

# CRIMINAL LAW

VERMONT LAW AND GRADUATE SCHOOL, FALL 2024

**PROFESSOR SHANNON HEERY (SHE/HER/HERS)**

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**CLASS MEETINGS: MONDAY/WEDNESDAY 2:10 PM – 3:25 PM, OAKES 208**

**OFFICE HOURS:** I am available both in person and virtually. Please use these; I really enjoy getting to know you all!

***In-person:*** **Wednesdays 1:00 pm – 2:00 pm.** Feel free to drop in or schedule in advance. If you decide to drop in, I welcome group office hours or discussions. If you'd like to ensure an individual discussion, please contact me to schedule something in advance.

***Location:*** My Office, Waterman 218, or sometimes First Branch!

***Virtually:*** I am generally available Thursdays between 9:30 a.m. – 11 a.m. and 2 p.m. - 4 p.m. for virtual appointments. Reach out via email to request a virtual meeting time. In your message, please include a few times that you are available. If Thursday does not work due to your schedule, let me know, and we can arrange another time that is mutually convenient. I have included a Teams Link for all Virtual Office Hours on our Canvas home page. Anytime we schedule a virtual appointment, use that link to meet.

***Those don't work?*** Simply reach out via email and we can plan another time to meet!

## TEACHING ASSISTANTS:

- Isabella (Bella) Pickett: [IsabellaPickett@vermontlaw.edu](mailto:IsabellaPickett@vermontlaw.edu)
- Catherine (Catie) Michael: [CatherineMichael@vermontlaw.edu](mailto:CatherineMichael@vermontlaw.edu)
- Julia Bloechl: [JuliaBloechl@vermontlaw.edu](mailto:JuliaBloechl@vermontlaw.edu)
- Camille King: [CamilleKing@vermontlaw.edu](mailto:CamilleKing@vermontlaw.edu)
  - o Office Hours: TBD

\*Look for information via Canvas regarding the scheduled office hours of each of the TA's in this class. They are a great resource to use.

## REQUIRED TEXT AND COURSE WEBSITE:

- (1) Cynthia Lee and Angela Harris, **Criminal Law: Cases and Materials, 4th Edition** (Thomson West 2019).
- (2) **Canvas:** Throughout the semester, I will post additional material, from videos to podcasts to readings, through Canvas. It is your responsibility to keep track of these individually distributed handouts as well as to read, view, or listen to anything assigned. Please follow the postings closely so you have completed any reading, viewed any videos, listened to any podcasts, and completed any other assignments before each class. Generally, I will post additional assigned content within the module for each class at least one week in

advance. Of course, rules can have exceptions (especially if the assignment stems directly from something that came up in class that requires follow-up), but I will do my best to give you ample time to complete the assignments.

\*Please reach out to me or to your TA's if you have any questions while navigating the Canvas page. We will use various features from the page, including "groups" for dividing into groups in class (see section below on Group Work).

***A Note about Outside Study Aids:***

As we will discuss throughout the semester, Criminal Law is very specific depending upon the rules of a given jurisdiction. As such, some of the rules and content of a Criminal Law widely vary from resource to resource. I fully support using outside resources if you feel it is necessary to understand a concept, but *please* pay close attention to what is required for *this course* and what the rules are that you must know for the final. I find that outside resources can often cause confusion for students in this particular subject.

**COURSE LEARNING OUTCOMES:**

My overarching goals for the course are for you to understand the basic concepts that inform our system of Criminal Law in the United States, as well as to learn how to analyze and identify issues within complex fact patterns that may arise. To these ends, my goals for the course include the following learning outcomes:

1. Identifying and applying the foundational concepts of criminal law.
2. Knowing how to assess criminal law examination questions in a manner consistent with the Bar Exam.
3. Knowing the elements of various common law criminal offenses and defenses.
4. Understanding the manner in which the law, both statutory and judge-made, changes.
5. Understanding the structure of the criminal law system in the United States and its inadequacies.
6. Spotting relevant issues in a fact pattern.
7. Identifying legal rules within legal authorities.
8. Synthesizing rules of law into a logical framework for analysis.
9. Adeptly applying facts of hypothetical fact patterns to learned rules and critically thinking through the application.
10. Identifying the policy choices that are evident in the creation of crimes, the selection of offense elements, and the implementation of individual discretion by various criminal system actors.
11. Developing the ability to reflect and assess the current criminal system, whether and how it provides "justice," and its disparate impact on certain communities.
12. Understanding that criminal cases greatly impact real human beings. Students will learn to examine the system with empathy and understand its wide-reaching effects on the whole and in a particular case.

To achieve these goals, you will become familiar with court opinions interpreting and applying the basic constructs of Criminal Law, as well as with statutory rules and other rules that our federal government and various state governments have formulated. In order to assess progress toward these goals, I have designed in-class exercises as touchstones to better understand the

substantive knowledge and analytical tools the class has mastered, as well as areas we need to cover in more depth. The exercises will also enable you to monitor your own personal progress during the semester.

**CLASSROOM ENVIRONMENT, EXPECTATIONS, AND VALUES: Creating an Accountable Space**

- (1) The class is structured with the understanding that everyone learns at a different pace and in a different way and that we each bring different lived experiences to the classroom and to our discussion of criminal law. I plan to vary the way we cover the material throughout the semester to appeal to all preferred learning methods.
- (2) I hope to have lively class discussions in which everyone will *listen* to each other's opinions with *civility and respect*. That does not mean that everyone has to agree with everyone else. My expectation is simply that everyone treats one another with common courtesy and professional integrity as you discuss the material. It also means that when you disagree with one another, you do so in a professional manner.
- (3) All members of the VLGS community, including professors, are expected to treat each other with respect. I want to promote an environment that avoids words/remarks or actions that show bias or prejudice based on age, disability, ethnicity, gender, national origin, native language, race, religion, sex, sexual orientation, or socioeconomic status. I also want us to be able to engage in honest discourse. If you have any concerns about anything said or done in class, by me or by one of your colleagues, please talk to me about your concerns.
- (4) Criminal law frequently involves sensitive material that can be distressing to some. Please keep in mind that everyone else's lived experiences are not your own and you may not know what another person has been or is going through. Do not make assumptions about your classmates. Instead, show sensitivity to your classmates and to the subject matter.
- (5) Be open to new ideas. Our environment should foster growth and learning.
- (6) It is okay to admit not knowing or understanding something. It is safe to make a mistake. This is true for everyone in class and all class members should strive to create and maintain that feeling for all other class members.
- (7) Be willing and unafraid to express yourself: including your thoughts, opinions, or any concerns.
- (8) Come to class prepared and engaged! Preparation and active contribution are very important in our class.

Please consult and abide by the Vermont Law and Graduate School's Better Community Statement (which can be found in the [student handbook](#) and is reprinted here):

As members of the Vermont Law and Graduate School (VLGS) community, we choose to be a part of an academic community that is dedicated to principles that foster integrity, civility, and justice.

As citizens of a broad and pluralist society, we encourage those of all cultures, orientations, and backgrounds to educate and respect one another in a safe environment.

- We respect the dignity of all persons and assume the best about them.

- We challenge and reject all forms of bigotry while striving to learn from each other's differences.
- We celebrate our differences while appreciating our similarities.
- We value an inclusive environment that is accepting of each other's physical, cognitive, social, and professional differences.
- We respect the rights of each and every member of the community, regardless of race, ethnicity, national origin, religion, age, gender, sexual orientation or lifestyle, medical condition, or socio-economic status.
- We realize that our common interests exceed our individual differences.

As members of the Vermont Law and Graduate School community, we affirm our rights to freedom of expression and association, and the belief that they must be exercised responsibly. The spirit of building a better community is best served when the ideals of integrity, civility, and justice are expressed and debated with tolerance, understanding, appreciation, and good will.

#### **CLASS ATTENDANCE:**

Class attendance is mandatory. Vermont Law and Graduate School Academic Regulation II.A provides that a student will receive a grade of F-Wd if they are absent from 20% of regularly scheduled classes. The Academic Regulations permit individual professors to set a higher requirement (but not a lower requirement). For this class, you will receive a grade of F-Wd if you are absent from more than three regularly scheduled classes.

I take attendance by QR code that is presented on the first slide of the day. Because we need to begin class, this is removed within a minute of the class beginning (at 2:10 p.m.).

If you are actually present in class, but you have difficulty with the QR code or link, you **must** email me as soon as this problem occurs to be counted as in attendance and on time.

If you are *actually present for class* but did not sign into the class via QR code because you were tardy, you **must** email me ***upon arrival*** to let me know that you are in class and missed the QR code in order to be counted as in attendance for the day, but tardy.

Two tardies equals one unexcused absence. As described above, being on time means you are in the classroom and ready to participate in class when it starts at 2:10 p.m. Joining class on Teams does not count as attendance. Additionally, students cannot consistently absent themselves for long periods during class. Of course, I understand if you need to excuse yourself occasionally, but doing so every class, multiple times in the same class or in another unreasonable way indicates that you are not complying with the participation requirement (see below) in the course and may count as an absence or impact your final grade.

Pursuant to Vermont Law and Graduate School's attendance policy, I am required to record class attendance. **I have no authority to excuse any absence or to allow more absences than the Attendance Policy allows.** Students are responsible for monitoring their own compliance with the attendance policy. I tally attendance at the ***end of the semester***; therefore, I cannot update you with how many classes you have missed. If you are concerned about your status, I will not

be able to answer your concerns due to the way I account for your attendance. Therefore, I would suggest that you be diligent about recording your own attendance and being prepared in advance in case you have to miss a class for unexpected reasons.

For more information, please speak directly with the Registrar's Office. If additional absences are due to a health issue or some other extraordinary circumstance beyond your control, contact Vice Dean for Students Brennan as a withdrawal or medical leave may be appropriate.

On occasion, we may need to have class virtually on Teams due to inclement weather or other unforeseen circumstances. I ask that you all commit to full participation in a virtual forum as well if this situation arises.

#### **CLASS DISCUSSION AND PREPARATION:**

Class discussion, including responding to questions asked by me and points made by your classmates, is an essential component of this course. That said, ***please do not confuse quantity with quality***. Being a part of class discussion includes actively listening, not disengaging, or merely waiting to speak, and contributing in useful ways in accordance with the classroom environment section above. If you find yourself talking a lot in class, take the responsibility for listening more. If you never talk in class, take the responsibility for contributing more.

I expect students to be prepared for class and will call on you at random. As I said above, active participation is expected. If you are not prepared on a particular day, you may "pass" once. However, you should expect to be called on during a future class in short order. Passing more than once will put you in jeopardy of negatively impacting your final grade (in accordance with the paragraph below).

As you will see in the "Grading" section, I do not grade "participation" as a factor in your final grade. Do not interpret that to mean your participation is not required. To the contrary, I assume you all will be excellent participants! Essentially, as long as you follow the expectations in this syllabus, you will have no issue. However, if you consistently pass or violate other classroom rules, ***I reserve the right to lower your final grade by one half of a letter grade to reflect these violations of classroom expectations.***

I am incredibly understanding if you alert me to any issues that impact your participation ***in advance of class***. If, due to the nature of the topic matter, a personal life experience, or another sensitive personal reason, a certain class is not one that you feel comfortable contributing to, please let me know in advance of class via email. You do not need to provide the specific reason why in this circumstance.

When you have reached this portion of the syllabus, send me an email to tell me your favorite thing that happened this summer. The first person to send me an email will receive a prize. It is not a great way to start by failing to send an email at all. Reading this entire document is imperative to a good understanding of the course!

### **IN-CLASS EXERCISES AND GROUP WORK:**

We will do hands-on exercises throughout the semester. In addition to classroom discussion, your active contribution to these exercises falls into the category above regarding expectations of class discussion and participation. Please do not underestimate the value of group work. As an attorney, you are often required to collaborate with a team.

I occasionally also ask students to participate in role-playing exercises. I typically do not do so until we have created an environment that feels comfortable. Still, if this is something that you just cannot do, please come to speak with me about it in advance.

As noted above, I often use the “groups” tab on canvas to create random groups. Please familiarize yourself with this tab so you can easily access your group assignments.

### **ASSIGNED READINGS:**

There is a separate document with your reading assignments. These readings are tentative and may change throughout the semester as current events, time, and interest necessitate. Again, **you must check our Canvas site regularly to stay current on the assignments for each week. I may update individual class modules with any additional materials required for class. The casebook reading assignments are unlikely to change.**

I intentionally do not assign large chunks of reading for this course. The reading in this class is very manageable, which is another reason why I have high expectations for your class preparation and thoughtfulness with the material we cover. I do this to foster more in-depth discussion and understanding of large topics. The book is also well organized and helpful. I would strongly suggest paying attention to topic headings, sections, all notes after, *and footnotes* within, the readings.

### **DISCUSSION QUESTIONS:**

I will provide discussion questions from time to time. These are for you to read and consider prior to class. While you do not need to submit any kind of written response to me, it is quite helpful to jot down your thoughts in response to these questions. They also help you to be well prepared for the class discussion.

### **POWERPOINTS:**

I utilize PowerPoint slides throughout the course. I will provide you with a pdf version of my slides at the end of each week through Canvas (in a module entitled “All Slides”). I ask that you not share these slides with anyone outside of our course.

You will see that my PowerPoint slides for this course, in general, are somewhat bare. This is intentional. Part of learning Law in general, and Criminal Law specifically, is critically reading the cases and discerning how they illustrate overarching Criminal Law principles, ultimately extracting the rules. My slides are not designed to immediately provide those answers, but to work with you to get there through robust discussion and a careful reading of the case law.

### **HOW A CRIMINAL CASE MOVES THROUGH COURT AND EVIDENCE IN A CRIMINAL CASE:**

While we are discussing cases from our casebook you will also learn how a case moves through the criminal court system. To that end, in addition to learning substantive criminal law, another objective of this class is to teach you the steps involved in prosecuting and defending a criminal case. This means that when you are preparing for class, you should always consider what court wrote the opinion you are reading and how that case landed in that court (state or federal, trial or appellate, etc.).

You **must** also consider arguments from various perspectives and think through what facts the prosecutor or the defense attorney would use to support their arguments. This is a crucial skill to develop in this course. Students who excel in the course are able to challenge their own assumptions about the facts and make strong arguments applying the facts to the law, regardless of the role assigned in a criminal case.

### **ACCOMMODATIONS:**

If you have a disability and would like to request an accommodation for any reason and/or any aspect of the class, please review our accommodations policy [here](#). Follow the instructions by completing the on-line form and uploading the required supporting documentation to ensure the accommodation is considered in a timely manner. Contact Associate Dean of Diversity, Equity, and Inclusion, Lisa Ryan, for any accommodation request or questions. Please note that requests made within two weeks of an examination may not be granted in time. Please make your request as soon as possible.

### **QUESTIONS:**

You are welcome to reach out directly to me or to any of the TA's with questions; however, please know that I am not a big fan of answering substantive questions *via* email. One of the reasons for this is because I value getting to know each of you, so I prefer the kind of back-and-forth exchange we can have talking with one another. With that understanding, please feel free to ask me a question via email if you think the question is straightforward enough that it does not warrant a meeting or if you think it is something I should clarify with the class.

### **GRADING:**

1. 25% - Quizzes, Written Assignments, and Group Work
2. 10% - Midterm Exam
3. 65% - Final Exam

### **EXAMS:**

You will have two graded exams in this course, a midterm and a final examination. The exams may include multiple choice questions, true/false questions, short answer questions, and essay questions. I will discuss the exams more as we progress through the course. For now, please know that you are responsible for all material covered in class (including guest speakers or information otherwise discussed or distributed for class and anything posted in Canvas, such as information in handouts, supplementary readings, video clips, in-class exercises, etc.) unless I tell you otherwise. You are also responsible for all material assigned on the syllabus unless I tell you otherwise.

Other assessments will not impact your final grade so long as they are completed with a good faith effort in a timely manner (see below).

***Midterm Exam:***

The midterm exam will be a one hour in-class examination through examsoft. It will take place on **Wednesday, October 23<sup>rd</sup>** during our class session. The midterm exam will be closed book; however, ***you will be allowed one printed sheet of 8.5 x 11 paper that you may bring for use during the exam.*** You may use both sides of the paper. You may handwrite or type. You can truly put whatever you would like on the piece of paper as long as it is only one sheet of that size.

***Final Exam:***

The final exam will be a three-hour in-class examination available through examsoft. ***The final will be closed book.*** The date will be determined at a later time by the registrar's office.

***Exam Essay Success:***

If given an essay question, the strongest exams respond using the CREAC method. My CREAC preference is: Conclusion, Rule, *Example*, Application, and Conclusion.

*Example:* means from a case, hypothetical, current event we discussed during the course, etc.

You do not need to provide case names in this course. A reference with a sufficient description will suffice. You also do not need to memorize all details of the cases at all. The purpose of the example is to allow you to draw a conclusion based on your assessment of the facts as applied to the rules. We will discuss this in more detail in preparation for the exam.

***Exam Review:***

There will be a two-week deadline from the publication of your grade in the course to reach out to me to schedule a review of your final exam. This is so that the exam is fresh in both of our minds, enabling a productive and helpful conversation. I will first have you meet with my administrative assistant, Brenda Caron, to review the materials. You will then need to schedule a follow-up appointment with me if you have remaining questions.

**QUIZZES:**

You will have two ungraded quizzes. Both will be available via canvas and timed. You must complete the quizzes with an earnest effort in order to receive credit for them, but otherwise, your score will not contribute to your final grade. In other words, as long as you complete them and do your best, you will receive full credit.

**WRITTEN ASSIGNMENTS:**

Do not stress about the written portion of these assignments. If they are completed in a timely manner and there is a genuine effort to reflect on the assignment given, you will receive full credit. I will not be submitting substantive feedback (though I am happy to discuss them with you outside of class) or checking grammar, etc., but I do generally respond briefly to your thoughts via Canvas comment. These are meant to be a safe space for you to write genuine reactions to something you have heard/experienced that is a part of the criminal system.



The introduction assignment due before the first day of class is included for grading purposes here, but it is straightforward and without any outside task that you need to complete.

You must complete two other written assignments, both of which will reflect on the criminal legal system and require some active work before reflection.

I will give you 4 options for reflective assignments (posted below and also in the assignment tab on Canvas) and require that you complete two of them. If you choose to complete a third assignment and written reflection, you will receive one extra credit point on your final grade.

Written Assignment Instructions (Copied and Pasted from Canvas. Available and required to be completed in Assignment Tab in Canvas):

**Written Assignments 1-4: You must complete 2 of the 4 described below. If you complete a 3rd, you will receive 1 bonus point on your final grade.**

\*\*This "assignment" is used only to describe your topic choices. It will not allow for any direct submission. Instead, I will include 3 more assignments in the assignments tab: Active Written Reflective Assignment 1 (Required), Active Written Reflective Assignment 2 (Required), Active Written Reflective Assignment (3) (Optional). Submit one written assignment in each (3rd optional).

**Please complete two of the below tasks and submit a written reflection on what you saw/listened to/read.**

**Parameters:** At least 1 page, no more than 2 pages. 12-point font. Double spaced. Times New Roman.

**Deadlines:** These are open to be completed throughout the semester until December 4, 2024, at 11:59 p.m. I would strongly suggest, however, that you do these sooner rather than later, so you do not have to scramble to try to complete them at the end of the semester when things get the most chaotic!

**Grading:** As a reminder from the syllabus, as long as they are completed, you follow the above and below parameters, and you make a genuine and honest effort (you completed the task and honestly react to what you saw/listened to/read) then you will receive full credit.

**Options for Tasks to Complete for the Topic of your Written Reflective Assignments are as follows:**

1. **Visit Court for Criminal Proceedings:** Please go in person. This link to court calendars should be a helpful tool: [available here](#). If that is not possible due to transportation or other reasons, please first reach out to let me know the situation. Then, if approved, you should research whether there is online viewing available ([available here](#).) If you need to view it online, you must do two separate dates and times.

*For the written assignment:* State the date, time, courthouse and courtroom you observed. Talk about your reactions to what you saw - give some details about the experience, what sort of proceeding you believed it to be, the charges, the prosecutor, the defense attorney, and the judge, the result (of that isolated appearance), etc. Any other observations about the courthouse,

courtroom, treatment of witnesses, defendant, other people in the courtroom who were a part of the proceeding, etc. are all welcome.

**2. Visit a Jail:** I will arrange jail visits. I will set up at least one or two jail visits/tours that you can join so this is not an overly complicated assignment if it is what you choose to complete. If you know this is one that you're interested in doing, please let me know asap so I can gauge interest in good times for larger groups to tour.

*For the written assignment:* Please include the date, time, and jail that you went to. Feel free to talk about your reaction to the building (sight, sound, smell, etc.), what you expected, what you witnessed (if it met your expectations or was very different than what you anticipated), any events that happened while you were there, and what, if any, impact it has on your thoughts about how we discuss sentences for criminal cases.

**3. Read Usual Cruelty:** This book is 161 pages, but the pages are smaller than the average book. It reads fairly quickly, but it is heavy. I have many copies of this book in my office available for your use (Waterman 218). I'd just ask that you return it after completing the assignment. It is also available on audible if that's preferred: [available here](#). (Audible total read time for every part of the book is 4 hours and 26 minutes).

*For the written assignment:* Discuss what you learned from the book. What surprised you? What did you agree/disagree with, what outraged you, what did you think was no big deal, what did you think was a huge deal, etc. What stories impacted you, and any other reactions you had to what you learned. An honest assessment is what I'm looking for.

**4. Listen to Reformed: A Criminal Justice Podcast:** Available [here](#). You must listen to all episodes before you begin your reflective writing assignment.

*For the written assignment:* Discuss what you learned from the podcast. What surprised you? What did you agree/disagree with, what outraged you, what did you think was no big deal, what did you think was a huge deal, etc. What stories impacted you, and any other reactions you had to what you learned. An honest assessment is what I'm looking for.

#### **OTHER FORMATIVE ASSESSMENTS:**

I may give several additional formative assessments during the semester in the form of short quizzes, polls, and short written responses. These are to help both of us gauge progress. They will not directly impact your final grade, but I do expect participation in accordance with the above section regarding participation.

#### **COMPUTERS AND TECHNOLOGY:**

As a courtesy to everyone, do not use the internet or your computer for personal use during class, including, (but not limited to): instant messaging, file sharing, text-messaging, any kind of recording, or any other such applications during class. Do not look things up on the internet, check your email, or otherwise multi-task during class. Even if you are great at doing multiple things at once, it can be very distracting to others, including classmates sitting near you or behind you. The only exception is if you are specifically asked to do so for learning purposes during a class. Texting during class is also prohibited.

**RECORDING CLASS:**

Do not independently record the class without checking with me beforehand and/or obtaining permission to do so. Links to class recordings will be available on our Canvas site in a module entitled “All Recordings”.

**SYLLABUS AND AMENDMENTS:**

This is an important document for our class. It sets the expectations for each of you as we begin the semester. To incentivize your careful attention to it, I will offer a food item of the majority’s choice (e.g. pizza, ice cream, etc.) “party” at the end of the semester if we make it through the course without *anyone* asking me a question that is answered in this syllabus. Yes, it’s long, but you can do it! An important lesson to be learned from law school, that will immensely benefit your practice as an attorney, is always check the rules to find the answer *first*. Conversely, if someone asks me a question that can be found in this syllabus, I will alert the person to that and ask that you seek the answer yourself. Any Amendments to the Syllabus will be made in writing. When you reach this portion of the syllabus, send me a response to your email saying, “I’m almost done!”

**FINAL THOUGHTS:**

I value all perspectives and experiences. Criminal Law can be a difficult topic for many, and we will read cases that may be hard to ingest. I understand and respect that it will impact many of you in different ways. The course deals frequently with the theory and the moral and cultural impetus behind the laws so please understand that we will need to unpack that. I expect each of you to contribute in meaningful ways to class discussion based on your careful preparation for class, but also based upon your individual lived experiences and unique perspective. These shape and influence who you are and your understanding of the material.

I hope to meet you all on an individual basis during the semester so do not hesitate to contact me and/or arrange a meeting! I look forward to working with each of you.