



MASSACHUSETTS SCHOOL OF LAW at ANDOVER
SYLLABUS FOR CRIMINAL PROCEDURE – Spring 2021 (T, TH Evening)
Professor Shane Rodriguez
TENTATIVE SYLLABUS – SUBJECT TO CHANGE BY START OF COURSE

Instructor: Professor Shane Rodriguez

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**Prof. Rodriguez's
Web Page:** <http://msslaw.edu/rodriguez-criminal-procedure/>

Westlaw TWEN: www.lawschool.westlaw.com

Casebook: *Criminal Procedure and the Constitution*, West Publishing, **2020 Edition**. Israel, Kamisar, LaFave, King and Primus. ISBN 9781684679959

Class Times: **Tuesday & Thursdays, 6:00p.m. - 7:15 p.m.**

Purpose and Course

Description: The purpose of this course is to cover those criminal procedure topics which reflect the Federal Supreme Court's current position on constitutional questions raised by operation of our federal and state criminal justice systems. Where relevant we will also review Massachusetts Supreme Judicial Court opinions that distinguish the law of the Commonwealth from the Federal law.

The intent of the course is to create competency in those areas tested by the bar examination as well as to lay a proper foundation to become skilled practitioners.

Grading

The midterm and final examinations will combine to be 90% of your final grade in this class. In addition, there will be weekly assignments of a minimum of ten (10) MBE-type questions and/or Short Directed Essay Questions which will serve as quizzes and will combine to be 10% of semester grade. I reserve the right at any time during the semester to modify and/or change the course grading.

Lack of class participation has the strong potential to impact negatively on your course grade.

Course Requirements & Class Participation

Class Attendance: Students must be prepared for every class to be called on to brief cases or for discussion of questions. You are, therefore, expected to be in class and to participate. Students who have more than **three** unexcused absences during the semester may have their semester grade lowered by as much as one-third of a grade.

Attendance is taken at the beginning of class. You will be marked absent if you are not present when attendance is taken.

Quizzes: I **will not** permit any make-ups for missed weekly in-class and/or on-line TWEN quizzes.

Notes And Tape Recorders In Class: I test what I teach, and I follow the syllabus. If you do all assigned readings and attend class, you will be prepared for the exams. It is necessary that each of you develop an effective method of recording and retaining the materials as it is taught and discussed. Classes are interactive, and it is not always advisable to take copious notes. Research strongly indicates that students who attempt to use word processors to “transcribe” class discussions perform less well on exams than do those students who actively participate in those discussions. Use of tape/digital recorders are allowed in this class and may be preferable for you.

The purpose of class is to learn the law through discussion and participation to develop analytical skills. This cannot be achieved if you are intent on being a scribe.

CLASSROOM DECORUM

All students will observe the following classroom decorum:

1. **Timeliness.** Arrive on time. Late arrivals are disruptive. If late arrivals become too frequent those arriving late will not be allowed into the classroom.
2. **Cell Phones and Messaging.** With the exception of extraordinary circumstances there will be *no cell phone use in class*. Turn off all cell phone before the class begins. If there is a family emergency requiring you to be reachable you must approach me before class and inform me of the situation. In such an event you may keep your cell phone on if it has a “vibrate” only option. In the event that your cell phone or other device disturbs the class you will be told to leave the classroom immediately and will be marked as absent for the class.
3. **Laptop Computers.** While many colleges and professional school are banning laptop computers form classroom, I believe that they can be a useful classroom tool. Please arrive early enough to start your laptop prior to class so the start up noises will not be disruptive. If, however, I determine that you are using the computer for other than legitimate classroom purposes you will be immediately asked to leave and will be marked absent for the class.
4. **Talking in Class.** This is an interactive class, and it is normal for there to be a bit of a “buzz” while we are discussing a case, a principle or a hypothetical. You are expected to listen while others are talking and to respond if called upon. Civility is expected at all times by all students.
5. **Eating/Drinking in Class.** Eating in class is strongly disfavored. I do understand that stressed-for-time students, especially evening students, are often unable to take meals at normal hours, and therefore snacks and drinks will be tolerated as long as they are not disruptive. I will not tolerate full meals, full “submarine” sandwiches, or anything of the like. I also will not tolerate undue noise such as stubborn plastic wrappers. I will ban all foods and drinks in class if I think they are becoming a distraction.
6. **Civility Above All Else.** Each of you will be treated at all times with courtesy and respect, and you will treat each other with a high degree of civility at all times. At all times we will argue issues and never personalities.

TBD

Chapter Seven

Section 1.

Section 2.

Section 3.

Chapter Eight

Section 1.

Section 2.

Section 3.

Chapter Nine

Chapter Ten

Section 1.

Section 2.

Chapter Eleven

Chapter Twelve

Chapter Thirteen

Chapter Fourteen

Section 1.

Section 2.

Chapter Fifteen

Section 1.

Section 2.

MID-TERM EXAM

Pre-Trial Identification Procedures

Wade and Gilbert: Reliability Concerns

The Court Retreats: Kirby and Ash

Due Process Limitations

Investigation by Subpoena

Introduction

Fourth Amendment Limitations

The Privilege Against Self-Incrimination

Pretrial Release

The Decision Whether to Prosecute

The Decision to Prosecute

Selection of the Charge

Screening the Prosecutor's Charging Decision

Speedy Trial and Other Speedy Dispositions

The Duty to Disclose

Guilty Pleas

Plea Bargaining

Requisites of a Valid Plea

Trial by Jury; Judicial Impartiality

Right to Jury Trial

Jury Selection (SEE NEXT PAGE)

Section 3.	Right to Impartial Judge
Chapter Sixteen	Fair Trial/Free Press
Chapter Seventeen	The Role of Counsel
Chapter Eighteen	The Trial
Section 1.	Presence of the Defendant
Section 2.	Confrontation and Compulsory Process
Section 3.	The Right to Remain Silent – or Testify
Section 4.	Due Process Requirements
<u>Last Day of Spring Classes</u>	May 10, 2021
<u>Final Exam</u>	Date to Be Determined