

# CARLETON UNIVERSITY

## Department of Law

### LAWS 2301D: CRIMINAL JUSTICE SYSTEM

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

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

Please note that my contact information will change as of mid-September 2010; I will advise you of my new information at that time.

**Office:**      **c/o Shore Davis Hale, Barristers-at-Law**  
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At Carleton: Deliver any mail or messages to the Department of Law, 4<sup>th</sup> floor Loeb Building

**Fax:**      (613) 233-2374

**e-mail:**      [jhhale@mac.com](mailto:jhhale@mac.com)

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

**LECTURE SCHEDULE**      Laws 2301D: Thursdays, 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](#)

"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 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. 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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**REQUIRED READING**      (1)    **Stuart, Don and Ronald Delisle: *Learning Canadian Criminal Law* (11<sup>th</sup> ed.), Carswell, 2009**

- (2)    ***Pocket Criminal Code 2011* (Carswell, 2010) OR**  
***The Practitioner's Criminal Code 2011 (Student Edition)* (Alan Gold, Ed.; LexisNexis/Butterworths, 2010) OR**  
***Tremear's Annotated Criminal Code 2011* (Carswell, 2010) OR**  
***Martin's Annotated Criminal Code 2011 (Student Edition)* Canada Law Book, 2010**

All of the above are *required purchases*, i.e., you must have the Stuart & Delisle text and one version of the *Criminal Code* for both Laws 2301 and 2302. The texts are or will be available at the University bookstore. Used copies of the *2010 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 in the 11<sup>th</sup> edition and page references will be very confusing. You should have no difficulty finding a used copy of the Stuart & Delisle text, and the same edition will likely be used next year so you should have no trouble selling it used after the course. You are permitted to bring copies of these required and recommended readings to the exams in December and April.

I use the same texts in Laws 2302 as in Laws 2301. If you are taking both courses with me, you will not need to buy any additional texts for Laws 2302.

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) **Case brief or other assignment to be determined**, to be assigned October 7<sup>th</sup> and to be due October 21<sup>st</sup>, 2010.
- (2) **Final examination**, 3-hour open-book, to be held in the formal exam period (December 9-22, 2010).
- (3) **Bonus points**: up to 4 bonus points available, to be explained in class and by email.

“**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**: In each course, the case brief or assignment is worth 20%, and the exam is worth 80%. An additional 4 points will be available as bonus points.

#### TEACHING ASSISTANTS / MARKERS

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

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## DESCRIPTION OF THE COURSE

While some of you will be taking only one course with me, either Laws 2301 or Laws 2302, I suspect that most of you will be taking both courses. As you may know, these courses have evolved from what used to be a single, full-year course, Laws 2004, Introduction to Criminal Law in Context. The first half of the course (2301) will be more theoretical and will focus more on the rationale behind our law, while the second half (2302) will be more like a traditional law school Criminal Law class, focusing on the fundamentals of criminal law. The description that follows is adapted from my previous description for Laws 2004. Please note that any reference to “the course” is now a reference to two courses.

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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 (*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 2011, although a 2010 *Code* should be satisfactory.

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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. Experience shows that understanding and interest are enhanced by personal attendance and by active participation in the classroom.

This will be my 21<sup>st</sup> year teaching this course. I hope that you enjoy the course as much as I enjoy teaching it!

**LAWS 2301D: CRIMINAL JUSTICE SYSTEM (FALL 2010)****COURSE OUTLINE<sup>1</sup>**

<b><u>Class No.</u></b>	<b><u>Readings<sup>2</sup></u></b>	<b><u>Topic(s)</u></b>
<b>1</b> September 9	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 16		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 23		G. Sentencing H. Procedures under the <i>Youth Criminal Justice Act</i>
<b>4</b> September 30	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 7	175-185 111-112	C. Role of Crown counsel D. Role of defence counsel E. Role of the victim
<b>6</b> October 14	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.)

<b>7</b> October 21	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> October 28	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 4	10-23	F. Powers of the Courts: Rules of Statutory Interpretation
<b>10</b> November 11	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 18	189-258	D. Conditional release (parole etc.)
<b>12</b> November 25		“Cushion” (in case I have to miss a class along the way, or material takes longer than planned to cover)
December 2		<b>REVIEW CLASS</b>
December 9-22, 2010		<b>FINAL EXAMINATION</b> (Date, time and location TBA)