AdvancedCrime & Law
Module Guide - Spring Term 2016
LALA104H5

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# GENERAL INTRODUCTION TO THE COURSE

A foundational working knowledge of the criminal law is an essential part of your BSc in Criminology and Criminal Justice. This course builds on Autumn term’s ‘Crime and Law’ module to provide you with the skills and knowledge to form informed opinions about the criminal law. The module will assist you in further familiarising yourself with the foundations, principles and terminology of the criminal law, as we will reconsider the basic tenets of the law in light of offences and cases that complicate doctrinal certainties. We will also engage with a number of contemporary criminal legal debates that have a particular urgency today, such as debates concerning the new offence of corporate manslaughter, the use of joint enterprise doctrine for tackling ‘gang crime’, the proposed extension of hate crimes, the criminalisation of political protest, the aftermath of the reform of sexual offences law, and the recent criminalisation of HIV transmission. We will explore these debates with a special emphasis on the social and political context of legal judgments and reforms. By the end of the course, you will have a good grasp of the current manner of thinking about the criminal law.

### LECTURER & TUTOR DETAILS

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<th>Role</th>
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<tbody>
<tr>
<td>Lecturer:</td>
<td>Dr. Başak Ertür</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:b.ertur@bbk.ac.uk">b.ertur@bbk.ac.uk</a></td>
</tr>
<tr>
<td>Office Hours:</td>
<td>Mondays, 4-5pm</td>
</tr>
<tr>
<td>Office Location:</td>
<td>Room 201, 12 Gower Street (This room is on the second floor and there is no lift: meetings in more accessible rooms can be easily arranged whenever requested)</td>
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<th>Role</th>
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<tr>
<td>Seminar Tutor:</td>
<td>Niall Williams</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:niall.williams@bbk.ac.uk">niall.williams@bbk.ac.uk</a></td>
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IMPORTANT DATES:

Spring Term

Lectures start: Tuesday 12 January 2016
Seminars start: Tuesday 12 January 2016
Reading Week: 8-14 February 2016
Last Class: Tuesday 15 March 2016
Spring / Easter Closure: College closed 24-29 March 2016

COURSEWORK SUBMISSION DATES

Presentation: Latest by last seminar on 15 March 2016
(arrange with your tutor during first seminar)
Essay: Monday 18 April 2016 by 4:30pm

USE OF MOODLE

Please check regularly for updates, information and materials. Where possible the lecturers will draw your attention to new materials being placed on the sites, but it is considered to be your responsibility to stay informed and check regularly. If for any good reason you are unable to use Moodle and require assistance with obtaining the materials for the course please contact a member of the Administration Team at the Main Law School Office. http://moodle.bbk.ac.uk/

REQUIRED BOOKS

You will need to have regular access to the following book and are encouraged obtain a copy:


Last term’s required book for ‘Crime and Law’ will also prove useful:


Copies of essential reading other than the textbook will be provided in the reading pack or online via Moodle.
AIMS AND LEARNING OUTCOMES

In this course we aim to...

- Empower students, as people training in criminology and criminal justice, to be comfortable with engaging with the terminology, doctrines and debates in criminal law
- Develop students’ understanding of key legal concepts in criminal law
- Engage with the criminal law in its social and political context, and further explore critical theoretical approaches to criminal law
- Form a comprehensive and critically astute understanding of the potential, limits and consequences of criminal law as a mechanism for responding to crime and criminal behaviour
- Explore the ways in which the criminal law intersects with and departs from the dominant values, priorities, aspirations, fears and bigotries in society
- Further develop specialist subject specific and transferable skills in preparation for employment or further study

By the end of this course you should be able to...

- Explain, understand and reflect on the law’s response to various aspects of crime and criminal behaviour
- Demonstrate in-depth knowledge and understanding, and reflect critically on, at least one area of crime and criminal behaviour
- Demonstrate the ability to show the relationship between, synthesise and comment critically on relevant criminological and criminal legal theory
- Demonstrate the ability to understand and reflect critically on relevant criminal case law
- Demonstrate competence in subject specific and transferable skills which can prepare you for employment or further studies. These include skills in writing, IT literacy (including accessing statute and cases from law databases), group work, independent research, analysis and critique, oral presentation, independent research and critique
- Exercise sound academic judgement, take personal responsibility for your course of study and demonstrate initiative
**HOW IS THE COURSE TAUGHT?**

**Lectures**
Lectures will be on Tuesdays, 6:00-6:55pm.

**Seminars**
Seminars will occur every week on Tuesdays, immediately following the lecture. There are two seminar slots, one which runs from 7:00pm-8:00pm and one which runs from 8:00pm-9:00pm. Please check your timetable (available on “My Birkbeck” www.bbk.ac.uk/mybirkbeck/) to confirm which seminar group you are in. **You have to attend the seminar group you are assigned to.** There will be no lectures or seminars during Reading Week.

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**HOW IS THE COURSE ASSESSED? (summary)**

The course is assessed in the following way:

<table>
<thead>
<tr>
<th>Type of assessment</th>
<th>Weighting (%)</th>
<th>Deadline</th>
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<tbody>
<tr>
<td>Presentation in class</td>
<td>0%</td>
<td>by the last class: 15 March 2016</td>
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<tr>
<td></td>
<td>(compulsory</td>
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<td></td>
<td>but not graded)</td>
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</tr>
<tr>
<td>Essay (3,000 words)</td>
<td>100%</td>
<td>18 April 2016, 4:30pm</td>
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DETAILED ASSESSMENT INFORMATION

1) Presentation in class

As part of your assessment for this course, you are required to make a presentation to your seminar group on one of the texts set as required or further reading for a week that you choose or are allocated to. You should seek your seminar tutor’s assistance to decide which text to present on.

Please note that presentations are not graded, but they are compulsory, i.e. if you do not make a presentation, you will not pass the course and you will need to do an alternative assessment during the resit period.

Presentations can be done individually or in pairs, and should run approximately 5-7 minutes per person or 10-12 minutes per pair. The format and focus of the presentation is up to you, but should go beyond summarising the readings. Strong presentations will demonstrate a thorough reading of the text, a critical approach to the topic and an ability to pose thoughtful, discussion-oriented questions for the seminar group.

Some issues you may want to consider in your presentations are listed below. You can use the following questions as guidance, and since your time is very limited, it will be sufficient to consider any 2-3 of these in your presentations:

(a) A brief synopsis of the reading

- Identify the central thesis / main argument; or the key points if it is a case report
- Highlight key points and evidence used to support the thesis
- Identify the theoretical perspectives / methodological issues raised in the analysis
- What is the author’s claim about the significance of the work?
- How does the selected reading relate to other articles or issues in the module?
(b) Your own critique / analysis / response to the readings

- Do you agree with the central thesis or argument? Why or why not?
- Does the evidence / examples support the main thesis or argument? What other evidence could have been used? Is there counter-evidence available?
- What are the strengths and limitations of the theoretical perspectives or methodologies used in the text?
- Do you accept the author’s claim about the significance of the work? Do you see other points of significance or relevance?
- Can the arguments or ideas be applied to other situations, and if so, with what impact? Who benefits from the argument? Who does not?
- Who / what is included in the discussion and who / what is excluded? What perspectives are missing? Who is absent?
- How are people / organizations / ideas / power structures represented in the reading? Do these representations challenge or reinforce dominant social norms?
- What assumptions are made by the author? What basic principles, values or ideas do their arguments rely on? How does the author use and define (both explicitly and implicitly) key terms and concepts?
- What contradictions or tensions can be found in the arguments? What patterns?
- What feelings, emotions, reactions came up for you as you read the text? Why do you think you responded that way? What do those reactions tell you about the reading, but also about yourself?

(c) Question to raise for discussion:

- Are there points you didn’t understand about the reading or issues to clarify?
- What theoretical, political or substantive questions arise from the reading?
- What questions arise from your own critique and analysis?
2) Essay – 3,000 words (100%)

Essay topics will be distributed in class and posted on Moodle after Reading Week.

The essay provides an opportunity for you to demonstrate what you have learned in this class and to pursue your own interests by conducting further research on a topic that you’d like to learn more about.

The essay must draw from course materials (i.e. required course readings) as well as your own independent research.

The essay must be properly referenced, using a consistent academic referencing style and must include a bibliography. Please include specific page numbers for all in-text or footnoted references. Failure to properly reference will result in mark deductions and can result in referral to the academic misconduct committee. For further information, see section on ‘Referencing & Good Academic Practice’ below.

The essay must have a clear introduction, overall argument and conclusion. The essay should not simply summarise reading materials, but needs to incorporate your own analysis and argumentation. Your argument needs to be supported by examples and evidence.

Due Date: Monday 18 April 2016. To be submitted online via Moodle by 4:30pm.
IMPORTANT NOTE ABOUT DUE DATES

Please note that coursework deadlines are strictly kept. Unless there are mitigating circumstances (i.e., unforeseen, unpreventable circumstances that disrupted your academic performance), late essays will be marked with a capped grade of 40%. Requests for mitigating circumstances to be considered must be directed to the law school office, along with documentation (e.g., medical note or other evidence). Failure to submit an assignment (notwithstanding mitigating circumstances) will result in a zero for that assignment and an incomplete in the module. From 2015-16 all re-sit submissions (i.e., 2nd and 3rd attempts) will be capped at the passmark for 40% unless there are mitigating circumstances. For further information, please see the Student Handbook and the Frequently Asked Questions section of the Programme page on Moodle.

REFERENCING & GOOD ACADEMIC PRACTISE

Good academic practice requires that you provide full and proper references for all materials that you make use of in your written work. Any reference to ideas or material from other sources (including internet sources!), whether in the form of direct quotation or paraphrasing must be acknowledged using properly formatted referencing style. Failure to reference properly can result in plagiarism.

The Harvard (Author-Date-Page) Style of referencing is used widely in the field of criminology and you are advised to use this style for your assignments. Please note that styles can vary in terms of punctuation, capitalisation and formatting, so you may see different variations in different sources. However, for the purposes of your assignments, we recommend you use the following guide provided by the University of the West of England:

UWE General Online Referencing Guidelines:
http://www1.uwe.ac.uk/students/studysupport/studyskills/referencing/uweharvard.aspx

UWE Quick Guide on Harvard Referencing:
http://www2.uwe.ac.uk/services/library/help/printable%20library%20guides/9-uwe-harvard.pdf

UWE Full Guide on Harvard Referencing:

Birkbeck’s Definitions, procedures, and penalties for dealing with plagiarism:
http://www.bbk.ac.uk/mybirkbeck/services/facilities/support/plagiarism
http://www.bbk.ac.uk/mybirkbeck/services/rules/CAS%20Reg%201516.pdf
http://www.bbk.ac.uk/mybirkbeck/services/rules/Assessment_Offences.pdf
General Tips for Avoiding Plagiarism:

- **Give yourself enough time** to work on your assignment, so you are not tempted to copy text from other sources.
- **Take notes carefully** so that you keep track of specific sources and page numbers. Make sure you clearly identify in your notes which ideas are your own and which come from your sources.
- **Reference as you write**, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author’s last name and page number), you can then go back and do the formatting later. But it is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- **Consult a referencing guide!** If you are unsure about referencing format or procedure, check a referencing style guide.

Remember: Using another person's work without acknowledgment, or using work in a way that may mislead or deceive your reader is plagiarism. It doesn’t matter whether you deliberately intended to deceive or not; it still counts as plagiarism and is subject to the university’s policies and penalties on academic misconduct (see links above). Plagiarism is not only dishonest, but it undermines the integrity of academic scholarship and is not acceptable.

Common Referencing Errors to Avoid:

- ‘Cutting and pasting’ text without putting it in quotation marks or properly paraphrasing it (i.e., putting it into your own words). Remember, paraphrasing does not mean changing one or two words in the passage; it means putting the idea *entirely* into your own words.
- Including references for direct quotes but not for paraphrased material.
- Failing to include full reference details for web-based resources (i.e. including the URL address only and nothing else). For referencing webpages and online sources, you should include: the title of the specific article or page you’ve used, the author (if given); the original date the article was posted (if available); the full URL address; and the date you accessed the webpage.
- Using inconsistent format / style (i.e. mixing and matching different referencing styles)
- Referencing material you haven’t actually read yourself (i.e. padding your bibliography or copying other people’s references). If you want to reference a source within a source (known as ‘secondary referencing’), you need to make it clear what you have read directly versus what you are using from a secondary source. For example, if a textbook includes passages from government report that you also want to quote, but you haven’t read the original report yourself, you should cite the textbook, eg. (Government Report X, cited in Textbook Y).
- Not including a bibliography / reference list at the end of your essay.
WHAT IS EXPECTED OF YOU?

We expect you to:

- Prepare for and attend lectures
- Prepare for and attend seminars
- Participate in seminar discussions
- Do an in-class presentation
- Complete the final essay

Preparing for your lectures and seminars usually means completing the required reading before class, making notes and considering the discussion questions. Preparation for this course and all the other courses you will study as part of your degree also involves you keeping abreast of current affairs as they relate to criminology and the criminal justice system. Please ensure that you read a good quality newspaper. If you are short of time then at least try to read a good quality newspaper on a Sunday.

DISABILITY, DYSLEXIA AND ACCESSIBILITY SUPPORT

If you have any disability, accessibility or dyslexia support needs, you are encouraged to contact the Disability and Dyslexia Support Office so we can support your full learning and participation in the course. The Disability Office offers a range of supports and services, including financial support for those who qualify. [www.bbk.ac.uk/disability](http://www.bbk.ac.uk/disability)
# LECTURE AND SEMINAR SCHEDULE SUMMARY

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<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Lecture / Seminar Topic</th>
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<tbody>
<tr>
<td>1</td>
<td>5 January</td>
<td>NO CLASS</td>
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<tr>
<td>2</td>
<td>12 January</td>
<td>Law, Morals, Politics</td>
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<tr>
<td>3</td>
<td>19 January</td>
<td>Omissions</td>
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<td>4</td>
<td>26 January</td>
<td>Corporate Manslaughter</td>
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<tr>
<td>5</td>
<td>2 February</td>
<td>Participation: Focus on Joint Enterprise</td>
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<tr>
<td>6</td>
<td>9 February</td>
<td>READING WEEK – NO CLASS</td>
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<tr>
<td>7</td>
<td>16 February</td>
<td>Hate Crimes</td>
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<td>8</td>
<td>23 February</td>
<td>Criminalising Protest</td>
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<td>[Guest lecturer: Nadine el-Enany]</td>
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<tr>
<td>9</td>
<td>1 March</td>
<td>Sexual Offences: Focus on Rape</td>
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<td>10</td>
<td>8 March</td>
<td>HIV Transmission</td>
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<tr>
<td>11</td>
<td>15 March</td>
<td>Review of Course</td>
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Week 1 (5 January)

NO CLASS
PLEASE PREPARE FOR NEXT WEEK
Week 2 (12 January) *Law, Morals, Politics*

We begin this session with general information about the module: its scope, key concerns, assessment structure, and resources. We will then move on to a general consideration of criminal law in relation to morality and the realm of politics. We will seek preliminary answers to questions such as:

- What is legal judgment?
- What is the relationship between criminal law and morals?
- What is the relationship between criminal law and politics?

In tackling the latter two questions, we will focus on the significance of the legal distinction between intention and motives. Notably, the criminal law distinguishes between motives and intention when allocating blame, and generally ignores the question of the motivations of a defendant until sentencing, that is, the final stage of a criminal trial. The exclusion of motives from the consideration of legal culpability creates a gap between legal culpability and moral culpability. What is the significance of this gap for the justice of the criminal law?

**Required Reading:**


**Questions for Discussion:**

The seminar discussions for this week and the weeks ahead will stem from a close engagement with the required reading. So you must make sure to come prepared. These questions are meant to guide the class discussions, and also to assist you in reading and preparing for the seminar:

1. What are the three arguments that Norrie proposes against the idea that legal judgment reflects moral judgment?
2. What does Norrie mean when he refers to the individualism and atomism of law in apportioning guilt?
3. How does the criminal law distinguish motive from intention? How does this compare to the distinction between the two concepts in ordinary language?

4. What is the rationale behind the irrelevance-of-motive maxim?

5. Who is the “abstract legal individual” according to Norrie?

Further Reading:


Week 3 (19 January) **Omissions**

Criminal liability usually arises from *doing* something. But under certain circumstances, *not doing* something, that is, not acting, or withholding action, may also constitute a liability. The circumstances that give rise to liability for omitting to act are very limited in English law. In other words, there is no general and universal duty to act, so the ‘Good Samaritan’ rule does not apply here. The fact that the law limits the ‘duty of care’ to certain circumstances and relationships is interesting in itself and requires our attention: What kind of circumstances and what kind of relationships create a ‘duty of care’? Why not others? We may also inquire into the value systems that these distinctions stem from and sustain. For example, criminal legal scholars generally agree that the historical development of the omissions doctrine can be attributed to the values of individual freedom and autonomy that underpin the criminal law. This week, we will study the controversial case of *Stone and Dobinson* to explore how the criminal legal doctrine of omissions exposes the tensions in criminal law between individual autonomy and collective responsibility.

**Required Reading:**


**Questions for Discussion:**

Compare the official judgment in *Stone and Dobinson* with the alternative ‘feminist judgment’:

1. How do they differ?
2. Do the differences in the representation of facts in the two judgments make a difference in the conclusions they reach? Is storytelling relevant to criminal legal judgments?

3. What is the difference between the two judgments in terms of the balance they strike between individual autonomy and collective responsibility?

4. Which one do you find yourself agreeing with more? Why?

Further Reading:


Week 4 (26 January) **Corporate Manslaughter**

The Corporate Manslaughter and Corporate Homicide Act of 2007 created a new offence. Even though criminal law traditionally addresses the culpability of individuals, this new offence allows a corporation to be held liable for manslaughter. The implications of this are immense. In this session we will be discussing the historical, social, political and legal context of this new offence, and exploring the following questions:

- How did this new offence come about?
- What social need does this offence address? Does it address it sufficiently?
- What is the political significance of this offence?
- What is the legal significance of holding corporations liable, when criminal law is historically crafted and streamlined for apportioning liability to individuals?
- What are the implications of this new offence for our understanding of crime and punishment?

**Required Reading:**


**Questions for Discussion:**

1. Are corporate deaths accident or crime? Should corporations be held liable for them?
2. Should criminal liability of corporations be limited to homicide?
3. Will this new offence save lives?
4. Should the sentence for a conviction under this Act be limited to a fine?
Further Reading:


Week 5 (2 February) **Participation: Focus on Joint Enterprise**

There are certain modes of liability that widen the net of criminal law beyond principal offenders. There are good reasons for extending liability beyond the principal perpetrator, as the law should take into account the culpability of all participants in a crime. However, extending liability in these ways can, at times, stretch the law too thin. This week we will consider criminal liability for offence participation, focusing particularly on the doctrine of joint enterprise. Joint enterprise is an old common law doctrine that has come under scrutiny in the recent years, due to its intensified use by the police and the CPS in their attempts to tackle ‘gang crime’.

**Required Reading:**


**Questions for Discussion:**

1. What are the three types of joint enterprise, and which one is the type that has been a cause of controversy?

2. A, B and C arm themselves with wooden sticks and attack X. As they are beating X, A produces a knife and stabs X. X dies of stabbing injuries.
   a. What is A likely to be held guilty of?
   b. What is the mental element required to hold B and C liable as accessories for the same offence?
   c. What kind of defence could B and C offer against accessorial liability?
d. What if A, B and C had armed themselves with iron rods instead of wooden sticks to attack X – would that make a difference in the prosecution’s case?

3. The Metropolitan Office has publicly stated that the joint enterprise doctrine is useful for dealing with gang crime. Meanwhile prosecutors have been accused of taking a ‘drag net’ approach to charging young people through the joint enterprise doctrine. Further, an Oxford University research found that only 21% of the public feel that they can support murder convictions based on joint enterprise.

Provide 3 arguments for and 3 arguments against the use of joint enterprise doctrine in dealing with violent crime.

**Further Reading:**


WEEK 6 (9 February 2016)
READING WEEK – No class this week
Week 7 (16 February) **Hate Crimes**

There are two distinct types of offences that come under the rubric of ‘hate crimes’: direct and derivative. Direct hate crimes are designed to target ‘hate speech’ that is intended to stir up hatred towards a group of people because of their race, religion or sexual orientation. Derivative hate crimes, on the other hand, are aggravated versions of a limited number of common offences such as assault and battery. We will examine these two forms of hate crimes as they are currently formulated and discuss the recent consultation paper by the Law Commission on extending the existing offences. We will also consider whether it makes sense to turn to the criminal law for solving social tensions stemming from hatred. To what extent can the law address bigotries and hostilities effectively? What, if any, are the limits on the freedom of speech?

**Required Reading:**
- R v Rogers [2007] UKHL 8
- R v Malik [1968] 1 All ER

**Questions for Discussion:**
1. What is the distinction between direct hate crimes (stirring up offences) and derivative hate crimes (aggravated offences)?
2. Do you think the aggravated offences should be extended to include hostility on the basis of disability, sexual orientation and transgender identity? (see Law Commission Consultation Paper summary)
3. Do you agree with the decision in *Rogers* that ‘racial aggravation’ should be interpreted broadly to include xenophobia?
4. To what extent do you think the criminal law should be used for correcting conflicts in social relations? Can you think of instances where
the use of criminal law for this purpose might backfire? Consider your answer with regards to both direct hate crimes, and derivative hate crimes.

5. ‘Such strategies [as extending anti-discrimination law to include speech as discriminatory conduct] tend to enhance state regulation over the issues in question, potentially empowering the state to invoke such precedents against the very social movements that pushed for their acceptance as legal doctrine’ Judith Butler, *Excitable Speech*, p. 24. Discuss with reference to *Malik*.

**Further Reading:**


In this session we explore the criminalisation of protest activity in Britain. The idea of protest today potentially includes a wide range of activities, such as marches, occupations, direct action as well as riots. The legal foundations of the right to protest are narrower than what we may conceptualise more broadly as protest, and are considered to lie in human rights law. Protected in the European Convention on Human Rights 1950 (ECHR), which is incorporated in the Human Rights Act of 1998, are Article 10 on freedom of speech and Article 11 on the freedom of assembly and association. These provisions, taken together, provide the foundation, in legal terms, of what is known as the right to protest. In this session we will consider both the way in which the criminal law is used to limit protest activity, but also surrounding state practices which contribute to the criminalisation of dissent. The scope of the freedom to protest depends not only on the way in which it is legislated – the 1986 Public Order Act has had the effect of depoliticising protest through its creation of serious and flexible offences (such as violent disorder) which have been used against protesters – but also on the manner in which protests are policed.

**Required Reading:**


Trenton Oldfield was sentenced to six months imprisonment after holding a direct action protest against elitism and inequality at the Oxford Cambridge boat race on 7th April 2012. He was convicted of the common law offence of public nuisance. Public nuisance is a broad offence covering a wide scope of behaviour which is deemed to endanger the health, morals, safety, comfort,
convenience, or welfare of a community. In 2010, the Law Commission recommended the abolition of the offence, criticising it for being vague, outdated and often in conflict with the European Convention on Human Rights. The Commission warned that the offence could be used to criminalise any undesirable behaviour, including protests.\(^1\) Initially, Oldfield was charged with Section 5 of the Public Order Act 1986, which is punishable by a fine, but after Michael Ellis MP challenged the Metropolitan Police Commissioner about this during a Home Affairs Select Committee meeting, the charge was changed to one of public nuisance, which carries a maximum sentence of life imprisonment.\(^2\) Oldfield has always maintained that he was exercising his democratic right to protest. He argues that his decision to disrupt the boat race stemmed from three developments which took place in the days prior to his protest: the coalition government’s signing of the Communications and Data Bill which legalised the surveillance of all digital communications of all UK citizens, the bill privatising the NHS received Royal Assent and finally, a cabinet minister called on the public to report their neighbours to the police if they suspected them of planning a protest at the Olympic games.

**Questions for Discussion:**

1. In legal terms, what does the right to protest comprise?
2. What are the problems associated with charging protesters with the public order offence of violent disorder?
3. In your view, should Trenton Oldfield have been charged with a criminal offence?
4. Do you think the sentence Oldfield received was proportionate?
5. Oldfield decided not to appeal. Can you think why this might be?
6. Do you find Judge Molyneaux’s reasoning in her sentencing remarks convincing?
7. Teresa May, the Home Secretary, exercised her discretion to issue a deportation order in relation to Trenton Oldfield (he is Australian) following his conviction. She argues that his deportation is in the public

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interest and that his presence in the UK is ‘not conducive to public good’. In your view, was her decision justified?

Further Reading:


Week 9 (1 March) Sexual Offences: Focus on Rape

The law on sexual offences underwent major change with the Sexual Offences Act 2003. The reforms were seen as necessary in an area of criminal law which was identified by the Home Office as ‘archaic, incoherent and discriminatory’. The statutory overhaul was also a response to long-standing problems with reporting, prosecution and conviction rates. This week we will be considering the rationales for and effects of these reforms. We will also be looking at debates concerning some of the structural and effective issues regarding the criminal law’s response to sexual violence. We will be focusing specifically on rape.

Required Reading:

- Sexual Offences Act, sections 1, 74-76
- R v Bree (Benjamin) [2007] EWCA Crim 804
- R v Jheeta [2007] 2 Cr App Rep 34

Questions for Discussion:

1. How does the Sexual Offences Act 2003 define consent?
2. What are rebuttable and irrebuttable presumptions? What is their effect on the burden of proof?
3. ‘Some argue that the most complicated element in relation to the offence of rape is that of consent. Nevertheless, it is the simplest element. It can best be defined as free agreement.’ Discuss with reference to Bree and Jheeta.
Further Reading:


HIV transmission is a controversial issue that touches on a number of things: the concept of consent, the contingency of ‘crime’; and individual responsibility versus the public interest. Until 2001 it was thought that the reckless transmission of HIV was not a criminal offence under the Offences Against the Person Act 1861. This was confirmed in 1998 by the Home Office in a consultation document that also concluded that the creation of such an offence would not be in the public interest. The Court of Appeal cases of Dica and Konzani have significantly changed and, arguably, made new law in this area.

**Required Reading:**

- R v Dica [2004] EWCA Crim 1103
- R v Konzani [2005] EWCA Crim 706, CA

**Questions for Discussion:**

1. What evidence is required to demonstrate ‘consent to risk of transmission’?
2. ‘Criminalisation of the transmission of HIV through consensual sexual activity would have serious and negative consequences for the reporting and detection of the virus: those who ought to take advice might be discouraged from doing so’. Discuss.
3. Could, and if so should, the principles established in Dica and Konzani apply to the transmission of a cold or flu?
4. ‘Consenting to unprotected sexual intercourse is an implied consent to all the risks associated with it, including infection with the HIV, which is one possible consequence of unprotected sex.’ Discuss.

Further Reading:


Week 11 (15 March) **Review of Course**

In this final week, we will review the course and provide guidance about the assessment for the module. In the lecture, we will discuss essay writing, resources for independent research and referencing in detail. In the seminar, we will collectively evaluate sample essays and discuss what makes a student essay strong or weak.

**Required Reading:**

To be distributed.
LIBRARY INFORMATION

All the books that included on the required and further reading lists should be available in the library. You are strongly encouraged to consult the library regularly and will need to make use of the library resources to complete the assessments.

For information about using the library in general:
http://www.bbk.ac.uk/lib/about/

To access the Electronic Library including online access to E-Journals:
http://www.bbk.ac.uk/lib/elib/

To access the catalogue of books:
http://vufind.lib.bbk.ac.uk/vufind/

OTHER RESOURCES & SKILLS SUPPORT

There are many resources available at Birkbeck to improve your academic writing skills – be sure to use them! For general skills related to the programme, please consult the Programme Page on Moodle and scroll down to the section titled “Academic Skills and Learning Resources”.

The college also runs a number of workshops, short courses and special sessions to help with writing and other skills. A timetable of workshops is available on the MyBirkbeck pages:
http://www.bbk.ac.uk/mybirkbeck/global/workshop_timetable?orgunit=GLOBAL

There is also an excellent range of resources and supports available through the Birkbeck Learning Skills Module, will is available to all students via Moodle:
https://moodle.bbk.ac.uk/course/view.php?id=7881