**Legal Studies 109: *Aims & Limits of Criminal Law* Spring 2024**

**Instructor: Richard Perry, J.D., Ph.D.** [**https://www.law.berkeley.edu/our-faculty/faculty-profiles/richard-perry/#tab\_profile**](https://www.law.berkeley.edu/our-faculty/faculty-profiles/richard-perry/#tab_profile)

**Contact via email:** **rwperry@berkeley.edu**

**Lecture Meetings: Monday-Wednesday 5:10-6:30 (Berkeley Time) in 155 AAP. Per Legal Studies policy, our lectures will be recorded via Classroom Course Capture and then posted on bCourses; please note that these recordings will include student participation; our discussion sections may also be recorded if the section classrooms are so equipped**

**Office hours:** Wednesday afternoon 1:30-3:00, via Zoom & by appointment, sign up for a time slot at [https://www.wejoinin.com/rwperry@berkeley.edu](https://www.wejoinin.com/rwperry%40berkeley.edu)

**Zoom Link for Office Hours**: [https://berkeley.zoom.us/j/94253166834?pwd=RHNUUllyTW9ZU08rSEhCa0hRL0l2dz09](https://berkeley.zoom.us/j/94253166834?pwd=RHNUUllyTW9ZU08rSEhCa0hRL0l2dz09%20()

Meeting ID: 942 5316 6834

Passcode: 428884

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**GSI: Daimeon Shanks-Dumont, JD: email** **daimeon\_shanks@berkeley.edu**

**Office Hours: Café Strada Mondays 4:00-5:00 and by appt.**

**Sections: 101 M 2:00P-2:59P B51 Hildebrand**

 **102 W 3:00P-3:59P 124 Wheeler**

**See also Daimeon’s section syllabus & materials folder on bCourses**

**IMPORTANT NOTICES:**

**Sections do NOT meet until Week II**; GSI office hours also begin only in Week II. Please sign up in advance for office hours to avoid conflicts and to respect fellow students’ privacy.

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***Land Acknowledgement*:** UC Berkeley occupies unceded lands of the Chochenyo Ohlone, the Xučyun people. We recognize that every member of the Berkeley community benefits every day from the use and occupation of this land, ever since our institution was founded in 1868. Our students are encouraged to consider enrolling in our department’s new course, **LS 190.2:** **Racial & Colonial Foundations of UC Berkeley**, taught by Prof. Nazune Menka.

**Topical and Thematic Structure of this Spring 2024 Course Offering:**

This course is organized of two primary threads. The first thread of the course examines core concepts and doctrines of substantive Anglo-American criminal law from a critical law & society perspective. It considers these concepts from an interdisciplinary and comparative perspective. The second major thread addresses recurring conceptual controversies in thinking about crime in the US from the 18th and 19th centuries into the 21st century.

We will focus on recent developments in criminal law and will consider emerging theoretical frameworks for understanding these recent developments. Since U.C. Berkeley is now, and has long been, one of the world’s leading centers for the study of law and society, the work of both past and current Berkeley scholars at will be highlighted in particular.

**LS 109 Learning Objectives:**

i.To achieve a broad grasp of the case law and evolving doctrines of substantive criminal law from a “legal studies” framework; we will focus especially on broad historical, political trends in US criminal law that have evolved in the USA in its distinctive “governing through crime” (cf. J. Simon 2007)

ii.To achieve a basic practical competence a critical analysis of case law and of the development of criminal law doctrines; this competence includes a familiarity with applying case analysis to new fact patterns, and reasoning using actual and hypothetical cases; and

**Required Readings:**

There is one required textbook: Matthew Lippman, Contemporary Criminal Law (Sage), 6th Edition 2023. Since this is a class where the scholarly practice of reading and critically discussing legal cases is a primary learning objective of the course, every student in this class is REQUIRED to bring the assigned reading to every class meeting. Therefore, we want to assist you to find one as easily as possible. This textbook can be purchased at the campus-area bookstores. Paper copies, both new and used, can also be bought online for a considerable savings. It can be purchased on-line as an e-book. The campus bookstore or Amazon.com will also rent a copy to you for a lesser price.

The majority of core courses in U.S. law schools focus their classroom activity on the reading and analysis of specific appellate case opinions, the “law on the books.” This class makes use of the case method to a significant extent. For students to become competent in case analysis is a main goal of our course. But this course should be understood as a “legal studies” or “law and society” study of criminal law doctrines. This means that, in addition to the study of case law, we will also examine the “law in action” – i.e., how these legal doctrines actually work in the social world we live in.

There will also be a number of supplementary readings & related materials made available on bCourses. Also, on bCourses students will find Powerpoints and other review materials (often posted AFTER the lecture, so we can maximize class participation), along with related video links and other recommended materials for further study.

**DSP and Other Accommodations:**

If you have special needs due to different abilities we will make every effort to accommodate them. For University policies regarding students with disabilities, and federal and state law affecting people with disabilities, see: http://access.berkeley.edu/ . The student has the responsibility to inform the professor or GSI during the first week of the term, along with providing the appropriate documentation from the DSP Office.

Accommodations for athletic and other non-DSP scheduling are the responsibility of the student to negotiate with the instructors during the first two weeks of the semester.

**Content Cautions & Considerations for Substantive Criminal Law Case Readings**

LS 109 is a course about the law of crimes, structured around our shifting conceptions of crime and around theories of its causes and responses to it. Many of the topics focus on harms to persons. We are obliged to discuss these diverse, often horrific, harms in order to teach this course, but we wish to do so with as much consideration as possible for the large percentage of us whose lives have been touched any of these physical or socio-psychological harm. Please do not hesitate contact your instructors so that we can work to accommodate your individual circumstances

**Grading and Assessment:**

**In lieu of midterm exams, we will have three Mid-semester Short Written Assignments:**

These will be roughly 500-600 words (roughly 2 pages), prompts posted on bCourses on Wednesdays after lectures, students’ responses due on Sunday evening

- 15 points each assignment (the first will be graded P/NP)

**Written Assignment #1: Week III,** **roughly one hour, 2-3 pages, due bCourses Feb. 4th**

**Written Assignment #2: Week VIII, roughly one hour, 2-3 pages, due on bCourses March 10th**

**Written Assignment #3: Week XII, roughly one hour, 2-3 pages, due on April 14th.**

**Discussion section participation: 15% – See Section syllabus on bCourses**

**Lecture-related Assignments & Participation:**

* Reading Exercises (10%): there will be 10 prompts/questions published during the semester. You are required to do 8 of them (so you get two weeks off). Generally, these will be posted during/after the Wednesday lecture, due on Saturday evening, also Lecture On-Call discussions.

**Final Essay Exam:** 30% of course grade, in the form of a three-hour, take-home exam essay. Students may have a maximal time-frame to complete a 2 hour 50 minute open-book essay test: May 5-10th (note that May 10th is the final day of Spring Exam Week and also the end of the 2023-24 academic year).

**Course Outline List of Topics and Readings:**

(Students should expect minor adjustments to this schedule from week to week, in accordance with the pace of class discussion; Covid infection rates; the scheduling of possible guest lecturers is also an evolving process)

**Part I Weeks 1 and 2: Foundational Concepts of Crime, Law, and Modern Constitutional Governance; Classical Frameworks Introduced and Contrasted**

**Week I (Jan. 17th)**: Introduction to the course and to the instructors. Introduction to key terms and concepts in the study of crime, law, criminology, and criminal justice.

Conceptualizing crime and criminal justice in the modern state. The lectures will summarize much of Lippman Ch. 1 and the Appendix on case analysis. How do we recognize and assess harm and crime – and how can we distinguish harms and crime from one another? Index crimes and “crime rates.”

Read Lippman Ch. 1, begin Ch. 2; supplementary bCourses reading on Hobbes, Beccaria, Bentham;

**Week II (Jan. 22nd & 24th)**: Here we review the U.S. constitutional framework of crime, criminal law, and criminal justice process (“due process” as an ideal and other CJ processes) with a particular emphasis on theories of general deterrence, utilitarianism, questions of legitimacy of state violence and punishment; classical and contemporary theories, policies, and practices of punishment; the criminal justice system and policies and on-going controversies.

Read Lippman Ch 2 and skim Ch 3; intro to US court structures and case analysis; plea bargaining; supplementary bCourses reading on Jonathan Simon’s “governing through crime.”

**Part II: A Law & Society Intro to the “General Part” of Substantive Criminal Law**

**Week III (Jan 29th& 31st):** Begin Ch. 4 – *Actus Reus*; volitional acts and the act/status distinction. Defining criminal act and criminal failure to act. The principle of harm and the affirmative criminal act; also, Legal duties and criminal omissions. criminal possession and its problems.

Further bCourses reading on Martin v City of Boise, Durkheim’s punishment and social solidarity, Holmes “Path of Law.”

**WRITTEN ASSIGNMENT #1: JAN 31ST –due FEB 4TH (ca 1-hour assignment)**

**Week IV (Feb. 5th & 7th)**: On *mens rea* and other modes of culpability. Read Lippman Ch. 5. Discussion of the evolution and influence of the Model Penal Code. Subjective and objective standards of *mens rea*.

Further bCourses readings on hate crimes (specific intent -- thought crimes?), inchoate crime as a legal construct.

**Week V Feb. 12th & 14th)**: Ch 5 continued; materials for discussion of duties to others that may give rise to criminal culpability. Discussion of strict liability and regulatory offenses. Concurrence and causation: different definitions of causation and culpability.

Supplementary readings on harm/danger risk assessment and objective causation, J. Simon and Horwitz.

**Week VI (Feb 19th HOLIDAY!!!) & Feb. 21st)**: Begin Lippman Ch 6, on complicity and parties to crime. What are traditional categories of accomplice? How can criminal culpability be apportioned among multiple actors? How is *mens rea* established for accomplice crimes? Vicarious liability. Corporate criminal liability, *respondeat superior*, common-law familial, and other socio-normative relations.

Further bCourses readings: Kutz “On Complicity”

**Week VII** (Feb. 26th & 28th): Continue Ch. 6. Begin Lippman Ch 7 – on three inchoate crimes: attempt, conspiracy, and solicitation. Different actus reus and different standards of potential harm.

**Week VIII** (March 4th & 6th): Continue Ch. 7. **PLEASE NOTE THAT WE ARE PUTTING CHAPTERS 8 AND 9 ON HOLD UNTIL AFTER CHAPTER 10**.

Begin Lippman Ch 10. What are the historical and contemporary meanings of taking life in homicide doctrine? Of taking life intentionally and/or otherwise?

Where are the socio-legal boundaries between living persons, fetal persons, and the homicide victims? What is the relation between the degrees of murder and the history of the death penalty? How do we distinguish degrees of Murder? How is murder distinguished from Manslaughter? What is Felony Murder and why is it so controversial and so differently applied in different jurisdictions? Why do crimes of homicide have the most differentiated and complicated levels of mens rea?

**WRITTEN ASSIGNMENT #2: MARCH 6TH – due MAR 10TH (ca. 1-hour assignment)**

**Week IX** (March 11th &13th): Chapter 10 continued.

**Week X** (March 18th & 20th): Ch. 8 – Affirmative defenses: Justifications. The historical conception of a Natural Right. What burdens of proof may fall upon the accused under what circumstances? What principles may justify harmful acts that would otherwise be criminal offenses? Self-defense, defense of others, defense of home, “execution” of public duties, resisting unlawful arrest, necessity, consent.

**WEEK of MAR 25th - MAR 30th: SPRING BREAK! STAY SAFE!**

**Week XI** (April 1st & 3rd): Lippman Ch 9 – on excuses and mitigation. Do certain circumstances and/or particular accused individuals merit exculpation or other considerations for harms they cause? Insanity, diminished capacity, voluntary & involuntary intoxication, age (infancy), duress, mistake, entrapment, cultural & other “new defenses.”

**Week XII** (April 8th & 10th): Lippman Ch 11– Historical doctrines on crimes of sexual conduct and other harms to the dignity and autonomy of the person. Risks of relationships and pervasive gender disparities. Assault, battery, stalking. Kidnapping and false imprisonment.

**WRITTEN ASSIGNMENT #2: APRIL 10TH – due APRIL 14TH (ca 1-hour assignment)**

**Week XIII** (April 15th & 17th): Lippman Chs. 12 & 13: On the notion of “home” in criminal law. Crimes against habitation; dwelling as a space protected by criminal law. On the “properties” of crime: burglary, trespass, mischief. Lippman Ch 13 – the properties of property, places, spaces, and things.

**Week XIV** (April 22nd & 24th): The shifting boundaries of law and morality between self and society: on “vice and victimless crimes” against community. Read Lippman Ch 15 – on crimes against public order and morality, their shifting definition. On “victimless crimes”: supplementary readings on bCourses.

**RRR WEEK (April 29th to May 3rd):** Review session date and location to be finalized during Week XIV.

**FINAL EXAM:** The take- home final prompt will be posted on Sunday evening at the end of RRR Week**. Students will have FIVE FULL DAYS, until the evening of Friday May 10th, in which to draft and submit their 3-HOUR final essay exams.**

**FRIDAY MAY 10TH IS THE OFFICIAL FINAL EXAM DATE FOR LS 109**

**MAY 10 IS ALSO OFFICIAL END OF THE ACADEMIC YEAR 2023-24**

**Students who are unable to conform to this exam schedule for ANY reason must notify their GSI by Week III. We will do our best to assist you, but the end-of-semester dates are set by the Registrar and your instructors cannot add more days to the academic year.**