Criminal Procedure II Syllabus

Fall 2008 Semester
Professor Fred Klein
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Wednesday 6:10-8:00pm

OBJECTIVES:

This course will focus primarily on the constitutional and statutory issues that confront the criminal law practitioner from the decision to prosecute through the possible sentence. Specifically, possible topics we will cover include prosecutorial discretion, bail, grand jury, joinder of charges and defendants, motions and hearings, discovery, timeliness, jurisdiction and venue, guilty pleas, trial issues (such as jury selection, confrontation, restraints and courtroom closure) and sentencing. Although not a trial advocacy class, we will discuss trial issues and hopefully act out a few starting with a bail application. Although not an evidence course, we will discuss issues of proof that develop in a criminal case.

Courtroom criminal procedure is defined by both constitutional protections and statutory requirements. Accordingly, we will be discussing overarching constitutional rules governing the prosecution and defense of a criminal case as well as specific laws controlling the various phases of criminal litigation. Our statutory focus will be on New York State’s Criminal Procedure Law although we will also discuss the Federal Rules of Criminal Procedure on selected issues such as sentencing.

The student will learn the black letter law concerning the issues that arise during the prosecution and defense of a criminal case. You will also learn to brief a court’s written opinion and discuss/debate the legal principles involved and their applicability to different facts. This will assist you to think, speak and act like an attorney. Finally, you will be exposed to the practical applications and problems that confront the criminal practitioner in the real world.
TEXT:

In an effort to hold costs to a minimum, I have decided to offer something for everyone with respect to the textbook we will be using. The assigned text will be Modern Criminal Procedure, Kamisar, Lafave, Israel, King and Kerr, 12th edition, Thomson/West which is a brand new edition.

For those of you who have previously taken Criminal Procedure I with me and have the 11th edition of that book, it will be perfectly acceptable to use it for this course. There are not extensive changes in the 12th edition and I will give assignments with page references to both editions.

Finally, to those of you who already took Criminal Procedure I with another professor, plan to take it with another professor or do not plan to take it, you need not purchase the whole Modern Criminal Procedure 12th edition for this course. You can purchase Advanced Criminal Procedure, Kamisar, Israel, LaFave, King and Kerr, 12th edition, Thomson/West which is a softcover (and less expensive) version of the relevant sections of Modern Criminal Procedure that we will be reading in this course.

To summarize, if you already have the 11th edition of Modern Criminal Procedure, use it here. If you will not be taking Criminal Procedure I with me, purchase Advanced Criminal Procedure. If you will be taking Criminal Procedure I with me in the future, purchase Modern Criminal Procedure, 12th edition, as we will be using it in that course as well. Any of these books will be fine for this course, If you are having trouble with this confusion, email me. In any event, let the bookstore know your choice as soon as possible because I will be posting an assignment to complete for the first class.

METHODOLOGY

Reading assignments from the text will be given for discrete areas of the law. These will be supplemented by the assignment of statutory sections and individual cases (usually from New York) 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. Occasionally, if time permits, a guest lecturer who is a participant in the criminal justice system will be invited to speak.

REQUIREMENTS

1  Reading- All assignments in the text as well as outside statutes and cases are required to be read prior to class. You will be kept informed of specific reading assignments for upcoming classes.

2  ATTENDANCE - THE CLASS WILL NOT MEET ON AUGUST 20, 2008. OUR FIRST SESSION WILL BE ON AUGUST 27, 2008 WHERE WE WILL DISCUSS A MUTUALLY CONVENIENT MAKE UP DATE.
3 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.

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. 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. Be prepared to be called upon in class to discuss the assigned material. Your preparedness and class participation will count toward your final grade.

Students will be permitted to take notes by computer, tape recording or other means. 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.

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 possibly together with narrative issue spotting and analysis essays. 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 and express yourself in understandable written answers. Your demonstrated level of preparedness, the quality of your class participation and your attendance will be factored into your final grade. The law school’s mandatory grade curve will apply to this course. In the past, I have found that this benefits the students.

CONCLUSION

I can be reached by email and will respond rather quickly if I am not in court. If you have substantive questions, 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 or via email) is encouraged but 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.

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 courtroom criminal procedure, I will consider that a success. I look forward to learning with and from all of you.