



MASSACHUSETTS SCHOOL OF LAW at ANDOVER
TENTATIVE ADVANCED CRIMINAL LAW SYLLABUS -- Fall 2022
Professor Rodriguez
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- TWEN:** www.lawschool.westlaw.com
- Phone:** 978.580.4242 – Please use this number to either contact or text me for school or business-related purposes only.
- Texts:** Materials will be provided in class.
- Purpose:** This course will give students a solid foundation for “Massachusetts Distinctions” which are often tested in the written section of the Massachusetts Bar Exam, as well preparing students to be competent practitioners in the area of criminal defense in Massachusetts Trial Courts.
- This upper-level course will closely examine selected Massachusetts statutory, decisional and common law crimes as well as the related penalties. Focus will be on comparing the common law crimes that you learned in your foundational criminal law course to the Massachusetts distinctions.
- In addition to providing a basis for high performance on “essay day” of the bar exam this course will serve as a comprehensive review of the common law crimes for the MBE portion of the bar exam. This course is also ideal as well as practical for Bar Essay and Comparison of Massachusetts and National Law (also known as COMP).
- Day/Time:** **Tuesday/Thursday 7:30pm to 8:50pm**
- Grading:** The midterm and final examinations combine for **85%** of your final grade. In addition, there will be weekly assignments of MBE-type questions and/or fill-in-the blank element questions. These assignments will operate as quizzes and will combine to be **15%** of the semester grade. You are ***expected to participate in all class discussion***. Lack of such participation may impact negatively on your grade. **I reserve the right at any point during the semester to modify and/or change the course grading.**

Course Requirements & Class Participation

This syllabus sets the policies, goals, rules, and expectations for the course. *Please read this syllabus carefully prior to the first class.* I expect you to understand the class rules and class expectations when you arrive for the first class; I will not restate the contents of this syllabus in the first class. I will not answer questions about class rules and policies that are already stated in this syllabus.

GOALS AND OBJECTIVES (“LEARNING OUTCOMES”) OF THE COURSE

This class will focus on comparing the common law crimes that you learned in your foundational criminal law course to the Massachusetts distinctions. Successful students will master the complicated structure and functions of the doctrines, legal methods, legal reasoning, and legal analysis employed by lawyers when practicing “criminal law,” the process by which our American legal system protects individuals and rights. It is expected that students achieving a grade of “C” or better will have mastered the law and legal processes sufficiently to pass this course. It is also expected that successful students will achieve an understanding of the fundamentals of criminal law that is sufficient to enable them to take the first steps to practice criminal law upon graduation from the Massachusetts School of Law. Students who fail to master criminal law will receive a grade below that of “C.”

Merely learning the material to “get by” is unacceptable in this, or any other, law school class. Competent attorneys do not merely “get by;” they conscientiously and ethically root out ways to provide the highest possible level of client representation. Unsophisticated clients deserve to expect that their attorneys are knowledgeable, sophisticated, and diligent; indeed, that is why they hire them. If you want to become a lawyer, you must commit yourself to learning *all* the applicable rules of law, inside and out, and to learn how to apply those rules of law to a variety of fact patterns (this is called analysis). Because society demands much of lawyers, I will demand much of you.

LIVE CLASSES

Unless and until we hear otherwise, all classes this semester will be live. I expect students to attend class unless they are sick or have another valid excuse for absence. I take attendance. Because no one can predict the course of the pandemic, however, it remains possible that the structure and rules of the course will have to be modified once again on short notice. I will communicate any changes via TWEN email blasts, but you will need to routinely check the TWEN site for changes in case you miss any of the notifications.

COVID PROTOCOL

We will follow the COVID protocol set by the administration regarding vaccination, the wearing of masks, social distancing, etc.

If you become ill, even if you do not believe your illness to be caused by COVID, you are required to stop attending classes and to notify both the Registrar and me of your illness. In such case, you will need to supply the Registrar with a negative COVID test as she reasonably requires to be allowed to return to class. I will work with you to give you a reasonable opportunity to make up your work and ensure that you are not penalized for being forthright about your illness. I know it will not happen, but any student who knows s/he is ill, but continues to attend classes and/or exams, will be referred to the deans for potential discipline on the ground of conduct unbecoming of a law student, i.e., purposely risking the health and welfare of MSL students, staff, and faculty.

CLASS ATTENDANCE:

I CALL ON STUDENTS RANDOMLY, AND YOU ARE EXPECTED TO BE PREPARED FOR EVERY CLASS. Students must come to class prepared to brief cases and for class discussion. You are expected to be in class and to participate. Individuals 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. Lack of attendance and participation will impact your overall course grade.

Because the classes are intended to be highly interactive, the listed anticipated due dates are to be considered aspirational. At times, especially at the beginning of the semester, we may fall behind of the anticipated due dates; it is also possible that we will move more quickly at times than anticipated. You therefore should continuously match those dates to what we have actually completed in class. Please be prepared for every class by staying slightly ahead of the anticipated due dates and by adjusting and readjusting as the semester progresses.

If you have read ahead substantially, I expect you to review what you have already read just before class. It is no excuse to state, "I read the case too long ago to remember it." Lawyers often write briefs months before they argue in court and, like you, are expected to know the material when they are called on to discuss the legal issues.

NOTES And TAPE RECORDERS In CLASS

I follow the syllabus and I test what I teach. Do all of the assigned readings and attend class and you will be prepared for the exams. It is necessary that you develop an effective method of recording and retaining the materials as they are taught and discussed. Because classes are interactive it is not 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 class. Use of tape/digital recorders are allowed in this class and may be preferable for you. Since the classes are interactive and it is not always possible to take copious notes on every point, I recommend the use of tape/digital recorders in class. A recorder should assist in rounding out, or filling gaps in, notes. It also can serve as a "safety net" in a fast-paced class.

Some students take notes on a laptops or netbook, and this is fine. One caveat, however: I sometimes notice that students are more consumed with typing out what is said in class word-for-word than with listening and participating. The purpose of class is not for you to be a scribe; it is for you to develop analytical skills, and this cannot be achieved if you are single-mindedly typing. You will always be able to supplement the law we discuss in class with outside reading.

Being Prepared

I expect you to be prepared for every class and I treat an unprepared student as an absent student. This is not college, and old college tricks like skimming, cramming, and pretending to be prepared simply will not work. Here is what I expect of you before, during and after class:

Before Class

1. Read, reread, study and THINK thoroughly about the assigned cases and materials;
2. Do not leave a case or other reading until you are confident that you thoroughly understand the facts sufficiently to restate them if asked to do so in class;
3. Do not leave a case or other reading until you are confident that you understand why the case book author placed the case in the book;
4. Do not leave a case or other reading until you are confident that you can recite the legal issue(s) presented in the case;
5. Do not leave a case or other reading until you are confident that you know and UNDERSTAND each rule of law, and its elements, presented in the case;
6. Do not leave a case or other reading until you are confident that you understand the policy reasons for the adoption of each rule of law implicated in the case;

7. Read, reread, study and THINK thoroughly about the relevant “hypotheticals” or problems pertaining to the subject matter being studied in each class;
8. Do not leave a hypothetical or problem until you are confident that you understand why the professor assigned it;
9. Do not leave a hypothetical or problem until you are confident that you can recite the legal issue(s) presented in it;
10. Do not leave a hypothetical or problem until you are confident that you know and UNDERSTAND each rule of law, and its elements, implicated in the hypothetical or problem.
11. Do not leave a hypothetical or problem until you are confident that you understand the policy reasons for the adoption of each rule of law implicated by the hypothetical or problem.

During Class

1. Be prepared well enough to be able to provide an accurate recitation of the facts and holding of each assigned case, hypothetical, or problem.
2. Be prepared well enough to be able to provide a concise recitation of the issue(s) presented in each case, hypothetical, or problem.
3. Be prepared well enough to be able intelligently discuss the legal issues and rules of law presented or implicated by the assigned reading.
4. Be prepared enough to be able to intelligently discuss any factual variations the professor and/or other students propose during class.
5. Be prepared enough to be able to intelligently discuss flaws and strengths in the court’s reasoning or in the applicable rule of law;
6. Be prepared enough to be able to intelligently discuss alternative arguments that might have better resolved the dispute at issue in each case;
7. Be prepared enough to be able to intelligently discuss the policy issues relevant to each case, hypothetical, or problem.

After Class

1. Identify and clarify anything confusing about the law or application of law covered in class. If necessary, work with classmates collaboratively to achieve mastery of the law;
2. Rework your class notes and case briefs to reflect a more accurate picture of the cases, issues, and rules of law.
3. Think about how the lesson covered in the particular class fits into the overarching body of criminal law.

You will be expected to read each assignment in its entirety. Reading “case notes,” “canned briefs,” Westlaw briefs and other shortcut aids, at the expense of the actual cases, will fail to prepare you adequately and will result in you being marked as unprepared.

CLASSROOM DECORUM

All students are expected at all times to conduct themselves in a civil manner as follows:

1. Timeliness. Please arrive on time. Late arrivals are disruptive to the class. Tardiness should still be the exception rather than the rule. I often take attendance at the beginning of the class. Late students will be marked absent, and I reserve the right not to change this designation if you come in later. If tardiness becomes an issue, i.e., if it starts to cause disruptions, I will impose a hard-and-fast rule that those arriving late will not be allowed into the classroom.
2. Stand, Name, Project. When you speak in class, whether it's while volunteering or after being called on, please stand, state your first name, face the rest of the class (not me), and project your voice so as to be heard. Please do this for the entire semester. Speaking in public is uncomfortable at first, but even those of you who intend to practice transactional law as opposed to litigation must realize that the practice of law is a performance art as well as an intellectual endeavor.
3. Cell Phones and Messaging. *Except for class purposes*, there will be *no cell phone use in class*. I reserve the right to instruct students to leave the class immediately if they engage in text messaging, instant messaging, social media, or other forms of electronic communication during class, and will do so if this issue becomes a problem. If you refuse an instruction to leave, I will report you to the administration for discipline.
4. Laptop Computers. While I believe that laptop computers are an invaluable classroom tool, lately their use sometimes has become troublesome in several ways. Like cell phones, they beep and make noises when starting up. Please arrive early enough to start your laptop prior to class so the start-up noises will not be disruptive. If you cannot set up your laptop prior to class, please ensure that it is on mute and will not be disruptive.
5. It is never appropriate to use computers to play computer games, send and receive instant messages, surf the net, or perform other computer functions not related to the task at hand. I wander around the room a bit while teaching and will probably catch at least some of such off-focus activity if it occurs.
6. With limited exceptions, attorneys are not permitted to use their laptops, tabs, or other electronic devices while arguing or trying cases in court. The same will be true in my class. When you end up standing to present a case or answer questions framed by the professor, *you are to close your laptops and put down other devices*. Your focus will be on the professor and other students. If you feel that you are unable to remember all you have gleaned from your reading, you may refer to paper notes.
7. Talking in Class. This will be an interactive class, and it is normal for there to be a bit of a "buzz" while we are discussing a case or "hypothetical." I do not usually get upset if the class is analyzing a hypothetical, and some students do a little "kibitzing" in the process. However, I still expect you to listen while others are talking so you can respond if called upon, and, most importantly, to respect others by not talking over them. I will not tolerate talking that doesn't involve the subject matter at hand.
8. Eating/Drinking in Class. I generally do not approve of anything that might divert your focus from the class discussion and eating and drinking in class certainly falls into that category. On the other hand, I do understand that stressed-for-time students, especially evening students, often are unable to take meals at normal hours, and therefore need some sustenance to get them through. Generally, therefore, I tolerate small snacks and drinks during class. I will not tolerate full meals, full "submarine" sandwiches, or anything of the like. I also will not tolerate undue noise while eating, e.g., stubborn plastic wrappers, crunchy foods, etc. I will ban all foods and drinks in class if I think they are becoming a distraction.
9. Civility above All Else. There is often intellectual tension in a law school classroom especially with subjects like Advanced Criminal Law, on which reasonable minds can differ. Students and professors can differ -- sometimes widely -- in their views on morals, ethics, society, politics, and ways of life. It is my intention to treat each of you with the utmost courtesy and respect, even when we disagree. In turn, I expect that each of you will also treat each other with respect and courtesy. Passionate argument is terrific if kept civil and respectful. Remember: argue the issues, not the personalities!

CLASS ASSIGNMENTS / TOPICS:

Week 1:

Class 1 & 2: Introductions and Course Expectations

**Glossary of Massachusetts Sentencing Terms – Version 4.20 Updated
– February 25, 2022 – Incorporates Criminal Justice Reform Act – Lee
Gartenberg**

The Sources of Criminal Law

1. Statutes
2. Common Law
3. Model Penal Code
4. Regulations

Anatomy of a Crime

Mens rea

Actus Reus

Concurrence in Time Between Mens rea and Actus Reus

Causation

Injury/harm

A. Elements: The Building Blocks

1. Intent
2. Specific Intent
3. General Intent
4. Malicious
5. Reckless
6. Negligent
7. Strict Liability
8. Inferences

B. Lesser Included Offenses

C. Right of Arrest

1. Probable Cause
2. Arrest Warrant
3. Warrantless Arrest
4. Criminal Complaint Application
5. Misdemeanors
6. Statute Present
7. Statute Past
8. In Presence
9. Breach of the Peace
10. Complaint presence breach of peace
11. Felony

D. Penalties

E. Fines / Fees / Court Costs

F. Jurisdiction

G. Statute of Limitations – G.L. c. 277 §63

H. Venue

* Where Class 1 of a week falls on a school holiday be prepared to cover all materials due for the week in Class 2 of that week, as time allows, as well as in subsequent classes.

We will use the Massachusetts Model Jury Instructions, Massachusetts Practice Series and assigned cases and materials for all the below crimes and defenses.

Week 2:

Class 1: **Crimes Against the Person:**
Assault G.L. c. 265, § 13A
Assault by Means of a Dangerous Weapon G.L. c. 265, § 15B
Assault with intent to commit any Felony G.L. c. 265 § 29
Armed Assault with the intent to Rob or Murder G.L. c. 265 § 18
Armed Assault in a Dwelling House G.L. c. 265 § 18A

Class 2: **Unarmed Assault with the intent to Rob or Steal G.L. c. 265 § 20**
Armed Assault with the Intent to Rob or Murder G.L. c. 265 § 18
Assault and Battery G.L. c. 265 § 13A
Assault & Battery on a Public Employee G.L. c. 265 § 13D

Week 3:

Class 1: **Assault & Battery w/ a Dangerous Weapon (ABDW) G.L. c. 265 § 15B**
Dangerous Weapons G.L. c. 269 § 10(a)(b)
A&B by Means of a DW Serious Bodily Injury, DROs & Pregnancy
G.L. c. 265 § 13A

Class 2: **Domestic Violence & Restraining Orders & Harassment Prevention**
Orders
Assault on a Household Family Member G.L. c. 265 § 13M
Assault and Battery on a Household Family Member G.L. c. 265 § 13M
Violation of an Abuse Prevention Order G.L. c. 209A § 7
Harassment Prevention Order G.L. c. 258E §§ 1- 8
Violation of a Harassment Prevention Order G.L. c. 258E §§ 9-12

Week 4:

Class 1: **Domestic Violence & Restraining Orders & Harassment Prevention**
Orders – Con't

Theft Offenses -- Larceny G.L. c. 266, § 30

Class 2: **Theft Offenses -- Larceny G.L. c. 266, § 30 (Con't)**
Property Crime Embezzlement - G.L. c. 266, § 30
False Pretense - G.L. c. 266, § 30

Week 5:

Class 1: **Crime of Attempt - G.L. c. 274, § 6**
Attempted Larceny G.L. c. 274, § 6

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Larceny from the Person - G.L. c. 266, § 25
Larceny by Stealing in a Building – G.L. c. 266, § 20

Class 2: Shoplifting - G.L. c. 266, § 30A,
Larceny by Check – G.L. c. 266, § 37
Receiving Stolen Property - G.L. c. 266, § 60

Week 6:

Class 1: Uttering - G.L. c. 267, § 1
Forgery G.L. c. 267, § 5

PROPERTY CRIMES

Armed Robbery – G.L. c. 265, § 17
Unarmed Robbery G.L. c. 265, § 19
Armed Robbery & Armed Robbery While Masked G.L. c. 265, § 17

Class 2: Use of a Firearm while Committing a Felony G.L. c. 265, § 18(B)
Home Invasion While Armed G.L. c. 265, § 18(C)
Armed / Unarmed Assault w/ Intent to Rob or Steal G.L. c. 265, § 20
Stealing by Confining and Putting in Fear G.L. c. 265, § 21

Week 7:

Class 1: **PROPERTY CRIME: HABITATION OFFENSES**
Armed Burglary - G.L. c. 266, § 14

Unarmed Burglary - G.L. c. 266, § 15
B&E w/ Intent to Commit Felony – G.L. c. 266, § 16
B&E w/Intent to Commit Misdemeanor – G.L. c. 266, § 16A

Class 2: **PARTIES TO A CRIME ACCOMPLICE LIABILITY & JOINT VENTURE:**
Commonwealth v. Zanetti, 454 Mass. 449 (2009) posted on
TWEN
Joint Venture:
Commonwealth v. Wood, 2014 WL 3857252
Proof that Accomplice Knew the Principal carried a Weapon:
Commonwealth v. Britt, 467 Mass. 87 (2013)

* Where Class 1 of a week falls on a school holiday be prepared to cover all materials due for the week in Class 2 of that week, as time allows, as well as in subsequent classes.

Week 8:

Class 1: ACCESSORIES:

Accessory Before the Fact - G.L. c. 274 § 2

Accessory After the Fact – G.L. c. 274 § 4

NOTE: See **Protected Relative Defense**

Commonwealth v. Sokorelis, 254 Mass.154 (1926) posted on TWEN

Commonwealth v. Chandler, 29 Mass. App..Ct. 571 (1990) posted on TWEN

Class 2: CONSPIRACY:

Conspiracy – G.L. c. 274, § 7

NO Overt Act Requirement:

Commonwealth v. Pero, 402 Mass. 476 (1988) posted on TWEN

Object of the Conspiracy:

Commonwealth v. Bessette, 351 Mass. 148 (1966) – posted on TWEN

Massachusetts May Adopt Defense of Renunciation

Commonwealth v. Nee, 459 Mass. 174 (2010) – posted on TWEN;

Week 9:

Class 1: SOLICITATION

Solicitation of a Felony

Threats to Commit a Crime G.L. c. 275, § 2-4

Class 2: Prep for Mid-Term Exam

Week 10: Mid-Term Exam

Homicide and Lack of Criminal Responsibility assigned materials to follow prior to Week 10.

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