

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW

LAW 516, CRIMINAL LAW—Section 1

Professor Chris Behan

Fall 2020

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](mailto: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. University rules require both of us to wear masks. Otherwise, I plan to keep regular office hours via Zoom Tuesdays from 3:00-5:00. There will be a Zoom link for these office hours on the course TWEN page. My teaching assistant, Trish Pfeiffer, will also be available. You may contact her via email at [Patricia.shermanpfeiffer@siu.edu](mailto:Patricia.shermanpfeiffer@siu.edu) or text at 618-559-7575.

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. Make sure your TWEN emails are not going into your spam or clutter files.

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, Zoom Room, and Seating Chart**

This class meets Monday and Wednesday from 9:15-10:30 in Room 120. Some class members will participate remotely via Zoom. The Zoom link for the class is posted on the TWEN page. I believe all class members—even those in the classroom—will be able to log onto Zoom and have the materials that are shared via Zoom available on their computer screens.

From time to time, I will schedule a class entirely on Zoom; on those days we will all meet electronically via zoom. If it becomes necessary at some point to switch entirely to Zoom, we will all be familiar with what to do, and the transition should be seamless.

We will have a seating chart. The seating chart is necessary not only so I can get to know you, but also for contact tracing purposes for COVID-19 if required by the university and/or the county health department. The seating chart will be finalized on Wednesday, August 19.

### **4. Litigation Teams and Class Participation**

I use litigation teams to help encourage cooperative class participation. Each team consists of three or four students. Zoom participants must also form themselves into litigation teams. You must select your own litigation teams by class time on Wednesday, August 19. Using the template posted on the TWEN page, upload a document that contains the following elements and information:

- (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.
- (4) A photograph of each team member.

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 either to 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. Policy on Collaboration and Plagiarism.** Unless otherwise indicated in the assignment instructions, 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 with others, you cannot turn in another person’s work product and claim it as your own. When you turn in assignments on the TWEN dropbox, you are required to click a box certifying compliance with this policy for that assignment.

## **7. Computer Policy, Powerpoints, and Note-Taking.**

**Responsible use of computers is permitted in class.** Active, sustained listening, without the distraction of electronic media, is a critical skill for lawyers. Good lawyers who serve their clients do not shop online during court hearings, update their social media accounts during depositions, or send text messages or emails during client meetings or negotiations. These activities divert a person’s attention from the task at hand. Worse yet, they can distract other students and interfere with their ability to concentrate and learn. I permit the responsible use of computers in class. I expect you to listen, participate, remain engaged with the material, and avoid the distractions caused by misusing computers and electronic devices in a professional environment.

**Irresponsible use of computers is not permitted in class.** I reserve the right to remove the privilege of using computers if they are being used irresponsibly and creating distractions in class. If an individual student’s computer use is creating a problem, I will remove that student’s privilege until the problem is solved. If the problem is classwide, I will remove the privilege from the entire class.

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 electronic quizzes or surveys in class on a platform that permits you to answer on a smartphone or a computer. This is the only time smartphone use is permitted in class.

## **8. Zoom Etiquette**

For those students who will be attending class via Zoom while your classmates are live, please understand that you are expected to engage with the material and the rest of the class members just as if you are in the room with us. From time to time, we will hold an entire class via Zoom.

I expect the following from anyone attending class via Zoom:

- Make sure you have a good, high-speed internet connection. If you are attending from home, ensure that no one else is using Zoom or streaming movies or video at that time. If you can plug your computer directly into a router with an ethernet cable or USB connection, you'll find your Zoom connection will be much better than simply using wifi.
- Turn off all programs on your computer except Zoom and a word-processing program if you are using one to take notes. Do not use chat services or instant-messaging services on your computer during class.
- Do not use your cellphone during a Zoom class, or any class, unless it is to participate in an online survey or quiz as directed by me.
- Unless otherwise directed, keep your video camera on and ensure the area around you is free from distractions, including pets and people. Remember, when we have a small section of students participating via Zoom, your Zoom presence is intended to substitute for your personal presence in the classroom as much as possible.
- A few things to consider when your camera is on.
  - You are free to use a virtual background if you'd like, provided it is not overly distracting.
  - If you're attending class from a bedroom or other room in your home, take the time to make your bed, pick up any dirty clothes or dishes that might be lying around, and, in general, straighten the area up to look as uncluttered and professional as possible.
  - The camera should be focused on your face and not on other parts of your body such as up your nostrils, your forehead, your neck, your chest, your midsection, any other non-face part of your body, or the wall behind you.
  - The light source in the room should be in front of you, not behind you.

- Wear acceptable clothing, such as you would wear to class. Ensure that other people in your home who might pass through camera range are also wearing acceptable clothing. Acceptable clothing does not include pajamas and/or underwear.
  - (This section is derived entirely from experience; my other students and I have, unfortunately, seen far more than we would like to see in classes or meetings in which the participants haven't complied with these recommendations.)
- Unless you are being called on, keep your microphone muted. If you would like to participate, use the Raise Hand function on Zoom to indicate this.
  - If something happens to your internet connection during class, turn Zoom off and on and log back on as soon as you can. There is no need to apologize for this; it happens to everyone. It may happen to me while I'm teaching (has happened before).
  - I likely will not activate the Zoom chat feature for our classes. I've found it to be more distracting than helpful during 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, a particularly useful resource is Joshua Dressler, *Understanding Criminal Law* (6th ed. 2012).

d. Commercial Study Aids (Bar-Bri, Kaplan, Themis, etc.). 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, unless you develop a documented illness such as COVID-19. Under those circumstances, we will make individual adjustments, in consultation with the Associate Dean for Academic Affairs, to determine what should be done in your case.

There is an attendance tab on the TWEN page. It is your responsibility to record your attendance for class each day. Recording attendance on TWEN signifies two things: (1) you are **physically present (in the room or in the Zoom room)**; 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.

Although it has never happened yet, a student could 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 Assignments. (**Ungraded, but you must demonstrate proficiency to get credit.**) There are two: (1) an essay question administered electronically and assessed personally by me; and (2) a case synthesis exercise that I will provide more details about later. For both assignments, you must demonstrate proficiency. If you do not achieve proficiency on the first draft, you will receive feedback and be required to rewrite it until you demonstrate proficiency. Details to be provided later.

c. Midterm Examination. (**20%.**) 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.

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.

### **13. Class Rhythm and Reading Schedule.**

I will provide the reading schedule for the semester to you in two halves: one for the first part of the semester, up through the midterm assessment week; and another for the second part of the semester.

Each class session consists of three parts: Preparation, Class, and Post-Class Review and Synthesis. Spaced repetition is a key to learning and understanding material. Thus, reading and preparing before class, participating in class, and then reviewing and synthesizing material after class ensures you will learn the material and be prepared for exams.

- a. Preparation. Your preparation for each class should consist of the following: (1) watch/listen to the short (10-15 min) pre-class podcast that I will post prior to each class (there may be a few times I decide not to post a podcast; if so, I will email and let you know; but you should plan on a podcast for most classes); (2)



read the assigned materials; (3) brief each case in the reading, in writing; and (4) think about and answer for yourself the problems and questions that are in the book.

- b. Class. Arrive to class early and prepared. Listen to what is going on in class. When another student is speaking, evaluate their answers to questions and the reaction and follow-up questions from the professor. Take good notes (you don't need to be a stenographer; in fact, it is a bad idea to try and write every word you hear in class; but you should learn to take notes that help you identify and understand the main concepts discussed in class).
- c. Post-Class Review and Synthesis. Each week, you should review your class notes from that week while the class is still fresh in your mind. If you have questions, contact me and/or my teaching assistant. Use office hours, email, and/or text to make contact and communicate. Get those questions answered while they are still fresh! Later in the semester, you might look at your notes and no longer remember what you once questioned. Start writing your course outline early in the semester.

**14. University Information and Policies.** See the Provost's syllabus attachment at [https://pvcaa.siu.edu/ common/documents/provost-memos/syllabus-attachment-fall-2020.pdf](https://pvcaa.siu.edu/common/documents/provost-memos/syllabus-attachment-fall-2020.pdf).

**15. Law School Policies and Procedures.** Posted as a separate PDF document on the course TWEN page at [https://law.siu.edu/ common/documents/courses/fa-20-syllabi/law-school-fall-2020-attachment.pdf](https://law.siu.edu/common/documents/courses/fa-20-syllabi/law-school-fall-2020-attachment.pdf)

**16. 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 topic. Think of the reading schedule as like an airline flight schedule. Even though flights are occasionally delayed, you still must be at the airport on time. In other words, even if we don't finish a particular topic on the assigned day, you still must be prepared for the next day's material. We always catch up!

Week	Class	Date	In-Class Topic	Reading & Other Assignments
1	1	17 Aug	Chapter 1. Introduction to Criminal Process	Ohlin, 3-23  Principal cases: <i>Owens, Ragland</i>
	2	19 Aug	Chapter 2. Punishment	Ohlin, 25-54  Principal cases: <i>Brewer, Madoff,</i>

Week	Class	Date	In-Class Topic	Reading & Other Assignments
				<p><i>Gementera</i></p> <p>Sign up on TWEN to meet with Professor Behan during office hours.</p>
<p><b>NOTE: WE ARE NOT COVERING CHAPTER 3 ON THE DEATH PENALTY. THAT TOPIC IS COVERED IN THE SENTENCING CLASS AND CRIMINAL PROCEDURE: POST INVESTIGATIONS CLASS.</b></p>				
2	3	24 Aug	Chapter 4. Fundamental Principles of Criminal Law.	<p>Ohlin, pages 89-118</p> <p>Principal cases: <i>Street, Rogers, Lewis, Morales, Bell.</i></p>
	4	26 Aug	Chapter 5. The Act Requirement.	<p>Ohlin, pages 119-140</p> <p>Principal cases: <i>Utter, Pestinikas, Davis</i></p>
3	5	31 Aug	Chapter 6. Mental States	<p>Ohlin, pages 141-163</p> <p>Principal Cases: <i>Young, Bailey, Jewell</i></p>
	6	2 Sep	Chapter 6. Mental States	<p>Ohlin, pages 163-180</p> <p>Principal Cases: <i>Olsen, Staples</i></p>
4	7	7 Sep	<p>Labor Day Holiday. Make-up assignment for this class is practice MEE problem: available on TWEN on 4 Sep. Due by midnight on Sunday, 6 Sep. Timed. Additional directions to follow. Not graded but must re-do until achieve proficiency.</p>	
	8	9 Sep	Chapter 7. Mistakes	<p>Ohlin, pages 181-207</p> <p>Principal Cases: <i>Navarro, Sexton, Weiss, Marrero</i></p>
	9	14 Sep	Chapter 8. Causation	Ohlin, 209-232

Week	Class	Date	In-Class Topic	Reading & Other Assignments
5				Principal Cases: <i>Oxendine, Jennings, Smith</i>
	10	16 Sep	Chapter 9. Intentional Murder	Ohlin 235-252  Principal Cases: <i>Taylor, Guthrie, Carroll</i>
6	11	21 Sep	Chapter 10. Voluntary Manslaughter	Ohlin 253-278  Principal cases: <i>Girouard, Castagna, White</i>
	12	23 Sep	Chapter 11. Reckless Killings	Ohlin 279-306  Principal Cases: <i>Kolzow, Knoller, Snyder, Biechele</i>
7	13	28 Sep	Chapter 12. Felony Murder	Ohlin 307-338  Principal Cases: <i>Howard, Stewart, Hernandez, Sophonone</i>
	14	30 Sep	Chapter 13. Negligent Homicide	Ohlin 339-456  Principal Cases: <i>Traughber, Small</i>
8	<b>No Class This Week. 1L Formative Assessment Week. Midterm Examination on Monday, October 5. Graded. Essay and MC. More information to follow.</b>			