

Boyd School of Law, UNLV
Fall 2009
Office: 451

CRIMINAL LAW-LAW 616-2
Professor Blakesley
Office Hours by Appointment
Phone: 895-2487

E-Mail: chris.blakesley@unlv.edu

TENTATIVE SYLLABUS - Aug. 6, 2009

Text: RONALD N. BOYCE, DONALD A. DRIPPS, ROLLIN M. PERKINS, *CRIMINAL LAW AND PROCEDURE: CASES AND MATERIALS* (Foundation Press 10th ed. 2007).

CHRISTOPHER L. BLAKESLEY, LINDA A. CARTER, PETER J. HENNING, *GLOBAL ISSUES IN CRIMINAL LAW* (Thomson-West 2007).

Christopher L. Blakesley, *Ruminations on Terrorism: Expiation & Exposition* (on TWEN & on the Portal) (this is an article - will be on our TWEN)

Supplemental – Helpful Reading – Hornbooks, Treatises, etc. –

Rollin M. Perkins & Ronald N. Boyce, *CRIMINAL LAW (Hornbook -3^d ed. 1982)* (dated, but wonderful on the Common Law history of U.S. criminal law).

Wayne R. LaFare *CRIMINAL LAW (Hornbook, latest edition)* (with pocket parts).

Wayne R. LaFare *PRINCIPLES OF CRIMINAL LAW (Concise Hornbook Series, latest edition)*

Joshua Dressler, *Understanding Criminal Law* (5th ed. 2009).

Paul H. Robinson, *CRIMINAL LAW: CASE STUDIES* (latest edition - the 4th ed. will be coming out later in the Fall).

George P. Fletcher, *RETHINKING CRIMINAL LAW* (1978) (a wonderful book).

Jerome Hall, *GENERAL PRINCIPLES OF CRIMINAL LAW* (2nd 3d. 1960) (old, but a classic).

Herbert L. Packer, *THE LIMITS OF THE CRIMINAL SANCTION* (1968) (old but a classic).

H.L.A. Hart, *PUNISHMENT & RESPONSIBILITY* (1968) (old, but a classic).

ADMINISTRATION:

Class TWEN Page: You are required to sign up for the class TWEN page. To do so, you will need to access the TWEN program using your Westlaw password. The TWEN page will contain the latest syllabus (which I will update and modify as we go through the course), relevant materials and readings that I want you to read or deem to be interesting and helpful. I will use the TWEN page to send announcements, information about the course, and modifications or additions to the syllabus as the semester proceeds.

The TWEN page includes a discussion student group option. This is completely voluntary for those who wish to participate. It is to discuss issues related to the course and class discussion. As in any such forum, please show mutual respect. Be civil and professional in your communications with each other. Note that I will have access to this discussion forum and will check-in from time to time to see issues that might be interesting and helpful to address in class.

My attendance policy. You are to 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, analytical nuance, and spontaneity in the course develops. It is often that these moments are where valuable insight occurs. My purpose in the course, more than anything else, is to prompt you to think critically about the subject and to question your own predispositions. Although rules are important, this critical thinking is more important than memorizing simple rules. I will take attendance into account in relation to class participation. Moreover, ***nine (9) absences*** may result in your being dropped from the class. I will use my discretion to determine whether an excused absence is warranted. Generally, only medical or family emergencies are deemed sufficient.

I take ***class participation*** into account in my grading to the following extent. I may increase or decrease your final grade up to one grade (e.g., from a B to an A, or from a B to a C or increments in between), as the circumstances warrant. If a person has shown the ability to analyze and solve problems in the subject matter to a degree *significantly better* in participation than they manifest in their examination, I will raise that person's grade accordingly. This generally will occur when the person's raw-score is on the margin of a grade division. Thus, after I have finalized the grades on a raw score basis, I will send them to the registrar and then determine who is on the borderlines and might meet the requisites for a grade increase based on participation. Obviously, engagement and thoughtful, respectful contribution is important to me and provides valuable insight and perspective in an arena that is volatile, emotionally engaging, and passionate. It prompts evaluation of one's own and society's values which play an important role in the law, as well as in our own lives. One word of caution: It may be tempting for some to "over participate," in the sense of trying to dominate or to "impress." This, while rare, is neither helpful nor impressive. I want to spread the opportunity to participate around. That said, I want each of you to feel free to raise your hand and add comments when you wish to do so. This is very helpful to me and to the class. Participation is especially helpful, when the issue being discussed is thorny and, thus, some may be hesitant to talk about it. In sum, participate, just don't try to dominate.

The examination: The final examination will be of a traditional law school type. Generally, you will solve one to several hypothetical problems in writing. Occasionally, I will include some short-answer questions. Our examination is currently scheduled for December 15, 2007. ***What I expect you to learn - or here are some ruminations on where we'll go, what we'll consider, and why.*** The bulk of our time will be spent on learning how to think critically, in the arena of substantive Criminal Law. This course helps you pursue an understanding of not only basic criminal law, but also of the law in general, including issues such as what is law, the function of the U.S. Constitution, including some of the Bill of Rights relating to criminal law. This will take place in an arena about which you likely will have strong feelings. My hope is that the course will cause you to learn in the experiential sense (it will cause you to think critically) and that this will make you a different person (intellectually) from what you were before, and better at understanding and promoting your values.

Nature of the Subject: The course is more intimate and personal than you would expect, plus it addresses much more wide-ranging and different material than most people think. Often, complex, controversial, and sometimes contradictory (yet nearly always passionate) reactions to issues are raised by the subject matter. This is valuable. Criminal law provides a vehicle to

consider law and its impact on our personal well being. It provides insight into the nature of society. It raises serious moral issues. It prompts us to consider what sort of human beings we are.

Substantive criminal law is certainly current and crucial. Any apparent complexity is made manageable, perhaps even intriguing, because of the important, emphatic, passionate, and empathetic nature of the issues. Issues the problems that go to the core of our sense of morality are good catalysts for a deeper and clearer understanding of principles that occasionally might seem abstract. They are personal, real, and not just for a small segment of society or the legal community. Criminal law is extremely practical, when seen in light of our cultural or social philosophies, criminal legislation and cases, our Constitution and those of other countries, and the impact on our or other's well-being and to the continued viability of a safe and civilized life based on the rule of law.

Criminal law provides a wonderful opportunity for us to challenge our own prejudices and predispositions, which each of us has an obligation to do, if we are really to contribute to the common good as lawyers and human beings. It is also necessary, if we are going to be clear thinkers, whole moral beings rather than automatons. I, like everyone else, have biases and predispositions, which I want you to feel free to challenge. I will be polite in challenging you; I trust that you will be polite challenging me and each other. This give and take - this critique of words, sentences, paragraphs, cases, opinions, policies, philosophies, principles, etc. is the grist of becoming a lawyer, or for that matter, a thinking person. This helps us to think more clearly while we learn not only criminal law, but also more about law in general, about philosophy and the nature of our constitutional system. We will study many important and currently debated issues about which you will have strong feelings.

This course, like law school, is designed to help you learn that becoming a lawyer is a process, not a magical or mystical event. It is a process of becoming; of metamorphosis. If any of you have become fluent in a language different from your native tongue, you have already experienced a similar process. Victor Hugo said that learning a new language gives one a new personality. I have found that this is true. Well, becoming a lawyer is really quite analogous. Whether it is to become a person who is really fluent in a foreign language or to become a lawyer, you must immerse yourselves in the process of becoming that is law school and this course. On the more physical side, becoming a lawyer is also analogous to becoming a marathon runner. Taking short-cuts in trying to become fluent in a new language or trying to become a marathon runner thwarts the process. You actually prevent yourselves from taking the steps required to become different from what you were before. Thus, in law school we run a gauntlet of "becoming a lawyer," so to speak, or becoming a person who thinks critically.

My method on this process and in this course: The process in law school and in this course is one of both cognitive learning and experimental learning. You certainly must learn the "rules" pertinent to Criminal Law or whatever class you may take. Most people think that the law is nothing more than a set of rules. Yes, there are rules, but learning them is the easy part. We are not involved in learning by rote merely to regurgitate, although gaining 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. This is only done when one understands the philosophy, policy, and principles that underlie the rules.

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 and occasionally I will take positions that I may not actually believe. This will be to pique your interest, understanding, passion, and conscience. I hope that I will be able to get you worked-up enough to think deeply about the issues we consider and your own place in the world.

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 or contention, 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 you to promote whatever values you hold. To shy away from this is so timid as to prevent quality learning.

If you fully engage yourself in this enterprise, you will become a *compleat lawyer* — *this is not a misspelling, but a fine word*. Sometimes, as we rise the upper division in law school, we develop a sense that philosophical, policy or other in-depth discussions are irrelevant or that the professor engages in “hiding the ball.” We may have deluded ourselves that there is a simple rule to solve the problem at hand. And we just “want the rule.” Well, there is no simple rule and to search for a magical rule will only thwart development of the capacity to solve difficult issues. Good lawyers are those who can address and resolve difficult cases. Just about anyone can win an easy case. 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 law’s application to a difficult 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.

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 cover as much 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 or so pages ahead of where we left off on the previous class. Some days, especially at the beginning, it will take longer to cover pages, because the material is transformative, teaches something that is tougher to incorporate or because we get into an interesting and worthwhile discussion. 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.

Disabilities: UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the DRC for the coordination of services. The

DRC is located in the Student Services Complex (SSC), Room 143, and the contact numbers are: VOICE (702) 895-0866, TTY (702) 895-0652, FAX (702) 895-0651. For additional information, please visit: <http://studentlife.unlv.edu/disability/>

Our tentative set of assignments follow. We will get as far as the time allows, both on a daily basis and overall. Sometimes we will go slowly (especially at first), in order to get your minds working in a critical thinking way and to develop the basics of criminal law. My purpose is to help you learn the basic elements of criminal law, that cover virtually all crimes, and especially to think clearly and critically in the substantive criminal law arena.

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Tentative Syllabus

Ch. 1 Criminalization, Definition & Classification.

Nature & Purpose of Criminal Law pp. 1-2

Blakesley, Ruminations on Terrorism: Expiation & Exposition Website & TWEN

CHRISTOPHER L. BLAKESLEY, LINDA A. CARTER, PETER HENNING, GLOBAL ISSUES IN CRIMINAL LAW (Thomson-West 2007). pp. 72-75

Proof Beyond a Reasonable Doubt: *In re Winship* pp. 8-15

Moral & Const'l Limits to Criminal Law - Principle of Legality (introduce homicide) pp. 15-20

Classification & Model Penal Code pp. 94-98

Ch. 2: Offenses Against the Person p. 99

Homicide - Statutes for all homicide – pp. 186-196, plus handouts of NRS (for reference).

- First we will consider relevant parts of Ch. 6 (*Actus Reus, Generally*) and Ch. 7 (*Mens Rea Generally*). Then we will consider the Homicide pages.

- **First read:**

Pertinent pages from Ch. 6: *Actus Reus, Generally* pp. 414-421

Pertinent pages from Ch. 7: *Mens Rea, Generally* pp. 556-568

Actus Reus & Mens Rea - Terrorism, as an example GLOBAL ISSUES, pp. 77-94

Chapter 2: Offenses Against the Person

Homicide - Murder, Voluntary & Involuntary Manslaughter

pp. 99-196

Note that we will take the some of the cases out of order. The book mixes the first degree, second degree murder cases with both voluntary and involuntary manslaughter. Actually, many of the cases could possibly end up with a verdict of first or second degree murder, or of voluntary or involuntary manslaughter, so it is worth your while to consider whether you think the judgment by the court is correct or not. You should read the whole package, then re-read them, so that you can place them in the appropriate category. I will refer to aspects of cases dealing with the battle over whether the offense is 1st degree, 2nd degree murder, or voluntary manslaughter. You will see that several of the decisions turn on the validity of jury instructions (given or not given). So, as you read the cases, order them in terms of murder, voluntary, and involuntary manslaughter and note to yourself whether you think that the decision is apt or not.

Murder (GBH, F/M, First and Second degree) - pp. 105-139

Voluntary & Involuntary Manslaughter - pp. 148-182

For Involuntary Manslaughter, Read the following cases:

- Harris v. State p. 178
- Murray case (ricochet) p. 167
- Rodriguez (children die in fire - locked in home) p. 170
- State v. Bier p. 173
- People v. Watkins (Imperfect S/D) p. 175

After Voluntary & Involuntary Manslaughter, we will discuss more of Ch. 7: *Mens Rea* for Recklessness & Criminal Negligence: as follows - pp. 587-601

Capital Punishment - pp. 139-148; handout *Patrick Kennedy v. Louisiana* (death penalty for child rape rejected)

Assault & Battery

pp. 197-219; MPC pp. 218-219

Ch. 10. Special Defenses (we may change the order of the cases we consider) - pp. 859....

- Public Authority pp. 859-861; 877-879 (MPC); Hypotheticals
- Prevention of Crime pp. 889-890; 901-902 (MPC); Hypotheticals
- Self Defense pp. 902-906; 910-911; MPC pp. 941-942, Hypotheticals
- Defense of Others pp. 942-943; Hypotheticals

From Ch. 9: Impelled Perpetration

pp. 806-833; MPC p. 834; Hypotheticals

Ch. 6 Imputability

- **Parties to Crime** pp. 502-506, handout, & Hypos; MPC - pp. 519-521
- **Solicitation & Conspiracy** pp. 463-464, handout & Hypos; MPC - pp. 492-493
- **Attempt** pp. 421-423, Hypos & handout; MPC - pp. 451-452
- **Negative Acts** Hypos & parts of pp. 453-463
- **Causation** pp. 521-522, handout, Hypos & Discussion - compare to torts

Burglary

We'll do much of this with hypos & a handout.

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

- Larceny:** Hypotheticals representing cases
- Embezzlement:** Hypotheticals representing cases
- False Pretenses:** Hypotheticals representing cases