

CRIMINAL PROCEDURE – ADVERSARY SYSTEM
LAW 6112 – 3 CREDITS
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW

Spring 2025 Course Policies & Syllabus

Professor Lea Johnston
Office: 305 Holland Hall
Office phone: (352) 273-0794
Email: JohnstonL@law.ufl.edu
Office Hours: T, 9:55-11:55 AM

Class meeting time: T, Fri: 8:30 – 9:55AM

Location: HH Room 360

COURSE DESCRIPTION AND OBJECTIVES. This course examines the adjudicatory phase of criminal procedure, beginning after arrest and continuing through sentencing. We consider federal constitutional provisions and rules of procedure, the policies underlying those requirements, and their impact on the roles of prosecution and defense counsel. We also study Florida law where it differs significantly from the norm. At each stage of the process we ask the ultimate question: do we have a legitimate system of criminal justice that is accurate and fair, respects notions of limited government, and is reasonably efficient?

Students are encouraged to employ critical thinking and to rely on data and verifiable sources to interrogate all assigned readings and subject matter in this course as a way of determining whether they agree with their classmates and/or their instructor. No lesson is intended to espouse, promote, advance, inculcate, or compel a particular feeling, perception, viewpoint, or belief.

STUDENT LEARNING OUTCOMES. At the end of this course, students should be able to:

- Identify the steps in the adjudicatory process and the constitutional principles and legal rules that inform them;
- Identify and establish, from a given fact pattern, possible violations of procedural rules and statutes governing the process of criminal litigation;

- Examine evidence of inequities and disparate outcomes within the criminal legal system, learning how to sensitively address and challenge them;
- Describe the power of prosecutors and the constitutional and statutory limits on that power;
- Articulate the right to counsel as well as counsel's role and scope in a defense;
- Demonstrate an understanding of the strategies and tactics used by the actors in our criminal legal system and the relationship between prosecutors, defense lawyers, and the court; and
- Review, reflect on, and think critically about the operation and legitimacy of the criminal legal system with respect to individual rights and liberties.

REQUIRED AND SUGGESTED INSTRUCTIONAL MATERIALS.

Required: King et al., Kamisar, LaFave, and Israel's Criminal Procedure: Adjudication (16th ed. 2023).

Canvas: Please be sure to register for the Canvas course, check our Canvas course site before each class, and have any required materials with you in print or easily accessible electronic form in class. Our Canvas course site has our syllabus, problems, supplemental readings, and other class materials. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

Optional: King et al., 2024 Supplement to Kamisar, LaFave, and Israel's Modern Criminal Procedure, Basic Criminal Procedure: Investigation and Criminal Procedure, and Adjudication (West 2024) – this book includes the federal rules and statutes covered in this course. If you prefer not to purchase this book, you may find all rules and statutes on Westlaw or Lexis.

Secondary Sources: To the extent you have questions on any topic, I suggest consulting this treatise: Wayne R. LaFave et al., Criminal Procedure, which can be found on Westlaw.

COURSE EXPECTATIONS AND GRADING EVALUATION. Our time will focus on case explications and discussion of problems, hypotheticals, and big-picture questions. It is essential that you prepare any assigned problems in advance of class.

After the first week, I will divide the classroom into four sections. Each section will be on call once every two weeks. Thus, each student is required to be fully prepared to discuss the assigned reading (including any material assigned for the class before that we didn't reach) and all assigned problems, once every two weeks. Your grade may be lowered if I call on you and you are absent or unprepared for class.

If an extenuating circumstance arises and you must miss class on your assigned on-call day (e.g., you are sick, have a job interview, or are at a funeral), email me before that class and select another on-call day within that two-week period. You may only do this once a semester unless unusual, unforeseen circumstances arise.

Cumulative Exam. Students will be evaluated through an **in-class**, cumulative, limited-space exam of 2 to 4 hours in length. The exam will predominately (or wholly) consist of multiple choice questions. In addition, it may contain short answer questions or an essay question. The exam will focus on material discussed in class, but all material and concepts covered in the course may be tested to some degree. Exams will be graded anonymously by exam number.

Our examination will be a **Limited Open Book Exam**. You may bring the following materials (and only these materials) in physical form with you to the exam room:

- **Your outline**
- **Assigned rules and statutes:**
 - **Federal authority: found in your case book supplement OR printed from another source (like Westlaw or Lexis)**
 - **Florida authority: printed from an online source**

Please be sure to bring a hard copy of all rules and statutes encountered in the course with you to the exam room. **Students will not be permitted to access the internet or any of their computer files during the exam.** Please plan accordingly.

Law school policy dictates that exams will only be distributed electronically. You may use a 'split screen' to see the exam questions while answering them.

Quality of class participation. Extra credit (up to 0.33 grade points on your final grade) may be given for high quality class participation and preparation. Negative credit may be given for lack of preparation or poor attendance.

CLASS ATTENDANCE POLICY. Attendance in class is required by both the ABA and the Law School. Attendance will be taken at the beginning of each class meeting. Students are allowed **four** absences **for any reason** during the course of the semester. Please plan

accordingly and arrive to class on time. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

PREFERRED NAME AND PRONOUNS. It is important to the learning environment that you feel welcome in this class and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible so I can address you with your preferred name and pronoun.

OFFICE HOURS. Office hours will be held in my office (Holland 305) each Tuesday from 9:55-11:55 AM. You are welcome to drop by or schedule a meeting during these hours. My final office hour of the semester will be on **Tuesday, April 15**. I will be happy to receive questions on course material by email until **12pm on Wednesday, April 23**.

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES. Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at [this link](#).

ABA OUT-OF-CLASS HOURS REQUIREMENTS. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction. Each weekly class is approximately 3 hours in length, requiring at least **6 hours of preparation** outside of class. This requirement will be met through your completing the assigned reading and practice materials.

HEALTH AND WELLNESS RESOURCES. Your mental and emotional health are important. Here are some important resources of which you should be aware.

- *U Matter, We Care:* If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit [U Matter, We Care website](#) to refer or report a concern and a team member will reach out to the student in distress.
- *Counseling and Wellness Center:* [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as non-crisis services.
- *Student Health Care Center:* Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](#).
- *University Police Department:* [Visit UF Police Department website](#) or call 352-392-1111 (or 9-1-1 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](#).

Basic Needs Assistance. Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

SPRING 2025 TENTATIVE COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This tentative outline is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change. **Daily assignments can be found on Canvas at the “Syllabus” tab. Readings beyond the case book can be found within each related module.** For the first week of class, please see **Modules 1 and 2 on Canvas** (see highlighted below). I will update the Syllabus and module dates on Canvas weekly.

Week Topic

Week 1 – Jan. 14, 17

Tuesday

Module 1: Overview

- CB pages 3-4 (to “steps in process”), 6 (“arrest”) -14 (to end of note 2), 15 (start at note 6) – 18; 50-52 (“innocence”)
- Natapoff, *Misdemeanors* – only pages 1313-19, 1325-26 (in module)
- Reading on Florida: collateral consequences & fines and fees (in module)
- *Optional reading on misdemeanor system* (in module)

Friday

Module 2: The Right to & Performance of Counsel

Right to Trial Counsel

- Watch video on building blocks of right to counsel (in module)
- CB pages 63-69, 69-72 (*only notes 1, 3, 5, 7, 8), 73 (bottom) -79 (*skip Brennan dissent in Scott)
- Florida Rule of Crim. Proc. 3.111
- Complete **Questions 1 & 2 of Right to Counsel Problem Set** prior to class (in module)
- *Optional reading for students interested in public defense* (in module)

Week 2

Module 2: The Right to & Performance of Counsel

Right to Trial Counsel, cont’d

Right to Assistance of Experts

Right to Proceed Pro Se

Competency

	Effective Assistance of Counsel
Week 3	
	Effective Assistance of Counsel, cont'd
	Conflicts of Interest
Week 4	
	Disqualification of Counsel
	<u>Module 3: Client Control</u>
THE COMMENCEMENT OF FORMAL PROCEEDINGS	
	<u>Module 4: Pretrial Release</u>
	Pretrial Release Procedures
	Constitutional Limits on Release Procedures
Week 5	
	<u>Module 5: The Decision to Prosecute</u>
	Prosecutorial Discretion
	Challenging the Charging Decision
	<u>Module 6: Grand Jury Review</u>
	Speaker: David Byron, Assnt. U.S. Attorney
Week 6	
	Challenges Related to Grand Jury
	<u>Module 7: Pretrial Issues for Motions</u>
	Practice
	Joinder & Severance
Week 7	
	Speedy Trial
	<u>Module 8: DISCOVERY</u>
	For the Defense: By Statute
Week 8	
	For the Defense: By Statute, cont'd
	For the Defense: Under the Constitution
	For the Prosecution

Module 9: NEGOTIATED PLEAS

Risks of Plea Bargaining

Week 9

Risks of Plea Bargaining, cont'd

Introduction, Voluntariness, Innocence

Judicial Participation

Week 10

Determining Plea is Understandingly Made; Factual Basis of Plea; Judicial Regulation of Agreement

Professional Responsibility of Defense Counsel

Withdrawal and Breach

Week 11

Forfeiture of Claims by Guilty Plea

Module 10: TRIAL BY JURY

The Right to a Jury Trial

Jury Selection: Venire

Week 12

Jury Selection: Petit Jury

Right to Presence

Right of Confrontation

Week 13

Module 11: DOUBLE JEOPARDY