



**UNIVERSITY OF NAIROBI
SCHOOL OF LAW**

Course Title: Criminal Law II

Course Code: GPR 3112

Contact Hours: 45 Hrs

Prerequisite: Criminal Law I

Course Instructor : Dr. Evelyne Asaala

Contact Information: asaalaevelyne@gmail.com

Purpose of the Course:

To explore the elements of specific offences and their corresponding penal sanctions; to analyze the responses to criminal behavior in light of theoretical and conceptual underpinnings of criminal law.

Course Content:

Specific offences: offences against the person: murder, manslaughter, assault; offences against liberty; offences against property: Theft, Robbery and robbery with violence, Handling Stolen Property, Burglary and house breaking; offences against public order: Treason, Sedition, Prohibited publications unlawful oaths, Unlawful assembly and riot; offences against the administration of lawful authority: Perjury, Disobedience of lawful orders, Contempt of court. Theories of crime: Classical and positivist traditions, Environmental criminology, Social disorganization, Social differentiation, Ecological theories, Poverty, anomie and strain, Conflict, Marxist and Radical theories of crime; Theories of punishment: Retribution, Deterrence: general and specific deterrence, Reformation, Rehabilitation.

Expected Learning Outcomes:

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Areas of specialization:

Criminal Law, International Criminal Law, Transitional Justice and International Human Rights Law

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

1. Apply the elements of specific offences to given facts and make conclusions on criminal liability.
2. Analyze the penal sanctions in light of the objectives of criminal law and the contextual realities.
3. Explain the major categories of crimes, elements of the major substantive offences and their defenses.
4. Evaluate the criminal law as a means of solving social problems.
5. Explain the nature, concept and theories of crime and punishment, and critique Kenya's penal system.

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
Total	100

Core Reading Materials for the Course:

1. Smith, J.C. & B. Hogan, Criminal Law (Oxford: Oxford University Press, 2011, 10th Ed)
2. William Musyoka, Criminal Law (Nairobi: Law Africa, 2013)

Recommended Reference Materials:

1. Dennis Baker, Glanville Williams Text book on Criminal Law (London: Sweet & Maxwell, 2015)
2. Card, Cross & Jones, Criminal Law (Oxford: Oxford University Press, 2014, 21stEd)
3. Clarkson, C.M.V. & HM. Keating, Criminal Law: Texts and Materials (London: Sweet & Maxwell, 2014, 8thEd.)
4. Collingwood, J.J.R., Criminal Law of East and Central Africa (London: Sweet & Maxwell, 1967)
5. Mushanga, T., Crime and Deviance: An Introduction to Criminology (Nairobi: East African Literature Bureau, 1976).

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6. Williams, Katherine S. Textbook on Criminology (London: Blackstone Press, 5th Edition, 2004)
7. Easton, S. & C. Piper, Sentencing and Punishment (Oxford: Oxford University Press, 2005)
8. Muga, Erasto, Crime and Delinquency in Kenya, (Nairobi: East African Literature Bureau, 1975)
9. Robinson, P. H., Criminal Law (New York: Aspen Publishers, 1997)
10. Kaplan, Weisberg & Binder, Criminal Law: Cases and Materials (New York: Aspen Publishers 8th Edition 2016)
11. Seidman, Robert, A Sourcebook of the Criminal Law of Africa (London: Sweet & Maxwell, 1966)
12. Padfield, Nicola, Criminal Law Core Text Series (Oxford University Press, 10th Edition, 2016)
13. Clifford, William, An Introduction to African Criminology (Nairobi: Oxford University Press, 1974).
14. Maguire, Morgan & Reiner, The Oxford Handbook of Criminology (Oxford: Oxford University Press, 5th Edition, 2012)
15. Jones, Stephen, Criminology (London: Butterworths, 6th Edition, 2017).
16. Cross, Rupert, Punishment, Prison and the Public (London: Stevens & Sons, The Hamlyn Lectures 23rd Series, 1971).
17. 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: THEORIES OF CRIME AND PUNISHMENT

Theories of Crime

- 1 Classical and positivist traditions
- 2 Environmental criminology
- 3 Social disorganization
- 4 Social differentiation
- 5 Ecological theories
- 6 Poverty, anomie and strain
- 7 Conflict, Marxist and Radical theories of crime

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Theories of Punishment

- 1 Retribution
- 2 Deterrence: general and specific deterrence
- 3 Reformation
- 4 Rehabilitation

TOPIC 2: OFFENCES AGAINST THE PERSON

a. Murder

section 203 of the Penal Code
Section 213 of the Penal Code

The Actus Reus

- *Ndiba vs. Republic* [1981] KLR 103
- *Republic-vs. Felix Nthiwa* Nairobi HCCRC No. 43 of 1999
- *Republic vs. Isaiah Muoki Musyoka and two others* Nairobi HCCRC No. 69 of 1998
- *Rex vs. Sirasi Bachumira* (1936) 3 EACA 40
- *Rex, vs. 'Muhoja s/o Manyenye*(1942) 9 EACA 70
- *Kimweri vs. Republic* [1968] EA 452
- *Republic vs. Cheya and another* [1973] EA 500

(a) Deceased undergoes treatment which causes his death: section 213 (a) of the Penal Code

- *Rex vs. Mwagambo s/o Gishodi* (1941) 8 EACA
- *John MuiaMuii vs. Republic* Mombasa CACRA No. 96 of 1999

(b) Deceased fails to get proper medical attention

- Section 213 (b) of the Penal Code
- *Tindira s/o Chiru and another vs. Rex* (1951) 18 EACA 180

(c) Act of accused forces deceased to take evasive action which results in his death.

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- Section 213 (c) of the Penal Code
- (d) Act of accused hastens death of deceased
- Section 213 (d) of the Penal Code
- (e) Act of accused accompanied by that of the deceased or of other persons
- Section 213 (e) of the Penal Code

Tindira s/o Chiru and another- vs. Rex (1951)18 EACA 180

Rex vs. Tabulayenka s/o Kirya and three others (1943) 10 EACA 51

Njoroge vs. Republic [1983] KLR 197

Rvs. Ngerezas/o Masaga and others [1962] EA 766

Dracaku s/o Afia and another vs. R [1963] EA 364

Mens rea/malice aforethought

- *SharpalSingh vs. R* [1960] EA 779
- *Lokoya vs. Uganda* [1968] EA 332
- *Mugoma and another vs. Republic* [2003] KLR 382
- *Joseph CheboiKabon vs. Republic* Nakuru CACRA No. 86 of 1999 (unreported)

(a) An intention to cause the death of another/ express malice

- Section 206 (a) of the Penal Code
- *Ogeto vs. Republic* [2004] 2 KLR 14
- *Rex vs. MazabiabinMkomi* 8 EACA 85
- *Chenttyot vs. Republic* [1976-1985] EA 47
- *Paulo s/o Mabula vs. R* (1953) 20 EACA 207
- *Rex vs. Tubere* 12 EACA 63
- *Tindira s/o Chiru and another vs. Rex* (1951) 18 EACA 180
- *Mugao and another vs. Republic* [1972] EA 543
- *Rex vs. Mwita s/o Ogondo* (1944) 11 EACA

(b) An intention to cause grievous harm to another/ implied malice

- Section 4 of the Penal Code
- Section 206 (a) of the Penal Code

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- *Republic vs. Isaiah Muoki Musyoka and two others* Nairobi HCCRC No. 69 of 1998 (unreported)
- *Rsx vs. Gwangire s/o Sinyangwire*(1935) 2 EACA 133
- *Rex vs. Yakobo Ojambo s/o Nambio* (1944) 11 EACA 97
- *Rvs. Singh* [1962]EA 13
- *Peter Okoth and another vs. R* [1964] EA 103
- *Solomon Mungai and others vs. Republic* [1965] EA 782

(c) Knowledge that the act or omission will cause death/ implied malice

- Section 206(b) of the Penal Code
- *Olenja vs. Republic* [1973] EA 546
- *Rex vs. Tintgurwa bin Byantimba*(1943) 10 EACA 44
- *Rex vs. Tabulayenka s/o Kirya and three others* (1943) 10EACA51
- *Njoroge vs. Republic* [1983] KLR 197
- *R vs. Ngereza s/o Masaga and others* [1962] EA 766
- *Dracaku s/o Afia and another vs. R* [1963] EA 364
- *Isa Mukabya vs. 5*[1963] EA 376
- *Rex vs- Kariokiwa Njagga*(1934) 1 EACA 149
- *Republic vs. Ndalamia and two others* [2003] KLR 638
- *Rex vs. Petro Mangongo s/o Katwa* (1944) 11 EACA 100
- *Rvs. Serne* (1887) 16CoxCC311
- *Rvs. Singh* [1962] EA.13.
- *Rvs. Hancock and Shankland* [1956] 1 ALLER 641.
- *Rex vs. Palamba s/o Fundikila and another* (1947) 14 EACA 96

(d) Intent to commit a felony/ constructive malice

- Section 206 (c) of the Penal Code
- *Petero Sentali s/o Lemandwa vs. R* (1953) 20 EACA 230

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- *Olenja vs. Republic* [1973] EA 546
 - *Rvs. Stnne* [1937]3 All ER 920
 - *DPP vs. Beard* [1920] AC 479.
 - *R vs. Isingoma* 6 EACA 159
 - *Abdurabi s/o Musavs. R* (1956) 23 EACA 555
 - *Rex vs. Tirugurwa bin Byantimba* (1942) 10EACA44
 - *Rex vs. Selman s/o Ngulu and another* (1947) EACA 94
- (e) Intention to facilitate the escape from custody of a person who has committed a felony/constructive malice
- Section 206(d) of the Penal
 - *Isa Mukabya vs. R* [1963] EA 376
 - *Rex vs. Kariokiwa Njagga* (1934) 1 EACA 149

(4) Person for murder purposes

- Section 214 of the Penal Code
- *Republic vs. Nyamu and two others* [2005] 1 KLR 806

(5) Defences and extenuating circumstances

- *Republic vs. Felix Nthiwa* Nairobi HCCRC No. 43 of 1999 (unreported)
- *Mberu ale Legure vs. Rex* (1934) EACA 157
- *Shoukatallie vs. R* [1962] AC

(6) Penalty for murder

- Section 25 of the Penal Code
- Section 204 of the Penal Code
- Section 211 of the Penal Code
- Section 212 of the Penal Code
- Section 222 of the Penal Code
- *Republic vs. Wamboi Kamau* [1965] EA 548

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- *Byagonzavs. Uganda* [2000] EA 351
- *Rex vs. Mvula s/o Irove*(1944) 11 EACA 112
- *Njuguna s/o Karanja vs. Reginam*(1953) EACA 196
- *Rex vs. John s/o Ngoni and three others* (1944) 11 EACA 119
- *R vs. Kiripo* (1942) 20 KLR 60
- *Ekai vs. Republic* [1981] KLR 569 (7) Jurisdiction over Murder

b. Attempted murder

Definition

- Section 220 of the Penal Code
- Section 221 of the Penal Code
- *Mustafa Daga s/o Andu vs. Rex* (1950) 17 EACA 140
- *Hamisi s/o Tambi*(1954) 20 EACA 176
- *R vs. Muhoja s/o Manyenye* 9 EACA 70
- *Zebiyo s/o Ndyoka vs. Reginam*(1956) EACA
- *Ahmed Mohamed Saeed vs. Reginam*(1956) 23 EACA 396
- *Cheruiyot vs. Republic* [1976-1985] EA 47
- *Rex vs. Luseru Wandera s/o Wandera*(1948) 15 EACA 105

Conviction of Related Offences

section 179 of the Criminal Procedure Code

Rex vs. Roy Hull Home (1944) EACA 107

Mustafa Daga s/o Andu vs. Rex (1950) 17 EACA 140

Rex vs. Luseru Wandera s/o Wandera (1948) 15 EACA' 105

(4) Penalty for Attempted Murder

- Section 220 and 221 of the Penal Code
- Section 221 of the Penal Code
- *Cheruiyot vs. Republic* [1976-1985] EA 47

c. Manslaughter

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(1) Definition

- Section 202 and 205 of the Penal Code
- Section 205 of the Penal Code

(2) The *Actus Reus*

- *DPP vs. Newbury* [1976] 2 All ER 365
- *Rex vs. Mutono s/o Luigo and another* (1936) 3 EACA
- *Rex vs. Jeremiah Singine*(1935) 2 EACA 120
- *Rex vs. PelroMangongo s/o Katwa*(1944) 11 EACA 100
- *Amir Begum and another vs. Reginam*(1956) 23 EACA 402
- *Rex vs. Qurban Malik and another* (1948) 15 EACA

(3) The *Mens Rea*

- *Rex w, ZakayoLwabijjawo*(1947) 14 EACA 128
- *Kinywa Republic* [2003] KLR 294
- *Rex vs. Mbologa s/o Nyeshema* (1947) 14EACA 120
- *Rex vs, Petro Mangongo s/o Katwa* (1944-) 11 EACA 100
- *Rex vs. Mgambo bin Kwenyema*(1934) EACA 169
- *Gideon Miano vs. Republic Nairobi* CACRA No. 13 of 1999
- *Rex vs. KalunaSeguja*(1935) 2 EACA 85
- *Rex vs. YokanaKafero s/o SamvillLetakbulide*(1936) 3 EACA 104
- *Rex vs. DanieriBisamuli s/o Kite* (1943) 10 EACA 42
- *Rex vs. AmosiOnoka s/o Amboya* (1943) 10EACA69
- *James Philip vs. Rex* (1952) 19 EACA 231
- *Rex vs. Obao s/o Olukamba*(1936) 3 EACA 25
- *Issa Nurra vs. Rex* (1939) 16 EACA 158
- *Terence John Image vs. R* [1957] EA 94
- *Rex vs. KostaRwechunguras/o Tamuzim*(1947) 14 EACA 54

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- *Rex vs. Daudi Magomu s/o Anderea Magombe*(1941) 8 EACA

(4) Suicide Pacts

- Section 209 of the Penal Code

(5) Penalty for Manslaughter

- Section 202 of the Penal Code
- *Gedion Kenga Malta vs. Republic Mombasa* CACRA No. 3 5 of 1997
- *Rex vs. Rubias/o Waiyu* (1947) 14EACA66
- *Saleh bin Mohamed bin Salim Shikdi vs. Reginam*(1955) EACA 437
- *Rex vs. Ami/mi s/o Mahomedi*(1941) 8 EACA 39

d. Infanticide

- Section 210 of the Penal Code

e. Suicide

- Section 225 of the Penal Code
- Section 226 of the Penal Code

f. Concealing Birth

- section 227 of the Penal Code

g. Killing an Unborn Child

- section 228 of the Penal Code

h. Assault

- Sections 250 to 253 of the Penal Code.

(a) Common Assault

- *R vs. Mbulhia s/o Kaguru* 22(1) KLR 3 1
- *R vs. Gituro s/o Njau* 23 (1) KLR 60
- *R vs. Mbiirugo*22(2) KLR 62

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- (b) Assault occasioning bodily harm
- (c) Wounding
- (d) Grievous harm
 - Section 4 of the Penal
 - Section 234 of the Penal Code
- (f) Assaults on a police officer

i. Offences against Liberty

Sections 254 to 266 of the Penal Code

(a) Kidnapping

- section 254 of the Penal Code
- section 255 of the Penal Code
- section 257 of the Penal Code
- sections 25S, 259, 260 and 262 of the Penal Code
- Section 261 of the Penal Code

(b) Abduction

- section 256 of the Penal Code
- sections 258, 259, 260 and 262 of the Penal Code
- Section 261 of the Penal Code

(c) Wrongful confinement

- section 263 of the Penal Code

(d) Slavery-related offences

- Sections 264 and 265 of the Penal Code
- the Constitution

(e) Unlawful compulsory Labour

- Section 266 of the Penal.
- The Constitution

TOPIC 3: OFFENCES AGAINST PROPERTY

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- a. Theft
- b. Robbery and robbery with violence
 - Section 295 of the Penal Code
 - Section 296(1) of the Penal Code
- c. Robbery with violence
 - Section 296(2) of the Penal Code
- d. Handling Stolen Property
- e. Burglary and house breaking

Cases

- *Lerunyani vs. R* [1968] EA107
- *Gakubu vs. R* [1968] EA 395
- *R vs. Ndesario*[1969] EA 267
- *Sewava vs. Uganda* [1966] EA 487
- *Patel vs. R* [1962] EA 509
- *Oyat vs. Uganda* [1967] EA 827
- *Ramadhanivs R* [1969] EA 269

TOPIC 4: OFFENCES AGAINST PUBLIC ORDER

- a. Treason
- b. Sedition
- c. Prohibited publications unlawful oaths
- d. Unlawful assembly and riot

Cases

R vs. Damangu (1941) 8 EACA 64
Joyce vs. DPP [1946] AC 347
Mattaka vs. Republic [1971] EA 495
Rex vs. Luima (1949)16EACA 128

TPOIC 5: OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

- a. Perjury
- b. Disobedience of lawful orders
- c. Contempt of court

Cases

Muu vs. R [1957] EA 894

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Sigh vs. R 24(1) KLR81
Confair vs. R [1958] EA 289
Republic vs. Dick [1964] EA 519

TOPIC 6: SEXUAL OFFENCES

Sexual Offences Act, No. 8 of 2006 (SOA)

Definition and elements of key offences:

- a. Rape – sections 3, 4, 10
- b. Defilement- sections 8, 9
- c. Sexual assault – section 5
- d. Indecent Acts – section 6
- e. Incest – sections 20-22
- f. Sexual harassment – section 23
- g. Consent: definition – section 42; evidentiary and conclusive presumptions – sections 44 and 45

Reading

Kamau, Winifred, “The Legal Treatment of Consent in Sexual Offences in Kenya” (2014) 10 (1) Law Society of Kenya Journal 27–57.

TOPIC 7: AN OVERVIEW OF TRANSNATIONAL CRIMES

- (1) Counter Trafficking in Persons Act
- (2) The Narcotic Drugs and Psychotropic substances Act
- (3) Terrorism Prevention Act
- (4) The Cyber Misuse and Cyber Crimes Act

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