Instructor:
Sharon Fray-Witzer, Esq.

Email:
S.Fray-Witzer@NEU.edu;
Sharon@Fray-Witzer.com

Phone:
(617) 720-2527 (Office, Off Campus)

Office:
Churchill 417

Office Hours:
Wed. 2:00-3:00 P.M., and otherwise, by Appointment

Required Texts:
JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW (6TH ED., WEST)
JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW (6TH ED. LEXIS)(hereinafter referred to as “Supp”).
OVERVIEW:

What’s a “crime”? What should we deem “criminal”?

How do we make punishment “fit” the crime?

We’ll learn the basic rules and principles of assigning criminal responsibility in our legal system, asking where we should go from here.

Course Requirements*†
20% - Paper #1 (Approx. 4 concise pages)
20% - Mid-Term Examination
20% - Paper #2 (Approx. 4 concise pages)
20% - Attendance, Participation, and possible weekly Quizzes
20% - Take-Home Final Exam
EXTRA CREDIT OPTION -- MAY BE ANNOUNCED

* Please see me immediately if you have a documented need for special accommodation.
† Please ask questions you may have about citing sources. Plagiarism and other forms of academic dishonesty may result in a failing grade and/or disciplinary action. See http://www.northeastern.edu/osccr/academichonesty.html

DETAILS

We will study some major substantive and “inchoate” (incomplete) crimes, and the principal defenses to crime.

This course is about “substantive” (as opposed to “procedural”) law. It concerns what conduct is, can, or should be deemed criminal, what explanations should lead us to justify or excuse conduct which might otherwise be deemed criminal, and how crime should be punished (if at all – an interesting possibility to consider in order to understand punishment better).

The course is not concerned with the rules for investigating crime, or arresting a suspect (those issues were addressed in your Criminal Due Process course).

This course will address trial procedure only by examining the jury’s role in determining whether the prosecution has met its burden of proof, and the burden of proof that the defendant bears in raising certain defenses.

Another difference from Due Process: here, most cases are short, state cases, and, although they must be read carefully, they do less articulating of the law itself than your long Constitutional cases for Due Process. They are more often examples of the application of particular rules (often statutes), to make it memorable and debatable. We will often compare the facts and law of two different short cases to note contrasts in the rules applied, so you should come to class prepared to discuss and contrast the cases assigned for that day. That will further your understanding of legal reasoning and argument. Finally, since much criminal law is statutory (codified), this course (unlike Due Process) will introduce you to the important legal skill of statutory interpretation, and its larger implications in our legal system.
With some notable exceptions, Criminal Law is state law (as opposed to federal law). Therefore, it is highly jurisdiction-specific; Massachusetts’ criminal law may differ significantly from Tennessee’s. Most of our criminal law was once based on the common law (judge-made law, arising out of judges’ efforts to be consistent in their opinions over many individual cases). Even where statutes contain definitions of the words they use they may refer to the common law to fill in gaps. States generally first codified their criminal law into statutory “codes” based on existing common-law definitions and principles of criminal responsibility.

In the 60’s and 70’s, judges and lawyers in the “American Law Institute” (ALI) proposed to states a way of standardizing and clarifying state criminal codes: the Model Penal Code (MPC). No state has adopted the entire MPC, but enough states have adopted enough of it to use it as one way to learn the basics of criminal law.

In many sections of the syllabus, we will start by looking at how a matter is handled in common law. Then we will look at how the same matter is handled under the relevant provision of the MPC (in those states which have adopted that MPC provision).

And there may be even more ways in which some states handle the matter – having rejected the relevant MPC provision. You will need to know each of these approaches: the common law’s approach, and the MPC’s approach, and any other relevant statutory rule we study – and how they differ. This may seem like a lot to learn, but it’s actually easier, and more important, than simply memorizing one set of rules, which can change. By comparing approaches, each rule comes alive; you will be examining the effect of choosing between two different policies, which is much more satisfying, and a better way to remember the rules.

You might take notes at times by drawing a line down the center of your page, noting arguments for one side of the debate on one side of the line, and arguments on the other side of the debate on the other. It is only in the way rules are applied that they can be identified as rules. Mere words on a page are not rules in themselves. So debates about application are important.

The interaction of interpretation and statute is key to criminal law. Please note, therefore, that you must read carefully both the listed portion of the MPC, which can be found in the Appendix to your casebook, as well as any assigned cases.

Communication (Email): You should check your email at least once daily for course announcements, and/or supplementary materials. For example, I may send questions for the next days’ discussion.

Attendance: Attendance is required; frequent absences, or arriving late to class, will be reflected in your participation grade. Please arrive early, and with time to get focused, turning off cell phones before class. (I’ll try my best to do keep up my end of the deal by starting class on time). Computers should be used in class only for taking notes. If it seems that they may be presenting a distraction, I’ll simply ask that they all be turned off. Please remember to turn off other electronic devices.

Class preparation, participation, and presentations: You should come to class prepared to contribute to a lively and informed discussion, having read the cases for that week (in other words, you must read ahead), and bringing your questions. You should be able to summarize the facts of the case, identify the relevant legal issues, and the result of the case, as well as the court’s reasoning. Such preparation requires not only
reading the assigned materials, but also thinking about the reading, particularly your own positions on it, and preparing answers to the questions raised in the notes and assigned problems, even if we do not get to all of them in class, looking up the meanings of unfamiliar terms or concepts in a dictionary, preferably a legal dictionary (that is also what it takes to build vocabulary for the GRE’s or LSAT’s – there’s no shortcut). And please bring questions to clarify your understanding of the material. Class discussion is an important way of learning the material, and discussion includes listening carefully to peers.

This course often sparks debate, sometimes heated. Despite disagreements, students must treat one another with respect at all times. Please let me know right away if you believe that you have not been treated with respect by anyone in the class, or by me; we all may have something to learn, which is why we’re all here.

Please keep an eye on the news (which is always a good idea, in any event). I recommend the New York Times’ and the Boston Globe’s web sites if you don’t get the paper delivered. We may discuss current cases in class, and you should have some familiarity with them.

**Quizzes & Examinations:** Your performance on the mid-term examination will constitute 20% of your grade for the course, and your performance on the take-home final examination, distributed on the last day of class, and due in the middle of finals week, will constitute another 20% of your grade. Your performance on any unannounced quiz may have weight in your participation grade.

**Papers:** Two (2) papers, each approx. 4-6 pages in length will be required, the first to be assigned about one-quarter of the way through the semester, and the second about three-quarters of the way through, each due in class, a little over a week after they are assigned. The quality of your writing – in terms of syntax, organization, persuasiveness, etc. -- is important.

**Extra Credit:** An extra credit option(s) may give you the opportunity to earn a few additional points toward your final grade-point total; it will be explained if and when it becomes available.

**Academic Honesty:** Plagiarism, or cheating of any kind, will not be tolerated, and will result in a failing grade. It is also likely to lead to more serious sanctions. Please review your University’s policies.

**Grading:** Please refer to the attached grading policy. As explained above, the two papers, and the mid-term exam, will each be worth 20% of your grade, for a total of 60% of your overall grade for the course. The take-home final examination will count 20%. Attendance (required), and participation in class discussion will count 20%, part of which will be based on your performance on an in-class exercise on the Death Penalty, and part of which may be based on in-class quizzes. The quality of your participation will be as important as the quantity. You will not be awarded a grade in the course unless you complete/submit all required work.

**Office Hours:** Email is the best way to reach me, and to set an appointment. Please come see me! My office hours are listed at the top of the syllabus. But, if you believe you need help, do not wait to seek it; the sooner you seek help, the better you will do; email for an appointment outside of office hours if need be!

**TRACE Survey Participation** is expected and appreciated; it really helps!
**PAPER SUBMISSION POLICY**

All work is due in class on the due date, delivered yourself. I do not approve extensions in advance.

(Adjusting due dates is unfair to your peers, and may be not be helpful to you. This policy is also necessary to manage my time; papers are most easily graded as a batch.)

So, if you submit a paper late (or not in class) for any reason, you bear the risk of a grade reduction.

BUT:

If you anticipate a problem, email me as soon as possible explaining the problem, AND explaining specifically when I can expect the paper. Then, print the email for later submission with your paper. (This does not, of course, constitute advance approval of an extension to that date).

If you can submit any version of the paper at all by the paper deadline, please do so by email, or in hard copy, along with a note explaining that a more complete version is coming, and when I can expect it.

Submit the late paper in hard copy to me, in person, or to a department administrator, with the original email thread attached, including any additional paragraph of explanation attached, along with any other supporting paperwork, including any earlier-submitted version of the paper. (NOTE: Papers slipped under my door or left in my box can be marked as received only when I first see them, and I do not visit my office every day).

If the paper is submitted within 48 hours of the deadline with no explanation, or without adequate explanation, and is not submitted as soon as possible (given the explanation), there will be a half-grade (e.g. B+ → B) deduction. If the paper is submitted more than 48 hours after deadline but within one week of the deadline, without adequate explanation for the delay, there will be a full grade deduction.

Work submitted over one week late may not be graded.

Work for other courses will not generally be considered adequate explanation for lateness since papers are assigned well in advance and your peers are in the same boat.

Computer problems, though very real and ubiquitous, are not good excuses, particularly for a delay of longer than a few hours. Please have back-up systems in place.

Travelling with a team may be a good reason for submitting a paper by email, until a hard copy can be delivered, but it is not a good reason for submitting a paper late. (Ideally, you should submit the paper in hard copy before leaving).

Please follow any emailed paper with a hard copy as soon as possible, including a dated print out of the thread by which you delivered your paper by email, so that I don’t have to comb my “inbox” to confirm the claimed submission date. A paper submitted only as an email will not be graded unless there are very special (think: hospital-admission) extenuating circumstances, warranting explicit permission.
GRADING POLICIES

Grades are to be a source of motivation to learn, an evaluation of your work, and, most important, a communication to you of how you can learn better.

But what is most important is HOW you can LEARN better. If you want to know, I would be glad to talk to you about that further, particularly if you evince an interest, not only in getting good grades, but actually LEARNING.

**Points will be deducted from your participation grade for:**

1. Asking any question during class which pertains only to your grade, or to grades generally. This is especially true of the question, “will this be scaled?” If you would like to discuss your grade, please make an appointment. (But see #5).

2. Asking questions in class which you know will take us absurdly afield of the issue under discussion.

3. Asking questions immediately before class (unless you are telling me quickly why you must slip out of class early; it’s helpful to know that). Before class, I am busy preparing, and need to focus on the material to be presented.

4. Asking questions immediately after class which should be addressed by making an appointment (i.e. – any question which takes longer than about a few minutes to address). Please ask about appointments through email; office hours are posted. Unfortunately, I cannot remember at such moments your telling me that you won’t be in class on some day for some reason, though I do appreciate your telling me. Please do that by email (follow-up), too. After class, I must vacate the classroom for other professors, and return quickly to other duties, including teaching matters, matters for my law practice, making commuter trains home, and, occasionally, parenting.

5. Asking questions about your grade without bothering to ask any substantive question about the course material; surely you must have at least one.

6. Repeatedly asking questions about grading policy which can be answered by consulting the syllabus or class materials.

7. Complaining repeatedly that grading policies are unfair. My grading policies are carefully considered. I would not use grading policies which I thought were unfair. If you think they are unfair, please let me know briefly (it is useful for me to consider your thoughts, so I can reconsider mine), but if that yields no result you find satisfactory, then please take the matter up with someone other than me.

8. Complaining that you are not receiving your paper or exam back quickly enough. This is especially true if you ask for an assignment back within about a week of its being submitted, and it is ESPECIALLY true if YOU turned in an assignment late, or by email, for any reason. Have confidence that I want to get it back to you as quickly as I can, because it is an important learning tool.
9. Seeking information about your grade on a paper without collecting the paper itself with comments. This is especially true if it is accompanied by the phrase, “I just want to know what I got on it.”

10. Not collecting your paper with comments. It takes work to grade papers, and they are intended as a communication to you.

11. Asking whether class will be cancelled on a given day because it adjoins a holiday even though it is on the University’s class schedule. Cancelling such classes is not generally fair to people who have paid for that class, and your absence from it denies them the learning community you were accepted to provide. If you miss such a class, you must make some provision to learn covered material. If class is to be cancelled for any reason, that will be announced in the syllabus, or by email.

12. Asking, “Will we be doing anything important in class on_____” and/or “would you be willing to send me notes for that class.” You must make your own arrangements with respect to classes you miss, though I’d be happy to talk to you about the class after the fact. I cannot, however, afford you a full private lesson if you missed the class, unless you have a doctor’s note or another excellent excuse explaining your absence, and you have exhausted other options.

13. The phrase, “I don’t deserve the grade ___ because I’m just not a ___ student.” Grades are an evaluation of your work, not of you.
CRIMINAL LAW SYLLABUS

**Please note that these dates and assignments are subject to change, and we may not cover all the material listed. Additional reading may be posted.***

WEEK 1 –
Wed, Sept 9
Fri, Sept 11

I. INTRODUCTION TO CRIMINAL LAW

INTRODUCTION TO CRIMINAL LAW, AND THE THEORIES OF PUNISHMENT, AND THE QUESTION OF WHETHER ARE THEY JUST.
(Retributivist vs. Utilitarian Theories)

II. THE ROLES OF JUDGE VS. JURY AT TRIAL
AND THE PROSECUTION’S SEVERAL BURDENS OF PROOF:

A. THE PRESUMPTION OF INNOCENCE,
AND PROOF OF GUILT “BEYOND REASONABLE DOUBT”
(The Winship standard)

*In-class Jury Deliberation on Owens v. State*
II. ROLES OF JUDGE VS. JURY (CONTINUED)

Owens, (continued)

CB: pp.9-19 (SKIP REASONABLE DOUBT INSTRUCTIONS**)
Supp. pp. 1-4; p. 29-33

***

B. REVISITING “PROBABLE CAUSE” TO SUSTAIN A CHARGE AND THE MOTION TO DISMISS

C. THE PROSECUTION’S “BURDEN OF GOING FORWARD”;
   - The Burden to present Minimally-Sufficient Evidence;
   - The Motion for Directed Verdict of Not Guilty

D. THE SPECIAL ROLE OF JURY INSTRUCTIONS

E. “JURY NULLIFICATION,” AND THE CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY

F. PLEA BARGAINING AND SENTENCING

POSSIBLE FILM ASSIGNMENT:  “TWELVE ANGRY MEN”

III. SOURCES OF CRIMINAL LAW – WHERE IS IT?

- Common Law
- Statutes (supersede common law)
- Constitution
- International Law
- Model Penal Code (MPC) – as a model statute
- Administrative Regulations
- Civil Law?

IV. HOW DO CONSTITUTIONAL RIGHTS LIMIT SUBSTANTIVE CRIMINAL LAW AND PUNISHMENT?

Reading:
CB: pp. 1-5
V. THEORIES OF PUNISHMENT IN APPLICATION:
CRIMINALIZATION, AND SENTENCING

A. WHAT’S A “CRIME”?; WHAT SHOULD BE DEEMED “CRIMINAL”?

B. WHAT’S PUNISHMENT? WHY PUNISH?

Reading:
CB: 30-50;
p. 58 note 6;
Supp. 11-24

C. HOW MUCH SHOULD WE PUNISH?;
“Proportionality” and the Eighth Amendment;
Methods of Punishment,
and an Introduction to the Death Penalty

Reading:
CB pp. 69-91 (Kant, Bentham, Coker and Ewing)
Supp. pp. 53-69

VI. THE “ELEMENTS” OF CRIME:

-Actus Reus
-Mens Rea
-Causation

A. HOW SHOULD WE READ, AND WRITE, CRIMINAL STATUTES?

Reading:
CB: pp.105-119 (Banks, Morales)

[POSSIBLE ADDITION: FOSTER]

Reading:
Supp. 4-9

[POSSIBLE ADDITION ON SHAMING PUNISHMENT: GEMENTARA]
WEEK 4  
Wed., Sept 30  
Fri,. Oct. 2

A. WHEN CAN ONE BE SAID TO HAVE “ACTED”?  
(THE REQUIREMENT OF ACTUS REUS)

Reading:
CB: pp.127-130 (Actus Reus, thru Martin v. State, and notes following),
and pp.134-140 (notes 5, 6 - Decina, 7, 8, 9, Beardsley.
and notes 1-4 following Beardsley, with particular attention to the 
Kitty Genovese case);
MPC § 2.01
Supp. pp 91-94

B. DO THOUGHTS COUNT?  
(THE REQUIREMENT OF MENS REA?)

Reading:
CB: pp. 153-170 (Conley, skip over notes on transferred intent MPC 
approach, State v. Nations)
MPC § 2.02
Supp. pp. 126-142 (*skip transferred intent on p. 132); p.144 
(recklessness), and pp. 148-49
C. IS IT ALL RIGHT IF YOU JUST MADE A MISTAKE?
   i. ....SOMETIMES, NO:
      (STRUCT LIABILITY)
Reading:
CB: 186-193 (Garnett)
MPC §2.05
Supp. pp. 155-159

   ii. ....AND SOMETIMES, YES:
      (MISTAKE DEFEATING PROOF OF “SPECIFIC” INTENT,
       AND, SOMETIMES, GENERAL INTENT)
Reading:
CB: pp. 194-194 (Navarro, thru note 3)
MPC §2.04
Supp. pp. 163-169

D. THE “INCHOATE” (incomplete) CRIMES OF ATTEMPT,
   SOLICITATION, AND CONSPIRACY:
   WHEN HAVE YOU GONE TOO FAR?
Reading:
CB: 748-755; “Initial Effort…”, Peaslee, Rizzo , and notes)
MPC § 5.01
Supp. pp. 405-408, 414-440
E. BUT WAS THE DEFENDANT TRULY THE “CAUSE” OF THE HARM?
   1. SINE QUA NON/“BUT-FOR”/“CAUSE-IN-FACT” CAUSE vs.
   2. “PROXIMATE”/“LEGAL” CAUSE

Reading:
CB pp. 215-220 (Oxendine, and “Proximate Cause”)
Kibbe v. Henderson; (to be posted on blackboard)
MPC § 2.03 (2)(a)&(b)

VIII. CRIMINAL HOMICIDE, AS AN EXAMPLE OF CRIME:
      -IS THERE MORE TO MURDER THAN KILLING SOMEONE?

A. “INTENTIONAL” CRIMINAL HOMICIDE

   1. MURDER - The four types recognized at common law:
      a. Intent to kill (“Malice”)
      b. Intent to do serious bodily harm
      c. Extreme Recklessness (“Depraved Heart” murder)
      d. Felony Murder

   2. MURDER UNDER THE MPC

   3. "FIRST-DEGREE" MURDER: THE EXAMPLE OF
      “PREMEDITATION” – can you kill without thinking?

Reading:
CB: 235-247
(tese pages contain, among other things, different state homicide laws; just
notice variations among state homicide crimes; do not worry about trying to
understand each law; see if you can identify one or two differences between
two states’ definitions of the same crime);
CB: pp. 253-263 (Guthrie; Midgett; Forrest)
MPC §210.0 – §210.2
Supp pp. 543, et seq.
4. VOLUNTARY MANSLAUGHTER
(CULPABILITY FOR MURDER MITIGATED BECAUSE OF THE UNCONTROLLABLE “HEAT OF PASSION”)

a. Who counts as a “Reasonable” Person?
b. What’s “Adequate Provocation” for that person?
c. How long does “heat” last before they “Cool”?

Reading:
CB: 259-270 (*Giraud v. State*); 281-288 (Model Penal Code version of manslaughter; *People v. Casassa*)
MPC §210.3
Supp. pp. 571-583

B. UNINTENTIONAL CRIMINAL HOMICIDES— KILLING BY RISK-TAKING “IN VOLUNTARY” MANSLAUGHTER
(or “criminally negligent homicide”)

Reading:
CB: pp. 304-315 (*Hernandez; Williams*, thru note 5)
Supp. pp. 583-585
WEEK 8
Wed., Oct. 28
Fri. Oct. 30

***SELF-EVALUATION QUIZ***; review

**********MIDTERM EXAMINATION**********
(In-class Death Penalty exercise, to be POSTED)

WEEK 9
Wed. Nov. 4
Friday Nov. 6

In-class DEATH PENALTY EXERCISE

ELECTRONIC RESEARCH EXERCISE TO BE POSTED; DUE NEXT CLASS.

C. SHOULD WE KILL KILLERS?
(THE DEATH PENALTY AND THE CONSTITUTION)

Reading:
CB: 345-369 (Gregg; McCleskey)

WEEK 10
Wed. Nov. 11 – NO CLASS – VETERANS DAY
Fri. Nov. 13

**********Writing Assignment #2 likley DISTRIBUTED**********

IX. DEFENSES – WHEN IS CRIME JUSTIFIED, OR EXCUSED?
A. AN INTRODUCTION TO DEFENSES:
IS “JUSTIFIED” BETTER THAN “EXCUSED”?
Reading:
CB: 480-486 (note 1)

-- CIVIL DISOBEDIENCE – A CRIME, OR DEFENSE?
B. NECESSITY AND DURESS  
– DID YOU REALLY HAVE A CHOICE?

Reading:
CB:  560-566 (Nelson v. State, and ALI Comments); 572-580 (Queen v. Dudley and Stephens & Notes, and Kadish on Excusing Crime); 583-586 (United States v. Contento-Pachon)
MPC: §§ 2.09; 3.02
Supp. pp. 323-330

C. SELF-DEFENSE – WHERE’S THE FINE LINE?

Reading:
CB:  500-532 (Peterson, Goetz, Wanrow, and notes)
Supp. pp. 243-248
MPC §3.04; 3.05

D. BATTERED WOMEN’S SYNDROME:  
A JUSTIFICATION OR AN EXCUSE?

Reading:
CB:  pp. 532-546 (State v. Norman x 2)

POSSIBLE FILM: DEFENDING OUR LIVES

Nov. 25
Nov. 27

**********THANKSGIVING BREAK*************
WEEK 12
Wed. Dec. 2
Fri. Dec. 4

************Likely DUE date for Writing Assignment # 2************

E. INTOXICATION
- CAN DRINKING BE TANTAMOUNT TO KILLING?

Reading:
Supp. pp. 345-350
MPC §2.0

F. INSANITY – WHO’S THE VICTIM?

Reading:
Supp. pp. 363-392
MPC § 4.01; 4.02

G. DEFENSES AT THEIR LIMITS - CAN WE EXCUSE SOCIETY?
   -- THE CULTURAL DEFENSE
   -- THE ROTTEN SOCIAL BACKGROUND DEFENSE

Reading:
CB: pp.715-717 (The “Rotten Social Background” defense)

WEEK 13
De. 9 - LAST CLASS/LAST DAY OF CLASSES

[POSSIBLE ADDITION: HATE CRIME]

Dec. 11th - FINAL EXAM DISTRIBUTED (TAKE-HOME)
Dec. 18th – FINAL EXAM DUE**

Grades posted: Dec. 21.

---

THE TAKE-HOME FINAL EXAM WILL BE DUE APPROXIMATELY ONE WEEK FROM ITS DISTRIBUTION DATE, AT OUR USUAL CLASS TIME, AND AT OUR USUAL PLACE (**STUDENTS WHO MUST LEAVE CAMPUS EARLY FOR PRESSING REASONS SHOULD CONTACT ME TO EXPLAIN, AND MAKE ADVANCE ARRANGEMENTS).