

Legal Studies 109: The Aims & Limits of Criminal Law 4 Units

Lectures: Room 110 Barrows; Mon-Weds-Friday 3:10-4:00 PM

Instructor: Richard Perry, J.D., Ph.D.

Contact: rwperry@law.berkeley.edu

Office hours: Mon-Weds-Friday 12:10-1:00 in 337E Boalt Hall North Addition; also available to for meetings on most days after our class meetings; please email in advance to make sure that other students have not booked the same meeting time.

GSI: Nicole Lindahl, PhD candidate in Jurisprudence and Social Policy

Email: <nicolelindahl@gmail.com>

Office hours: 1pm - 2:45pm on Mondays in Café' Milano

Discussion Sections: 101 and 102

UCB Catalog Course Description: This course focuses on the analysis of the capacity of criminal law to fulfill its aims. What are the aims of criminal law? How are they assigned relative priority? What principles can be identified for evaluating efforts to control disapproved activities through criminal law?

Topical and Thematic Structure of this Fall 2010 Course Offering:

This course is organized of two primary threads. The first thread of the course examines core concepts and doctrines of substantive Anglo-American criminal law in a critical law & society fashion. It considers these concepts from an interdisciplinary and comparative perspective. The second major thread addresses recurring conceptual controversies in thinking about crime in the US since the 18th century.

This course will focus on leading recent developments in criminal law and will consider emerging theoretical frameworks for understanding these recent developments. Since U.C. Berkeley is now, and has long been, one of the world's leading centers for the study of law and society, the work of both past and current Berkeley scholars at will be highlighted in particular.

This syllabus builds upon the earlier offerings of Prof. Christopher Kutz, especially in its use of the same primary course text and general ordering of topics.

Required Readings:

There is one required textbook: Matthew Lippman, *Contemporary Criminal Law* (Sage), 3rd Edition 2012. Since this is a class where the scholarly practice of reading and critically discussing legal cases is one primary objective of the course, every student in this class is **REQUIRED** to bring this book to every class meeting. Therefore we want to assist you to find one as easily as possible. This textbook can be purchased at the ASUC and other campus-area bookstores for roughly \$100. But it can also be bought online for a considerable savings (prices range around \$83 on Amazon.com). The edition assigned is

the most recent one, so you can expect to sell it back later, with its resale value depending on its condition. The campus bookstore will also rent a copy to you for around \$53.

Buying only the E-book is not wise, because you'll use the book for the final exam.

There will be a number of supplementary readings made available on bSpace; these will be most significant during the latter part of the term.

Student Responsibilities:

Attendance: Students are expected to attend all lectures and section meetings having already prepared any readings or assignments. Your participation in both lectures and sections will count significantly toward your final grade.

Classroom expectations: The topics of this course include many subjects which can be expected to generate strong feelings and emotions. It is a statistical fact that some members of the class may have been victims of violent crimes; at the same time, other members of our class may themselves have experienced false and unfair suspicions directed against them. All students are encouraged to offer their own questions, comments, and experiences, as well as to respond to those expressed by other students. Maintaining an effective and inclusive discussion space in class, however, requires all of us to act with respect for and sensitivity toward everyone in the room.

Plagiarism: According to the College of Letters and Sciences:

All written work submitted for a course, except for acknowledged quotations, must be expressed in the student's own words. It must also be constructed upon a plan of the student's own devising. Work copied without acknowledgement from a book, from another student's paper, from the internet, or from any other source is plagiarized. Plagiarism can range from wholesale copying of passages from another's work to using the views, opinions, and insights of another without acknowledgement, to paraphrasing another person's original phrases without acknowledgement.

The submission of such work will, under University rules, render the offending student subject to an F grade for the work in question or for the entire course, at the discretion of the instructor, and will also make the student liable for referral to the SJA.

Special Needs Due to Disabilities:

If you have special needs due to disabilities we will make every effort to accommodate them. For information on University policies regarding students with disabilities, and federal / state laws affecting people with disabilities, contact: <http://access.berkeley.edu/>. The student has the responsibility to inform the professor or GSI during the first week of the term, along with appropriate documentation from the DSP Office.

Evaluation and Grading:

The tests will be designed to draw together concepts and materials from the entire course. Tests will be comprised of multiple choice, short answer, and/or essay questions of modest length.

The four short tests will add up to 50% of the course grade. The final exam will count for 30%. Since the final will include material from the earlier sections of the course, if the grade on the final test is higher than those on the first four tests, the final MAY be weighted more heavily in the student's favor insofar as it demonstrates a heightened overall level of understanding of the course material.

Class participation -- i.e., coming to class already having read the assigned material and then participating in the class discussion -- is required of ALL students and will count for 20% of the grade. This 20% of the course grade will include participation BOTH in lecture and in weekly discussion sections.

Starting on Monday of the 2nd week of the term, the professor will call upon students to participate during the lecture periods. The class will be divided -- alphabetically by family name -- into 5 groups (Group A, B, C, D, and E) with approximately 10 students in each group. The primary goal of this give-and-take interaction will be to keep students current with the reading and engaged with the course material. As part of their participation grade, students will be evaluated not on whether their analysis is right or wrong, but rather on the simple fact of their having come to class prepared and willing to engage with the course material.

Attendance and participation at weekly discussion sections is similarly expected. Short written assignments designed to enhance students' understanding of key concepts may be required by the GSI in section meetings and included in the final course grade.

If a student will need to have a test or other course activity rescheduled to an earlier date because of a conflict between the course schedule and a day of religious observance, the student must inform the professor of this conflict before the end of the first week of the term.

Course Outline: List of Topics and Readings

(Students should expect minor adjustments to this schedule from day to day, in accordance with the pace of class discussion; the scheduling of guest lecturers is also an evolving process)

Part I : On Concepts of Crime, Law, and Modern Constitutional Governance: The Classical Frameworks Introduced and Contrasted

Week of Sept. 4th and 6th: Introduction to the course and to the instructors. Introduction to key terms and concepts in the study of crime, law, criminology, and criminal justice. Conceptualizing crime and criminal justice in the modern state. The lectures will

summarize much of Lippman Ch. 1 and the appendix on case analysis. How do we recognize and assess harm and crime – and how can we distinguish harms and crime from one another? Index crimes and “crime rates.” Read Ch. 1 and begin Ch. 2.

Week of Sept. 9th, 11th, and 13th: Here we (re)consider constitutional framework of crime, criminal law, and criminal justice process (“due process” and other processes) with a particular emphasis on theories of general deterrence, utilitarianism, questions of legitimacy of state violence and punishment. View portions of “Twilight: Los Angeles.” On the boundaries of the person, the community – the police, and the sovereign powers of the state. Finish reading Lippman Ch 2 and begin Ch. 3.

Week of Sept. 16th, 18th, and 20th: Finish Lipmann chapter 3: classical and contemporary theories, policies, and practices of punishment; the criminal justice system and policies and on-going controversies. Supplementary readings & materials on bSpace.

First Midterm Review-test on Friday, Sept. 20th – Bring green Scantron & Bluebook

Part II: A Critical Law & Society Overview of the General Part of Substantive Criminal Law Doctrine’s Core Concepts

Week of Sept. 23rd, 25th, 27th: Begin discussion of Lippman Ch. 4 – Actus Reus; criminal acts and omissions. On the question of harm and criminal acts. Recommended Harcourt reading.

Week of Sept. 30th, Oct. 2nd, and Oct. 4th: On volition and other modes of culpability. Read Lippman Ch. 5. Discussion of the evolution and influence of the Model Penal Code. Recommended Dubber reading on bSpace.

Week of Oct. 7th, 9th, and 11th: Ch 5 continued; materials for discussion of duties to others that may give rise to criminal culpability. Discussion of strict liability and regulatory offenses. Review of Chapters 4 & 5.

Week of Oct. 14th, 16th, and 18th:

Midterm II Review-test on Chs. 4 & 5. Begin Lippman Ch 6, on complicity and parties to crime. How is criminal culpability apportioned among multiple persons? Recommended Kutz reading on bSpace.

Week of Oct. 21st, 23rd, and 25th: Finish 6 discussion; begin Lippman Ch 7 – on inchoate crimes. What justifies penalizing a failure to cause harm?

Week of Oct. 28th, 30th, and Nov. 1st: Begin Lippman Ch 8 – on affirmative defenses. What burdens of evidence may fall upon the accused under what specific circumstances? What principles may justify harmful acts? Recommended Harcourt reading on prediction and dangerousness.

Week of Nov. 4th, 6th, and 8th: Ch 8 – Affirmative defenses, justifications continued. Begin Lippman Ch 9 – on excuses and mitigation. Do certain circumstances and/or particular accused individuals merit exculpation or other considerations for harms they cause? Further materials on bSpace.

Week of Nov. 11th, 13th, and 15th: **NO CLASS ON MON. NOV. 11 VETERANS DAY**
MIDTERM REVIEW TEST III ON CHS. 6,7,8, AND 9. BRING SCANTRON AND
BLUEBOOK

Part III: What is “special” about the “Special Part” of the Substantive Criminal Law? Governing Life-spaces through Criminal Law, Cultures of Control

Week of Nov. 18th, 20th, 22nd: Read Lippman Ch 10; What are the meanings of life in homicide doctrine? Of taking life intentionally and/or otherwise? Where are the socio-legal boundaries between living persons, fetal persons, and the homicide victims? Recommended Zimring reading.

Week of Nov. 25th and 27th: Lippman Ch 11– on crimes of sexual conduct and other harms to the dignity and autonomy of the person; on the troubled history of gendered personhood in the criminal law. Risks of relationships and pervasive gender disparities; Lippman Ch1 continued reading on “the relationship penalty.”

Week of Dec. 2nd, 4th, 6th:
Midterm Review-Test IV – Scantron and Blue book.

Lippman Chs. 12 & 13: On the notion of “home” in criminal law. Crimes against habitation; dwelling as a space of autonomous personhood, protected by criminal law. On the “properties” of crime: Lippman Ch 12 continued. Begin Lippman Ch 13 – the properties of property; of places, spaces, and things. The Shifting Boundaries of Law and Morality between Self and Society: Read Lippman Ch 15 – on crimes against public order and morality, their shifting definition. Background reading: Zimring & Harcourt on “vice and victimless crime”

RRR WEEK: Monday Review for final exam.

TUESDAY, DEC 17, 2013 7-10P : Final Exam Date Assigned by the Registrar

(Students unable to meet this exam schedule should notify the instructor by the 2nd week so that a reasonable accommodation can be arranged.