

# CARLETON UNIVERSITY

## Department of Law

### LAWS 2004FV: INTRODUCTION TO CRIMINAL LAW

**INSTRUCTOR  
(CONTRACT)**                      **John Hale**, B.Sc., LL.B., B.C.L. (Contract instructor, criminal lawyer)

**HOW TO REACH ME**      **Phone:**                      (613) 233-7747

**Office:**                      **c/o Shore Davis Hale, Barristers-at-Law**  
Suite 800, 200 Elgin Street  
Ottawa, K2P 1L5

   At Carleton: Deliver any mail or messages to the De-  
partment of Law, 4<sup>th</sup> floor Loeb Building

**Fax:**                              (613) 233-2374

**e-mail:**                              [jhhale@mac.com](mailto:jhhale@mac.com)  
(I check messages daily and will respond promptly)

**OFFICE HOURS**                      **Office hours** are by appointment only.

**LECTURE SCHEDULE**      Tuesdays, 6:05 – 8:55 PM  
Please check with Carleton Central for current room location

**PREREQUISITE**                      Laws 1000 or permission of instructor

**WEB SITE**                              See [WebCT](#)

**REQUIRED READING**      (1) **Stuart, Don and Ronald Delisle:**  
*Learning Canadian Criminal Law* (11<sup>th</sup> ed.), Carswell, 2009

   (2) *Pocket Criminal Code 2010* (Carswell, 2009) **OR**  
*Tremear's Annotated Criminal Code 2010* (Carswell, 2009)  
**OR**  
*Martin's Annotated Criminal Code 2010 (Student Edition)*  
*Canada Law Book, 2009* **OR**  
*The Practitioner's Criminal Code 2010 (Student Edition)*  
(Alan Gold, Ed.; LexisNexis/Butterworths, 2009)

All of the above are *required purchases*. They are or will be available at the University bookstore. Used copies of the *2009 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 10<sup>th</sup> Edition of the Stuart and Delisle text, no matter how cheap you find it, as the book has been substantially revised this year and page references will be very confusing. [Don't worry, you'll have no trouble selling your used copy of the 11<sup>th</sup> edition in the spring, as the course will be taught by video in the spring/summer of 2010.] 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 9-22).
- (2) **Final examination**, 3-hour open-book, to be held in April examination period (April 8-24).

“**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; (4) any e-mails sent by the instructor. You may NOT make use of a computer during the exams, except with permission of the Paul Menton Centre.

**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.

#### TEACHING ASSISTANTS / MARKERS

There are 4, count 'em four, TA's for this course. One TA has been assigned to the “F” section, while 3 have been assigned to the “V” section. I will provide contact information, as well as specifics about their duties, at a later date. However, the TA's are...

- Tara O'Reilly (2004F)
- Alan D'Cunha (2004V)
- Solomon Israel (2004V)
- Stephanie Woods (2004V)

---

## 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 innumerable yet still growing number of 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.

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 Eleventh edition (2009), as the tenth edition (2006) is out-of-date. Avoid buying used *Criminal Codes*, as recent amendments render old Codes obsolete: the current edition is 2010, although a 2009 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.

One final note regarding CUTV courses. It is wonderful that university courses can be provided to students other than via the traditional classroom lecture. This enables students who, because of distance, employment, family responsibilities or disability to take courses that would otherwise be inaccessible to them. The downside, though, is that the ability to see the lectures any time at one's convenience causes many students to fall behind, saving up the lectures until just before the exam and then cramming them in during a marathon session. While this is better than nothing, I strongly discourage this strategy in this or any other course. Do your best to keep up with the lectures weekly, and avoid the temptation to fall behind. By all means, come to class whenever you like, whichever section of the course you are in.

This will be my 20<sup>th</sup> year teaching this course. I hope that you enjoy the course as much as I enjoy teaching it!

## COURSE OUTLINE<sup>1</sup>

<u>Class No.</u>	<u>Readings<sup>2</sup></u>	<u>Topic(s)</u>
<b>1</b> September 15/16, 2009 <sup>3</sup>	58-62	<b>I. INTRODUCTION AND OVERVIEW</b> (2) Administrative matters (3) Expectations (instructor's and students') (4) Analysis: Approaches to defining "crimes". (5) Briefing a case  <b>II. CRIMINAL PROCEDURE IN A NUTSHELL</b> A. Classification of offences
<b>2</b> September 22/23, 2009		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"> <li>• Manner of questioning</li> <li>• Presumption of innocence / Burden of proof</li> </ul>
<b>3</b> September 29/30, 2009		G. Sentencing H. Procedures under the <i>Youth Criminal Justice Act</i>
<b>4</b> October 6/7, 2009	65-92 137-175	<b>III. THE ADVERSARY SYSTEM</b> A. The presumption of innocence B. Role of the trial judge
<b>5</b> October 13/14, 2009	175-185 111-112	C. Role of Crown counsel D. Role of defence counsel E. Role of the victim
<b>6</b> October 20/21, 2009	63-5	<b>IV. RULES OF EVIDENCE</b> A. Relevance and probative value B. Weight vs. admissibility C. Similar fact evidence D. Character evidence E. The hearsay rule

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

<sup>2</sup> All readings are from Stuart and Delisle, *Learning Canadian Criminal Law* (11<sup>th</sup> ed.)

<sup>3</sup> The "live" lecture is September 15<sup>th</sup>; the broadcast of the same lecture is September 16<sup>th</sup>.

<b>7</b> October 27/28, 2009	1-10 23-34	<b>V. SOURCES OF CRIMINAL LAW</b> A Common Law B Federal/provincial division of powers C Statutory provisions, as interpreted
<b>8</b> November 3/4, 2009	34-58  92-98 396-404	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
<b>9</b> November 10/11, 2009	10-23	F. Powers of the Courts: Rules of Statutory Interpretation
<b>10</b> November 17/18, 2009	Chapter 11; <i>Criminal Code</i> , Part XXIII	<b>VI. SENTENCING &amp; CONDITIONAL RELEASE</b> A. General principles; factors relevant to sentence B. Sentences under the <i>Young Offenders Act</i> C. Plea negotiations (“plea bargaining”)
<b>11</b> November 24/25, 2009	189-258	D. Conditional release (parole etc.)  <b>VII. ELEMENTS OF AN OFFENCE</b> 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
<b>12</b> December 1/2, 2009	258-306	3) Commission of an unlawful act (cont’d) 4) Omissions
December 8/9, 2009		<b>REVIEW CLASS</b>
December 9-22, 2009		<b>MID-TERM EXAMINATION</b> (Date, time and location TBA)
<b>13</b> January 5/6, 2010	306-322 323-360	4) Omissions (cont’d) 5) Voluntariness 6) Causation
<b>14</b> January 12/13, 2010	361-427	B. The Fault Requirement (mens rea or negligence) 1) Introduction 2) Subjective/objective distinction 3) Public welfare (regulatory) offences

<b>15</b> January 19/20, 2010	428-466 466-467 467-580	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
<b>16</b> January 26/27, 2010		<b>Review of mid-course exam</b>  5) 3 types of crime since <i>Creighton</i> (cont'd)
<b>17</b> February 2/3, 2010	1017-1038  1039-1061	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
<b>18</b> February 9/10, 2010	1078-1090 1061-1078  Chapter 4	(2) Counseling (3) Conspiracy  <b>VIII. RAPE AND SEXUAL ASSAULT</b> A. Lack of consent (review) B. Rape laws C. Crimes of Sexual Assault
<b>Winter Break</b> February 15-19, 2010		<b>No Lecture</b>
<b>19</b> February 23/24, 2010		C. Crimes of sexual assault (cont'd)
<b>20</b> March 2/3, 2010	691-711 711-736  742-747 Part XX.1 Cr. C.	<b>IX. TRUE DEFENCES</b> A. Mistake 1. Mistake of fact 2. Mistake of law  B. Incapacity and Impairment 1. Insanity / Mental Disorder (a) Statutory provisions
<b>21</b> March 9/10, 2010	747-768 769-824 826-866	(b) Jurisprudence 2. Automatism 3. Intoxication
<b>22</b> March 16/17, 2010	867-875 876-898 901-924	<b>X. JUSTIFICATIONS AND EXCUSES</b> A. Introduction / Air of reality B. Necessity C. Duress
<b>23</b> March 23/24, 2010	926-955 956-962	D. Defence of Person <b>E. Defence of Property</b>
<b>24</b>	962-990	F. Provocation

March 30/31, 2010	996-1015 98-111	<b>XI. POLICY DEFENCES</b> A. Entrapment B. <i>Charter</i> , s. 24
<b>REVIEW</b> April 6/7, 2010		<b>REVIEW CLASS</b>
April 8-24, 2010		<b>FINAL EXAMINATION</b> (Date, time and location TBA)