

**Criminal Law
Spring 2012**

Professor John Parry

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Class Schedule

Tuesday and Thursday, 10:35 a.m. to 12:00 noon, Room 1

Required Reading

Crump, Cohen, Levenson, Parry & Pether, *Criminal Law: Cases, Statutes, and Lawyering Strategies* (LexisNexis, 2nd edition 2010) [hereinafter cited as “CB” – for casebook]

Relevant sections of the Oregon Revised Statutes, provided as a separate document [hereinafter cited as “ORS”]

The two page supplemental reading (“Supp.”) attached to this syllabus.

Recommended Reading

If you want to look at additional materials as study aids, I recommend the following:

Joshua Dressler, *Understanding Criminal Law* (5th ed. 2009)

Wayne R. LaFave, *Criminal Law* (5th ed. 2010)

Wayne R. LaFave, *Principles of Criminal Law* (2nd ed. 2010)

Richard G. Singer & John Q. LaFond, *Criminal Law: Examples and Explanations* (5th ed. 2010)

All of these should be on reserve at Boley Library. Please let me know if you have trouble finding them.

Policy on Internet and Cell Phone Use

I expect you to turn your cell phone(s) off during class. If you have a good reason (such as child care, family illness, or the like) to keep it on, you must notify me. I also expect that, although most of you will use laptops to take notes, you will not use them (either alone or in conjunction with a cell phone) to access the internet during class unless I instruct you to do so for a class-related purpose. That means no emailing, texting, facebooking, surfing, or similar activities. I reserve the right to sanction students who do not comply with this policy.

Grades

Your grade will be based on a 4-hour limited open book final examination. Limited open book means that you may use the casebook, any supplemental materials, your notes, and personal outlines or group outlines to which you contributed. You may take the exam any time during the exam period.

Instructions

- 1) The syllabus assumes that we will cover each set of readings in one class, but that may change as the semester moves on. Unless I tell you otherwise, you should always assume that your assignment for the next class will be the next set of readings on the syllabus.
- 2) Whenever the casebook refers you to a section of the Model Penal Code, you should locate and read the appropriate section in the appendix to the casebook.
- 3) You should be prepared to discuss the numbered problems and the review problems in the casebook (where they are assigned). Although we often will not have time to discuss all of them (especially the review problems at the end of most of the chapters), they provide good opportunities for learning and reviewing the material in this course.
- 4) When you read a case or problem, think about how you would develop the facts if you were the prosecutor or defense attorney. What would you try to prove? How would you provide inculpatory or exculpatory context?
- 5) Where indicated on the syllabus, we will discuss the optional simulation exercises that appear at the end of most chapters in the casebook.

Syllabus

I. Foundations

Background Reading (read this before the first class): Harm, Morality, and Crime
(CB 801-810)

1. Reading for the First Class: *Legality and Vagueness*

CB 12-23, CB 779-801
ORS 161.025

2. Burden of Proof

CB 239-257, 266-285
ORS 161.055

Note that in class #2 we will consider the possible arguments that could be included in the Motion for Judgment of Acquittal described in Optional Simulation Exercise No. 6, at CB 282

II. Defining Crimes

3. Actus Reus, Circumstances, Harm, and Causation

CB 137-159, 165-174
ORS 161.085, 161.095

4. *Mens Rea: Elements and Transferred Intent*

CB 174-194
ORS 161.085, 161.095, 161.115

5. *Mens Rea: The Ostrich Problem, Strict Liability and Regulatory Crimes; Proof Outlines*

CB 194-218, 221-23
ORS 161.105

Note we will spend a little time at the end of class #5 on Optional Simulation Exercise No. 4, preparing a jury charge on the elements of murder under the Model Penal Code, as modified per the discussion of Exercises 3 & 4 at CB 222-23

III. Specific Crimes

A. Homicide

6. *Murder*

CB 39-60
ORS 163.005, 163.095, 163.115

7. *Other Homicide Offenses*

CB 62-84

8. *Homicide under the Model Penal Code*

CB 85-101
ORS 163.118, 163.125-149

9. *The Felony Murder Rule*

CB 102-136
ORS 163.115

Note we will spend some time in class #9 on Optional Simulation Exercise No. 2, which requires you to think about a jury argument on degrees of homicide (we will use the voluntary manslaughter version rather than the murder-with-sentence-reduction approach), as described at CB 111-12

B. Assault and Sexual Assault

10. *Assault and Introduction to Sexual Assault*

CB 287-312
ORS 163.160-163.195

11. *Sexual Assault: Resistance, Actus Reus*

CB 312-345
ORS 163.305, 163.355-163.445

12. *Sexual Assault: Evidentiary Issues, Aggravated Assault, and Statutory Rape*

CB 345-358
ORS 163.315-163.345
Supp. 1-2

C. Property Crimes

13. *Theft Offenses*

CB 481-513, 519-522
ORS 164.015-164.135

14. *Robbery, Extortion, and Burglary*

CB 523-543
ORS 164.205-164.415

IV. Defenses

15. *Introduction and Self Defense*

CB 359-385
ORS 161.190-161.219

Note we will spend some time in class #15 on the possible arguments that could be included in the Motion for Judgment of Acquittal described in Optional Simulation Exercise No. 9, at CB 479

16. *Battered Woman Syndrome, Defense of Others and of Property, and Related Defenses*

CB 385-400
ORS 161.205-229

17. *Necessity, Duress, and Entrapment*

CB 411-433
ORS 161.200, 161.270, 161.275

18. *Insanity, Intoxication, and Diminished Capacity*

CB 433-459
ORS 161.295-161.305, 161.125

19. *Mistake and Ignorance*

CB 459-474, 476-78
ORS 161.115(4)

V. Sentencing

20. *Reasons for Punishing*

CB 546-547, 552-581

Note that in class #20 we will use Optional Simulation Exercise No. 10 (CB 642) and the review problems (CB 643-646) to explore the various justifications and theories of sentencing. You should come to class with some ideas about how the various theories of sentencing would apply to the various fact patterns.

21. *Sentencing Options and Sentencing Schemes*

CB 588-603 (skim), 603-627
ORS 161.605-161.737

22. *Proportionality and the Death Penalty*

CB 581-588, 627-641
ORS 163.095, 163.105, 163.150

VI. Preparatory Crimes and Complicity

23. *Attempt Crimes*

CB 647-669
ORS 161.405-161.430

24. *Solicitation and Introduction to Conspiracy*

CB 669-690
ORS 161.435-161.485

25. *More on Conspiracy*

CB 690-707, 709-713

26. *Multiparty and Corporate Liability*

CB 713-737
ORS 161.150-161.175

Oregon Revised Statutes
Title 4. Evidence and Witnesses
Chapter 40. Evidence Code

Section 40.210

Rule 412. Sex offense cases; relevance of victim's past behavior or manner of dress.

(1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.355 to 163.427, or in a prosecution for an attempt to commit one of these crimes, the following evidence is not admissible:

- (a) Reputation or opinion evidence of the past sexual behavior of an alleged victim of the crime or a corroborating witness; or
- (b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim of the crime incited the crime or indicated consent to the sexual acts alleged in the charge.

(2) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.355 to 163.427, or in a prosecution for an attempt to commit one of these crimes, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

- (a) Is admitted in accordance with subsection (4) of this section; and
- (b) Is evidence that:
 - (A) Relates to the motive or bias of the alleged victim;
 - (B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or
 - (C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.355 to 163.427, or in a prosecution for an attempt to commit one of these crimes, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime, is also not admissible, unless the evidence is:

- (a) Admitted in accordance with subsection (4) of this section; and
- (b) Is evidence that:
 - (A) Relates to the motive or bias of the alleged victim;
 - (B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;
 - (C) Is necessary to establish the identity of the victim; or

(D) Is otherwise constitutionally required to be admitted.

(4) (a) If the person accused of committing rape, sodomy or sexual abuse or attempted rape, sodomy or sexual abuse intends to offer evidence under subsection (2) or (3) of this section, the accused shall make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties, and on the alleged victim through the office of the prosecutor.

(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (2) or (3) of this section, the court shall order a hearing in camera to determine if the evidence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and shall determine the issue.

(c) If the court determines on the basis of the hearing described in paragraph (b) of this subsection that the evidence the accused seeks to offer is relevant and that the probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence that may be offered and areas with respect to which a witness may be examined or cross-examined. An order admitting evidence under this subsection may be appealed by the government before trial.

(5) For purposes of this section:

(a) "In camera" means out of the presence of the public and the jury; and

(b) "Past sexual behavior" means sexual behavior other than the sexual behavior with respect to which rape, sodomy or sexual abuse or attempted rape, sodomy or sexual abuse is alleged.