

## Criminal Procedure I Syllabus

Spring 2018 Semester  
Tuesday 10:10 AM - 12:10 PM  
Thursday- 10:10 AM – 12:10 PM  
Room 230

Professor Fred Klein  
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TEXT: Kamisar, Israel, LaFave, King, Kerr and Primus, Basic Criminal Procedure; Cases-Comments-Questions, 14<sup>th</sup> edition (West Publishing 2015) (paperback edition)

### OBJECTIVES:

This course will focus primarily on the constitutional issues confronting law enforcement and suspects during a criminal investigation as a result of the Fourth, Fifth, Sixth and Fourteenth Amendments to the US constitution. Specifically, we will cover the law of search and seizure, self incrimination, identification procedures and the right to counsel as defined by the US Supreme Court. Attention will also be given to differences in these areas between the US Supreme Court and the law of the State of New York. Finally, if time permits, we will discuss important selected procedural issues that arise during the prosecution of a criminal case including double jeopardy, discovery, pretrial hearings, jury selection, confrontation and the ethical responsibilities of a prosecutor.

By the end of this course the student should: 1) learn the black-letter law concerning constitutional issues that arise during the investigation of a crime; 2) develop a foundation in the area to prepare for the bar examination; 3) learn to brief a court's written opinion and discuss/debate the legal principles involved and their applicability to different facts; 3) begin to think, speak and act like an attorney; and 4) be exposed to the practical applications and policy issues that confront the criminal practitioner in the real world.

## METHODOLOGY

Reading assignments from the text will be given for discrete areas of the law. These will be supplemented by the assignment of individual cases (usually cases decided after publication of the text or cases from New York State) to be read on line or in the library. Please use the TWEN cite for this course to view assignments. The number of the assignment will loosely correspond to the class number. Students will be expected to brief the assigned material, orally discuss the cases in class (including the facts, issues and holding) and respond to and pose questions concerning the material. The American Bar Association requires that you spend at least eight hours per week, on average, outside of class studying for this 4-credit course. This is in addition to the four hours a week we spend in class.

## REQUIREMENTS

- 1 Reading- All assignments in the text as well as outside cases are required to be read prior to class. You will be kept informed of specific reading assignments for upcoming classes. Reading cases is more demanding than reading narrative. This is because each sentence in the case may be important. If you skim a case, you could miss the key sentence. You will be expected to know and discuss the facts, legal rules, application of the rules and policy arguments contained in each case. You should read concurrences and dissents equally because today's minority could be tomorrow's majority.
- 2 Attendance- The law school must certify to the Board of Law Examiners that a student was in "good and regular attendance." You must attend 80% of all scheduled classes to sit for the final exam. Attendance will be taken at all classes by passing around a sign in sheet. It is the student's responsibility to make sure that their name is signed by them. If your signature is absent from the sign in sheet, you will be counted as absent. If you believe you must be absent from more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be made to the Office of Student Affairs and must be accompanied by appropriate documentation. Lateness must be avoided at all costs. It is wasteful and distracting to those students who are punctual. I make every effort to start class precisely at 10:10 AM. Please plan accordingly and be in your seat ahead of time. All classes will be podcast!!

- 3 Participation- It is essential that you are prepared for class and participate in class discussions when called upon. Do not expect to sit in class and absorb information by listening and taking notes alone. Learning the law is not a spectator sport and involves more than memorizing rules. As a lawyer, you need to be able to apply those rules to varying situations and to express yourself clearly and persuasively whether summing up to a jury, negotiating a business transaction or interviewing a client.

When asked to discuss a case, do not read from the text or a commercial outline. You may use your own notes. Try to only discuss the pertinent facts, not every conceivable detail. Also, since this will be a large class, you need to speak clearly and loudly so all of your colleagues can learn from you. This will be an excellent opportunity for you to work on your public speaking skills. Your preparation and class participation will count toward your final grade, usually by a bump up or down, eg, a B to a B+ for positive participation; a B to a B- for being unprepared. If you have not done the assigned reading for a class, please do not attempt to fudge it. You will be wasting the time of the rest of the students. Simply acknowledge that you are unprepared so I can call on someone who is prepared. Given the number of students enrolled, however, it is unlikely that I will randomly cold call on you more than once or twice for the semester. Therefore, it is essential that you make every effort to prepare for each class. Finally, only ask for a “pass” for a class in truly compelling circumstances which does not include a simple failure to complete the reading.

There will be assigned seats and a seating chart so that I can learn your names and converse with you personally. The seats will be assigned based on where you sit for the first class. Therefore, if seat location is important to you, I urge you to attend the first class and be there early to get the location you feel most comfortable in.

**THERE WILL BE NO USE OF LAPTOPS OR OTHER DIGITAL DEVICES IN CLASS. YOU WILL NEED TO TAKE NOTES IN CLASS BY HAND WRITING THEM. RECENT STUDIES HAVE FOUND THAT STUDENTS LEARN BETTER WHEN TAKING HAND WRITTEN NOTES AS OPPOSED TO TRYING TO TRANSCRIBE WHAT IS TAKING PLACE VIA KEYBOARD. ALSO, STUDENTS WHO MISUSE LAPTOPS ARE DISTRACTING AND ANNOYING TO OTHER STUDENTS. FINALLY, STUDENTS HAVE TOLD ME THAT THEY LISTEN BETTER AND PARTICIPATE MORE IF NOT WEDDED TO A LAPTOP.**

There will be absolutely no cell phone conversations (phones to be placed on vibrate), text messaging, e-mailing or surfing the internet while class is in session. Severe penalties will be imposed on those who violate this rule.

PLEASE DO NOT WEAR A HAT IN CLASS. I TRY TO MAINTAIN A FORMAL PROFESSIONAL LEARNING ENVIRONMENT THAT IS CONDUCIVE TO A THOUGHTFUL AND SERIOUS LEGAL DISCUSSION.AND I FIND THAT HATS TEND TO DETRACT FROM THAT ATMOSPHERE. HOWEVER, IF YOU NEED TO WEAR A HAT FOR MEDICAL OR RELIGIOUS REASONS, PLEASE LET ME KNOW AHEAD OF TIME. THERE IS NO OTHER DRESS CODE FOR THE COURSE.

## EVALUATION

There will be no written quizzes or papers assigned. Your grade will substantially depend on your performance on a closed book written examination given at the conclusion of the semester. This test will consist of multiple choice questions. The test will be based on your readings as well as information discussed in class which may not overlap. You will be responsible for material in the assignments even if not discussed in class and material discussed in class even if not included in your reading assignments.

Your score will be based upon your knowledge of the legal principles covered in the readings and discussed in class and your ability to apply those principles TO FACTUAL SITUATIONS. The level of preparation and the quality of your class participation will be factored into your final grade. The law school's mandatory grade curve will apply to this course.

## CONCLUSION

I can be reached in my office, before/after class or by email. Because of my Clinic responsibilities, which involve random court appearances, it is impossible for me to have scheduled office hours. However, I can make tentative office appointments with you and you can also stop by my office at any time if I am there. I take pride in my accessibility to students so, despite no set office hours, I am in my office much of the week, particularly in the afternoon.

It is important that you keep up with the reading assignments. There is too much material covered for you to catch up later and you will better understand the material covered in class if you have already done the reading. If you have questions about the assigned material or

issues discussed in class, please discuss it with me before we move onto something else which may build upon the previous material. Before discussing it with me, however, I urge you to try to obtain the answer for yourself. You can do this by re-reading the case, reading the entire case (rather than the edited version in the casebook), listening to the podcast of the cCLASS and consulting secondary material.

I will try to direct you to the correct answer without answering it for you. One of the skills attorneys must learn is how to answer questions themselves. I am eager to receive questions but answering them will be part of the learning process for you. Communication with me outside of the classroom (either during breaks, via email or in my office) is not counted for your grade so don't worry about hurting yourself by asking. The only way you get hurt is by not asking and not learning (or asking a question in class that shows you haven't done the reading).

At this stage of the semester, you are undoubtedly eager to learn the material in this course and hopeful that the practice of law, no matter what field you choose, will be interesting and rewarding. If at the end of the semester you have the same enthusiasm and goals, and a solid foundation in criminal procedure, I will consider that a success. I look forward to learning with and from all of you.