

# 25 MA CASES EVERY CRIMINAL PRACTITIONER SHOULD KNOW

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Monday/Wednesday 4:00 - 6:30 pm

## Purpose and Course Description

Welcome to the 25 Massachusetts Cases Every Criminal Practitioner Should **Know**. This syllabus contains a link to access the Westlaw Law School Portal for TWEN which I will use as a repository for items such as the course syllabus, podcasts, PowerPoint presentations, audio and or video recordings, assignments and quizzes, customized polling, weblinks, forums and discussions boards for this course. Read the syllabus carefully. I hope you enjoy the class and will benefit from taking the class.

The purpose of class is to read the cases to understand the complex legal issues and rules and become adept at applying the rules in your pleadings and before the court. By doing so, you will develop the analytical skills necessary for excellence as a competent attorney. This is unlikely to be achieved if your focus in class is merely being a scribe.

**Note:** This is a preliminary course syllabus which I will later update and provide to all students on Tuesday, August 31, 2021.

## TWEN

<https://lawschool.thomsonreuters.com/>

## Text(s)

*No Textbook Required. All twenty-five assigned cases will be accessed using TWEN (Westlaw Edge)*

## Office Hours

By appointment only

## Subject Matter of Class

This course will focus on twenty-five of the most carefully selected Massachusetts cases and issues that often arise in both the district and superior courts. After reading, briefing, and discussing these cases, students will have the confidence to anticipate these legal issues and stand before any Massachusetts court and argue these cases and issues successfully.

## Grading

Assignments are worth 30% of the course grade. The final exam will be worth 70% of the course grade.

**978.580.4242**

This is my personal cell phone use this number for calling or texting.

Please use this for class related or business purposes only.

## Course Requirements and 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.



### 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.

### CLASS ATTENDANCE

The course expectation is that all students will be present and actively participate during each class meeting. If you are unable to attend a specific class or you will be late, please contact me by phone or leave me an email. **Lack of attendance and/or class participation has the potential to impact negatively on the semester grade.** In order to participate in the course, you will need to have access to the internet, an active TWEN account, access to a computer/laptop/smart device to gain access to the assigned cases, assignments and quizzes, podcasts, audio and or video recordings, weblinks, PowerPoint presentations, forums and/or discussion boards, customized polling and the ability to check your email regularly for course correspondence. You may also need access to a printer.



## 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. 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.

Hypothetical: Ben and Jerry opened a business in Anchorage, Alaska, where they intend to sell ice cream of all things. A year later, the business is not doing so well, so Ben decides to come back to the ice cream shop later that evening to pack up much of the equipment used in the business and sell it on Ebay; to recoup some of his losses.

Can a partner in a partnership be criminally liable for larceny of partnership property?

## 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 will not 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 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!

**Note:** During summer, I reserve the right to assign new and/or additional cases decided by the Massachusetts Appeals and Supreme Judicial Courts which directly relate to and impact the topical areas of study.

May 31st

### **Criminal Process of the Complaint/Indictment**

1. Commonwealth v. DiBennadetto, 436 Mass. 310 (2002)
2. Commonwealth v. McCarthy Jr., 385 Mass. 160 (1982)
3. Commonwealth v. O'Dell Jr., 392 Mass. 445 (1984)

June 5th

### **Motion to Dismiss Oral Argument**

#### **BAIL**

4. Brangan v. Commonwealth, 477 Mass. 691 (2017)

June 7th

### **Oral Bail Argument**

#### **Discovery and Pretrial Related Issues**

Massachusetts Rules of Criminal Procedure - Rule 14

#### **Discovery Issues & Concerns**

5. Kyles v. Whitley, 514 U.S. 419 (1995)

June 12th

#### **Discovery and Pretrial Related Issues**

6. Commonwealth v. Dwyer, 448 Mass. 122 (2006)
7. Commonwealth v. Lampron, 441 Mass. 265 (2004)

June 14th

#### **Pretrial Conference Reports Due**

8. Commonwealth v. Heath, 89 Mass. App. Ct. 328 (2016)

#### **Probation in Massachusetts – Violation and Revocation Hearings**

9. Commonwealth v. Eldred, 480 Mass. 90 (2018)

June 19th

#### **Probation Violation/Final Surrender Oral Argument**

#### **Trial Issues**

10. Commonwealth v. Edwards, 444 Mass. 526 (2005)
11. Commonwealth v. Martin, 423 Mass. 496 (1996)

June 21st

**Trial Issues**

12. Commonwealth v. Latimore, 378 Mass. 671 (1979)

**Seizure in a Constitutional Sense**

13. Commonwealth v. Matta, 483 Mass. 357 (2019)

**Anonymous Tips and Investigatory Stops**

14. Commonwealth v. Lyons, 409 Mass. 16 (1990)

**BREAK**

July 10th

**Terry Stops, Frisk and Exit Orders**

15. Commonwealth v. Narcisse, 457 Mass. 1 (2010)  
 16. Commonwealth v. Torres-Pagan, 484 Mass. 34 (2020)



July 12th

**Motor Vehicle Stops**

17. Commonwealth v. Gabriel Cordero, 477 Mass. 237 (2017)

**Gelgatt Motions**

18. In the Matter of a Grand Jury Investigation, 92 Mass. App. Ct. 531 (2017)

July 17th

**Search and Seizure – Expectation of Privacy and Electronic Device**

19. Commonwealth v. Jason J. McCarthy, 484 Mass. 493 (2020)  
 20. Commonwealth v. Mora, 485 Mass. 360 (2020)  
 21. Commonwealth v. Comenzo, 489 Mass. 155 (2022)

July 19th

**Search and Seizure – Expectation of Privacy and Electronic Device**

22. Commonwealth v. Carrasquillo, 489 Mass. 107 (2022)  
 23. Commonwealth v. Delgado-Rivera, 487 Mass. 551 (2021)  
 24. Commonwealth v. Yusuf, 488 Mass. 379 (2021)

July 24th

**Fifth Amendment - Miranda Issues & the Doctrine of Voluntariness**

25. Commonwealth v. Welch, 487 Mass. 425 (2021)

July 26th

**Fifth Amendment – Miranda Issues and the Doctrine of Voluntariness**

Fifth and Six Amendment Issues – assigned materials

Final Exam Discussion

July 31st

Final Exam Review

August 3rd

**Final Exam**

