

## **CRIMINAL LAW AND PROCEEDINGS**

Degree in Legal Studies (Solicitors)

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Code: 16705

Main Scientific Area: Public Legal Sciences

Lecturer: Gonçalo Nicolau Cerqueira Sopas de Melo Bandeira

Language of Instruction: Portuguese

Regime: S2

Contact Hours: 60h Total Workload: 108h

ECTS: 6,0

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### **Objectives**

1 - Define and understand the concept of criminal law; 2 - Define and understand the problem of the ends of the penalties; 3 - Define and understand the historical development of criminal law; 4 - Define and understand the general theory of criminal law; 5 - Define and understand the general theory of criminal infraction; 6 - Define and understand the forms of crime; 7 - Define and understand the law of criminal procedure; 8 - Define and understand the fundamental principles of the law of criminal procedure; 9 - Define and understand the criminal procedure law and its application; 10 - Define and understand the subject of the proceedings; 11 - Define and understand the object of the proceedings; 12 - Define and understand the coercive measures and patrimonial guarantee (warranty); 13 - Define and understand the criminal proceedings.

### **Learning Outcomes**

1 - Identify and distinguish various rights and duties of criminal law and distinguish various rights and duties of criminal procedure; 2 - Understanding the place of systematic criminal rights and duties and understand the place of systematic criminal procedural rights and duties in the context of the disciplines of law; 3 - Know and understand the principles of ordering the domain of criminal law and criminal procedure law; 4 - Understanding the differences between the world of criminal law and criminal procedural law through an understanding of substantive and adjective law and imposing punishments that live within them; 5 - Identify the role of jurisprudence and doctrine in the discipline of criminal law and criminal procedure law; 6 - Develop the capacity to analyze and synthesis; 7 - Apply the knowledge and skills acquired in the resolution of cases of a certain complexity; 8 - Solve problems involving criminal law and criminal procedure law; 9 - Acquire the essential knowledge and skills in the area of criminal law in the broad sense.

### **Course Contents**

§ Part I: CRIMINAL LAW: CHAPTER I - CONCEPT OF CRIMINAL LAW, WITH SPECIAL RELIEF OF THE DIFFERENTIATION BETWEEN CLASSIC CRIMINAL LAW, ECONOMIC, AND SOCIAL CRIMINAL LAW AND THE "AGAINST ORDINANCES" LAW ("LAW OFFENSES"); CHAPTER II - THE PROBLEM OF THE ENDS OF THE PENALTIES; CHAPTER III - BRIEF OVERVIEW OF THE EVOLUTION HISTORY OF CRIMINAL LAW; CHAPTER IV - GENERAL THEORY OF THE CRIMINAL LAW; CHAPTER V – GENERAL THEORY OF THE CRIMINAL INFRACTION: A) ELEMENTS; B) CONSTRUCTIONS; C) ANALYSIS: 1) ACTION; 2) VAGUENESS DOCTRINE; 3) ILLEGALITY; 4) GUILT (FAULT); 5) PUNISHMENT; CHAPTER VI - FORMS OF THE CRIME: A) ATTEMPT; B) AUTHORSHIP AND "CO-PARTICIPATION"; C) CUMULATION OF OFFENCES. § Part I - B: CRIMINAL PROCEDURAL LAW: CHAPTER I - THE DELIMITATION OF THE CRIMINAL PROCEDURAL LAW; CHAPTER II - THE BASIC PRINCIPLES OF THE CRIMINAL PROCEDURE; CHAPTER III - THE CRIMINAL PROCEDURE LAW AND ITS APPLICATION; Part II: CHAPTER I – THE FIGURES OF THE

PROCESS;CHAPTER II - THE OBJECT OF THE PROCESS; CHAPTER III – THE MEASURES OF COERCION ANDPATRIMONIAL GUARANTEE (WARRANTY); CHAPTER IV – CRIMINAL PROCEDURE.

### **Recommended Bibliography**

ANDRADE, Manuel da Costa, in «Contributo para o Conceito de Contra-Ordenação (A Experiência Alemã)», publicado in Revista de Direito e Economia, 6/7 (1980-1981), pp. 81-121; publicado igualmente in «Direito Penal Económico E Europeu: Textos Doutrinários, Volume I, Problemas Gerais», Coimbra Editora, Coimbra, Portugal, 1998, pp. 75 e ss.;

- in «Consentimento e Acordo em Direito Penal (Consentimento Para A Fundamentação De Um Paradigma Dualista)», tese de dissertação de doutoramento em Ciências Jurídico-Criminais pela FDUC; Coimbra Editora, Limitada, Portugal, 1990 (reedição em 2004);- in «A "dignidade penal" e a carência de tutela penal como referência de uma doutrina teleológica-racional do crime», RPCC, ano 2, fascículo 2, 1992;

- in «Sobre as Proibições de Prova em Processo Penal», Coimbra Editora, Coimbra, 1992, (reimpressão m 2013);

BANDEIRA, Gonçalo N.C.S. de Melo, in «"Responsabilidade" Penal Económica e Fiscal dos Entes Colectivos § à volta das sociedades comerciais ou sociedades civis sob a forma comercial», tese de dissertação de mestrado pela F.D.U.Católica.P., Almedina, Coimbra, Portugal, 2004;

- in «O Crime de "Branqueamento" e a Criminalidade Organizada no Ordenamento Jurídico Português no contexto da União Europeia: novos desenvolvimentos e novas conclusões», in AA.VV., Coordenação de Nascimento Silva, Luciano / Bandeira, Gonçalo N.C. Sopas de Melo, «Branqueamento de Capitais e Injusto Penal - Análise Dogmática e Doutrina Comparada Luso-Brasileira», Editora Juruá, www.juruá.com.br, Lisboa, Portugal, 2010, pp.555-668;

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- «A designada "Responsabilidade das pessoas colectivas e equiparadas" no contexto do presente ordenamento jurídico luso e do "regime geral das infracções tributárias"», in «A Fiscalidade como Instrumento de Recuperação Económica», «Respostas Fiscais à Crise no Espaço Europeu», «Receita Fiscal e Garantia dos Contribuintes», «Impacto das 'Reformas' na Recuperação Económica», Centro de Investigação em Contabilidade e Fiscalidade, Editorial Vida Económica, Lisboa, pp. 316-342, 2011;

- in «A Responsabilidade das Empresas pelo Crime de Corrupção», «Direito Penal § Fundamentos Dogmáticos e Político-Criminais», «Direito Penal», Homenagem ao Prof. Peter Hünerfeld, Organização Manuel da Costa Andrade; José de Faria Costa; Anabela Miranda Rodrigues; Helena Moniz; Sónia Fidalgo, Coimbra Editora, Coimbra, Portugal, pp. 805-848, 2013;

- in «Responsabilidade Financeira e Criminal § Direitos Constitucionais Sociais, Dinheiros Públicos e Recuperação de Activos», Prefácio de Jónatas Machado, Editora Juruá, Lisboa, 2015;

- in «Lições e sumários desenvolvidos policopiados de Direito e Processo Penal referentes ao ano lectivo de 2021-2022», "Moodle", ESG/IPCA, Barcelos, Março de 2022;

- in «Responsabilidade Penal e Contraordenacional das Organizações Colectivas», «Estudos Em Homenagem Ao Prof. Doutor Manuel Da Costa Andrade», Volume I, Direito Penal, Boletim da Faculdade de Direito, Stvdia Ivridica, 108, Ad Honorem - 8, Organizadores: José de Faria Costa, Anabela Miranda Rodrigues, Maria João Antunes,

Helena Moniz, Nuno Brandão, Sónia Fidalgo, Universidade de Coimbra, Instituto Jurídico, 2017/2018, pp. 129-148;

CORREIA, Eduardo, in «Direito Criminal», com a colaboração de Jorge de Figueiredo Dias, 1963, II, Reimpressão, Livraria Almedina, Coimbra, 1993;

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DIAS, Jorge de Figueiredo, in «Para Uma Dogmática Do Direito Penal Secundário, Um Contributo Para A Reforma Do Direito Penal Económico E Social Português», publicado in RLJ, Coimbra, Portugal, ano 116.º (1983-1984), pp.263 e ss., e ano 117.º (1984-1985), pp. 7 e ss.; e, republicado, in «Direito Penal Económico E Europeu: Textos Doutrinários», Volume I, Problemas Gerais, Coimbra Editora, Coimbra, Portugal, 1998, pp. 35 e ss.;

- in «Direito Processual Penal», Coimbra Editora, Coimbra, 1.ª ed. 1974 e reimp. («Clássicos Jurídicos»), em 2004;

- in «Direito Penal § Parte Geral § Tomo I § Questões Fundamentais § A Doutrina Geral do Crime», 3.ª Edição actualizada e ampliada, Gestlegal, Coimbra, 2019.

PORTELA, Irene Maria, in «O Combate ao Branqueamento e Capitais e o Financiamento do Terrorismo à Luz do "USA PATRIOT Act 2001"», in AA.VV., Coordenação de Nascimento Silva, Luciano / Bandeira, Gonçalo N.C. Sopa de Melo, «Branqueamento de Capitais e Injusto Penal - Análise Dogmática e Doutrina Comparada Luso-Brasileira», Editora Juruá, www.juruá.com.br, Lisboa, Portugal, 2010, pp. 255-290;

### **Learning and Teaching Methods**

I – CONCEPT OF CRIMINAL LAW, WITH SPECIAL RELIEF OF THE DIFFERENTIATION BETWEEN CLASSIC CRIMINAL LAW, ECONOMIC AND SOCIAL CRIMINAL LAW AND THE "AGAINST ORDINANCES" LAW ("LEGAL OFFENSES"); 1 - Define and understand the concept of criminal law; II - THE PROBLEM OF THE ENDS OF THE PENALTIES; 2 - Define and understand the problem of the ends of the penalties; III – BRIEF OVERVIEW OF THE EVOLUTION HISTORY OF CRIMINAL LAW; 3 - Define and understand the historical development of criminal law; IV – GENERAL THEORY OF CRIMINAL LAW; 4 - Define and understand the general theory of criminal law; V - GENERAL THEORY OF THE CRIMINAL INFRACTION: A) ELEMENTS; B) CONSTRUCTIONS; C) ANALYSIS: 1) ACTION; 2) VAGUENESS DOCTRINE; 3) ILLEGALITY; 4) GUILT (FAULT); 5) PUNISHMENT; 5- Define and understand the general theory of criminal infraction; VI - FORMS OF THE CRIME: A) ATTEMPT; B) AUTHORSHIP AND "CO-PARTICIPATION"; C) CUMULATION OF OFFENCES; 6 - Define and understand the forms of crime; VII – THE DELIMITATION OF THE CRIMINAL PROCEDURAL LAW; 7 - Define and understand the law of criminal procedure; VIII - THE BASIC PRINCIPLES OF THE CRIMINAL PROCEDURE; 8 - Define and understand the fundamental principles of the law of criminal procedure; IX - THE CRIMINAL PROCEDURE LAW AND ITS APPLICATION; 9 - Define and understand the criminal procedure law and its application; X - THE FIGURES OF THE PROCESS; 10 - Define and understand the subject of the proceedings; XI – THE OBJECT OF THE PROCESS; 11 - Define and understand the object of the proceedings; XII - THE MEASURES OF COERCION AND PATRIMONIAL GUARANTEE (WARRANTY); 12 - Define and understand the coercive measures and patrimonial guarantee (warranty); XIII - CRIMINAL PROCEDURE; 13 - Define and understand the criminal proceedings; 14 - Developing skills for resolving practical cases; The syllabus that was described in their place is an essential basis of the criminal law and the criminal procedure law and continental European Portuguese: deepen the knowledge of criminal law, "law offenses" ("against ordinances") and criminal proceedings particularly in areas relating to fundamental rights. Developing theoretical and practical perspectives within the themes related also to the substantive criminal law, the "offenses" ("against ordinances") and enforcement measures, subject to the procedure and resources. None of this can be achieved if students do not have knowledge about the syllabus pointed in particular on the General Doctrine of Crime or the General Theory of Criminal Offence, as well as its practical application. These are students who have never had lessons of criminal law and criminal procedural

law, the fundamental core of any "rule of law" and democracy. It is essential that students learn the fundamental basis, establishing the proper connections between criminal law and criminal procedural law.

### **Assessment Methods**

Continuous and periodic evaluation

The continuous and periodic assessment comprises the following assessment elements:

Test (70% of the final classification or 14 points);

Written individual work (25% or 5 points);

Attendance (5% or 1 point).

The test will have a theoretical and a practical component, with a weight of 35% for each component in the final classification. The minimum score in the test is 5 points, under penalty of exclusion from the continuous assessment.

The maximum grade in the attendance component presupposes the presence of the student in at least 2/3 of the classes. Below this threshold, the component grade is proportional to the number of classes attended, as long as absences are not justified.

Students who obtain a grade equal to or greater than 8 and less than 10 points in the set of three elements of continuous assessment will be admitted to an oral test. In this case, the final classification of continuous assessment will be the grade of the oral test. The oral test will cover all the subjects taught.

The test date will be announced by the Course Director.

Exam seasons

During exam periods (first semester exam period, special period and exceptional period), the evaluation is done through a written exam, from 0 to 20 points.

Students who obtain a score equal to or greater than 8 and less than 10 points in the written exam will be admitted to an oral test. In this case, the final classification will be the grade of the oral test. The oral test will cover all the subjects taught.