

Course Outline

COURSE:	LAWS 4302 A – Regulation of Corporate Crime
TERM:	Fall 2009
PREREQUISITES:	LAWS 2004 and one of LAWS 3005, LAWS 3201 or LAWS 3800
CLASS:	Day & Time: Thursday – 1805-2055
	Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Andrew Unger, B.A., LL.B., B.C.L.
CONTACT:	Office: C476 LA (Loeb)
	Office Hrs: By appointment
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"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. Documented disabilities could include but not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. 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 . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

Note that plagiarism is a serious offence that cannot be resolved with the course instructor. The Associate Deans of the Faculty conduct a rigorous investigation when an instructor suspects plagiarism. Severe sanctions for plagiarism are possible.

The University Senate defines plagiarism as "presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own." This can include:

- submitting a take home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- failing to acknowledge sources through the use of proper citations when using another's works and/or failing to use quotation marks.

COURSE DESCRIPTION

The introduction to this course will involve exploring definitions of corporate crime and causes of corporate crime, reviewing key concepts in criminal law, and discussing the basis of criminal liability for corporate crimes. The course will then introduce students to examples of Criminal Code offences that are often associated with corporate crime, identify the elements of these offences, and examine examples from case law. We will then go on to explore alternatives to criminal sanctions for corporate malfeasance including regulatory sanctions and civil sanctions. Finally, we will consider critical perspectives with respect to existing theories of criminal liability for corporations and international dimensions of corporate crimes.

READINGS

- Coursepack for Laws 4302A – Available at bookstore
- *Criminal Code* available at <http://laws.justice.gc.ca/PDF/Statute/C/C-46.pdf>
- Select readings will be posted on WebCT.

COURSE EVALUATION

Students will be required to prepare a seminar presentation and a term paper during the course. The term paper will be worth 50% of the final grade. Students will be given a list of topics/questions from which to choose. The term paper is due on November 26. The seminar presentation will be worth 35% of the final grade. Students are strongly encouraged to work with a partner on seminar presentations. In addition to the seminar presentation and term paper, 15% of the final grade will be allocated based on class participation. Class participation grades will be evaluated on the basis of attendance, preparedness, and participation/contribution to class discussions. There will be no final examination in the course.

Presentation	35%
Term Paper	50%
Class Participation	15%

COURSE SYLLABUS**Part I - Introduction**

Aims and objectives of the course. What is the significance of corporate crime and why do we study it?

Defining corporate and white collar crime. Causes of corporate crime.

Review of key concepts in criminal law – strict construction, proof beyond reasonable doubt, actus reus, and mens rea.

Liability of individuals vs. liability of corporations in the corporate criminal law context.

The “directing minds” doctrine, and new statutory provisions for corporate criminal liability.

Part II – Criminal Code Offences and Corporate Crimes

- Fraud
- Forgery
- Theft
- Proceeds of Crime
- Falsification of books and documents
- Securities fraud and market manipulation
- Bribery and corruption offences
- Counseling parties to commit offences.

Part III – Alternatives to Criminal Sanctions

Corporate malfeasance and regulatory sanctions; absolute liability vs. strict liability; and the defence of “due diligence.”

Corporate malfeasance and civil sanctions. Effectiveness of deterrence and sanction through tort law. The phenomenon and utility of the class action process.

Part IV – Special Topics in Corporate Crime

Critical perspectives on existing theories of criminal liability for corporations. International dimensions to corporate crime.

International dimensions of corporate crimes; globalization and complications for tracking and prosecuting corporate crimes; limits of national enforcement mechanisms for controlling international corporate crime; and environmental crimes as corporate crimes.

Please note that students will also be doing presentations, and the schedule has been designed to provide ample time for this exercise.

Principal Sources¹

Cairns-Way et al. *Dimensions of Criminal Law 3rd ed.* Toronto: Montgomery, 2002.

Gerber et al. *Encyclopedia of White Collar Crime.* London: Greenwood Press, 2007.

Henderson, M. *Commercial Crime in Canada.* Toronto: Thomson, 2004.

Glasbeek, H. *Wealth by Stealth: Corporate Crime, Corporate Law, and the Perversion of Democracy.* Toronto: Between the Lines, 2002.

Linden, A. *Canadian Tort Law 7th ed.* Markham: Butterworths Canada, 2001.

Roach, K. *Criminal Law 3rd ed.* Toronto: Irwin Law, 2004.

Stuart et al. *Learning Canadian Criminal Law 10th ed.* Scarborough: Thomson Carswell, 2006.

Simpson, Sally. *Corporate Crime, Law, and Social Control.* Cambridge: Cambridge University Press, 2002.

Week 1	Syllabus distribution and review.
Week 2	Henderson, M. <i>Commercial Crime in Canada</i> , Pages 1-3 [Introduction to Commercial Crime in Canada] Gerber et al. <i>Encyclopedia of White Collar Crime</i> Pages 54-58, 182-184, 253-255, and 85-94 [Entries on “Corporate Crime,” “Media Portrayal of Corporate Crime,” “Bre-X,” and “Enron.”] Simpson, Sally. <i>Corporate Crime, Law, and Social Control.</i> Pages 2-29
Week 3	E.H. Sutherland, "White-Collar Criminality" (1940) 5 Am. Sociological Rev. 1. James R. Lasley, "Toward a Control Theory of White-Collar Offending" (1988) 4 J. Quantitative Criminology 347. Roach, K. <i>Criminal Law.</i> Pages 21-24 and 27-29 [Criminal Law and the Constitution]
Week 4	<i>R. v. Oakes</i> , [1986] 1 S.C.R. 103 [Presumption of Innocence] <i>R. v. Pare</i> , [1987] 2 S.C.R. 618 Stuart et al. <i>Learning Canadian Criminal Law</i> Pages 191-192 and 351-353 [Strict Construction] Roach, K. <i>Criminal Law.</i> Pages 200-213 [New Liability for Corporations]

¹ Does not include journal articles. See below for specific journal articles.

Week 5	Criminal Code. Sections 380, 366, 368 <i>R. v. Theroux</i> , [1993] 2 S.C.R. 5 <i>R. v. Drabinsky</i> , [2009] 242 C.C.C. (3d) 449 <i>R. v. Bodnarchuck</i> , [2005] B.C.J. 184, 64 W.C.B. (2d) 169
Week 6	Henry N. Pontell "White-Collar Crime or Just Risky Business? The Role of Fraud in Major Financial Debacles" (2004) 42 <i>Crime, L. & Soc. Change</i> 309. Criminal Code. Sections 462.31, 322, and 397 <i>R. v. Daoust</i> , [2004] 1 S.C.R. 217
Week 7	Criminal Code. Sections 119, 122, 22 <i>R. v. Boulanger</i> , [2006] 2 S.C.R. 49 <i>R. v. Hamilton</i> , [2005] 2 S.C.R. 432
Week 8	
Week 9	Roach, K. <i>Criminal Law</i> . Pages 184-199 [Regulatory Offences] Stuart et al. <i>Learning Canadian Criminal Law</i> . Page 416 [New Approach to Regulatory Offences] Cairns-Way et al. <i>Dimensions of Criminal Law</i> . Pages 249-252, 317-321 [A Critique of the Regulatory Offences Doctrine]
Week 10	Stuart et al. <i>Learning Canadian Criminal Law</i> . Pages 388-397, 408-413 Criminal Liability for Regulatory Offences Ministry of Environment – Court Bulletins Linden, A. <i>Canadian Tort Law</i> . Pages 1-32, 553-554, 609 The Functions of Tort Law; Product Liability; Class Actions.
Week 11	Gerber et al. <i>Encyclopedia of White Collar Crime</i> . Pages 282-285, 289-91, 59-60 Entries on “International Corporate Crime,” “Environmental Crimes,” and “Exxon Valdez.”