3. Voluntary Intoxication. CB at 1170-1178 (*Langworthy*).
4. Involuntary Intoxication. CB at 1179-1186 (*Hall*)
- MPC Art. 2.08 Intoxication.
8. 30 Jan *Mens Rea* under the Model Penal Code.
- Mental states of culpability. Purpose, Knowing, Recklessness and Negligence. MPC Art. 2.02 General Requirements of Culpability. CB at 45-46.
9. 31 Jan Recklessness. CB at 50-55 (*Santillanes*).
- Criminal Negligence. CB at 55-75 (*Olshefski, Ex Parte Marley, Guminga, Morrisette*) and *Staples v. United States*, 511 U.S. 600 (1994).
- TWEN: Lecture/problem set #3.
10. 4 Feb IV. **Causation**
- A. But For Causation.
 - B. Proximate Cause. CB at 108-124 (*Love, Frazier, Velazquez*).
11. 5 Feb C. Common Law Rules of Causation.
- MPC Art. 2.03. Causal Relationship Between Conduct and Result;

Divergence Between Result Designed of Contemplated and Actual Result or Between Probable and Actual Result.

Recommended reading: Arthur Train, *The Dog Andrew, in Tutt and Mr. Tutt* at 100-130 (Bantam Books 1946) (1919).

12. 6 Feb V. **Results and Attendant Circumstances**
- A. Corpus Delicti. CB at 412-418 (*Onufrejczyk*)
- B. The Beginning and Ending of Life. CB at 418-430 (*Keeler*).
- TWEN: Lecture/problem set #4.
13. 11 Feb **PART TWO: BASIC CRIMINAL PROCEDURE AND EVIDENCE**
- I. Burdens of Proof
- CB at 125-143 (*In Re Winship, Mullaney v. Wilbur, Patterson, Ring*).
Recommended reading: *Sullivan v. Louisiana*, 508 U.S. 275 (1993) (erroneous reasonable-doubt instruction to jury).
14. 12 Feb II. Presumptions
- CB at 143-159. (*Sandstrom, Francis v. Franklin, Ulster County v. Allen*).
15. 13 Feb MPC Art. 1.12. Proof beyond a reasonable doubt; affirmative defenses; burden of proving fact when not an element of an offense; presumptions.
- MPC Art. 1.13, 110-11 Comments. Allocating Burdens of Proof.
- TWEN: Lecture/problem set #5.
16. 18 Feb **PART THREE: CRIMES**
- Crimes Against the Person**
- I. **Murder**
- A. Common Law Elements.

- B. Malice Aforethought: The *Mens Rea* of Murder. CB at 430-446 (*Webster, Guthrie*).
1. Intention to cause death.
 - a. Common law. CB at 430-446 (*Webster*).
 - b. Statutory murder. CB at 439-446 (*Guthrie*).
17. 19 Feb 2. Intention to inflict grievous bodily harm. CB at 446-457 (*Midgett*).
3. Extremely reckless disregard for the value of human life. CB 457-469 (*Langford*).
18. 20 Feb 4. Felony murder. CB at 483-506. (*Smith v. Myers, Salas, Hauptmann, and Aaron*).

TWEN: Lecture/problem set #6.

19. 25 Feb II. **Voluntary Manslaughter**
 CB at 506-518 (*Flory, Bedder*).
 MPC Art. 210. Criminal Homicide.
20. 26 Feb III. **Affirmative Defenses to Homicides (Note: Preview to part Four Defenses: Excuse and Justification)**
- A. Self-Defense. CB at 518-535 (*Goetz, Greninger*).
21. 27 Feb B. Defense of Others.
 C. Defense of Habitation.
 D. Defense of Property.
 CB at 535-547 (*Beeley, McNeese*).
 E. Defense by Police Officers. CB at 548-559 (*Garner*).
 F. Forcibly Resisting Arrest. CB 559-563 (*Hill*).

TWEN: Lecture/problem set #7.

22. 4 Mar

IV. **Involuntary Manslaughter**

CB at 563-571. (*Horton, Marshall, Feinberg*).

23. 5 Mar

V. **Mayhem, Battery, and Assault**

A. Common Law Elements.

Read MPC Art. 211. Assault; Reckless Endangering; Threats.

Crimes Against the Person--Sex Offenses

VI. **Rape**

A. Common Law Elements.

24. 6 Mar

1. By Force and Without Consent. CB at 572-588 (*Helfant, Ogunmola*).
2. Statutory rape. CB at 629-660 (*Garnett*).
3. Acquaintance rape. CB at 588-613 (*Rusk*).
4. Marital rape exemption. CB at 613-629 (*Lane, Kizer*).

TWEN: Lecture/problem set #8.

25. 11 Mar

Property Acquisition Offenses ((Larceny, Embezzlement, Larceny by Trick, False Pretenses, Receiving Stolen Property, Theft (as a consolidated acquisition offense))

I. Outline of Property Acquisition Offenses

II. **Larceny**

A. Common Law Elements of Larceny and Related Offenses.

CB at 709-713.

26. 12 Mar
1. Res of common law larceny. CB at 751-759 (Property capable of being stolen, *Lund*).
 2. How did the taking occur.
 - a. Mistake. CB at 713-721 (*Neff*).
 - b. Taking of found goods. CB at 721-723 (*Brooks*).
 - c. Misappropriation. CB at 723-726 (*Mark Kane Bugely*).
 - d. False pretenses. CB at 726-731 (*Bell*).
 - e. Larceny by false promise. CB at 731-741 (*Norman-King*).
 - f. Larceny by trick. CB at 741-743. (*Skeeter*).
 - g. Embezzlement. CB 779-782 (*Neff*, Pt. 2).
 3. Carrying away.
CB at 743-751 (*Lee and Olivo*).
 4. Constructing the taking and carrying away. CB 749-751 (*Olivo*).
27. 13 Mar

TWEN: Lecture/problem set #9.

28. 18 Mar
5. Of another. CB 759-771 (Property of Another).
 6. Intent to deprive. CB at 762-774) *Hugo v. City of Fairbanks, Stearns*).
 7. Grades of larceny. CB at 774-779.

II. Receiving Stolen Property

CB at 812-822 (*George, Autocephalous Greek-Orthodox Church,*

Harrington).

Consolidated Theft Offense under the MPC Art. 223. Review of theft offenses.

29. 19 Mar **Property Acquisition Offenses Involving Affronts to Personal Safety**
- I. **Extortion**
 - II. **Robbery**
 - A. Elements of robbery and aggravated robbery. CB at 822-845 (*Jupiter, Carter*). Read *Kansas v. Long*, 8 Kan.App.2d 733, 667 P.2d 890 (1983) and *Kansas v. Long*, 234 Kan. 580, 675 P.2d 832 (1984) (excerpted versions on reserve).
 - B. Force or Fear: CB 845-854 (*Taylor*).
30. 20 Mar **Offenses Against Habitation**
- I. **Burglary**
 - A. Common Law Burglary. CB at 854-881.
 - B. Modern Burglary Statutes. CB at 881-896 (*Taylor, Jones*).
 - C. Review of robbery, extortion, burglary and criminal trespass. Read MPC Art. 221.
- TWEN: Lecture/problem set #10.
- 24-28 Mar SPRING BREAK
31. 1 Apr **The Inchoate Crimes: Attempts, Solicitation, and Conspiracy**
- I. **Attempts**
 - A. Elements of Attempts. CB at 897-900.
 - 1. Intent. CB 900-909 (*Gracidas-Ulibarry*).
 - 3. Act. CB at 910- 917 (*Paluch*).

32. 2 Apr B. Defenses to Attempts.
1. The defense of impossibility. CB at 100-108 (*Dlugash*), 917-934 (*Thousand*). *United States v. Thomas*, 13 U.S.C.M.A. 278 (1962).
 2. Renunciation. CB at 934-940.
33. 3 Apr MPC Art. 5.01 Criminal Attempt.
- TWEN: Lecture/problem set #11.
34. 8 Apr II.. **Solicitation**
- A. Common Law Elements. CB 963-971 (*Lubow, Thousand*).
- MPC Art. 5.02.
- III. **Conspiracy**
- A. Common Law Elements. CB at 971-975 (*Krulewitch*).
1. The agreement. CB at 975-791 (*Braverman, Jose Colon*).
 2. Necessary parties--Wharton's Rule. CB at 991- 1008 (*Carter, Gebardi, Iannelli*).
- MPC Art. 5.03. Criminal Conspiracy.
35. 9 Apr B. Defense of impossibility to Conspiracy and Solicitation. CB at 1017-1043 (*Bridges*).
36. 10 Apr **Complicity for the Acts of Another Aiders and Abettors, Accessories Co-Conspirator liability Vicarious and corporate liability**
- CB at 940-963. (*Matthews, Standefer, Zierlion*).
- TWEN: Lecture/problem set #12.

37. 15 Apr **PART FOUR: DEFENSES**
- I. **Penal Theories**
- II. **Excuse (human frailty defenses)**
- A. Duress. CB at 1143-1147 (*St. Clair*).
- B. Provocation.
- C. Syndrome defenses. CB 1205-1215 (*Stewart*)
38. 16 Apr III. **Justification (moral choice defenses)**
- A. Necessity.
- B. Self-defense.
- CB at 1147-1170 (*Bailey*); Lon Fuller, *The Case of Speluncean Cave Explorers*, 62 HARV. L. REV. 616 (1949).
39. 17 Apr IV. **Insanity**
- A. M'Naughten (Right-Wrong) Test. CB at 1220-1246 (*M'Naughten, Serravo, Wood*).
- B. Irresistible Impulse Test. CB at 1247-1248.
- C. The Products Test. CB at 1248 (*Durham*).
- D. The American Law Institute (A.L.I.) Test and Its Recent Modifications. CB at 1253-1258.
- TWEN: Lecture/problem set #13.
40. 22 Apr V. **Diminished Responsibility**
- CB at 1263-1268 (*Fisher*).
41. 23 Apr VI. **Constitutional Defenses**
- A. Defining What is Wrong.

CB at 160-182 (*Shaw v. Director of Public Prosecutions, Caminetti*). *United States v. Sanchez*, 11 U.S.C.M.A. 216, 29 C.M.R. 32 (1960).

42. 24 Apr

B. Scope of Police Power. CB at 229-234 (*Bonadio*).

C. Fifth Amendment

1. Due Process.

2. Vagueness.

3. Overbreadth.

CB at 235-255 (*Papachristou, Village of Hoffman Estates, Coates*)

TWEN: Lecture/problem set #14.

43. 29 Apr

D. First Amendment

1. Foul language. CB at 255-274 (*Gooding, R.A.V.*)

2. Hate crimes. Read *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

44. 30 Apr

E. Right to Privacy. CB at 274-283 (*Griswold*);
Recommended CB at 283-314 (*Roe* and *Hardwick*)

F. Equal Protection. CB at 314-324 (*Michael M*)

TWEN: Lecture/problem set #15.