

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW
LAW 516, CRIMINAL LAW—Section 1
Professor Chris Behan
Fall 2019

COURSE MEMORANDUM & SYLLABUS

1. Course Description and Objectives

Criminal law is perhaps the most fascinating legal discipline imaginable. In studying crimes, criminals, and governmental responses to criminal behavior, we will grapple with issues that go to the very heart of who we are as individuals and as a society: What conduct constitutes criminal behavior? Where should we invest community financial resources for law enforcement and corrections? Who should be punished, and how should we punish them? To what extent should the age, social class, race, ethnicity or gender or the alleged criminal affect the application of criminal law? What role should a victim's wishes play in a criminal prosecution?

We will not, however, spend all our time with our heads in the clouds of policy and philosophy; every day, we will dive down into the weeds of factual nuances, common law rules, and specific statutory provisions. Closely reading and carefully interpreting cases and statutes is a vital function of understanding criminal law. Applying a set of facts to a statute—a task that prosecutors and defense counsel perform every day—is fundamental to any study of American criminal law.

At the end of the semester, you should be able to:

- a. Analyze a set of facts and apply the appropriate criminal law statute to those facts.
- b. Intelligently address policy issues and controversies related to criminal law.
- c. Understand and apply basic canons of statutory interpretation.
- d. Understand basic criminal law concepts including, but not limited to, legality, *actus reus*, *mens rea*, intent, and defenses.
- e. Have a working knowledge of the substantive criminal law subjects covered on the bar examination.

2. My Contact Information.

a. *General.* My office is in Room 254. Telephone number is 453-8722. E-mail address is cbehan@siu.edu. Mobile number is 618-521-1849, if you need to text me or have an emergency. Order of preference for contacting me: email, text, telephone. Please include your name when you text, as I am otherwise unlikely to know who you are.

b. *Office Hours.* I have an open-door policy. If I am in my office and the door is open, you are welcome to stop by and talk. Otherwise, I plan to keep regular office hours on Tuesdays and Thursdays from 2:00-4:30. My teaching assistant, Trish Pfeiffer, will also have office hours and will post those at the beginning of the semester on the TWEN page.

c. *Electronic Communication.* Check your e-mail daily. I will use your TWEN e-mail address to send messages pertaining to class. Please feel free to e-mail me with questions and other observations about the class.

d. *Problems and Issues.* Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student does or says something insensitive or inappropriate that is not properly resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please come see me so we can discuss it and resolve it. Some of my best growth and development as a professor has come from students taking the time to alert me to issues or problems I had not previously been aware of.

3. Class Time, Room and Seating Chart

This class meets Wednesday from 9:00 am to 10:15 am, and Friday from 11:00-12:15, in room 108 of the Law School.

We will have a seating chart. Please sit with the members of your litigation team on Wednesday, August 20. We will finalize the seating chart on this day.

4. Litigation Teams and Class Participation

Each team consists of three or four students. You must select your own litigation teams by class time on Wednesday, August 20. Bring a 3x5 notecard with the following information to class on that day:

- (1) The name of your litigation team (pick your own name, but please do not pick an inappropriate name)
- (2) The names of each participant, along with his or her undergraduate institution, major and hometown
- (3) An interesting fact, unknown to most people, about each member of the team.

In class, I call on litigation teams randomly. All teams must be prepared to discuss all aspects of the cases and materials assigned for the day. I do not permit members of a litigation team to either dominate the discussion at the expense of other members, or to avoid participating by hiding behind the other team members. When I call on a team, I ensure that all members of

the team participate. It's in your best interest to meet as a team before class to ensure that everyone is prepared for class.

Although litigation teams are primarily responsible for the day's discussion, all students in the room should be prepared to participate in the discussion. I call on students randomly, and I also welcome your voluntary participation. I expect students I call on to be prepared to argue either side of the issues we address in class. The assigned reading materials are an ideal resource to prepare you to make clear and cogent arguments in class. In most classes, you can expect up to one-third or more of class members to be called on to participate.

Some of our classroom interaction will occur by means of the Socratic method, during which I closely question you as you make your best argument for or against an idea, legal position, or precept. However, we will also use group discussion, mock courtroom arguments in class, and so on. You should be prepared to participate in a variety of ways in our classroom dialogue.

Does class participation matter? Yes: the dialogue in class is an essential part of learning to think like a lawyer. Pay attention even when you are not actively participating. As an incentive to spur your preparation and participation, class participation is worth 10% of your grade. *Even though I call on teams, I grade class participation individually.*

You don't have to be brilliant, but you must prepare and you must participate when called on.

An important note about classroom participation. Criminal law is a messy business and often involves controversial or painful subjects. Please be respectful of the viewpoints and experiences of others as we discuss these topics. If you or someone to whom you are close has been a victim of the type of crime we are discussing for the day, please let me know before class that you would be uncomfortable participating in the day's discussion. I won't call on you, and I don't need to know the specific reasons for your discomfort. If, however, your objection to participation is merely ideological (for example, if you are morally opposed to the death penalty and don't want to be asked to give arguments in favor of the death penalty), you're out of luck. A good lawyer is able to see the merits and shortcomings of all arguments pertaining to an issue.

5. Workload and Preparation for Class

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), "a 'credit hour' is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time." This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of **at least 9 hours per week (3 in class and 6 preparing for class) on course-related work.**

6. Submitting Case Briefs & Problem Case Discussions

In order to ensure that you meet the workload standard, you are required to turn in an electronic copy of your case briefs prior to the beginning of each class on the TWEN dropbox. You can turn them in as one document or as separate documents. The work you submit for each class session will receive a combined grade, as explained below.

These submissions are automatically time-stamped by the TWEN system. Late submissions will receive an automatic 50% point reduction. If it doesn't appear in the TWEN dropbox, for my purposes, you didn't turn it in. Email submissions don't count. Bringing a hard copy to class doesn't count. If you are going to be absent, you can turn in the materials anyway, by the deadline, and still receive credit. If you miss class, and also fail to turn in the materials by the deadline, you will simply receive a 0 for that day. I recommend that you bring a hard copy to class to assist you in class discussions and help you with note-taking.

Your case briefs must contain the following elements. If any of these elements are missing, you receive an automatic 50% point reduction. (If this looks familiar to you, it should: it is the very same format that Professor Fountaine, your Torts professor, requires.)

Your name and the date at the top left of the page.

For each principal assigned case in the reading

1. Case Name, Court, Date
2. Facts (a brief paragraph, no more than 3-5 sentences)
3. Prior History (procedural posture and what happened in the court below)
4. Issue (might have multiple issues; if so, repeat 4-10 for each issue separately)
5. Result (who wins and what is the disposition (affirmed, reversed, remanded, etc.))
6. Legal Rule/Test/Standard
7. Analysis/Reasoning
8. Holding
9. Policy
10. Dicta/Court's Cautionary Notes/Explanatory Information
11. Concurrence(s)/Dissent(s)
12. Other Notes (include here your own notes about vocabulary, thoughts about the, questions/things you don't fully understand, things you want to be sure to remember, etc.)

My teaching assistant will screen these items for compliance with above requirements and will grade them as follows:

10 points. Submitted on time. Meets the formatting and technical requirements for the assignment. Shows genuine effort and insight.

5 points. Document is late (even by a minute) but otherwise meets requirements.

0 Points. Document is not turned in or shows serious deficiencies in the formatting and technical requirements for the assignments. Apparent effort is insufficient to demonstrate actual compliance with the assignment.

7. Policy on Collaboration and Plagiarism. Any work product that you turn in during this class must be entirely your own. Although you are encouraged to study together and to prepare for class as a litigation team, you cannot turn in another person's work product and claim it as your own. This applies to case briefs as well. When you turn these documents in on the TWEN dropbox, you are required to click a box certifying compliance with this policy for that assignment.

8. Listening, Note-Taking and Computer Policy.

Computers are not permitted in class. Active, sustained listening, without the distraction of electronic media, is an absolutely critical skill for lawyers. Lawyers do not access the internet during trials, depositions or client meetings, nor, in most cases, do they use computers to take notes during these events. I expect you to listen in class. From time to time, I will ask a random student to summarize or critique the argument another student has just made.

I will use a few Powerpoint slides in the classroom and make them available after each class session in PDF format on the TWEN page. As you'll learn, however, these slides are not an adequate substitute for taking notes. They are minimalist in nature, typically consisting of pictures and questions.

From time to time, I may give ungraded electronic quizzes or surveys in class on a platform that permits you to answer on a smartphone. This is the only time smartphone use is permitted in class.

9. Policy on Recording Class

You are not authorized to record the class. The class will, however, be recorded every day as per law school policy. If you must miss class because of an illness or school-related activity, you may ask me for access to the recording for the missed class, and I will freely grant such petitions for truly meritorious situations. Sleeping in, skipping class, shopping, recovering from a night of revelry, or other similar activities are not considered meritorious.

10. Course Materials

a. Coursebook. Our primary classroom text is Ohlin, *Criminal Law: Doctrine, Application, and Practice* (2d edition 2018). This book is available at the SIU campus bookstores, the 710 Bookstore, the Saluki Bookstore, and through online vendors. This year, I am switching to this book from an entirely different book.

b. TWEN Page. Other course materials can be found on the Westlaw TWEN page associated with this course. You are responsible to check the TWEN page and to read any assigned materials posted to the TWEN page.

c. If you need supplementary materials, the law library has a substantial number of treatises and other materials on reserve in the criminal law section. These resources are useful in understanding difficult concepts or providing a more in-depth look at different criminal law subjects. A particularly useful resource is Joshua Dressler, *Understanding Criminal Law* (6th ed. 2012).

d. Commercial Study Aids. I neither endorse nor recommend their use. Some students believe that commercial outlines are a good substitute for reading the assigned text, participating in class, and working to understand the material on their own. Those students are wrong. Commercial study aids, if abused, are a great way to earn bad grades and, eventually, fail the bar.

11. Attendance Policy & Classroom Etiquette

Attendance is required. You may miss no more than four (4) classes during the semester. I will pass around an attendance sheet every day. Your original, genuine initials on the attendance sheet certify two things: (1) you are **physically present**; and (2) you are **prepared** for class. "Prepared" means that you have read the assignment, completed any written assignments, and thought about any assigned questions or problems so you can discuss them in class if called upon. You are on your honor for this.

Come to class on time. It is a tremendous distraction to everyone when someone strolls in after class has begun.

Act like a professional in class. Be courteous to the others in the classroom by keeping distractions to a minimum and giving the class your full attention. Do not text, send instant messages, or hold private conversations with others during class. If it is necessary for you to leave the classroom while class is in session, please minimize the disruption when entering or exiting the room.

I also expect you to act like a professional *after* class. I am often saddened to learn that some students engage in social media flame-fests during or after class, mocking other students for viewpoints and thoughts expressed during class. Such behavior is beneath members of a learned profession. Depending on the severity of the behavior, it may also violate the SIUC Student Conduct Code rules prohibiting harassment, bullying, obstruction or intimidation, or

harassment via technology. See SIUC Student Conduct Code § 2.3.5. If you are the victim of or witness to such behavior, please let me know.

12. Grading and Evaluation

I will evaluate your work in several ways:

- a. Classroom preparation and participation. **(10% of your final grade.)** Everyone will be called on and will have opportunities to participate. Make sure you are prepared! I will assign 100 raw points for classroom preparation and participation. These will be scaled to be worth 10% of the final grade. Everyone starts out with 80 points. You can earn up to an additional 20 points through consistent superior preparation and performance in classroom discussions throughout the semester; this determination is in my sole discretion and is not appealable. At the end of the semester, I will ask each of you to turn in a self-evaluation memorandum explaining what grade you believe you should earn from classroom preparation and participation, supported by a sound narrative explanation and evidence. I will then compare your notes and mine and assign total points for this area of assessment.

You can also lose all 80 of these initial points for deficient preparation and/or classroom performance. If I call on you and you are unprepared, inadequately prepared, or not paying attention, you will lose 10 raw points for that day. Also—if you attempt to excessively dominate classroom discussions by blurting out answers without being called on, talking over your classmates, treating classmates or the process disrespectfully, sighing or acting put out if I don't call on you, or engaging in other unprofessional classroom behavior, you will lose 10 points on the day.

- b. Writing Across the Curriculum Assignment. **(Ungraded, but you must demonstrate proficiency to get credit.)** This will be an essay question administered electronically and assessed personally by me. If you do not demonstrate proficiency on the essay, you will be required to rewrite it after receiving feedback on it until you demonstrate proficiency. Details to be provided later.

- c. Midterm Examination. **(10%.)** This examination will be administered on Thursday, October 10 as part of 1L Formative Assessment Week. It consists of both multiple choice and essay questions. Further details about the midterm will be forthcoming later in the semester.

- d. Case Briefs and Reflection Paper. **(10%.)** These points will be totaled at the end of the semester and scaled to be worth 10% of the final grade.

- e. Final examination. **(70%.)** The final examination is closed book and cumulative, meaning that it covers the entire semester. The examination is scheduled for Friday, December 13, at 8:15 am. Further details about the exam will be forthcoming later in the semester, but it will be a mix of multiple choice and essay questions.

12. University Information and Policies. See the Provost’s syllabus attachment at <https://law.siu.edu/academics/semester-info/syllabi/fa-19.html>.

13. Law School Policies and Procedures. Posted as a separate PDF document on the course TWEN page.

14. Reading Schedule.

The following is the reading schedule for the first eight weeks of the term. The reading schedule is flexible, and I reserve the right to change it if I believe we need to spend more time on a particular topic. Think of the reading schedule as similar to an airline flight schedule. Even though flights are occasionally delayed, you still have to be at the airport on time. In other words, even if we don’t finish a particular topic on the assigned day, you still have to be prepared for the next day’s material. We always catch up!

Week	Class	Date	In-Class Topic	Reading & Other Assignments
0	1	16 August	Chapter 1. Introduction to Criminal Process	Ohlin, 3-23 Principal cases: <i>Owens, Ragland</i>
1	1	19 Aug (This week we meet M-W, not W-F)	Chapter 2. Punishment	Ohlin, 25-54 Principal cases: <i>Brewer, Madoff, Gementera</i> Sign up on TWEN to meet with Professor Behan during office hours.
	2	21 Aug	Chapter 4. Fundamental Principles of Criminal Law.	Ohlin, pages 89-118 Principal cases: <i>Street, Rogers, Lewis, Morales, Bell.</i>
Note: I will be out of the country from Thursday, 22 August to Monday, 1 September. Accordingly, we will not hold class meetings during the week of 26-30 August. We will still have assignments during that week for which you are responsible, as explained below.				
2	3	28 Aug	The assignment for this class is to write a reflection paper on prosecutorial discretion and Stand Your Ground Laws. You’ll watch the movie <i>3 ½ Minutes, 10 Bullets</i> in your torts class on this day. In addition to the movie, I will assign some additional reading materials on the topic and will post them, along with an assignment memorandum giving more details about this assignment, on TWEN. The reflection paper will be graded according to the standards established in the assignment memorandum. In terms of raw points, it will be worth four case briefs.	

Week	Class	Date	In-Class Topic	Reading & Other Assignments
	4	30 Aug	No Class. We will not have to make this class up. The materials we covered during orientation week serve as a make-up for this class.	
	5	4 Sep	Chapter 5. The Act Requirement.	Ohlin, pages 119-140 Principal cases: <i>Utter, Pestinikas, Davis</i> Practice MEE problem: available on TWEN on 4 Sep. Due by COB on 5 Sep. Timed. Additional directions to follow. Not graded but must re-do until achieve proficiency.
	6	6 Sep	Chapter 6. Mental States	Ohlin, pages 141-163 Principal Cases: <i>Young, Bailey, Jewell</i>
4	7	11 Sep	Chapter 6. Mental States	Ohlin, pages 163-180 Principal Cases: <i>Olsen, Staples</i>
	8	13 Sep	Chapter 7. Mistakes	Ohlin, pages 181-207 Principal Cases: <i>Navarro, Sexton, Weiss, Marrero</i>
5	9	18 Sep	Chapter 8. Causation	Ohlin, 209-232 Principal Cases: <i>Oxendine, Jennings, Smith</i>
	10	20 Sep	Chapter 9. Intentional Murder	Ohlin 235-252 Principal Cases: <i>Taylor, Guthrie, Carroll</i>
6	11	25 Sep	Chapter 10. Voluntary Manslaughter	Ohlin 253-278 Principal cases: <i>Girouard, Castagna, White</i>
	12	27 Sep	Chapter 11. Reckless Killings	Ohlin 279-306 Principal Cases: <i>Kolzow, Knoller, Snyder, Biechele</i>

Week	Class	Date	In-Class Topic	Reading & Other Assignments
7	13	2 Oct	Chapter 12. Felony Murder	Ohlin 307-338 Principal Cases: <i>Howard, Stewart, Hernandez, Sophonone</i>
	14	4 Oct	Chapter 13. Negligent Homicide	Ohlin 339-456 Principal Cases: <i>Traugber, Small</i>
8	No Class This Week. 1L Formative Assessment Week. Midterm Examination on Thursday, Oct. 10. Graded. Essay and MC. More information to follow.			