# Criminal Law I

## Prof. Marta Bertolino

1. ***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course will give students a solid grounding in the general issues and principles of criminal law and an outline of the Italian criminal justice system, with particular reference to constitutional principles. Special attention will be paid to the key categories of crimes through an analysis of examples of the most important crimes in each area so as check their elements and validity in light of an interdisciplinary reading of the situation and one that is teleologically oriented towards punishment and its function. The system of sanctions will be examined, taking account also of recent reforms in the criminal system. At the end of the course, students will be able to understand the general categories of crime, thanks to a teleologically protection-oriented interpretation of criminal laws, according to a constitutional dimension of the crime that is also aware of the profile of the penalty function.

***COURSE CONTENT***

Part I

*Fundamental issues and principles of the criminal system.*

* The distinctive features of “criminal” law. The idea of punishment and reparation.

– Criminal law and its relationship with the political system and other areas of the legal system.

– Relationship between substantive law and the law of evidence, in particular the relationships between criminal law on the one hand and civil law, civil procedure and administrative law on the other.

– The idea of “integrated criminal science” and the relationship between criminal law and criminology.

– The deterrent function served by the sentence compared to the function served by sanctions in other legal areas.

– The formation of the Italian criminal system. The Rocco Code. Constitutional principles. Subsequent evolution.

Part II

*Criminal laws.*

– Legality of criminal law and principles that crimes must be established by law.

– The interpretation of criminal law, legal positivism and strict interpretation.

– The effectiveness of criminal law over time: technological, scientific and social evolution, and the succession of criminal laws through the centuries.

Part III

*Crimes.*

– The structure of a crime.

– The classic notion of criminal law events: harm and actual risk of harm. Legal interests and the principle of offensiveness.

* Criminal law and abstract harm and criminal law and conduct.
* The distinction among the various types of crime.
* Substantive law and proving the elements of a crime.
* Criminal law and scientific knowledge.

– Causal nexus.

– Defences.

– Vicarious liability. Intention. Negligence.

* Error of fact and error of law: the relationship between authority and liberty.
* Strict liability.
* The circumstances of the offence.
* Attempted crimes.
* Concurrent offences.
* Joint offenders.
* Administrative offences and corporate liability for crimes.

Part IV

*The system of sanctions: general outline and principles.*

– The system of sanctions. In particular, imprisonment and the awareness by offenders of their wrongdoing

– The system of sanctions envisaged by the Rocco Code: general outline (sentences and security measures, custodial sentences and fines).

– Constitutional provisions on punishment. The notion of rehabilitation and its implications. Legality and discretion in responding to crime. The principle that the punishment must fit the crime.

– The evolution of the system of sanctions: general outline (the prison system, decriminalisation, alternative punishments and the sentences that can be imposed by the justice of the peace).

***READING LIST***

Students that attended the course regularly (practise exercise included) are expected to prepare the exam on the basis of lecture notes and in particular, for those topics not covered during the lectures, they should refer to the following text:

G. Marinucci-E. Dolcini-G. L. Gatta, *Manuale di diritto penale. Parte generale*, latest edition, Giuffrè, Milan.

In order to be prepared for the exam, non-attending students are required to study integrally the following text:

G. Marinucci-E. Dolcini-G. L. Gatta, *Manuale di diritto penale. Parte generale*, latest edition, Giuffrè, Milan.

In addition to the manual, an in depth study of the following volume is required for non-attending students:

F. Stella, *Giustizia e modernità,* Giuffrè, Milan, 2003, 3rd ed.

In addition, for a deeper reflection on criminal law fundamentals, the lecturer suggests to everyone a careful reading of one or more of the following texts:

F. Stella, *La giustizia e le ingiustizie*, Il Mulino, Bologna, 2006.

F. Stella, *Leggi scientifiche e spiegazione causale nel diritto penale*, Giuffrè, Milan, 2000 (2a ed.).

H. Arendt, *Responsabilità e giudizio*, Einaudi, Turin, 2004.

E. Wiesnet, *Pena e retribuzione: la riconciliazione tradita*, Giuffrè, Milan, 1987.

Other reading material affording an in-depth analysis of paramount criminal law issues will be specified during the academic year.

The exam will require knowledge of the relevant constitutional and criminal law provisions, constant referral to which in a fully up-to-date criminal code is highly recommended, including during lectures.

***TEACHING METHOD***

Lectures. In-depth study seminars. Visits to prisons. Conferences held by academics and judges on topical criminal questions.

To get an in-depth analysis of specific topics that have been covered, the course will include *moot trials*, during which students will be invited to analyse and discuss legal cases in class. Students’ active participation in the *moot trials*, tested during the Criminal Law I exam, will award students an ECTS credit according to the University regulations.

Students who so wish may also participate in further series of dedicated lessons or seminars of criminal or criminological interest during the academic year for which the Faculty may decide to award credits. Amongst them, it will be staged the series of seminars on “Giustizia e Letteratura” (Law and Literature).

***ASSESSMENT METHOD AND CRITERIA***

Mainly through an oral examination at the end of the academic year. The assessment will be marked in thirties and take into account students’ knowledge of the subject, how well they express themselves, their critical and argumentative skills.

***NOTES AND PREREQUISITES***

Given the introductory and institutional nature of the subject, there are no prerequisites in terms of course contents.

Further information can be found on the lecturer's webpage at http://docenti.unicatt.it/web/searchByName.do?language=ENG or on the Faculty notice board.