# Criminal Law

## Prof. Francesco Centonze

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

* ***Course Aims***

The course aims to carry out a critical analysis of the different approaches adopted by the legal system towards criminal activity, with a focus on its most significant issues: the relationship between freedom and security, the functions of punishment, the boundaries between rights and violence, and the relationship between individuals, communities, and Authority.

Furthermore, it aims to explore the most ‘traditional’ topics of the so-called general part of criminal law (the key principles; the theory and the different forms of crime; sanctions), in the light of the fundamental principles of the Constitution and the political-criminal debate on the reform of criminal law.

From the point of view of the presentation of the general categories of criminal law, it will also focus on some topics analysed in the single-subject course, in order to outline the main issues raised by the principles and regulations presented in class. This will include an in-depth analysis of specific crimes and their relationship with jurisprudence, as well as the latest events.

Finally, the course aims to promote a conscious approach towards criminal law, and knowledge of the key theoretical concepts for the interpretation of the different regulations.

* ***Intended learning outcomes***

At the end of the course, students will be able to understand the structure and the functioning of the criminal justice system.

* *Knowledge and understanding*

At the end of the course, students will be able to identify the role played by criminal law in the legal system, and its correlation with relevant constitutional principles; develop their knowledge of the general part of criminal law and its compatibility with constitutional law; reflect upon the sources of criminal law, inspired by the idea of a society embodied by the legislative body in a specific historical period; analyse the impact of the latest events (such as the Covid-19 pandemic on criminal law, the PNRR reform on criminal justice system and some criminal law remarks relating to the Russian-Ukrainian war).

* *Ability to apply knowledge and understanding*

At the end of the course, students will be able to apply their newly-acquired knowledge to the study of specific case studies, also thanks to the advent of remote teaching; provide a correct interpretation of particular legal situations, in order to identify their peculiarities and find appropriate solutions, also through the presentation of relevant examples; evaluate the correspondence between the legal system/the solutions offered by the usual procedures and the principles of the Constitutional Court.

* *Independent judgment*

At the end of the course, students will be able to carry out a critical analysis of the current legal system in the light of the principles of the Constitution, and assess the effectiveness of the legal solutions that may be applied to specific case law.

* *Communication skills*

At the end of the course, students will be able to develop the communication skills they need to discuss (and find appropriate solutions to) specific case law.

* *Learning ability*

At the end of the course, students will be able to acquire an in-depth knowledge of the general part of criminal law (including its most controversial points), and apply it to the analysis of relevant case studies. This will allow them to develop not only their analytical rigour, but also the ability to be concise.

***COURSE CONTENT***

First Part

* The balance between freedom and security in contemporary society. The separation between guilty and innocent that marks the watershed between democracies and totalitarian and authoritarian regimes.
* The principles on criminal law enshrined in the Italian Constitution and international conventions.
* Criminology and criminal politics. The relationship between criminal law, civil law and administrative law. Depenalisation.
* The functions of punishment. The analysis of different concepts: retribution, deterrence, and rehabilitation. The Classical school and the Positivist school. The questioning of prison as part of constitutional and supranational principles.
* Criminal law and evidential issues. The protection of the innocent and the principle of “beyond any reasonable doubt”.

Second Part

* The legal asset theory and the principle of harm.
* Subsidiarity and materiality.
* Legality. The impact of EU law. The crisis of legality in Italy.
* Main distinctions among the various types of crime.
* The key concepts of the general theory of crime.
* Typical fact and offense.
* The concept of action. Proper and improper omission.
* The classic notion of criminal law events: harm and risk of harm.
* Substantive law and judicial evidence of the elements of a crime.
* Causation. The attempts to make the classic criminal law model more flexible. The judge and science. The role of scientific uncertainty in judgements.
* Culpability as a dogma. Criminal negligence.
* Justification.
* Imputability.
* Errors of fact and errors of law.
* Culpability and strict liability.
* The objective conditions for criminal liability.
* Exclusion of liability causes.
* The circumstances of crime.
* Attempted crimes.
* Complicity in a crime. Concurrent offences and apparent concurrence of provisions.
* An introduction to corporate liability for crimes.

Third Part

* The system of sanctions. The recent reform of sanctions (so-called ‘Cartabia reform’, legislative decree no. 150 of 2022).
* The deterrent function served by the sentence compared to the function served by sanctions in other legal areas.
* The principle that the punishment must fit the crime. Commensurate punishment.
* The extinction of crime and penalty.
* Brief overview of:
* Alternative sanctions;
* Alternative measures;
* Security measures and social dangerousness;
* Prevention measures.

***READING LIST***

Students that attended the course regularly are expected to prepare the exam on the basis of lecture notes, possibly supplemented with the reading list texts specified during the course and the course additional material that will be made available on Blackboard*.*

Non-attending students may take the exam by studying the topics specified in the syllabus contained in one of the following texts chosen by the student: 1) D. Pulitanò, *Diritto penale*, X ed., Giappichelli, Torino, 2023; 2) R. Bartoli - F. Palazzo, *Corso di Diritto penale*, IX ed., Giappichelli, Torino, 2023; 3) G. Marinucci - E. Dolcini - G.L. Gatta, *Manuale di Diritto penale. Parte generale*, XI ed., Giuffrè, Milano, 2022.

Students are expected to be familiar with the updated rules relevant to the exam syllabus, with the Constitution, the Criminal Code and other laws examined during the course. Students will therefore need to continuously refer to an updated version of the Criminal Code containing the main supplementary laws.

***TEACHING METHOD***

Classroom lectures, with possible seminars. During the course, the lecturer will present “Crime law clinic” sessions consisting of the discussion of acts and documents relating to criminal proceedings concerning some of the issues addressed during the course.

***ASSESSMENT METHOD AND CRITERIA***

* *Assessment method*

Oral exam, aimed to assess knowledge and understanding of the key concepts and issues of criminal law.

It will be focused on the principles, categories, sanctions, and principles at the basis of criminal law, and the theories of punishment. The final mark will be expressed in thirtieths.

During the exam, students will be assessed on their knowledge of the principles, categories, and institutions of the general part of criminal law, and their ability to apply them to specific case studies. With regard to the examples presented in class, students may be tested on their knowledge of the most relevant juridical issues raised by specific offences.

Non-attending students will have to study the whole course content, as indicated in the reading list mentioned above.

* *Assessment criteria*

Knowledge of the subject, accuracy of answers, development of reasoning skills, and use of appropriate terminology.

***NOTES AND PREREQUISITES***

* *Notes*

Class attendance is *strongly* recommended.

* *Prerequisites*

There are no prerequisites for attending the course. However, students should show a certain curiosity towards the critical and philosophical analysis of criminal issues, especially during the first part of the course.

***STUDENT RECEPTION***

Information on office hours available on the teacher's personal page at <http://docenti.unicatt.it/>.