

# CARLETON UNIVERSITY

## Department of Law and Legal Studies

### LAWS 2302A/V: CRIMINAL LAW

**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 in Southam 624;  
Rebroadcast Fridays 8:35-10:55 AM

**PREREQUISITE**                LAWS 1000 or permission of instructor

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

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You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** 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 requir-

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ing academic accommodations in this course, please contact PMC at 613-520-6608 or 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*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

- REQUIRED READING**
- (1) **Stuart, Don and Ronald Delisle:**  
*Learning Canadian Criminal Law* (12<sup>th</sup> ed.), Carswell, 2012
  - (2) *Pocket Criminal Code 2014* (Carswell, 2013) **OR**  
*The Practitioner's Criminal Code 2014 (Student Edition)* (Alan Gold, Ed.; LexisNexis/Butterworths, 2013) **OR**  
*Tremear's Annotated Criminal Code 2014* (Carswell, 2013) **OR**  
*Martin's Annotated Criminal Code 2014 (Student Edition)* Canada Law Book, 2013

All of the above are *required purchases*, i.e., you must have the Stuart Coughlan & Delisle text and one version of the *Criminal Code*. The texts are or will be available at the University bookstore. Used copies of the 2013 *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 11<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 12<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. You are permitted to bring copies of these required and recommended readings to the exams in March and April.

I am using the same texts in Laws 2302 as I used in my section of Laws 2301 in 2012. If you took Laws 2301D 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) **Mid-term examination (Saturday March 1, 2014, 11AM – 2 PM)**, 3 hour open book, covering the first 6 lectures *as taught* as opposed to *as per the course outline* (hopefully the same).
  - (2) **Final examination**, 3-hour open-book, to be held in the formal exam periods at the end of the course (April 11-26, 2014), covering lectures 7-12; again, the exam covers the lectures *as taught*.

“**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 on cuLearn, 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 you do better on will be worth 60% of your final grade; the other exam will be worth 40% of your grade. An additional 4 points will be available as bonus points.

**(All components must be completed in order to receive a passing grade.)**

**TEACHING ASSISTANTS / MARKERS**

At the time of writing I have been told that four teaching assistants will be assigned to the course, but this has not been finalized yet. When TA’s have signed off on assigned duties I will provide you with their contact information.

## **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 (*actus reus* and *mens rea*), the burden of proof, and defences to criminal charges.

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 2014, although a 2013 Code should be satisfactory.

A schedule of planned topics and readings is set out 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 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.

I acknowledge that the readings are quite heavy. There is no way that we can cover all the material within the 2.5 hours or so of class time each week. Therefore I will touch on what I think are the most important concepts, and will make reference to the cases, but will not go over all of the readings with you in class. It is important that you do the readings in advance so that my explanations may help you understand what you have read. Please never hesitate to ask questions in class about the readings, or even about cases that may currently be in the news.

The lecture notes will be posted weekly, in summary form, on the course website. I will also post the slides, and will do my best to post them in advance of class. 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. Experience shows that understanding and interest are enhanced by personal attendance and by active participation in the classroom.

One final note regarding CUOL courses. It is wonderful that university courses can be provided to students other than via the traditional classroom lecture. This enables students to take courses that would otherwise be inaccessible to them because of distance, employment, family responsibilities and/or disability. 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 registered in. There is always room for you in the classroom; if there isn't, we'll make room.

I hope that you enjoy the course, and I look forward to hearing from you as we go along. Course-content-related questions sent to me by e-mail may be answered to the class as a whole so that all students have the same information.

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

<u>Class No.</u>	<u>Readings<sup>2</sup></u>	<u>Topic(s)</u>
<b>1</b> January 8, 2014 TV: January 10	70-73  74-94, 101-104	<b>I. INTRODUCTION AND OVERVIEW</b> (1) Administrative matters (2) Expectations (instructor's and students') (3) Analysis: Approaches to defining "crimes". (4) Briefing a case  <b>II. CRIMINAL PROCEDURE IN A NUTSHELL</b> A. Classification of offences 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
<b>2</b> January 15, 2014 TV: January 17	181-260	<b>I. 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>3</b> January 22, 2014 TV: January 24	260-300 300-316 317-357	4) Omissions 5) Voluntariness 6) Causation
<b>4</b> January 29, 2014 TV: January 31	359-361 361-366	B. The Fault Requirement ( <i>mens rea</i> or negligence) 1) Introduction 2) Subjective/objective distinction

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

<sup>2</sup> All readings are from Stuart, Coughlan and Delisle, *Learning Canadian Criminal Law* (12<sup>th</sup> ed.)

<u>Class No.</u>	<u>Readings</u> <sup>2</sup>	<u>Topic(s)</u>
	366-425	3) Public welfare (regulatory) offences
<b>5</b> February 5, 2014 TV: February 7	426-472 472-473  474-517  517-560 560-583	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>6</b> February 12 TV: February 14	1065-1097  1099-1125	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
<b>Winter Break</b> February 17-21		<b>No Lecture</b>
<b>7</b> February 26, 2014 TV: February 28	1125-1142 1142-1154  593-624 624-715	(2) Conspiracy (3) Counseling <b>II. RAPE AND SEXUAL ASSAULT</b> A. Lack of consent (review) B. Rape laws C. Crimes of Sexual Assault
March 1, 2014	11:00 AM – 2:00 PM	<b>MID-TERM EXAMINATION</b> (Covers lectures 1-6 as taught)
<b>8</b> March 5, 2014 TV: March 7	717-739 739-771  Part XX.1 C.C. 773-802	<b>III. 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) Jurisprudence
<b>9</b> March 12, 2014 TV: March 14	802-866 866-910	2. Automatism 3. Intoxication
<b>10</b> March 19, 2014 TV: March 21	911-916 917-949 950-957	<b>IV. JUSTIFICATIONS AND EXCUSES</b> A. Introduction / Air of reality B. Defence of Person C. Defence of Property
<b>11</b> March 26, 2014 TV: March 28	957-983 983-1007	D. Necessity E. Duress
<b>12</b> April 2, 2014 TV: April 4	1008-1044  1045-1064 <i>R. v. Grant</i>	F. Provocation <b>V. POLICY DEFENCES</b> A. Entrapment B. <i>Charter</i> , s. 24

<u>Class No.</u>	<u>Readings<sup>2</sup></u>	<u>Topic(s)</u>
April 11-26		<b>FINAL EXAMINATION (LECTURES 7-12)</b> (Date, time and location TBA)