

John Jay College of Criminal Justice	Professor Lydia Segal
CRJ 71100 – Survey of Legal and Philosophical Issues in Criminal Justice	lydiasegal@yahoo.com
Fall 2004	212-237-8385
Thursdays, 6:30-8:30 p.m.	Office Hours – Thurs 11:30-1:00, 8:30-9:30 p.m.

COURSE DESCRIPTION AND OBJECTIVES

This is an introduction to some of the basic issues in the criminal law and its administration, with special attention paid to four central questions: 1) What should be the aim of criminal processes; 2) Why should crime be punished; 3) What behavior should be punished and how should crime be graded; and 4) Whether any limits should be placed on the severity of punishment. The course is taught in the manner of a law school course. The aim is to expose students to the type of thinking lawyers engage in. No prior knowledge is required.

TEXT

Kadish & Schulhofer, *Criminal Law and Its Processes: Cases and Materials* (7th edition, 2001)

COURSE REQUIREMENTS

Participation and Possible Presentations	20%
Paper	40%
Final Exam/Paper	40%

Participation: Students will be asked present one of the cases discussed in a particular week – this involves presenting the facts and the main legal arguments presented by the Court. The expectation is that everyone will have completed all the reading. Students who are unprepared for class should present me with a note before class. Students may be unprepared two times without penalty.

Paper: A 6-8 page paper on a subject to be distributed.

Final Exam: The final may be a paper or take-home exam.

SCHEDULE OF CLASSES AND READINGS

Background: The Structure of the Criminal Justice System, Kadish, 1-12

I. What is the Objective of Criminal Processes?

Legal Fictions: Inconsistent Verdicts and Plea Bargains

1. *Florida v. Gates* (2002) available at:
<http://www.2dca.org/opinion/September%2027,%202002/2d02-1189.pdf> (or do a search on the terms “Bailey Gates inconsistent)
2. Notes on inconsistent verdicts, Kadish, 71-73
3. An Overview of Criminal Trial Procedure, Kadish 12-20 (especially readings on plea bargaining)
4. Charles Nesson, “The Evidence or the Event? On Judicial Proof and the Acceptability of Verdicts,” 98 Harv. L. Rev. 1357 (1985)

Evidence: Truth and Competing Social Values I*Character Evidence and the Presumption of Innocence*

1. Introductory Notes on the Presentation of Evidence, Kadish 20-22
2. *People v. Zackowitz*, Kadish 22-25
3. Notes on Evidence of Other Crimes, 26-32
4. *Huddleston v. U.S.*, 485 U.S. 681 (1988)
5. Presumptions and Burdens of Proof, 35-51

The Exclusionary Rule

6. *Mapp v. Ohio*, 367 U.S. 643 (1961)
7. Christopher Slobogin, "Why Liberals Should Chuck the Exclusionary Rule," 1999 U.Ill.L.Rev. 363 (1999)

Evidence: Truth and Competing Social Values II*Testimonial Privileges*

1. *People v. Gionis*, 9 Cal.4th 1196 (1995)
2. *Trammel v. U.S.*, 445 U.S. 40 (1980)
3. *U.S. v. Rakes*, 136 F.3d 1 (1st Cir. 1998)

Rape Shield Laws

4. Susan Estrich, "Real Rape" (1987)
5. Harriett Galvin, "Shielding Rape Victims," 70 Minn. L. Rev. 763 (1986)
6. *State v. Smith*, 743 So.2d 199 (La. 1999)
7. *Stephens v. Miller*, 13 F.3d 998 (7th Cir. 1994)
8. *U.S. v. Knox*, 1992 WL 97157 (Mil Ct. 1992)
9. Kadish, 375-86

II. Why Punish Crime?Utilitarian and Retributive Justifications for Punishment

1. Kadish, 101-156 (feel free to skim notes, pay special attention to *Dudley and Stephens*, *Bergman*, *Chaney*, *Jackson*, and *Johnson*)

III. What Crimes Should Be Punished and How Should They Be Classified?The Act/Omission Distinction and Culpable Mental States*Act/Omission Distinction*

1. Kadish, 173-203

Culpable Mental States

2. Kadish 203-225

The Requirement of a Guilty Mind II*Mistake of Fact*

1. Kadish, 225-34

Strict Liability

2. Kadish, 235-46, 248-51, 253-55

Mistake of Law

3. Kadish, 255-60, 263-64, 271-274

Attempts

1. Kadish, 554-603
Focus: *Smallwood*, *Rizzo*, *Jaffe*, *Dlugash*

Rape

1. Kadish, 313-79
Focus: *Rusk*, 323-328; *Evans*, 346-48; *Sherry*, 351-354; *Fischer*, 354-58; *Liberta*, 366-69

Homicide

1. Kadish, 395-420,431-448

SPRING BREAKFelony-Murder

1. Kadish, 445-81

PAPER DUEGroup CriminalityConspiracy

1. Kadish, skim 671-680, 694-709, 714-17, 718-19, 730-32, 735-741

ExcusesSelf-Defense

1. Kadish, 750-55, 763-80, 788-790, 792-794

Duress

2. Kadish 845-49

Intoxication

3. 864-69

Insanity

4. 879-80, 890-94, 905-907, 909-911

V. What Limits (if any) Should Be Placed on Punishment?Proportionality

1. *Solem v. Helm* 463 U.S. 277 (1983)
2. *Hamelin v. Michigan*, Kadish 283-89
3. *Coker v. Georgia*, 433 U.S. 584 (1977)
4. *Enmund v. Florida*, 458 U.S. 782 (1982)
5. *Tison v. Florida*, 481 U.S. 137 (1987)

Truth, the Death Penalty and the Consequence of Error

1. *Gregg*, Kadish 494-999
2. *United States v. Quinones*, 205 F.Supp.2d 256 (S.D.N.Y. 2002)
3. Risk of Error (chapter from my book, tbd)
4. *Herrera v. Collins* (1993) 506 U.S. 390 (1992)
5. Barry Latzer, "Reflections on Innocence," 39 Criminal Law Bulletin No.2 (Mar. 2003)