

# CARLETON UNIVERSITY

## Department of Law and Legal Studies

### LAWS 2301E: CRIMINAL JUSTICE SYSTEM

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

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

**LECTURE SCHEDULE**            Wednesdays, 6:05 – 8:55 PM, Please check Carleton Central for Room.

**PREREQUISITE**                      Laws 1000 or permission of instructor

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

- REQUIRED READING**            (1) **Stuart, Don and Ronald Delisle:**  
*Learning Canadian Criminal Law* (12<sup>th</sup> ed.), Carswell, 2012
- (2) *Pocket Criminal Code 2013* (Carswell, 2012) **OR**  
*The Practitioner's Criminal Code 2013 (Student Edition)*  
(Alan Gold, Ed.; LexisNexis/Butterworths, 2012) **OR**  
*Tremear's Annotated Criminal Code 2013* (Carswell, 2012)  
**OR**  
*Martin's Annotated Criminal Code 2013 (Student Edition)*  
Canada Law Book, 2012

All of the above are *required purchases*, i.e., you must have the Stuart &

Delisle text and one version of the *Criminal Code* for Laws 2301. The texts are or will be available at the University bookstore. Used copies of the 2012 *Criminal Code* are more than adequate; earlier editions are useful but in many respects obsolete, and you may purchase them at your own risk. I discourage you from buying used versions of the 11<sup>th</sup> Edition of the Stuart and Delisle text, as the book has been substantially revised in the 12<sup>th</sup> edition. You should have no selling your used copy of the Stuart & Delisle text, as the same edition will be used for sections of Laws 2302 as well as in next year's 2301 course. However, for students who do have an 11<sup>th</sup> edition, I have provided page references for the readings. You are permitted to bring copies of these required and recommended readings to the mid-term and final examinations.

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-term examination**, October 24<sup>th</sup>, in class. 2 hours, open book; covers up to and including Lecture 5 material, as per the syllabus.
- (2) **Final examination**, 2-hour open-book (non-cumulative), to be held in the formal exam period at the end of the course (December 6-19, 2012).

“**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 mid-term exam is worth 40% of your grade. The final exam is worth 60% of your grade. If you do better on the mid-term than on the final, then the weighting will be reversed (60/40).

#### TEACHING ASSISTANTS / MARKERS

I expect to have one teaching assistant. I will let you know the TA's contact information once a TA has been assigned.

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The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at **613-520-6608** or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable). 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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## DESCRIPTION OF THE COURSE

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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, the burden of proof, and sentencing rationales.

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 Twelfth edition (2012), as the Eleventh edition (2009) is out-of-date. Avoid buying used *Criminal Codes*, as recent amendments render old Codes obsolete: the current edition is 2013, although a 2012 *Code* should be satisfactory.

A schedule of planned topics and readings is below. 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 doing the readings 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 exam. 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.

For the second time I am having an in-class mid-term examination. Because there are 13 Wednesdays in the term, and exams start just 1 day after the final class, there are unfortunately 11 lectures plus a review class. I have built in a one-lecture cushion in the event that we fall behind, I have to miss a lecture, etc.

This will be my 23<sup>rd</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 12	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. Court structure in Ontario – overview; appeals
<b>2</b> September 19		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> G. Sentencing H. Procedures under the <i>Youth Criminal Justice Act</i>
<b>3</b>		<b>III. THE ADVERSARY SYSTEM</b>

<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.) I will provide a new list of readings from the 12<sup>th</sup> Edition once I have the text.

September 26	65-92 137-175	A. The presumption of innocence B. Role of the trial judge
<b>4</b> October 3	175-185 111-112	C. Role of Crown counsel D. Role of defence counsel E. Role of the victim
<b>5</b> October 10	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
<b>6</b> October 17	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>7</b> October 24		Mid-Term Examination, in class (covers up to and including Lecture 5 material)
<b>8</b> October 31	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 7	10-23	F. Powers of the Courts: Rules of Statutory Interpretation
<b>10</b> November 14	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”) D. Conditional release (parole etc.)
<b>11</b> November 21	189-258	
<b>12</b> November 28		<b>Special Topic and/or “Cushion”</b>
<b>13</b> December 5		<b>REVIEW CLASS</b>
December 6-19, 2012		<b>FINAL EXAMINATION</b> (Date, time and location TBA)