

ADVANCED CRIMINAL PROCEDURE AND PRACTICE

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Tuesday/Thursday 7:30pm to 8:50pm

Purpose and Course Description

ADVANCED CRIMINAL PROCEDURE AND PRACTICE is designed to prepare students in the evolving areas of the leading *U.S. Supreme Court* and *Massachusetts constitutional court* cases, which continues to be tested on the **bar exam** and often used and cited in both the *Massachusetts District and Superior Courts*. This upper-level course will serve as an overview of selected *U.S. Supreme Court* cases and materials from your *Criminal Procedure* foundational course. We will then compare federal law to Massachusetts law under Articles 12 and 14 of the Massachusetts Declaration of Rights, Massachusetts statutory law as well as the common law. Massachusetts law is often more “defendant friendly” affording greater protections under Article 14 than the Fourth, Fifth, and Sixth amendments to the U.S. Constitution.

Grading Criteria

Tentatively, the midterm examination is worth (**20%**) of the semester grade and the final examination is worth (**60%**) the semester grade and will combine to be **80%** of your final grade in this class. In addition, there will be weekly assignments and/or quizzes which will combine to be **20%** of semester grade. **I reserve the right to modify and/or change the grading criteria at any point during the Spring Semester.**

Case List

Throughout the semester, I **will** substitute the full version of *Massachusetts Appeals Court* and/or *Supreme Judicial Court* cases for the shortened synopsis of cases which appear in your textbook. When this occurs, I will give you advance notice, and I will also either provide you with the actual case (via **TWEN**) or provide you with this actual case citation so you can look up the case.

Textbook

SUPPRESSION
MATTERS
UNDER
MASSACHUSETTS
LAW

2022 Edition

Joseph A. Grasso, Jr.

*Suppression Matters Under
Massachusetts Law*
2023 Edition
by The Honorable Joseph A.
Grasso, Jr. (Author)
Publisher: LexisNexis

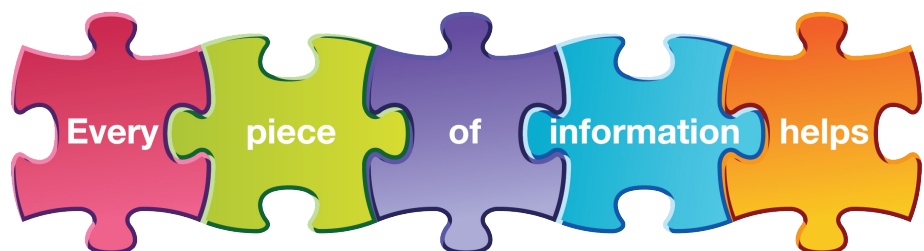
Class Attendance

Weekly class attendance and participation is an absolute must and lack of such will adversely impact your 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

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.

Classroom Decorum

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

Timeliness. Arrive on time. Late arrivals are disruptive. Frequent late arrivals will be excluded from the classroom.

Cell Phones and Messaging. There will be *no cell phone use in class*, with the exception of extraordinary circumstances. All cell phones must be turned off before the class begins.

If there is a family emergency requiring you to be reachable, 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.

Laptop Computers. While many colleges and professional school are banning laptop computers form classroom, I believe that they can be a useful classroom tool. Arrive early enough to start your laptop prior to class such that start up noises will not be disruptive to other students.

If I determine that you are using the computer for other than legitimate classroom purposes you will be immediately told to leave and will be marked absent for the class.

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 when called upon. Civility is expected at all times by all students.

Eating/Drinking in Class. Eating in class is strongly disfavored. I understand that stressed-for-time 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, in my opinion, they are becoming a distraction.

Civility Above All Else. Each of you will be treated at all times with courtesy and respect, and will treat others with equal civility at all times. In our class discussion, we will argue issues but never personalities.

Notes on Tape Recorders In Class

I follow the syllabus and I test what I teach. Do all 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.

The purpose of the class is to learn the law through discussion. 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.

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 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.

What was the significance of Mapp v Ohio?

The U.S. Supreme Court ruled in a 5-3 vote in favor of Mapp. The high court said evidence seized unlawfully, without a search warrant, could not be used in criminal prosecutions in state courts.

After Class

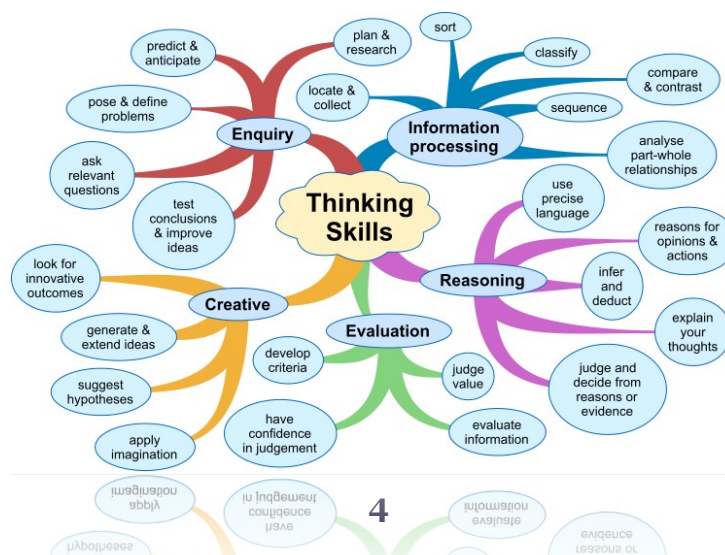
1. Identify and clarify anything confusing about the law or application or law covered in class. If necessary, work with classmates collaboratively to achieve mastery of the law;
2. Rework your class notes and case briefs to reflect a more accurate picture of the cases, issues, and rules of law.
3. Think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



TEAMWORK

Class Assignments

January 16, 2024:	<p>Introductions and Course Expectations</p> <p>Review and Distinctions between Federal Constitutional Law and Massachusetts Constitutional law – Massachusetts Declaration of Rights</p>
January 18, 2024:	<p>Con't - Review and Distinctions between Federal Constitutional Law and Massachusetts Constitutional law – Massachusetts Declaration of Rights</p> <p>Suppression Matters – Page: PTI-1</p> <p>Fundamental Rights, Incorporation and Selective Incorporation</p>
January 23, 2024	<p>Review: Federal Law - Wolf v. Colorado and Mapp v. Ohio</p> <p>Suppression Matters – Chapter 1 – The Origins and Purposes of the Exclusionary Rule. Pages: 1-1 to 1-17</p>
January 25, 2024	<p>Con't - Suppression Matters – Page: 1-1 to 1-17</p> <p>Suppression Matters – Chapter 2 – Predicates to Filing a Motion to Suppress: Physical Evidence, Statements, and Identification. Pages: 2-1 to 2-17</p>
January 30, 2024	<p>Con't – Suppression Matters - Pages: 2-1 to 2-17</p> <p>Suppression Matters – Chapter 3 – A Motion to Suppress Evidence: Is the Fourth Amendment or is Article 14 Implicated? Pages: 3 -1 to 3-83</p>
February 1, 2024	<p>Con't - Suppression Matters – Chapter 3 – A Motion to Suppress Evidence: Is the Fourth Amendment or is Article 14 Implicated? Pages: 3 -1 to 3-83</p>
February 6, 2024	<p>Con't - Suppression Matters – Chapter 3 – A Motion to Suppress Evidence: Is the Fourth Amendment or is Article 14 Implicated? Pages: 3 -1 to 3-83</p>
February 8, 2024	<p>Con't - Suppression Matters – Chapter 3 – A Motion to Suppress Evidence: Is the Fourth Amendment or is Article 14 Implicated? Pages: 3 -1 to 3-83</p>
February 13, 2024	<p>Review: Federal Law: Field Encounters, Terry Stops & M.V. Stops & Exit Orders</p> <p>Suppression Matters - Chapter 4 – Field Encounters and the Stop. Pages: Part II-1 – PartII-2, 4-2 to 4-119</p>
February 15, 2024	<p>Con't - Suppression Matters - Chapter 4 – Field Encounters and the Stop. Pages: Part II-1 – PartII-2, 4-2 to 4-119</p>
February 20, 2024	<p>Con't - Suppression Matters - Chapter 4 – Field Encounters and the Stop. Pages: Part II-1 – PartII-2, 4-2 to 4-119</p>



Class Assignments

February 22, 2024	Con't - Suppression Matters - Chapter 4 – Field Encounters and the Stop. Pages: Part II-1 – PartII-2, 4-2 to 4-119
February 27, 2024	Review: Federal Law – Terry Pat Frisk
	Suppression Matters – Chapter 5 – Field Encounters and the Frisk. Pages: 5 – 1 to 5 – 26
February 29, 2024	Con't - Suppression Matters – Chapter 5 – Field Encounters and the Frisk. Pages: 5 – 1 to 5 – 26
March 5, 2024	Review: Federal Law – Consent Searches
	Suppression Matters – Chapter 11 – Consent Searches. Pages: 11 -1 to 11 – 23
March 7, 2024	Con't - Suppression Matters – Chapter 11 – Consent Searches. Pages: 11 -1 to 11 – 23.
March 10 – 17, 2024	Spring Break
March 19, 2024	Review: Federal Law – Search Incident to a Lawful Arrest & Search Incident Before the Lawful Arrest, Search Incident to a Recent Occupant in a M/V.
	Suppression Matters – Chapter 12 – Search Incident to a Lawful Arrest. Pages: 12 – 1[a] to 12 – 30.
March 21, 2024	Midterm Exam
March 26, 2024	Con't - Suppression Matters – Chapter 12 – Search Incident to a Lawful Arrest. Pages: 12 – 1[a] to 12 – 30.
March 28, 2024	Review: Federal Law: Plain View Seizures
	Suppression Matters – Chapter 13 - Plain View Seizures. Pages: 13 -1 to 13 – 16.
April 2, 2024	Con't - Suppression Matters – Chapter 13 - Plain View Seizures. Pages: 13 -1 to 13 – 16
	Review: Federal Law: Exigent Circumstances, Hot Pursuit Doctrine, Evanescent Evidence, Community Caretaking Doctrine, Emergency Aid Doctrine
	Suppression Matters – Chapter 14 – The Exception for Probable Cause and Exigent Circumstances and the Motor Vehicle Exception. Pages: 14 – 1[a] to 14 – 38
April 4, 2024	Con't - Suppression Matters – Chapter 14 – The Exception for Probable Cause and Exigent Circumstances and the Motor Vehicle Exception. Pages: 14 – 1[a] to 14 – 38.
April 9, 2024	Con't - Suppression Matters – Chapter 14 – The Exception for Probable Cause and Exigent Circumstances and the Motor Vehicle Exception. Pages: 14 – 1[a] to 14 – 38
April 11, 2024	Review: Federal Law – Container Inventory Searches, Booking Room Inventory Searches, M/V Inventory Searches.
	Suppression Matters – Chapter 15 - Inventory Searches/Storage Searches. Pages: 15 – 1 to 15 – 21.

The distinction between hot pursuit and fresh pursuit lies in the severity of the crime committed. Fresh pursuit comes into play when law enforcement officers are tracking down a suspect who has committed a serious violent felony, such as bank robbery, murder, or sexual assault.



Class Assignments

April 16, 2024	Con't - Suppression Matters – Chapter 15 - Inventory Searches/Storage Searches. Pages: 15 – 1 to 15 – 21.
April 18, 2024	Review: Federal Law: Voluntariness Test, Massiah, Miranda, Meaning of “Custody”, Right to Remain Silent, 14 Day Break in Custody, Public Safety Exception, Moran v. Burbine, Brewer v. Williams, and Kuhlmann v. Wilson.
April 23, 2024	Review: Federal Law: Voluntariness Test, Massiah, Miranda, Meaning of “Custody”, Right to Remain Silent, 14 Day Break in Custody, Public Safety Exception, Moran v. Burbine, Brewer v. Williams, and Kuhlmann v. Wilson.
April 25, 2024	Final Exam , Discussion, Review, closing comments

