

## Course Outline

<b>COURSE:</b>	<b>LAWS 2004 B – Criminal Law in Context</b>
<b>TERM:</b>	<b>Fall/Winter 2009-2010</b>
<b>PREREQUISITES:</b>	<b>LAWS 1000</b>
<b>CLASS:</b>	<b>Day &amp; Time: Mondays, 8:35 to 11:25 a.m.</b> <b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR:</b>	<b>Professor Diana Young</b>
<b>CONTACT:</b>	<b>Office: Loeb D498</b> <b>Office Hrs: Mondays 12:00 to 1:00 or by appointment</b> <b>Telephone: (613) 520-2600 ex. 1981</b> <b>Email: Diana_Young@carleton.ca</b>

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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html) . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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### COURSE DESCRIPTION

This is an introductory course that is designed to provide students with an overview of criminal law and the criminal justice system, and to encourage critical thought about the processes that lead to the criminalization of individuals. The course aims to provide students with a grasp of first principles and a foundation for further study of issues and problems in criminal law. This includes basic concepts of criminal liability, defences, procedure and the fact-finding process, as well as the effect of the Charter of Rights and Freedoms.

The course will also involve a consideration of the human dimensions of the criminal justice system, and how political pressures, police practices, discretionary powers of the Crown, defence attorneys and adjudicators affect outcomes at the trial, sentencing and appeals stages of the process. We will consider how these factors might affect our understanding of the concept of the rule of law, and the nature of impartiality. We will also examine the extent to which the public face of the criminal law is consistent with its practical realities.

### REQUIRED TEXTS

The required text for this course is Rosemary Cairnes-Way and Renate Mohr, *Dimensions of Criminal Law*, 3<sup>rd</sup> ed. (Toronto: Emond Montgomery Publications Limited, 2002). Some supplementary material will be distributed in class or posted on WebCT.

### SUPPLEMENTARY TEXTS

Students may wish to purchase a recent edition of the Criminal Code, particularly an annotated version such as Martin's or Tremeeer's.

**EVALUATION*****Essay – 30% of final grade***

Students will be required to submit an 8 to 10 page research paper on **March 8, 2010**. The instructor will provide the class with a list of suggested topics; however, students are welcome to write on a topic that does not appear on the list, provided they submit a brief outline of their proposed paper topic for approval ahead of time. This will help ensure that the proposed topic is feasible and that it will meet the course requirements.

***Christmas Examination – 30% of final grade***

The mid-course examination will be held during the Christmas exam period.

***Final Examination – 40% of final grade***

The final examination will be held during the April exam period.

Both examinations will be open book format, and will include essay and short-answer questions. Students will be responsible for all the required readings, including supplementary material distributed in class or posted on WebCT, as well as material covered in the lectures and class discussions. Students will have three hours to complete each exam.

**Late assignments will be penalized at the rate of 5% per day. Extensions on assignments will only be granted in extenuating circumstances, such as a verifiable medical condition or family emergency. Students requesting extensions will be required to supply appropriate documentation.**

**SCHEDULE****Part I: An Overview of the Criminal Justice System**

- Sep 14**
- *Introduction*
  - Stages of the Criminal Justice System

- Sep 21**      Readings: *WebCT; R. v. Murray, (2000) 144 C.C.C.*

**Rule of Law, Implementing the Law and Discretionary Power**

- Role of the Police
- Role of Counsel
- Crown's relationship with police and courts
- Crown discretion
- Defence Counsel: Ethics and the duty to advocate

- Sep 28**      Readings: *Textbook; pp. 5 to 34, 65 to 72*

**Rule of Law and the Definition of Offences**

- What is a Crime? The decision to criminalize
- Role of Judges: Interpreting the law or creating the law?
- Policy and the judicial function
- Criminalizing HIV transmission

- Oct 5**      Readings: *Textbook, pp. 49 to 65, 72 to 107*

**Victims and Offenders**

- Role of the victims in the process and ownership of disputes
- Who commits crimes? Who is convicted? Who is incarcerated?

**Part II: Basic Elements of Criminal Responsibility****Oct 12** \*\*\*\**Thanksgiving, No Class*\*\*\*\***Oct 19** Readings: Textbook, pp. 347 to 351, 354 to 363, 366 to 397.

- *Actus Reus* and *Mens Rea*: guilty acts, guilty minds, and the relationship between the two
- Intent vs. motive
- Mistakes of law and mistakes of fact

**Oct 26** Readings: Textbook, pp. 438 to 495, *Charter of Rights and Freedoms*, s. 7**Objective and Subjective Standards of Liability**

- The nature of blameworthiness
- Constitutional aspects of *mens rea*

**Nov 2** Readings: pp. 518 to 565**Further Aspects of Mens Rea**

- Sexual Assault and *mens rea*

**Nov 9** Readings: Textbook, pp. 282 to 324, 100 to 107, *Criminal Code* s. 735**Prosecuting corporations**

- Institutional guilty minds and scapegoats: problems with applying the doctrine of *mens rea* in the corporate context
- Alternatives to criminalization: regulation, civil actions, internal surveillance and public pressure

**White Collar Crime**

- White collar criminals, images of crime, and selective justice

**Part III: Sentencing****Nov 16** *Victims, Offenders, and the Public Interest*

- Political agendas and the manipulation of narrative
- Parole as risk management

**Nov 23** Readings: Textbook, pp. 108 to 157, *Criminal Code*, ss. 718 to 718.2, 720 to 726.2, 243**More on Crown Discretion**

- Plea bargaining: negotiated justice as risk management, resource management
- Minimum mandatory sentences
- Legislative framework of sentencing
- Purposes and principles of sentencing
- Sentencing as a means of addressing social inequality

**Nov 30** Readings: Textbook, pp. 157 to 203, *Criminal Code*, ss. 717, 730 to 732.1 734, 737, 738, 742.1 to 742.3**Sentencing options**

- Fines, probation, imprisonment

**Community-based sentencing**

- Restorative justice
- Alternative measures
- Restitution
- Conditional sentences
- Concepts of “community”

**Dec 7** Review for Exam

**CHRISTMAS BREAK**

**Jan 4** *Young Offenders*

- Welfare, the social sciences and individual responsibility
- Sentencing and the criminal responsibility of young people
- Perceptions of juvenile delinquency and reform

**Part IV: More on Mental States and Culpability**

**Jan 11** Readings: *Textbook, pp. 585-623; Criminal Code, s. 16*

**Mental Disorder**

- Psychiatric evidence and moral reasoning
- Cognition and self-restraint: models of criminal responsibility
- Mental health professionals, the criminal justice system and coercion: experts and the justification of coercion

**Jan 18** Readings: *Textbook, pp. 623-674*

**Mental Disorder**

- The mentally ill accused and due process
- The mentally ill accused and diversion programs
- Automatism

**Jan 25** Readings: *Textbook, pp. 674-680, 685-727*

**Intoxication**

- Voluntary mood alteration and criminal responsibility
- Alcohol and social context: images of loss of control and license
- Intoxication and automatism

**Part V: Fact-Finding, the Rule of Law, and the Human Aspect of Judgment**

**Feb 1** Readings: *Textbook, pp. 731-790*

**The trial process and institutional fact-finders**

- The trial as reconstruction
- Evidence

**Triers of fact and notions of impartiality**

- Jury selection
- Personal experience and interpretive acts: images of the impartial observer and social privilege.

**Feb 8** Readings: *Textbook pp. 791-807*

**Wrongful Convictions**

- Causes of wrongful convictions and “noble cause corruption”
- Political responses to wrongful convictions: denial and DNA

**Feb 15** **\*\*\*READING WEEK – NO CLASS\*\*\***

**Feb 22**      Readings: *On WebCT*; Excerpt from Ontario Commission on Proceedings Involving Guy Paul Morin

**Wrongful Convictions**

- Resistance and rectification: appeals, reviews, and inquiries

**Mar 1**      Readings: *On WebCT*; Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police (1998), 126 C.C.C. (3d) 12

**Screening Offences – Construction of facts, images of innocence and images of guilt**

- The social location of the offender
- The social location of the complainant and the decision to treat an event as a criminal act

**Part VI: Affirmative Defences**

**Mar 8**      Readings: *Textbook*, pp. 809-829, 839-847, 850-879

**Provocation and the Reasonably Murderous Accused**

- The reasonable person and moral blameworthiness
- Provocation and politics – violence, gender, culture and the political nature of the “reasonable person”

**Self-Defence**

- Justification for violence, rational moral agents, and social context

\*\*\*\***Research Paper Due**\*\*\*\*

**Mar 15**      Readings: *Textbook*, pp. 907-908, 925-944, 957-973, 976-992.

**Necessity and Duress**

- Constructions of blame – the problem of rational but blameless offenders
- Context and the reasonable person

**Mar 22**      Readings: *TBA*

**Criminal and quasi-criminal responses to terrorism**

- Methods of coercion and surveillance

**Mar 29**      **Review for Exam**