

CARLETON UNIVERSITY

Department of Law

LAWS 2004D: INTRODUCTION TO CRIMINAL LAW

INSTRUCTOR (CONTRACT)	John Hale , B.Sc., LL.B., B.C.L. (Criminal lawyer)
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OFFICE HOURS	Office hours are by appointment only.
LECTURE SCHEDULE	Tuesdays, 6:05 – 8:55 PM, in Mackenzie 3275 (fall term) and Minto 5050 (winter term)
PREREQUISITE	Laws 1000 (formerly Law 100), or permission of instructor
WEB SITE	http://homepage.mac.com/jhhale/
REQUIRED READING	(1) Stuart, Don and Ronald Delisle: <i>Learning Canadian Criminal Law</i> (10 th ed.), Carswell, 2006 (2) <i>Pocket Criminal Code 2008</i> (Carswell, 2008) <u>OR</u> <i>Tremear's Annotated Criminal Code 2008</i> (Carswell, 2008) <u>OR</u> <i>Martin's Annotated Criminal Code 2008 (Student Edition)</i> Canada Law Book, 2008 <u>OR</u> <i>The Practitioner's Criminal Code 2008 (Student Edition)</i> (Alan Gold, Ed.; LexisNexis/Butterworths, 2008)

All of the above are *required purchases*. They are or will be available at the University bookstore. Used copies of the *2008 Criminal Code* are more than adequate; earlier editions are useful but in many respects obsolete, and you may purchase them at your own risk. Steer clear of used versions of the 9th Edition

of the Stuart and Delisle text, no matter how cheap you find it. You are permitted to bring copies of these required and recommended readings to the exams in December and April.

In lieu of buying a *Criminal Code*, you may download the *Code* (and related statutes) from the Justice Canada website: <http://laws.justice.gc.ca/en/>.

METHOD OF EVALUATION

- (1) **Mid-course examination**, 3-hour open-book, to be held in December examination period (December 4-20).
- (2) **Final examination**, 3-hour open-book, to be held in April examination period (April 8-27).

“**Open book**”, for the purpose of exams, means that the following materials may be brought into the examination room: (1) any required text, including an annotated *Criminal Code*; (2) your lecture notes (or any notes that you shared with a study group or that you have with the permission of their author), and (3) any material downloaded from the course website, including the instructor’s lecture notes and PowerPoint slides, except sample exams and exam answers; (4) any e-mails sent by the instructor. You may NOT make use of a computer during the exams.

Grade breakdown: The exam that the student does best in will be worth 60% of the student’s final grade. The other exam will be worth 40% of the final grade.

DESCRIPTION OF THE COURSE

It is only fair to set out the instructor’s bias at the outset of the course. The course is taught by a practising criminal defence lawyer who agrees with the following:

- (1) the paramountcy and necessity of the Rule of Law;
- (2) the notion that a person is presumed to be innocent of any criminal wrongdoing, subject to a guilty plea or unless proven guilty beyond a reasonable doubt, on the basis of probative and relevant evidence that is legally admissible, and following a trial which accords with the principles of fundamental justice and with the procedures set out in the *Charter of Rights*, the *Criminal Code*, and other legislation;
- (3) the statement that the Canadian criminal justice system, despite its flaws, is fundamentally sound, and that the perceived flaws within the system are attributable to individuals within the system at least as often as they are attributable to the system’s inherent flaws and limitations.

The course is practice-oriented rather than theory-oriented. The instructor, recognizing his limitations, tends to de-emphasize the “sociology” aspect of the course that is emphasized in other sections, and is inclined to treat the course as a “law school course”. The instructor’s objective is to instill in the students a solid understanding of basic criminal law concepts, including the essential elements of crimes (*actus reus* and *mens rea*), the burden of proof, and defences to criminal charges.

In recent years I have spent several early lectures reviewing rules of evidence (which required the purchase of a second text), but I am discarding most of that material and choosing instead to discuss the role of the various personnel within in the criminal justice system (judges, Crowns, defence counsel, police). I will also

devote more time to criminal law concepts such as negligence and strict/absolute liability. Please keep these changes in mind when looking at sample exams from previous courses.

Discussion of these concepts will inevitably include discussions of the social policies that led to the creation of various offences and defences, but the approach is generally pragmatic. It is the instructor's ultimate objective that students be informed about the workings of the criminal justice system in Canada, with all its strengths and deficiencies, and that students who wish to criticize or defend the criminal justice system do so on the basis of facts rather than on emotion, gut feeling and anecdotal evidence.

The main text for the course is *Learning Canadian Criminal Law* by Stuart and Delisle. This text is intended for use by first-year law school students. Please buy the Tenth edition (2006), as the ninth edition (2004) is out-of-date. Avoid buying used *Criminal Codes*, as recent amendments render old Codes obsolete: the current edition is 2009, although a 2008 *Code* should be satisfactory.

A schedule of planned topics and readings is attached (Handout 2, Course Outline). There may be changes to the schedule, as some topics may take more or less time to discuss than foreseen at present; the accuracy of the schedule will also depend on the release of new decisions from the Supreme Court of Canada and lower courts, and also on questions asked by the class. Unless otherwise advised, students are responsible for reading the entire text in the order set out on the Course Outline.

Given the volume of readings expected of you, and the complexity of the material, you are strongly advised to avoid the temptation to save up the readings until the final days before the exams. Experience has shown that such a strategy monumentally backfires in the vast majority of cases. Keep up with the readings from the very beginning of the course and you will find the course material to be engaging, thought provoking and easily digestible; wait a few weeks and you will find the prospect unpleasantly daunting.

The lecture notes will be posted weekly, in summary form, on the course website. Review problems and sample exams will also be posted later on in the term.

All students are encouraged to attend class personally in order to facilitate classroom discussion of the concepts discussed. All students are encouraged to attend the review sessions in December and April. Experience shows that understanding and interest are enhanced by personal attendance and by active participation in the classroom.

This will be my 19th year teaching this course. I hope that you enjoy the course as much as I enjoy teaching it!

COURSE OUTLINE¹

<u>Class No.</u>	<u>Readings²</u>	<u>Topic(s)</u>
1 September 9, 2008	62-64	I. INTRODUCTION AND OVERVIEW (2) Administrative matters (3) Expectations (instructor's and students') (4) Analysis: Approaches to defining "crimes". (5) Briefing a case II. CRIMINAL PROCEDURE IN A NUTSHELL A. Classification of offences
2 September 16, 2008	134-172	B. Court structure in Ontario - overview; appeals C. Compelling attendance in Court D. Bail E. Pre-Trial procedures F. Trial procedure, including the burden of proof <ul style="list-style-type: none"> • Manner of questioning • Presumption of innocence / Burden of proof
3 September 23, 2008		G. Sentencing H. Procedures under the <i>Youth Criminal Justice Act</i> I.
4 September 30, 2008	64-88 134-172	III. THE ADVERSARY SYSTEM A. The presumption of innocence B. Role of the trial judge
5 October 7, 2008	172-186 108-109	C. Role of Crown counsel D. Role of defence counsel E. Role of the victim
6 October 14, 2008	TBA	IV. RULES OF EVIDENCE A. Relevance and probative value B. Weight vs. admissibility C. Similar fact evidence D. Character evidence E. The hearsay rule
7 October 21, 2008	1-10	V. SOURCES OF CRIMINAL LAW A Common Law B Federal/provincial division of powers C Statutory provisions, as interpreted
8 October 28, 2008	39-61 79-88 388-395	D. <i>Charter</i> limits (1) Overview of the <i>Charter</i> (2) <i>Hunter v. Southam</i> — interpreting the <i>Charter</i> (3) Section 1: <i>R. v. Oakes</i> (4) Section 7: <i>Reference re the B.C. Motor Vehicles Act</i> E. Void for Vagueness

¹ Tentative outline, subject to change depending on the release of noteworthy cases throughout the year

² All readings are from Stuart and Delisle, *Learning Canadian Criminal Law* (10th ed.)

9 November 4, 2008	10-27	F. Powers of the Courts: Rules of Statutory Interpretation
10 November 11, 2008	Chapter 11; <i>Criminal Code</i> , Part XXIII	VI. SENTENCING & CONDITIONAL RELEASE A. General principles; factors relevant to sentence B. Sentences under the <i>Young Offenders Act</i> C. Plea negotiations (“plea bargaining”)
11 November 18, 2008	187-247	D. Conditional release (parole etc.) VII. ELEMENTS OF AN OFFENCE A. The “Voluntary Act” Requirement (<i>actus reus</i>) 1) Introduction 2) “ <i>Actus reus</i> ” = [voluntary] activity, circumstances and consequences 3) Commission of an unlawful act
12 November 25, 2008	247-296	3) Commission of an unlawful act (cont’d) 4) Omissions
December 2, 2008		REVIEW CLASS
December 4-20, 2008		MID-TERM EXAMINATION (Date, time and location TBA)
13 January 6, 2009	296-312 313-350	4) Omissions (cont’d) 5) Voluntariness 6) Causation
14 January 13, 2009	351-419	B. The Fault Requirement (mens rea or negligence) 1) Introduction 2) Subjective/objective distinction 3) Public welfare (regulatory) offences
15 January 20, 2009	419-463 463-464 464-569	4) Crimes i. Murder and the <i>Charter</i> ii. Subjective awareness rarely required 5) 3 types of crime since <i>Creighton</i> i. Crimes requiring subjective awareness ii. Crimes of objective fault iii. Crimes based on predicate offences
16 January 27, 2009		Review of mid-course exam 5) 3 types of crime since <i>Creighton</i> (cont’d)
17 February 3, 2009	993-1026 1027-1049	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
18 February 10, 2009	1049-1070 577-676	(2) Counseling (3) Conspiracy VIII. RAPE AND SEXUAL ASSAULT A. Lack of consent (review) B. Rape laws C. Crimes of Sexual Assault

Winter Break February 16-20, 2009		No Lecture
19 February 24, 2009		C. Crimes of sexual assault (cont'd)
20 March 2, 2009	677-697 697-726	IX. TRUE DEFENCES A. Mistake 1. Mistake of fact 2. Mistake of law B. Incapacity and Impairment 1. Insanity / Mental Disorder (a) Statutory provisions
21 March 9, 2009	728-755 755-802 802-846	(b) Jurisprudence 2. Automatism 3. Intoxication
22 March 16, 2009	847-856 856-880 880-904	X. JUSTIFICATIONS AND EXCUSES A. Introduction / Air of reality B. Necessity C. Duress
23 March 23, 2009	904-932 933-939	D. Defence of Person E. Defence of Property
24 March 30, 2009	939-967 972-991 94-108	F. Provocation XI. POLICY DEFENCES A. Entrapment B. <i>Charter, s. 24</i>
REVIEW April 6, 2009		REVIEW CLASS (TBD)
April 8-27, 2009		FINAL EXAMINATION (Date, time and location TBA)