The course aims to explore some of the principles and doctrines underlying the criminal law. In particular, it investigates some of the theoretical (and particularly, ethical) problems that criminal law raises. For example, should criminal liability ever be imposed in the absence of moral responsibility? When can society’s interests in the prevention of harm provide sufficient justification for imposing criminal liability? The course is designed to increase students’ understanding of many of the principles underlying the criminal law, especially those concerning the scope of criminal prohibitions and the criteria for attributing responsibility and blame to individual wrongdoers. With increased understanding of those principles, students should gain in their ability to integrate analysis of general issues and principles with argument about particular rules and doctrines in the criminal law.

**Teaching format**

This course will be conducted as a seminar. Each week we will discuss a set of pre-assigned readings, which will be distributed to you throughout the term. You are expected to come to classes having read the assigned materials and being prepared to discuss them.

**Note:** Beginning in week five, students will be assigned each week to write a short essay on a question concerning the topic to be discussed in that week. The allocation of topics for the essay will be by sign-up sheet, at the Student Counter in the Faculty of Law.

**Assessment**

Students will be evaluated on the basis of:

a. participation in the seminar generally (20%);

b. a short (1500- to 2000-word) essay (20%); and

c. a 3500- to 4000-word term paper (60%)

with the option of

d. a presentation on one of the short essay topics (20%).
(a) Participation (20%) 

At the end of the course, a grade will be assigned based on your contribution to the seminar. The participation component will be based on the following factors:

1. the extent of your contribution to the wider discussion and, in particular, your ability to ask intelligent and insightful questions;
2. your preparedness for and attentiveness during the seminar, as demonstrated by your questions and comments.

Any unexcused absences will negatively affect the student’s participation grade.

**Note:** A student with a perfect attendance record who asks but one or two questions during the course of the semester and is otherwise attentive in the seminar may expect to receive a “C” grade.


(b) Short Essay (20%) 

You are required to submit a short essay of 1500-2000 words (this word-count to exclude footnotes and bibliography), answering any question you choose from the “questions to consider during preparation” listed under the relevant seminar topic. In this essay, you are expected to identify, explain, and critically assess a key theoretical issue that arises from some or all of the materials assigned in one particular week. This assignment should be in the form of an argumentative, as opposed to an expository or descriptive, essay. That is, you are expected to take a position and defend it with reasoned argument, rather than merely explaining the issue. **Note:** Please indicate the number of words at the end of your essay. You may be penalized up to 5% for exceeding the word limit.

Please note of the following instructions in relation to the essay: (i) the short essay must be submitted at or before the seminar in which the topic you are addressing is discussed (a penalty may be applied for late submission); (ii) you may submit the short essay either in hard copy at the seminar or in advance via IVLE. I urge you to submit your short essay as early as possible, however, as my feedback will assist you in writing your term paper.

Evaluation criteria: Your short essay will be assessed based on the following criteria:

1. the overall structure of your essay, and the presence of a clear thesis;
2. the strength of the argument and depth of your analysis of the issues; and
3. your appreciation of opposing arguments and ability to respond to them fairly and effectively.

**Note** that it is permissible to use Harvard or similar citation styles in the footnotes if the full reference is in the bibliography. Either way, please include a bibliography at the end. In addition, please: (i) set out the question at the beginning; (ii) state your matriculation number; and (iii) include page numbers.
(c) Term Paper (60%)

You are required to submit a term paper of 3500 to 4000 words (this word-count to exclude footnotes and bibliography). This term paper should also be in the form of an argumentative essay. As with the short essay, you are expected to take a position and defend it with reasoned argument. The evaluation criteria will mirror the evaluation criteria for the short essay. A list of questions (from which you should choose one) for the term paper will be provided at the end of week 8. You are permitted (but not required) to answer a question on the same topic as your presentation or short essay. The term paper must be submitted via IVLE. It is due by 4:00pm on the Thursday of Reading Week.

Your essay should include a bibliography. In addition, please: (i) set out the question at the beginning; (ii) state your matriculation number at the beginning or end of the essay; and (iii) use page numbering.

(d) Presentation (alternative 20%)

The option is available for students on a voluntary basis to make a presentation on one of the short essay topics. The presentation should be of around 5-10 minutes, in which you will introduce and debate an assigned question in light of set readings. Presenters are expected to focus on the issues and arguments rather than merely summarize the materials. The presentations will be followed by a class discussion. The instructor will act as a facilitator, asking questions and guiding the discussion. Note: You may not take part in the presentation and submit your short essay on the same topic.

Your presentation will be evaluated on the basis of:

1. the clarity of your objectives and presence of a sound structure;
2. your comprehension of the concepts, issues, and arguments;
3. your ability to analyse and evaluate key concepts, issues and arguments;
4. your participation in and contribution to the panel discussion and your ability to respond intelligently and effectively to the questions posed.

Presenters will receive the higher of their short essay and their presentation mark to count toward their overall grade. However, a presentation may not be offered in lieu of the short essay.

Plagiarism

Plagiarism is strictly prohibited. Disciplinary action will be taken against any student found plagiarizing.
Course Materials

Students at the Faculty of Law who have registered for this course will receive the course materials in their mailboxes or in class. Where necessary, students from other faculties may obtain the materials from the Student Counter at the Faculty of Law (down the corridor from the Moot Court) during office hours.
Schedule and Readings

Optional Background Readings

The following materials will be placed on reserve at the Law Library. They may be obtained at the circulation counter:

Criminal Law


Moral Philosophy and Criminal Law Theory

Weekly Readings : Taught Seminars

Please note that these readings are subject to change when the materials are distributed. Additional materials may be assigned later.

GENERAL NOTE ABOUT ASSIGNED CASES: In this course, where cases are assigned for reading we will discuss them in a very general, theoretical, way. You are not expected to have a detailed technical knowledge of the law—indeed, that is not the point. It is the underlying principle and policy that matters. So you should read, and be prepared to discuss, the cases from a theoretical and normative perspective.

Week One

Introductory class, considering the general nature of the criminal law and going over the course requirements.

Required reading

None.

Suggestions for further reading


Some questions to think about

When Parliament enacts a law, how can we tell that it is a criminal law, rather than some other type of law?

If the new law is “criminal”, what does that signify to the public?

Does the difference between criminal and other laws have any implications for how we, the Courts, and/or Parliament might approach the criminal law?
Weeks Two to Four: Criminalisation

Over these weeks, we will discuss some general, theoretical, principles of criminalisation. The discussion will include an overview of the rationales and normative constraints involved in legislating and interpreting criminal laws. We will consider the suitability of the Harm Principle, advocated by Mill, as a basis for criminalisation, together with complementary and alternative principles such as the Offence Principle, Legal Moralism, and Paternalism.

Required reading: Week Two


*B v. DPP* [2000] 2 AC 428, 470-472 (extract from judgment of Lord Steyn: notice how principle and policy considerations enter the interpretation of criminal statutes).

Required reading: Week Three


Suggestions for further reading


Questions to consider during preparation

Why does the decision to criminalise some activity need justification?

Is Mill right? When, and on what grounds, should prohibitions be extended to conduct that does not cause harm to others (say, because immoral, or offensive, or harmful to oneself)?

Are there techniques of social control which may be more successful than criminal law in reducing the incidence of the behaviour to be regulated? What are the advantages and disadvantages of using the criminal law?
Weekly Readings [and Short Essay topics]

Week Five: Consent

Required reading

G. Dworkin, ‘Paternalism’ (1972) 56 Monist 64.
“Care worker’s release on rape charge prompts CPS to seek review of law” The Guardian, 24 January 2000, page 5 (“Jenkins”).

Suggestions for further reading


Questions to consider during preparation

At the level of principle, are cases such as Brown, Siew Yit Beng, and Jenkins rightly decided?

When, if ever, is paternalistic criminal law justified?

Is the reasoning in Brown reconcilable with the legality of boxing or tattooing?

Is the State ever justified in criminalising a fully consensual infliction of harm? If so, when? (Consider, for example, whether there may be reasons to differentiate between suicide or euthanasia, failing to wear a seat belt, and consensual mutilation.)

Even in offences where consent can operate as a defence to criminal liability, the victim’s apparent consent can be vitiated by circumstances, e.g. when it is obtained by threats. What other circumstances can vitiate consent, and why?

Is consent properly a defence, or an element of the actus reus (offence) definition?
Week Six: Acts and Omissions

Required reading


Suggestions for further reading

For a valuable (and quite short) general introduction to the legal issues in this area, see A. Ashworth, Principles of Criminal Law (5th ed, 2006) § 2.7 (“Criminalizing Omissions”) and § 4.4 (“Omissions”).


Questions to consider during preparation

Should the criminal law treat omissions differently from acts that bring about the same harm? To what extent, if ever, should one be criminally liable for the failure to prevent such a harm from occurring?

If D continues walking with and speaking to a friend, instead of stopping to help V who is being assaulted by P, is D acting or omitting?

Why does the criminal law penalise acts more often than omissions? Are acts more culpable than omissions, if they have the same consequences?

Why does the criminal law distinguish between parents who omit to rescue their children and strangers who omit to rescue other people’s children?

Should there be a duty to rescue in the criminal law?

Considering the two judgments in Nicholson, which is right? Why?
Week Seven: The Voluntary Act Requirement

Required reading


Some relevant cases

Larsonneur (1933) 24 Cr App R 774, 149 LTR 542.

Suggestions for further reading


For a textbook introduction to the legal problems associated with voluntariness, see A. Ashworth, Principles of Criminal Law (4th ed, 2003) §§ 4.2-4.3.

Questions to consider during preparation

Should there be a general defence of involuntariness in the criminal law? What should be its requirements and boundaries, if any?

Is there a difference between a requirement of voluntariness and a requirement for a voluntary act in the criminal law? How does this relate to a defence of impossibility?

When is a person’s act “voluntary”?

Is the distinction between sane and insane automatism a satisfactory one?
Week Eight: Theories of Culpability

Required reading


Some relevant cases


Suggestions for further reading


Questions to consider during preparation

At the level of principle, is a case such as Elliott rightly decided? Should standard mens rea requirements (such as “recklessness” or “rashness”) be interpreted to require conscious choices by the defendant, or should criminal culpability be grounded in judgments about the defendant’s character, as was suggested by the UK Court of Appeal (but overruled by the House of Lords) in Kingston?

What are the differences between a subjective and an objective analysis of culpability? How would those differences affect practical areas of law, such as liability for attempts, or for negligence? (For a brief introduction to this question, see Simester and Brookbanks, Principles of Criminal Law (any edition) § 1.3.2(2) (“Theories of Culpability”).
Choice theories of blame are necessarily subjective. Are character theories necessarily subjective?

Moore discusses Hart’s suggestion of a “capacity” test for blame. Is Hart’s test subjective or objective? How satisfactory is it as a basis for blaming?

What are the strengths and weaknesses of choice theories? Of character theories?
Week Nine: Moral Luck and the Correspondence Principle

Required reading


*Also* the three quotations from Nagel, Lacey, and Smith on the distributed sheet.

Suggestions for further reading


Questions to consider during preparation

To what extent, if at all, should there be a Correspondence Principle in criminal law (for instance, when interpreting the *mens rea* requirements of crimes)? To the extent they are dependent on luck, should the further consequences of D’s conduct affect D’s criminal liability?

What is moral luck?

What is the significance of luck for moral judgments?

What is the relationship between moral luck and the so-called correspondence principle?
Week Ten: Mistaken and Unknown Justifications

**Required reading**


**Some relevant cases**

*Dadson* (1850) 2 Den 35, 3 Car & Kir 148, 4 Cox CC 358.


**Suggestions for further reading**


**Questions to consider during preparation**

At the level of principle, are cases such as *Dadson* and *Beckford* rightly decided?

What differences are there between unknown self-defence and mistaken self-defence?

Is one justified in killing an attacker who is insane? Is this case the same as self-defence against a sane, malicious person?

Should mistaken self-defence be allowed as a defence? Should a distinction be drawn between reasonable and unreasonable mistakes, as is implicitly suggested by *GFL Ewin v. Public Prosecutor* [1949] MLJ 279? Why?

Should unknown self-defence be allowed as a defence, by contrast with *Dadson*? Why?
Week Eleven: Necessity and Duress

Required reading


Re A (Children) [2001] Fam 147, [2000] 4 All ER 961 (just the criminal law part).

Suggestions for further reading


Questions to consider during preparation

At the level of principle, was Re A rightly decided? What kind of defence, if any, is involved? Or is Clarkson right to argue that (at the level of principle) the various defences of duress, necessity, etc., should be treated as one single unified defence?

Why should a legal system have defences of duress and necessity? What are their rationale(s)? Are they excuses or justifications?

What are the core components of duress and necessity? Should there be restrictions upon the nature of the threat and of the required act by the defendant?

Should the defence take account of subjective weaknesses or strengths of the defendant?

What is the relationship between duress, self-defence, and necessity?

See also the questions raised in Chan, Hor, and Ramraj, Fundamental Principles of Criminal Law (2005) at pp. 425-7 and 431-2.
Week Twelve

Round-up of classes, and question/revision discussion for term paper.

Week 13: Submission of Term Paper

Remember: The Term Paper is due by 4:00pm on Friday of week 13 (i.e. Friday 15 April 2016). It must be submitted via IVLE.