

CARLETON UNIVERSITY

Department of Law

LAWS 2302D: 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 Tuesdays 6:05 – 8:55 PM in Tory 210

PREREQUISITE Laws 1000 or permission of instructor

WEB SITE [See WebCT](#)

REQUIRED READING (1) **Stuart, Don and Ronald Delisle:**
Learning Canadian Criminal Law (11th 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*. 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 10th Edition of the Stuart and Delisle text, no matter how cheap you find it, as the book has been substantially revised in the 11th 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 am using the same texts in Laws 2302 as I used in my section of Laws 2301. 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) **Case brief or other assignment to be determined**, to be assigned February 1st and due February 15th.
- (2) **Final examination**, 3-hour open-book, to be held in the formal exam periods at the end of the course (April 7-21 2011).
- (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: 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

There are two teaching assistants assigned to this course. Alicia Maiuri can be contacted at amaiuri@connect.carleton.ca; Brittany Perreault can be contacted at brittany_perreault@hotmail.com.

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.

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.

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

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

CARLETON UNIVERSITY, DEPARTMENT OF LAW

LAWS 2302D: CRIMINAL LAW (WINTER 2011)

COURSE OUTLINE¹

<u>Class No.</u>	<u>Readings²</u>	<u>Topic(s)</u>
1 January 4	189-258	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
2 January 11	258-306 306-322 323-360	4) Omissions 5) Voluntariness 6) Causation
3 January 18	361-427	B. The Fault Requirement (mens rea or negligence) 1) Introduction 2) Subjective/objective distinction 3) Public welfare (regulatory) offences
	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
4 January 25		5) 3 types of crime since <i>Creighton</i> (cont’d)
5 February 1	1017-1038 1039-1061	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
6 February 8	1078-1090 1061-1078 Chapter 4	(2) Counseling (3) Conspiracy VIII. RAPE AND SEXUAL ASSAULT A. Lack of consent (review) B. Rape laws C. Crimes of Sexual Assault
7 February 15		C. Crimes of sexual assault (cont’d)

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* (11th ed.)

<u>Class No.</u>	<u>Readings²</u>	<u>Topic(s)</u>
Winter Break February 21-25		No Lecture
8 March 1	691-711 711-736 742-747 Part XX.1 <i>Cr. C.</i>	IX. TRUE DEFENCES A. Mistake 1. Mistake of fact 2. Mistake of law B. Incapacity and Impairment 1. Insanity / Mental Disorder (a) Statutory provisions (b) Jurisprudence 2. Automatism 3. Intoxication
9 March 8	747-768 769-824 826-866	
10 March 15	867-875 876-898 901-924	X. JUSTIFICATIONS AND EXCUSES A. Introduction / Air of reality B. Necessity C. Duress
11 March 22	926-955 956-962	D. Defence of Person E. Defence of Property
12 March 29	962-990 996-1015 98-111	F. Provocation XI. POLICY DEFENCES A. Entrapment B. <i>Charter</i> , s. 24
REVIEW April 5		REVIEW CLASS
April 7-21		FINAL EXAMINATION (Date, time and location TBA)