



**UNIVERSITY OF NAIROBI  
SCHOOL OF LAW**

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**Course Title: Criminal Law I**

**Course Code: GPR 405**

**Contact Hours: 45 Hrs**

**Prerequisite: None**

**Course Instructor : Dr. Evelyne Asaala**

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**Purpose of the Course:**

To familiarize students with the key principles of criminal law and to acquaint them with the social context in which it operates.

**Course Content:**

Definition and characteristics of criminal law; sources of criminal law; theoretical foundations of criminal law; elements of crime; strict liability; burden and standard of proof; criminal responsibility; parties to offences; presumptions; general rules to criminal responsibility; general defenses; incitement, conspiracy and attempt.

**Expected Learning Outcomes:**

At the end of this course, the learner should be able to:

1. Distinguish criminal actions from other wrongful actions.
2. Articulate the key principles of criminal liability.
3. Analyze the values and principles informing criminal law.
4. Discuss the general principles of criminal liability, such as actus reus, mens rea, presumptions.
5. Explain the general defenses in criminal law.

**Mode of Delivery:**

Lectures; Tutorials; Case Method; Seminar discussions; Individual Student and Group Presentations; Problem based learning; Moot Courts.

**Instructional Materials and/or Equipment:**

Computers; Internet; Laws; Law Reports; Discussion Aids; Chalk/white boards and necessary accompaniments; Library; DVDs; DVDS; CD-ROM; E-databases: Lexis-Nexis; Hein Online; JSTOR.

**Course Assessment:**

Type	Weighting (%)
Examination	70
Continuous Assessment	30
<b>Total</b>	<b>100</b>

**Core Reading Materials for the Course:**

1. David Ormerod, Smith and Hogan's Criminal Law: Cases and Materials (Oxford University Press, 2015)
2. William Musyoka, Criminal Law (Nairobi: LawAfrica, 2013)

**Recommended Reference Materials:**

1. Smith, J.C. & B. Hogan, Criminal Law (Oxford: Oxford University Press, 2011, 10th Ed)
2. Dennis Baker, Glanville Williams Textbook on Criminal Law (London: Sweet & Maxwell, 2015)
3. Card, Cross & Jones, Criminal Law (Oxford: Oxford University Press, 2014, 21st Ed)
4. Clarkson, C.M.V. & H.M. Keating, Criminal Law: Texts and Materials (London: Sweet & Maxwell, 2014, 8th Ed.)
5. Collingwood, J.J.R., Criminal Law of East and Central Africa (London: Sweet & Maxwell, 1967)
6. Mushanga, T., Crime and Deviance: An Introduction to Criminology (Nairobi: East African Literature Bureau, 1976).
7. Williams, Katherine S. Textbook on Criminology (London: Blackstone Press, 5th Edition, 2004)
8. Easton, S. & C. Piper, Sentencing and Punishment (Oxford: Oxford University Press, 2005)
9. Muga Erasto, Crime and Delinquency in Kenya, (Nairobi: East African Literature Bureau, 1975)
10. Robinson, P. H., Criminal Law (New York: Aspen Publishers, 1997)

11. Kaplan, Weisberg & Binder, Criminal Law: Cases and Materials (New York: Aspen Publishers 8th Edition 2016)
12. Seidman, Robert, A Sourcebook of the Criminal Law of Africa (London: Sweet & Maxwell, 1966)
13. Padfield, Nicola, Criminal Law Core Text Series (Oxford University Press, 10th Edition, 2016)
14. Clifford, William, An Introduction to African Criminology (Nairobi: Oxford University Press, 1974).
15. Rod Morgan, Robert Reiner, The Oxford Handbook of Criminology (Oxford: Oxford University Press, 6th Edition, 2017)
16. Jones, Stephen, Criminology (London: Butterworths, 6<sup>th</sup> Edition, 2017).
17. Cross, Rupert, Punishment, Prison and the Public (London: Stevens & Sons, The Hamlyn Lectures 23rd Series, 1971).
18. Oruka, Odera, Punishment and Terrorism in Africa: Problems in the Philosophy and Practice of Punishment (Nairobi: East African Literature Bureau, 1985).

**Legislation:**

1. Constitution of Kenya, 2010
2. Penal Code (Cap 63 Laws of Kenya)
3. Sexual Offences Act, 2006
4. Criminal Procedure Code (Cap 75 Laws of Kenya)
5. Evidence Act (Cap 80 Laws of Kenya)

**COURSE CONTENT**

**TOPIC 1: INTRODUCTION TO CRIMINAL LAW**

- (a) Characteristics of criminal law
- (b) Objectives of criminal law
- (c) Definition of a crime (characteristics)
  - Crimes as public wrongs
  - Crimes as moral wrongs (Libertarianism, legal paternalism, legal moralism)
  - Crimes versus civil wrongs

- (d) Public order versus individual liberty in the application of criminal law
- (e) Criminal proceedings

### ***Reading Material***

Patrick Devlin, “Morals and the Criminal Law” in *The Enforcement of Morals* (1965), excerpts reproduced in Clarkson & Keating, Chapter 1.

H.L.A. Hart, “Immorality and Treason” (1959) 62 *Listener* 162-63, excerpts reproduced Clarkson & Keating, Chapter 1.

H.L.A. Hart, *Law, Liberty and Morality*, (New York, Vantage Books, 1963)

Glanville Williams, “The Definition of Crime” (1955) 8 *Current Legal Problems* 107

*Shaw v. DPP* [1962] A.C. 220: [1961] All E.R. 446

*R. v. Brown* [1993] 1 AC 212

## **TOPIC 2: THE SOURCES CRIMINAL LAW**

- The Constitution
- The Common Law
- Legislation
- Customary Law
- International Law

### ***Readings Material***

William Musyoka, *Criminal Law* (Nairobi: LawAfrica, 2013) pg 15-23

George Dery, *Criminal Law* (2017): Chapter One pg 10-15

## **TOPIC 3: ELEMENTS OF CRIME**

- (1) Classification
  - a) Mental (Mens Rea)
  - b) Physical (Actus Reus)
  - c) Conduct
  - d) Result

(2) Crime content

a) Actus Reus

i) Commission

ii) Omission

iii) Conduct

### Proof of Actus Reus

*Larsonneur* (1933) 24 Cr. App. Rep. 74

*Deller* (1952) 36 Cr. App. Rep. 184

*Dadson* (1850) 2 Den. 35

*Bratty v. A-G Northern Ireland* [1963] A.C. 386

b) Mens Rea

### **Presumption of mens rea**

*Sweet v. Parsley* [1970] A.C. 132

### **Intention**

*Mohan* [1976] 1 Q.B. 1; [1975] 2 All E.R. 193

*Moloney* [1985] A.C. 905; [1985] 1 All E.R. 1025

*Nedrick* [1986] 3 All E.R. 1; [1986] 1 W.L.R. 1025

*Woollin* [1999] 1 A.C. 82; [1998] 4 All E.R. 103

*Steane* [1947] K.B. 997; [1947] 1 All E.R. 813

### **Recklessness**

*Cunningham* [1957] 2 Q.B. 396; [1957] 2 All E.R. 412

*Metropolitan Police Commissioner v. Caldwell* [1981] 2 W.L.R. 509; [1982] A.C. 341

*Elliott v. C (a minor)* [1983] 2 All E.R. 1005; [1983] 1 W.L.R. 939

*G & Another* [2003] 4 All E.R. 765; [2003] w.l.r. 1060

### **Negligence**

*Adomako* [1994]

### **Transferred Malice**

*Latimer* (1886) 17 Q.B.D. 359; [1886-90] All E.R. 386

*Pembliton*(1874) L.R. 2 C.C.R. 119; (1874) Coc C.C. 607

### **Strict Liability**

*R v. Prince* (1875) L.R. 2 C.C.R. 154

*Cundy v. Le Cocq* (1884) 13 Q.B.D. 207

*Sherras v. De Rutzen* [1895] 1 Q.B. 918

*Copperfields Cold Storage Co. Ltd. v. R.* 5 N.R.L.R. 248

*Nzoli v. R* [1951] E.A. 575 (K)

#### **TOPIC 4: BURDEN AND STANDARD OF PROOF**

- a) The burden of proof
  - i) The general burden
    - ii) Exceptions to the general burden
      - Insanity defense
      - Statutory burden of proof upon accused
      - Negative averment
- b) Standard of proof
  - i) Upon the prosecution (beyond reasonable doubt)
  - ii) Upon the defense (balance of probabilities)
- C) Burden of adducing evidence
  - i) On the prosecution
  - ii) On the defense

#### **Cases:**

*Woolmington v. DPP* [1935] A.C. 462; [1935] All E.R. 1

*Okole v. R* [1965] E.A. 555

*Sodeman v. R* [1936] 2 All E.R. 1138

*R v. Carr-Bryant* [1943] K.B. 607; [1943] 2 All E.R. 156

*R v. Oliver* [1944] K.B. 68; [1943] 2 All E.R. 800

*Mancini v. DPP* [1942] A.C. 1; [1941] 3 All E.R. 272

*R v. Macpherson* (1957) 41 Cr. App. Rep. 213

*R v. Gill* [1963] 1 W.L.R. 841

#### **Presumptions**

Presumptions of Law

- Irrebuttable presumptions of law
- Rebuttable presumptions of law

Presumptions of Fact

#### **TPOIC 5: GENERAL RULES TO CRIMINAL RESPONSIBILITY**

- i) Ignorance of the law/Mistake of law
- ii) Bonafide claim of right
- iii) Acts independent of the will
- iv) Accidents
- v) Oblique results
- vi) Motive
- viii) Insanity
- ix) Intoxication
- x) Immature age/infancy
- xi) Compulsion

## **TOPIC 6: PARTIES TO OFFENCES**

- A) Principal Offenders
  - i) The perpetrator
    - ii) The aider/abettor
    - iii) The counselor or procurer
- B) Joint offenders and Common intention
- C) Complicity, Consort and Conspiracy
  - i) Accessories
    - ii) Neglect to prevent a felony
- D) Vicarious liability

## **TOPIC 7: GENERAL DEFENCES**

### **A. Infancy**

- i) Children under 8 years
  - ii) Children between 8-12 years
  - iii) Children above 12 years
  - iv) Boys under the age of 12

#### Statutes

S. 8, Penal Code

SS. 187, 191, Children's Act, 2001

Cases

*R v. Kershaw* (1902) 18 T.L.R. 357

*R v. Waite* [1892] 2 Q.B. 600

### **B. Insanity**

- i) At the material time
- ii) At the trial

Section 13, Penal Code

**Cases**

*M'Naghten's Case* (1843) 10 C & F 200  
*R v. Burgess* [1991] 2 Q.B. 92  
*R v. Kemp* [1957] 1 Q.B. 399  
*Oyee s/o Duru v. R* [1959] E.A. 407  
*R v. Magata s/o Kachehakana* [1957] E.A. 330  
*R v. Windle* [1952] 2 Q.B. 826  
*R v. Muswi s/o Musele* 23 E.A.C.A. 622  
*R v. Sullivan* [1984] A.C. 156  
*R v. Phiri* 5 N.R.L.R. 184  
*R v. Kabande w/o Kihigwe* 15 E.A.C.A. 135

**C. Provocation**

**D. Intoxication**

Section 13, Penal Code

**Cases**

*DPP v. Beard* [1920] A.C. 479  
*R v. Majewski* [1977] A.C. 443  
*A-G for Northern Ireland v. Gallagher* [1961] 3 All E.R. 299  
*R v. Retief* 8 E.A.C.A. 71  
*Cheminingwav. R* 23 E.A.C.A. 451  
*R v. Moore* (1852) 3 C & K 451  
*Kinuthia s/o Kamauv. R* 17 E.A.C.A. 137  
*R v. Chilwa* 5 N.R.L.R. 212  
*R v. Pengaunusu s/o Mwendagumo* 10 E.A.C.A. 47  
*Woods* [1981] 74 Cr. App. Rep. 312  
*O'Grady* [1987] Q.B. 995

E. Defense of person or property

F. Claim of right

G. Accident

I. Mistake of fact

J. Necessity

K. Superior orders

L. Duress and coercion

M. Impossibility

**TOPIC 8: INCITEMENT, CONSPIRACY AND ATTEMPT**

**A) Conspiracy**

a) The men rea

- i) Conditional intention
- ii) Conditional intention
- iii) Impossibility
- iv) The object
- b) The Actus Reus
- i) The agreement
- ii) Proof of the agreement
- iii) Requisite number of parties
- B) Incitement
- i) Elements of the crime
- ii) Mens rea
- iii) Impossibility

**C) Attempt**

- i) Mensrea
- ii) Recklessness
- iii) ActusReus
- iv) Negligence and strict liability
- v) Attempts and impossibility

**TOPIC 9: CRIMINOLOGY & PENOLOGY**