

LAW 516, CRIMINAL LAW—Section 1

[Homepage - LAW-516-001 - Criminal Law \(siu.edu\)](https://www.siu.edu/law/516-001)

Professor Chris Behan

Fall 2023

COURSE MEMORANDUM & READING SCHEDULE

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:

- Analyze a set of facts and apply the appropriate criminal law statute to those facts.
- Intelligently address policy issues and controversies related to criminal law.
- Understand and apply basic canons of statutory interpretation.
- Understand basic criminal law concepts including, but not limited to, legality, *actus reus*, *mens rea*, intent, and defenses.
- Have a working knowledge of the substantive criminal law subjects covered on the bar examination.
- Critique the American criminal justice system for its ability to provide equitable treatment of accused persons based on race, ethnicity, gender, economic status, and other factors affecting access to justice.
- Engage and consider non-dominant perspectives on criminal justice with respect and empathy.
- Identify and critically reflect upon the ethics and professional responsibility aspects of your persona and identity as law students and lawyers.

Contact Information

General

My office is Room 254. Telephone number is 453-8722. E-mail address is cbehan@siu.edu. You can email directly or through the D2L page email function. 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.

Office Hours, Appointments, and Communication

Professor Behan

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, and I encourage you to do so.

I will have regular office hours on Monday and Wednesday afternoons from 3:00-4:30. I am also happy to meet with you at times of mutual convenience during the week. We can set those appointments up via email.

Madelyn Hayward

Can be contacted by students via email at madelyn.hayward@siu.edu or text at 801-885-9895. For all text messages, please include your name. If it is an emergency and a phone call is requested, send me a text first.

Office Hours- Madelyn plans to hold "office hours" on Mondays from 3:00pm-4:00pm in the formal lounge. I am also happy to meet with students at times of mutual convenience during the week. We can set those appointments up via email.

Electronic Communication

Check your e-mail daily. I will use your D2L 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 D2L emails are not going into your spam or clutter files.

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 of which I had not previously been aware.

Class Time, Room, MS Teams, and Seating Chart

Class Time and Room

This class meets **in-person** Monday, Wednesday, and Friday from 9:00-10:00 in Room 202. The first meeting of the class is Monday, August 21, 2023, and the final meeting is Friday, December 1, 2023.

MS Teams for Remote Classes

From time to time, I may go out of town for conferences and other job-related travel. On those days, I will either record a podcast for the class or schedule class session via Microsoft Teams. The class will receive plenty of advance notice.

Seating Chart

We will use a seating chart in the class. You'll sit with members of your litigation team (see below for more information on litigation teams). 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 23.

Course Materials

Required Textbook

Our primary classroom text is Ohlin, *Criminal Law: Doctrine, Application, and Practice* (**2d edition 2018**), ISBN 1454894911. Although there is now a third edition of the book out, I am using the second edition. It's a perfectly good edition of the book, and you should all be able to save money by finding used or rental copies.

This book is available at the SIU campus bookstores, the 710 Bookstore, the Saluki Bookstore, and through online vendors. This book is available at the SIU campus bookstores, the 710 Bookstore, the Saluki Bookstore, and through online vendors. It can also be rented. For those who prefer electronic texts, it is available from an e-book publishing service called Redshelf:

<https://www.redshelf.com/app/ecom/search/?terms=1454894911>

D2L Page

Other course materials can be found on the D2L page associated with this course. You are responsible to check the D2L page and to read any assigned materials posted to it.

BarBri

As a law student at SIU, you have access to BarBri study materials, including online multiple choice and essay questions. I encourage you to use these materials to prepare for the midterm and final examinations.

Supplementary Materials

If you need additional supplementary materials, a particularly useful resource is Joshua Dressler, *Understanding Criminal Law* (any edition is good; most current edition is 8th ed. 2018).

Preparation for Class, Class Rhythm, and Expected Workload

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.

Preparation

Your preparation for each class should consist of the following:

- Read the assigned materials.
- Brief each case, either using the template I've provided on D2L or a briefing format that works for you.
- Prepare written answers to the assigned problems for each class, also on the provided template.
- Turn in the written case briefs and problem answers **in a single document** no later than **the start** of each class on D2L (they are part of your final grade). Please note: I've set D2L up so it won't accept late submissions for written case briefs and problem answers. Submission of these items is treated on a strict liability basis. If you turn them in on time, they will be evaluated and graded. If you don't turn them in on time, you get a zero (0) for that day's assignment.

Reading for Class

One thing you should keep in mind about the reading for class: I may not lecture on everything in the reading assignment, but you are responsible to learn it and use it in class. You should be able to answer questions about anything in the reading assignment when you are on call to discuss a case or problem.

Class Rhythm

Regular Course Days

Most classes will follow a standard course rhythm:

- A brief review of concepts covered in the previous class;
- Close discussion of the assigned principal cases;
- Working through the problem cases in the reading assignment.

Synthesis Days

The class also includes spaced-repetition review and synthesis activities. On the reading schedule, every so often there is an entry entitled **Synthesis Activities**. On those days, we will spend time reviewing material by taking ungraded quizzes, working through multiple-choice and short-answer problems, or other learning activities I will announce during class.

Tips for Success

- **Arrive to class early and be 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.
 - In advance of each class, I will post a Word document with the PowerPoint slides for class. You can take notes on that document or keep it as a reference.

- I use relatively few Powerpoint slides in class. As you'll quickly learn, these slides are not an adequate substitute for taking notes. They are minimalist in nature, typically consisting of pictures and questions.
- You'll certainly fail the class if you depend only on the Powerpoint slides for study materials.
- **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.

Expected Workload

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 three 60-minutes blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 2 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.**

Litigation Teams and Class Participation

Litigation Teams

I use litigation teams to help encourage cooperative class participation. Each team consists of three or four students. The teaching assistants and I will form the litigation teams using random assignment criteria. We'll post the litigation team assignments by Tuesday, August 22. You must sit with your litigation team members in class, beginning on August 23. Before class begins on the 23d, you must communicate with the other members of your team and select one of you to fill out an electronic information form about your team, the link to which will be provided on the D2L page.

Only one member per team should fill out the survey, which asks for the following information.

- The name of your litigation team (pick your own name, but please do not pick an inappropriate name)
- The names of each participant, along with his or her undergraduate institution, major and hometown
- 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 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.

Class Participation

Everyone Eligible for Cold-Calling, Every Time

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 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.

Incentivizing Responsible Class Participation

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.

I cold-call on litigation teams, using a spreadsheet that randomly generates an order for cold-calling. It is possible to be called on multiple sessions in a row. I expect you to be prepared for class. **I will assign a grade on a scale of 0 to 10 every time I cold-call on a group in class.** If it becomes evident during our discussion that you are not prepared or have not been paying attention to class, I will announce that you have been assessed an absence for the day and you will also be assigned a grade of 0 for class participation for the day. I call on teams, but I expect every member of the team to participate in the discussion. Team members are graded individually. You cannot coast by on the work of other team members.

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

Classroom Discussion Management

When I call on a team in class, I am focused on that team and the dialogue we are having. I entertain questions from other class members after those discussions, but not during them. Furthermore, I do not call on every student who raises their hands, every time. Frequently, you may hear me say something such as, "We are moving on. I am not calling on you at this time." This is not personal, but rather a reflection of my judgment that it is time to move to another topic. If questions remain about a subject after I have moved on, you may approach me after class or during office hours to discuss.

Traumatic Topics

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 with 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 can see the merits and shortcomings of all arguments pertaining to an issue.

Plagiarism, Collaboration, and Use of Artificial Intelligence Resources

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 D2L dropbox, you attest that you are complying with this policy for that assignment.

You are not authorized to use artificial intelligence resources such as ChatGPT for class assignments unless assignment instructions specifically tell you to do so.

Computer Policy and Note-Taking

Responsible Use of Computers: Permitted

I permit the responsible use of computers in class. By this I mean taking notes, looking up cases or definitions on Westlaw or Lexis, and downloading course documents from D2L. 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: Not Permitted

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 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 class wide, I will remove the privilege from the entire class.

From time to time, especially on days marked for Synthesis Activities, I may give ungraded 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.

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.

Attendance Policy

Attendance, in person, is required. You may miss no more than six (6) classes during the semester. If you exceed the number of absences, you are subject to the procedures and penalties of law school Rule 5.g, Sanctions for Failure to Attend.

I will verbally call the roll at the beginning of each class. Answering present signifies 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 are prepared for any assigned questions or problems so you can discuss them in class if called upon. You are on your honor for this, but the enforcement mechanism is if I call on you and you are unprepared or inadequately prepared, you will get a zero (0) for class participation that day, PLUS you’ll be counted as absent for the day.

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

Classroom Behavior Expectations

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.

In addition to participating in class when called on, I expect you to listen respectfully to others. Interruptions of myself or others, eye-rolling or disruptive body language and behavior, or other unprofessional classroom behaviors will result in class participation grade reductions and/or assessed absences.

Do not attempt to dominate classroom discussions. Frequently, students raise their hands and I do not call on them. This is because I want to include multiple students in each class discussion. If I say something such as, “I see your hand, and I am not going to call on you,” don’t take it personally; just put down your hand so I can focus on other students.

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.

Grading and Evaluation

I will evaluate your work in several ways:

- Practice Exam Essays. **Ungraded, but you must demonstrate proficiency to get credit.** More information forthcoming.

- **Class Preparation. 5% of final grade.** As mentioned earlier in this document, you must turn in your case briefs and written answers for any hypotheticals or problem cases that are in the assigned reading for the day. These must be turned in to the D2L dropbox before class starts, in a single document (not multiple documents) using the provided template (posted on D2L in a folder called Case Briefing and Problem Template). You must submit your own work for these assignments. By submitting the work, you make the implied assertion that the work is your own and you have complied with the Honor Code. To submit work other than your own is plagiarism, a serious academic offense.
 - On-time, good-faith submissions receive 5 points.
 - Inadequate submissions that do not show good faith receive 0 points. **There are no makeup submissions permitted.**
 - Case briefs that are cut-and-pasted from commercial providers such as Quimbee receive a 0 and an Honor Code plagiarism referral.
 - Case briefs and/or problem solutions that are copied from other students receive a 0 and an Honor Code plagiarism referral.
 - **No late submissions are accepted.**
- **Class Participation. 5% of final grade.** Every time your group is called on in class, each individual member of the group will receive an individual grade for class participation. The grading standards are as follows:
 - **8-10 points.** (I am willing to give this grade to everyone, every time, but it must be earned; experience tells me relatively few students typically achieve this level.) Highest level of preparation. Student understands not only the basic facts and holding of the case, but also the Court's reasoning, including its treatment of precedent as cited in the case. Student is well familiar with notes cases, discussion materials, and problems. Student answers questions accurately and concisely. **Student's performance enhances the understanding of the overall class and demonstrates the highest standards of preparation, engagement, and performance.**
 - **5-7 points.** (The typical classroom participation grade will likely be in the 5-7 point range but see comment in parentheses above.) Acceptable level of preparation. Student understands the basic facts and holding of the case. Understands the Court's reasoning in the case, including treatment of precedent, but may require extra direction from the professor in class to get there. Student is familiar with notes cases, discussion materials, and problems but may require extra guidance and direction from professor to meaningfully contribute to the class discussion. Student demonstrates some difficulty answering questions accurately or concisely. **Student's preparation and performance makes a positive contribution to overall class discussion and the understanding of classmates.**

- **2-4 points.** Some preparation, but no real contribution to overall classroom discussion. Student may have read case but did not adequately understand it and did not spend the extra time required to do so. May be able to state the holding of the case but shows inadequate understanding of the Court's reasoning in the case. Evident struggle to connect notes cases and discussion materials with the primary case. Professor may need to call on another student to complete the discussion or assist the cold-called student. **Student demonstrates effort and some preparation, but falls short of making a positive contribution to the classroom discussion.**
- **0.** Manifestly inadequate preparation. Student cannot answer basic questions about the case. Student wastes classroom time searching for information that a prepared student would have readily at hand. Student is unfamiliar with notes cases, discussion materials, and problems. **Student's lack of performance and preparation detracts from the classroom experience for others and falls short of minimum standards of classroom professionalism.**
- Midterm Examination. **15% of final grade.** This examination will be administered as part of 1L Formative Assessment Week. Further details about the midterm will be forthcoming later in the semester.
- Final examination. **75%.** The final examination is closed book and cumulative, meaning that it covers the entire semester. Further details about the exam will be forthcoming later in the semester.

Law School & University Policies and Procedures

Posted on D2L Syllabus and Policies page.

Reading Schedule

The following is the reading schedule for the first two weeks of the semester. 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. I always catch up!

I will issue the reading schedule in increments of two or three weeks throughout the semester.

Reading and Assignment Schedule for 21 August to 8 September

Week	Class	Date	In-Class Topic	Reading & Other Assignments
Part One: Basic Elements of Criminality Note: We will proceed at a moderate pace when covering the material in Part One. We are building a foundation for the rest of the semester. The pace will increase after we master these basic materials.				
1	1	21 Aug	Chapter 1. Introduction to Criminal Process	Ohlin, 3-20 Principal cases: <i>Owens</i> , <i>Ragland</i>

Week	Class	Date	In-Class Topic	Reading & Other Assignments
	2	23 Aug	Chapter 2. Theories of Punishment.	Ohlin, 25-41 Principal cases: <i>Brewer, Madoff</i>
	3	25 Aug	Chapter 2. Theories of punishment.	Ohlin, 41-50, 55-56, 79-88 Principal cases: <i>Gementerra, Glossip</i>
2	4	28 Aug	Chapter 1. Reading a penal statute. Chapter 4. Fundamental Principles of Criminal Law	Ohlin, 20-23 & 89-96 Principal case: <i>Street v. State</i> Practice statutes will be provided in class.
	5	30 Aug	Chapter 4. Fundamental Principles of Criminal Law --Retroactivity --Statutory Construction & Common Law	Ohlin, 96-107 Principal Cases: <i>Rogers, Lewis</i>
	6	1 Sep	Chapter 4. Fundamental Principles --Vagueness --Rule of Lenity	Ohlin, 107-118 Principal Cases: <i>Morales, Bell</i>
3	7	4 Sep	LABOR DAY: No class this day. The makeup for this class is an open-book, timed MEE-style essay that will be provided after class on 8 September and will be due by 5:00 pm on 8 September.	
	8	6 Sep	Chapter 5. The Act Requirement. --Voluntary Acts --Omissions	Ohlin, 120-134 Principal Cases: <i>Utter, Pestinakis</i>
	9	8 Sep	Chapter 5. The Act Requirement --Bystander liability Synthesis Activities	Ohlin, 134-140 Principal Case: <i>Davis</i> <i>Synthesis Materials Provided in Class</i> Post-class assignment (makeup for Labor Day. Timed MEE assignment. Details provided in class.)