COURSE NAME: International Criminal Law

COURSE NUMBER: 8634I

PROFESSOR: William T. Worster

ESSENTIAL PREREQUISITES: Criminal Law

DESIRABLE PREREQUISITES: International Law

COURSE BOOKS:

REQUIRED: (1) Antonio Cassese, International Criminal Law (Oxford Univ. Press, 2d ed., 2008) [ISBN 0199203105]; (2) Reader including selected cases and materials (to be provided)

RECOMMENDED: None

METHOD OF GRADING & APPRAISAL OF STUDENT FOR GRADE:
Written examination

SUMMARY DESCRIPTION OF COURSE:
An introductory course in International Criminal Law focusing on the criminal prosecution of individuals under international law, primarily by international tribunals (or “hybrid” international/national tribunals) and secondarily by national tribunals applying international law. The course will include a consideration of aspects of criminal law that are common to most criminal legal systems, with a particular focus on those crimes that are “international;” will revisit the concept of criminal jurisdiction, how it is acquired, and its limitations, such as immunity for heads of state and diplomats; and will examine the elements of war crimes, crimes against humanity, and genocide, as well as a few other crimes of international concern.

COURSE CONTENT:
(1) Discussion of alternatives for reconciliation following mass atrocities with a focus on criminal accountability through either or both international and national criminal prosecutions.
(2) Consideration of criminal jurisdiction and immunities, especially immunities relevant for international criminal law: state immunity and diplomatic immunity.
(3) Study of the origins and elements of the major international crimes – war crimes (including brief introduction to the laws of war), crimes against humanity, and genocide – and a very brief consideration of other crimes of international concern – aggression, terrorism, and torture. This study will necessarily require an analysis of major treaties on point and treaty interpretation.
(4) Study the “modes of responsibility”, i.e. the ways in which criminal responsibility is incurred through various actions aside from direct commission, e.g. aiding and abetting, incitement, ordering, etc. In common law systems, these are considered individual offenses and codified as such, but international criminal law borrows this notion of “modes” from continental European civil law systems. Accordingly, a brief comparative analysis of civil and common law systems is also covered.

(5) Discussion of criminal defenses. This study will be relatively short since the major defenses are largely similar to defenses familiar to American criminal law (self-defense, insanity, etc.); however, some discussion of the differences between American and international defense categories and analysis will be covered.

(6) Study of international criminal procedure. Here also the procedure is very familiar to common law lawyers and law students (adversarial procedure, independent prosecution, etc.) so then study will be brief, although major differences between American and international procedure and trial practice will be noted, e.g. evidence rules, protections of the accused, and victim participation. One area that will be considered in more detail will be areas of special concern for national prosecution of international crimes, particularly extradition and mutual legal assistance.

(7) Consideration of international sentencing standards and other punitive measures for retribution, deterrence, rehabilitation and reconciliation with /restoration of victims.

RELEVANCY OF COURSE FOR CAREER PURPOSES:
Review of criminal law and procedure and (international) comparative legal analysis with potential application for a career in military law (laws of war), diplomatic law (civil and criminal immunities), domestic criminal law with international elements (e.g. international mutual legal assistance or extradition needs), international criminal tribunal, or a variety of other discrete areas such as applying the international crime exception to asylum in immigration law.

RELEVANCY OF COURSE FOR MD/MULTI-STATE BAR EXAMINATION:
Reviewing elements of criminal law (mens rea, actus reus, etc.), defenses, and procedure; reviewing elements of international law (rarely occurring on bar exam, but potentially helpful to review treaty, international customary law, etc.); and exercising ability to apply knowledge to unusual criminal laws (genocide, war crimes, etc.) by practicing, e.g. statutory analysis, criminal legal argument, etc.