

CRIMINAL LAW (LAW 615)
University of St. Thomas School of Law
Spring Semester, 2010
Dates: Monday, Tuesday and Thursday, 8:45-9:40
Room: MSL 321

Prof. Stephen Cribari

<http://www.law.umn.edu/facultyprofiles/cribaris.htm>

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Office hours: by appointment.

PLEASE NOTE:

Regarding meetings with students: I teach at both St. Thomas and UMN. Our class ends at 9:40, and my UMN evidence classes meet at 10:10 and 2:30. I and Prof. Dixon teach Evidence at St. Thomas on Tuesdays and Thursday (4:30-6:25), but we do not both teach all the classes. Thus, I will not be available immediately after our class, and will be irregularly available at 6:30 on Tuesdays and Thursdays. I think the best way to be able to meet with me, should you want to, would be (1) to set up an appointment at my UMN office or on a Tuesday or Thursday evening when I am scheduled to teach at St. Thomas, or (2) to contact me by e-mail. *To avoid a delay in receiving a response to an e-mail, please contact me at my UMN e-mail address, supra.*

GENERAL INFORMATION AND SCHEDULE OF READINGS

-- Please read the following carefully --

Text

Phillip Johnson, Criminal Law Cases, Materials and Text (7th Edition). ISBN 1-314-25649-0. Supplementary material will be distributed by Professor Cribari.

Helpful resources

LaFave's Principles of Criminal Law (concise hornbook series) or his Criminal Law (hornbook series) 4th ed., both published by Thomson West.

The "Nutshells" are helpful.

Course Goals and Methodology

The goal of this course is to attain a basic knowledge of the fundamental principles of criminal law. This entails familiarity with a body of case law, proficiency in statutory analysis and application of fundamental principles of criminal law to a variety of factual situations. Using the case method, we will become familiar with the language of criminal law, the general principles of criminal liability, and the common law concepts on which our present criminal justice system rests. For example, we will look at the tradition that a guilty act be accompanied by a guilty mind; the development of strict liability offenses; affirmative defenses such as self-defense; the defenses of justification and excuse and necessity; the relevance (or not) of mental illness; constitutional limitations on legislative and executive discretion to punish.

Class presentations will sometimes discuss case readings, sometimes build on those readings. I have spent much of my life in the trial and appellate courts of various state and federal jurisdictions, and I teach from the courtroom perspective. That is, I teach with the client in mind, and though this is criminal law and not criminal procedure, I take seriously the sixth amendment's provision that "the accused shall enjoy the right . . . to be confronted with the witnesses against him." The courtroom is an adversarial, confrontational theatre in which justice happens. We need to begin to feel at home in that atmosphere, and I hope our class will have much of the energy and electricity, the passion, of the courtroom. I will do my best to make that happen. (Note that word, "passion." From the Latin "patior," a verb that, curiously, is translated actively but conjugated passively. What better reminder that passion has two components: the willingness to act and the courage to be acted upon.)

Meeting with Students:

I am willing to meet with students whenever I can, to discuss any questions or concerns a student may have regarding the subjects I teach or law school generally or life and career. Please understand that I am only at St. Thomas to teach one course this semester. I have teaching responsibilities at the University of Minnesota, and elsewhere. On two of the days on which our class meets, I teach again in the evening, so I will be around St. Thomas a good bit this semester. You are welcome to speak with me whenever I am around or to stop by my office and speak with me whenever I am in the office. If you would prefer to set up an appointment in advance, feel free to speak with me after class or to e-mail me to arrange a time when we can meet.

I will generally not be available during the half-hour that precedes our class and unfortunately, I have a class at 10:10 at UMN so will need to leave St. Thomas as soon as our class concludes.

Examination and Grading:

There will be a final examination on which the grade will be based. I have not yet determined the format for the examination, e.g., take-home v. in-class; open v. closed book, etc. During the final weeks of class, I will announce the time and place of any extra review session I may hold. Attendance at such a session is voluntary.

I traditionally make use of any discretionary points available to me in order to raise or lower grades one level based on course participation. Please refer to my Policy On Use Of Cell Phones, Laptops And Recording Devices During Class, *infra*. I understand that the University of St. Thomas School of Law imposes a mandatory class average on this class. I will, of course, execute this policy, but I will not punish excellence. Those who demonstrate excellence on the examination will not have their grades diminished for the sake of the low end of the curve. I will review examinations with students, but I will not discuss any grade unless it is a D or lower.

With regard to examinations and grading generally, my view is that legal writing is nothing but legal thinking written down, and I look for that thinking. I will test, as best I can, for your thought processes, not just for memorized data points. I do not credit the “shotgun” approach to exam-taking. “I’ll tell the professor everything I can think of and maybe I’ll get the answer” doesn’t work with me. I look for reasoned answers, answers that involve the difficult task of making choices. To make a choice - whether in relation to a question on an exam, to a question about our use of time while at St. Thomas, or to a question about a client’s life or liberty – is a profoundly human, and spiritual, action. Paradoxically, we experience our essential human freedom in actions that require us to place limits on what we mean by that freedom.

Policies on Attendance and Class Participation

Consistent with the American Bar Association Law School Accreditation guidelines, class attendance is required and expected. In accordance with University of St. Thomas School of Law Policy III-C-5-D, you are entitled to miss one class session to attend an activity required in connection with the Mentor Program without penalty, but you must inform me in advance of such an absence, and you will be responsible for the material covered in class.

That said, I do not typically take attendance, but I do teach in an interactive way and call on students to participate, so I notice when people are absent or unprepared. Please e-mail me ahead of time, should you anticipate an absence. As noted above, I calculate course participation into the final grade. Because I have elected to use a casebook with little explanatory text, it is unlikely a student can attain a high grade in this course without regular class attendance.

Each student is expected to have read the assigned readings *prior* to the appropriate class session and to be prepared to discuss them. Please do not advise me if you are unprepared for class. Being unprepared for class gains you no concessions, just as being unprepared for trial accomplishes nothing other than to give your opponent an advantage over you and your client. You are preparing for a career in a highly competitive environment, an environment in which you will encounter arbitrary rules and mandatory deadlines the violation of which can result in your client’s loss of property, liberty and even life. (A former client of mine was executed because the lawyers who replaced me missed a filing deadline. I will not knowingly facilitate your becoming such a lawyer.)

Advanced reading assignment:

For the first class, please have read pages 1 through 20 of Section A of Chapter I (Basic Culpability Doctrines - The Traditional Concepts). Although I will present an overview of the criminal justice process during the first class, we will certainly begin the material in the casebook. We may cover 50 pages in the first week of class.

Class-by-class assignments:

The schedule of readings will adjust itself once we get a feel for the pace at which we cover the material. After a week or so of class, I may distribute a more detailed outline of the classes. For now, though, **assume we will cover approximately 30 pages per class (as supplemented from time to time by more recent material).**

We should proceed through the text, in the order in which it was written, up to page 509, though I reserve the right to augment, alter or supplement the coverage of the material, with due notice.

Special Class Assignment:

Because of the overwhelming importance of the U.S. Supreme Court's opinion about legislative discretion to punish, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), I will give a special lecture on the cases leading up to *Apprendi*, *Apprendi*'s progeny, and the impact of the originalist approach to constitutional interpretation, an approach that seems to have gained a significant majority on the Court in the criminal law and procedure area. I anticipate this lecture will be given on Tuesday, February 24. For this lecture, please read the following case excerpts contained in our text: *Mullaney v. Wilbur*, 421 U.S. 684 (1975) at text 572; *Apprendi*, at text 583. I will refer to many other cases during this lecture, including the following:

In re Winship, 397 U.S. 358 (1970); *Mullaney v. Wilbur*, 421 U.S. 684 (1975); *Patterson v. New York*, 432 U.S. 197 (1977); *McMillan v. Pennsylvania*, 477 U.S. 79 (1986); *Mistretta v. United States*, 488 U.S. 361 (1989); *Almendarez-Torres v. United States*, 523 U.S. 224 (1998); *Jones v. United States*, 526 U.S. 227 (1999); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Harris v. United States*, 536 U.S. 545 (2002); *Ring v. Arizona*, 536 U.S. 584 (2002); *Blakely v. Washington*, 542 U.S. 296 (2004); *Booker v. United States*, 543 U.S. 220 (2005).

Although this special lecture is "fair game" for the final exam, *I do not expect you to have read any cases other than the two assigned, supra.*

Prof. Cribari's Policy on the Use of Cell Phones, Recording Devices and Laptops During Class**Cell phones**

If I hear your cell phone ring during class, or if I observe you "IM-ing" or sending text messages during class, you will be asked to leave the class and I will deduct one grade level from your final grade for this course. If it is necessary that you receive phone calls

or check your cell phone during class, set your phone on vibrate so it does not disturb anyone and leave the room to answer or check it.

Recording devices

The use of recording devices during class is banned.

Laptops

Based on my experiences teaching at the University of Denver Sturm College of Law, the University of Minnesota Law School and University of Connecticut School of Law (including classes in computer forensics), and after discussion with many professors at a variety of law schools - discussions specifically addressing the use of laptops in larger classes taught from the practice perspective, I have banned the use of laptops in my regular semester large classes since January, 2008. *The use of laptops or word processing devices will not be allowed in this class.* You will not be able to hide in, or behind, a laptop in the courtroom; neither will it be available to you for legal support. The same applies to this class.

(It is my understanding that this policy comports with the expectations set forth by The University of St. Thomas School of Law as promulgated in “Responsibilities of Adjunct Professor – Classroom Atmosphere.”)

Students with Disabilities:

If you need course adaptations or accommodations because of a disability, please make an appointment in the Enhancement Program - Disability Services, located on the St. Paul campus in Room 119 O’Shaughnessy Educational Center (651-962-6315). If you already have a form from the Disability Services office indicating that you have a disability that requires accommodations, please present it to Director of Academic Achievement, Scott Swanson, as soon as possible so that he can facilitate the process for obtaining adaptations or accommodations.

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