

VICE CRIME

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PRACTICAL DETAILS

Texts

Textbook: Zimring & Harcourt, *Criminal Law And The Regulation Of Vice* (Thomson – West).

Required Handouts: Many of the required readings for this course will be distributed in handout form. These handouts will be made available on TWEN at least one week before the readings are assigned.

Preparation and Participation

Attendance: You must attend every class. If you are absent from more than four class sessions, you may be disenrolled from this course

Preparation. You must do the assignments for every class. If you are unprepared for a class, please give me a written note in the classroom before class starts (stating your name and that you are unprepared for class). Each such note will count as one absence. If you do not provide such a note, but you are unprepared when I call on you, you may also have your overall course grade lowered by 0.1 (e.g., from 3.0 to 2.9) each time.

Participation. If called on, you must make a genuine and serious effort to advance the class discussion. I do not require or expect you to be a polished public speaker, or to answer every question correctly. I do require and expect genuine and serious preparation and effort. I also welcome your volunteer questions and contributions throughout the course.

Professionalism And Respect For Each Other. As a law student, you are making the transition to a professional career. I encourage and expect you to aspire to professional conduct, communication, and demeanor in the classroom.

An essential aspect of this professionalism is respect for those around you. Thus, though law school can be stressful and vice crime explores difficult and controversial topics, I expect you to respect the words, ideas, values, and feelings of every other person in the classroom at all times.

Laptop Policy. You may use a laptop computer or equivalent for class-related activities such as taking notes and reviewing case briefs and other class materials. You may not use laptops or other electronic devices to surf the web, text-message, review email, play games, or view non-course related material. If necessary, I will limit or ban laptop use during class.

Grading

The grade you receive in this course will be your final exam grade, minus any deductions for lack of preparation (see above).

Office Hours and Other Ways of Communicating With Me

Office Hours: My office hours this semester will be:

Friday, 1:00-4:00 p.m. (but I will sometimes have a conflict so please check with me ahead of time)

Appointments / Drop-Ins: You may call or e-mail to make an appointment with me for a time outside of my office hours, and you may drop by my office at any time to see if I am available to talk. E-mail at anderskaye@tjssl.edu; call at (619) 961-4259.

E-mail Questions: I strongly encourage you to e-mail me questions at anderskaye@tjssl.edu. I will try to answer e-mail questions within three days, although it may take longer if the volume of questions gets too high.

COURSE GOALS

Over the course of this semester, we will work to develop and reinforce a number of basic skills that are essential to legal practice, to develop a deep knowledge of the substantive law of vice crime, and to develop a deep knowledge of the policy, philosophic, historical, social, and political considerations that bear on vice law. Our overarching goals here include:

1. Substantive Vice Law. In this course, you will develop the ability to state, analyze, and discuss the definitions, elements, explanatory and limiting doctrines, exceptions, and alternative approaches for the wide array of vice crimes and relevant defenses we cover this semester. You will also develop the ability to explain, discuss, and assess policy, philosophic, historical, and social considerations relevant to these vice crimes and defenses. We will develop your knowledge of these substantive matters through your readings in the casebook and supplemental materials, material presented during class, class discussion, assigned and in-class problems and exercises, and feedback on the final examination.
2. Reading Statutes. In this course we will deepen your ability to read and apply statutes, especially criminal law statutes. You will practice (1) determining when particular statutes apply to particular cases or fact patterns, and (2) parsing such statutes into their component elements (such that you can analyze legal issues arising under those statutes). To achieve this goal, we will discuss and practice with actual and hypothetical statutes appearing in class readings, hypotheticals, and exercises.
3. Reading Cases. In this course, we will deepen your ability to read cases. You will practice identifying (1) the case's procedural posture, (2) the background facts, (3) the legally significant facts, (4) the primary issue(s), (5) the legal rule(s) applied, (6) the holding, (7) the court's reasoning, (8) the reasoning of any concurrence or dissent, (9) and the court's disposition. You will also practice synthesizing a line of related cases and understand how to apply case law to new factual situations. To achieve this goal, we will discuss and practice with the class readings.
4. Written And Oral Legal Analysis. In this course, we will deepen your ability to engage in written and oral legal analysis. You will practice using the IRAC format to make an effective legal argument that: (1) identifies legal issues arising in a case or fact pattern; (2) identifies and states the applicable legal rules; (3) analyzes the issue arising in the case or fact pattern by applying the applicable legal rules to the relevant facts; and (4) provides the appropriate conclusion or outcome. We will develop this skill through classroom discussion and practice with cases, hypotheticals, problems, practice tests, and the final examination.

ASSIGNMENTS

1. At the end of each class, I will indicate what to read for the next class. If I do not announce the reading for the next class, please prepare the next two items on the syllabus. (If some of the items are very short, read three items.)
2. While it is possible that we will cover every topic listed below, it is also possible that we will omit one or more topics before the end of the semester.
3. Unless otherwise noted, page citations are to the textbook.

Topic 1: Fundamental Principles: The Debate About Morals-Enforcement

a. Vice Crime Thought Exercises

Handout – Introduction: Part A -- Offenses Survey (*I will collect your answers. You will not be graded, and you may answer anonymously.*)

b. The Hart-Devlin Debate – The Harm Principle and Legal Moralism

The Hart-Devlin Debate, pp. 1-3

Devlin, *Morals And The Criminal Law*, pp. 3-12

Note: From Devlin To Hart, pp. 12-13

Hart, *Law, Liberty, Morality*, pp. 13-20

c. Reflecting on the Debate

Ernest Nagel, *The Enforcement Of Morals*, read only pp. 31-40 (start at “3.” on page 31).

d. The Debate Evolves

Harcourt, *The Collapse Of The Harm Principle*, read only pp. 88-99 (start at “A Recent Development” and stop at “A Skeptical Response”).

e. Applying the Harm Principle and Legal Moralism

Handout – Introduction: Part B -- Thought Exercises (*I will not collect your answers, but we will discuss in detail in class.*)

Topic 2: Prostitution

a. The Law

New York Prostitution Statute *and* The Mann Act, in Handout - Prostitution: Part A

b. Overview

Richards, *Prostitution: Anthropological and Historical Perspectives*, pp. 634-38

Law, *Commercial Sex: Beyond Decriminalization*, Handout -- Prostitution: Part B

Nussbaum, "*Whether From Reason Or Prejudice*": *Taking Money For Bodily Services*, Handout -- Prostitution: Part B

Farley, *Prostitution, Trafficking, and Cultural Amnesia*, Handout – Prostitution: Part B

c. Where Are The Borderlines?

CJS [Excerpt] – Illustrative Examples, Handout – Prostitution: Part C

Marvin vs. Marvin, Handout – Prostitution: Part C

Whorton v. Dillingham, Handout – Prostitution: Part C

Miller, *Sugar Dating*, Handout – Prostitution: Part C

d. Prostitution And Contemporary Technology

Peppet, *Prostitution 3.0*, Supplement – Prostitution and Technology

Kolker, *The New Prostitutes*, Supplement – Prostitution and Technology

Dart v. Craigslist, Supplement – Prostitution and Technology

e. Some Possible Defenses?

Entrapment, Handout – Prostitution: Part D.1

Is Police Misconduct A Defense, Handout – Prostitution: Part D.2

Coercion and Duress, Handout – Prostitution: Part D.3

Necessity, Handout – Prostitution: Part D.4

f. Focusing On Costs

Flowers, *The Sex Trade Industry's Worldwide Exploitation of Children*, pp. 651-53

Morris & Hawkins, *The Overreach of the Criminal Law*, read only pp 72-74
(Prostitution)

Pearl, *The Highest Paying Customers: American Cities and the Costs of Prostitution Control*, pp. 673-84

g. The Regulation Alternative?

Nevada Prostitution statutes in Handout – Prostitution: Part A

Bingham, *Nevada Sex Trade: A Gamble For The Workers*, pp. 687-93

Topic 3: Regulating “Immoral” Sexual Conduct

a. Introduction

Kadish, *The Crisis of Overcriminalization*, read only pp. 44-47 (section on Sex Offenses)

Morris & Hawkins, *The Overreach of the Criminal Law*, read only pp. 68-72 (several short sections, starting with Sexual Behavior).

b. The Constitutional Framework

1. Contraception

Griswold v. Connecticut, pp. 107-15

2. Homosexual Sexual Conduct

Bowers v. Hardwick, pp. 116-29

Lawrence v. Texas, pp. 138-58

Sunstein, *What Did Lawrence Hold?*, read only pp. 165-71 (start at “Due Process” and stop at “B. Autonomy Simpliciter”).

c. Several Specific Kinds of Sexual Conduct

Rape, Handout – “Immoral” Sexual Conduct: Part A

Statutory Rape, Handout – “Immoral” Sexual Conduct: Part B

Fornication, Handout – “Immoral” Sexual Conduct: Part C

Adultery, Handout – “Immoral” Sexual Conduct: Part D

Sex Devices, Handout – “Immoral” Sexual Conduct: Part E (also, review Alabama Statute in 1st handout)

Sadomasochism, Handout – “Immoral” Sexual Conduct: Part F

Polygamy, Handout – “Immoral” Sexual Conduct: Part G

Incest, Handout – “Immoral” Sexual Conduct: Part H

Necrophilia, Handout – “Immoral” Sexual Conduct: Part I

Bestiality, Handout – “Immoral” Sexual Conduct: Part J

A Note on the Insanity Defense, Handout – “Immoral” Sexual Conduct: Part K

Topic 4: Obscenity

a. Introduction

Morris & Hawkins, *The Overreach of the Criminal Law*, read only pp. 74-75
(Pornography and Obscenity)

b. Pornography

Statutes, Handout - Obscenity: Part A
Miller v. California, Handout - Obscenity: Part B
Ginsberg v. New York, Handout - Obscenity: Part B
Stone, *Sex, Violence, and the First Amendment*, Handout - Obscenity: Part B
Koppelman, *Does Obscenity Cause Moral Harm*, Handout - Obscenity: Part B
Adler, *All Porn, All the Time*, Handout - Obscenity: Part B
MacKinnon, *Defamation and Discrimination*, pp. 601-09
Hawkins & Zimring, *Pornography and Child Protection*, read only pp. 619-23
("Children as Objects" and "The Issue of Experiment")
Notes and Questions, pp. 631-33

c. Child Pornography

Ferber v. New York, Handout - Obscenity: Part C
Ashcroft v. Free Speech Coalition, Handout - Obscenity: Part C
Hawkins & Zimring, *Pornography and Child Protection*, read only pp. 614-19
("Children as Subjects") and 623-24 ("Child Pornography and Social Values")

d. Sexual Performances

City of Eire v. Pap's A.M., Handout - Obscenity: Part D
Miller v. Civil City of South Bend, Handout - Obscenity: Part D
Case, "Lewd and Immoral," Handout - Obscenity: Part D
Adler, *Girls! Girls! Girls!*, Handout - Obscenity: Part D

Topic 5: Historical Lessons: Alcohol and Prohibition

a. Prohibition Statutes And Commentary

U.S. Constitution, 18th Amendment, Handout – Prohibition

U.S. Constitution, 21st Amendment, Handout – Prohibition

Volstead Act, Handout – Prohibition

New York Daily News [Commentary on the Volstead Act], Handout – Prohibition

b. Why Did We Have Prohibition, And Why Did We End It?

Hamm, *Shaping the Eighteenth Amendment*, pp. 699-712

Boudreaux & Pritchard, *The Price Of Prohibition*, pp. 712-18

Notes & Questions, pp. 731-32

c. How Did Prohibition Look To People At The Time?

National Commission On Law Observance and Enforcement ..., pp. 732-59

d. Regulating Alcohol Today

Gouvin, *Drunk Driving And The Alcoholic Offender*, pp. 759-67

Harcourt, *The Collapse Of The Harm Principle*, pp. 767-71

Topic 6: Drug Crimes

a. Introduction

Introduction, casebook pp. 217-21

Bennett, National Drug Control Strategy, pp. 222-32

b. The Law

The Federal Drug Schedules, Handout – Drug Crime: Part A1

Possession Offenses, H Handout – Drug Crime: Part A3

Possession With Intent To Distribute, Handout – Drug Crime: Part B

Distribution, Handout – Drug Crime: Part C

Manufacture, Handout – Drug Crime: Part D

Piggyback Provisions, Handout – Drug Crime: Part E

Group Criminality, Handout – Drug Crime: Part F

Crack and Powder Cocaine, Handout – Drug Crime: Part F2

Other Drug Crimes, Handout – Drug Crime: Part G

c. Legalization

Nadelman, The Case For Legalization, pp. 302-26

US DOJ, Speaking Out Against Drug Legalization, pp. 342-64

d. Medical Marijuana

The Economist, Reefer Madness, pp. 392-96

Diegelman, Letter to Mr. Paul Jones, pp. 414-19

United States v. Oakland Cannabis Buyer's Cooperative, pp. 419-32

e. Punishment or Treatment?

Ehlers & Ziedenberg, Proposition 36: Five Years Later, pp. 447-70

Topic 7: Gambling

a. Some Illustrative Laws

Significant Statutes, pp. 492-96

b. Some Basics

The Different Types of Gambling, pp. 504-05

Rychlak, *Video Gambling Devices*, pp. 491-92

Bergman, *The Historical Roots Of Gambling Law*, pp. 476-79
[*The Scale of Gambling*], pp. 505-13

c. Modern Technology And Gambling

[*The Internet Frontier*], pp. 513-17

d. Introduction To The Debate

King William III, *Preamble To The Act For Suppressing of Lotteries*, p. 522

Adam Smith, *The Wealth Of Nations*, p. 522-23

John Stuart Mill, *On Liberty*, p. 523

e. Pros and Cons In Depth

The National Gambling Impact Study Commission, *Final Report*, pp. 473-76

Rychlak, *Lotteries, Revenues, and Social Costs*, pp. 524-26

Kindt, *Legalized Gambling Activities*, pp. 526-28

[*Compulsive Gambling*], pp. 528-35

Martz, *Legalized Gambling And Public Corruption*, pp. 535-40

Concluding Notes and Questions, pp. 543-44

POSSIBLE ADDITIONAL TOPICS

If we have sufficient time at the end of the semester, we will cover some or all of the following material.

Topic 8: Other Areas Of Morals Enforcement?

Weapon Possession
Flag Burning
False Claims Of Military Honor

Topic 9: What About The “Regular” Criminal Law?

Are Murder, Rape, And Theft “Morals Crimes”?
What Role Should Paternalism Play In The Criminal Law? (Should Consent Be A Defense To Murder?)
What Lessons About The Political Process Can We Apply To The Regular Criminal Law?
Do We Criminalize Enough? Too Much?