

Course Outline

COURSE:	LAWS 4302B - Regulation of Corporate Crime
TERM:	Winter 2010
PREREQUISITES:	LAWS 2004 and one of 3005, 3201, 3800, or permission of the Department
CLASS:	Day & Time: Wednesday 18:05 – 20:55 Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Christina HARRISON BAIRD
CONTACT:	Office: C476 Loeb Office Hrs: Please email to make an appointment Email: Christina_Harrison@carleton.ca

"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 . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **March 12, 2010 for April examinations**.

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

COURSE DESCRIPTION

The objective of this course is to examine the current debates over the regulation of corporate crime from both legal and policy perspectives. Different theoretical perspectives on the nature and causes of corporate crime, and the role of the state in regulating corporate behaviour will be examined, with a view to determining the reasons for the failure of the criminal justice and regulatory systems to respond effectively to corporate crime. The role of criminal, civil and regulatory sanctions in deterring corporate crime will also be examined. With this foundation, students will be encouraged to think critically and to apply the principles they have learned to current affairs. Students will have the opportunity to develop their skills in research, analysis, writing and oral presentation – both individually and in collaboration with their peers. Seminars are intended to be highly participatory and their quality will depend largely on students' engagement with the required reading. Discussion will be fostered in an environment of mutual respect.

REQUIRED TEXTS

S. Simpson, *Corporate Crime, Law & Social Control* (New York: Cambridge University Press, 2002).
Criminal Code, R.S.C. 1985, c. C-46 at <http://laws.justice.gc.ca/PDF/Statute/C/C-46.pdf>
Securities Act, R.S.O. 1990, c. S.5 at <http://www.canlii.org/en/on/laws/stat/rso-1990-c-s5/latest/rso-1990-c-s5.html>

SUPPLEMENTARY TEXTS

B. Fisse & J. Braithwaite, *Corporations, Crime and Accountability* (New York: Cambridge University Press, 1993).
H. Glasbeek, *Wealth by Stealth* (Toronto: Between the Lines, 2003).
C. Wells, *Corporations and Criminal Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2001).
Selected additional readings will be posted on WebCT

EVALUATION**(All components must be completed in order to earn a passing grade)**

A. Of Coursework – Coursework consists of five elements, all of which must be completed in order to pass the course: a current affairs presentation, a debate, a paper proposal, a term paper and participation. There will be no final examination.

*Please note that all work is due at the **beginning** of class. Work that is submitted after the appointed time on the day that the assignment is due will be penalized by a deduction of **3 percent**. Work that is submitted after the due date will be penalized by a deduction of **5 percent** for each calendar day following the due date.*

Coursework Element	Description	Due Date	Percentage of Final Grade
1. Current Affairs Presentation	Individual student makes a 5-minute presentation that relates a current news article or legal case to concepts from the course. Student provides a 1-page summary to the class, and is prepared to lead discussion on the topic.	Sign up individually for dates in January & February	10%
2. Paper Proposal	Individual student prepares a proposal for their term paper, which includes a thesis statement, introduction, outline and annotated bibliography.	February 3rd	15%
3. Debate	Students sign up in advance for groups. Each group debates a different proposition relating to a concept from the course. Students prepare in advance to debate a particular side of the proposition.	Sign up in groups for dates in February & March	15%
4. Term Paper	Individual student prepares an original term paper relating to a concept of their choice from the course. 15 pages	March 31st	45%
5. Participation	Individual student attends class regularly and demonstrates thorough preparation by participating in discussion	Throughout term	15%

B. Of Instruction – Students will have the opportunity to evaluate the course and the instruction both formally and informally. Formal evaluation will occur toward the end of the course in accordance with Carleton University procedures. In addition, there will be at least one informal occasion for students to provide constructive anonymous feedback to the instructor through <http://www.getfast.ca/>. Further details will be provided in class.

SCHEDULE

Week 1 6 th January	Aims and objectives of the course. The significance of corporate crime and why we study it. Different approaches to the study of corporate crime. <u>Readings:</u> Neil Sargent, "Notes on Understanding the Role of Law in Responding to White Collar and Corporate Crime" in Neil Sargent, ed. "Legal Regulation of Corporate Crime, Fall 2007" (Ottawa: Carleton University, 2007) 1. (<i>on WebCT</i>)
Week 2 13 th January	Defining White Collar and Corporate Crime. Theorizing the causes. Official accounts of deviance and the problem of counting corporate crime. Who are the offenders and who are the victims? The significance of definitions of criminality and corporate deviance. Individualist theories of white collar crime (Sutherland, Shapiro, Gottfredson and Hirschi). <u>Readings:</u> Simpson, Preface & Chapter 1 AND Neil Sargent, "Some Definitions of the Field of Inquiry" in Neil Sargent, ed. "Legal Regulation of Corporate Crime, Fall 2007" (Ottawa: Carleton University, 2007) 9. (<i>on WebCT</i>) AND Gilbert Geis, "White-Collar Crime: What is it?" in Kip Schlegel and David Weisburd, eds., <i>White Collar Crime Reconsidered</i> (Boston: Northeastern University Press, 1992) 31.

<p>Week 3 20th January</p>	<p>Theorizing the causes of white collar and corporate criminality. Individualist theories of white collar crime (Sutherland, Shapiro, Gottfredson and Hirschi). Organizational theories of corporate crime (Kramer, Schragger and Short, Ermann and Lundman, Stone, Fisse and Braithwaite) <u>Readings:</u> Simpson, Chapter 2 <u>AND</u> James William Coleman, "The Theory of White-Collar Crime: From Sutherland to the 1990s" in Kip Schlegel and David Weisburd, eds., <i>White Collar Crime Reconsidered</i> (Boston: Northeastern University Press, 1992) 53. <u>AND 1 of the following</u> Laura Shill Schragger and James F. Short, Jr., "Toward a Sociology of Organizational Crime" (1977) 25 <i>Social Problems</i> 407. <u>OR</u> Diane Vaughan, "Toward understanding unlawful organizational behaviour" (1982) 80 <i>Mich. L. Rev.</i> 1377.</p>
<p>Week 4 27th January</p>	<p>Conflict theory approaches to understanding corporate deviance. The role of the state in controlling corporate and organizational deviance. Is the state part of the solution or part of the problem? <u>Readings:</u> Simpson, Chapter 2 <u>AND</u> John Hagan and Patricia Parker, "White-collar crime and punishment: The class structure and legal sanctioning of securities violations" (1985) 50 <i>Am. Soc. Rev.</i> 302.</p>
<p>Week 5 3rd February</p>	<p>Using the criminal law against corporate offenders. The hybrid nature of corporate criminal liability. The legal basis of attaching liability to the corporation. Identification theory, delegation theory and corporate culture. Problems of <i>mens rea</i>. Criminal liability of corporate directors and officers. <u>Readings:</u> Simpson, Chapter 3 <u>AND</u> Louise Dunford and Ann Ridley, "'No Soul to be Damned, No Body to be Kicked': Responsibility, Blame and Corporate Punishment" (1996) 24 <i>Int'l J. of the Sociology of Law</i> 1. <i>Criminal Code</i>, ss. 119-123, 322, 366-368, 397 <u>AND</u> <i>Criminal Code</i>, ss. 380-382.1, 400, 425-425.1, 487.012-487.017 (Bill C-13, 2004) <u>AND 1 of</u> <i>R. v. Drabinsky</i>, [2009] 242 C.C.C. (3d) 449 <i>R. v. Upton</i>, 2008 NSSC 360 (CanLII) <i>Tele-Mobile Co. v. Ontario</i>, 2008 SCC 12, [2008] 1 S.C.R. 305 <i>Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771</i>, 2005 SCC 70, [2005] 3 S.C.R. 425 <i>R. v. Th��roux</i>, [1993] 2 S.C.R. 5</p> <p style="text-align: center;">Paper Proposal Due</p>
<p>Week 6 10th February</p>	<p>Using the civil law against corporate offenders. Use of compensatory damage awards as legal accountability mechanisms. The regulatory function of tort law. Pros and cons of mass torts and class action litigation in responding to corporate harms. <u>Readings:</u> Simpson, Chapter 4 <u>AND</u> <i>Securities Act</i>, R.S.O. 1990, c. S.5, ss. 130-138.14 <u>AND 2 of the following</u> <i>Deep v. M.D. Management</i>, 2007 CanLII 22655 (ON S.C.) <i>Kerr v. Danier Leather Inc.</i>, 2004 CanLII 8186 (ON S.C.) <i>Kerr v. Danier Leather Inc.</i>, 2005 CanLII 46630 (ON C.A.) <i>Kerr v. Danier Leather Inc.</i>, 2007 SCC 44, [2007] 3 S.C.R. 331</p>
<p>17th February</p>	<p style="text-align: center;">** Winter Break – No classes **</p>
<p>Week 7 24th February</p>	<p>The regulatory approach to controlling organizational and corporate deviance. Structure and objectives of the regulatory process. Prevention not accountability as the primary function of regulatory controls. Strict liability offences and the limits of the regulatory sanction. <u>Readings:</u> Simpson, Chapter 5 <u>AND</u> Kernahan Webb, "Controlling Corporate Misconduct Through Regulatory Offences: The Canadian Experience" in Frank Pearce and Lauren Snider eds., <i>Corporate Crime: Contemporary Debates</i> (Toronto: U of Toronto Press, 1995) 339. <u>AND</u> <i>Securities Act</i>, R.S.O. 1990, c. S.5, ss. 76, 116, 119, 122, 126.1, 126.2 <u>AND 1 of the following</u> <i>Donnini v. Ontario Securities Commission</i>, 2005 CanLII 1622 (ON C.A.) <i>Bennett v. Bennett Environmental Inc.</i>, 2009 ONCA 198 (CanLII) <i>R. v. Rankin</i>, 2007 ONCA 127 (CanLII)</p>

<p>Week 8 3rd March</p>	<p>Sanctions against corporate and white collar offenders. Sentencing goals and philosophies and their applicability to white collar and corporate offenders. Deterrence versus retribution as a sentencing justification? Sentencing options: Fines, imprisonment, probation, conditional sentencing, restitution, compensatory damages? Role of restorative justice in sentencing white collar and corporate offenders? <u>Readings:</u> Bill C-52, 2009 <u>AND</u> Brent Fisse, "Sanctions against Corporations: The limitations of fines and the enterprise of creating alternatives", in Brent Fisse and Peter A. French, eds. <i>Corrigible Corporations and Unruly Law</i> (San Antonio: Trinity University Press, 1985) 159. <u>OR</u> Kenneth Mann, Stanton Wheeler and Austin Sarat, "Sentencing the White Collar Offender" (1980), 17 Am. Crim. L. Rev. 479. <u>AND 1 of the following</u> R. v. Drabinsky, 2009 CanLII 41220 (ON S.C.) R. v. Bassett, 2009 BCPC 111 (CanLII) R. v. Ellis, 2008 ABQB 40 (CanLII) R. v. Taylor, 2008 BCPC 120 (CanLII) R. v. Minnie and Shaw, 2007 BCSC 433 (CanLII) R. v. Benlolo, 2006 CanLII 19284 (ON C.A.) R. v. Bonamy, 2006 SKCA 72 (CanLII)</p>
<p>Week 9 10th March</p>	<p>Alternatives to regulatory sanctions. Negotiated compliance, enforced self-regulation and voluntary compliance systems. Use of alternative dispute resolution approaches for responding to regulatory concerns. Using carrots rather than sticks to achieve regulatory compliance goals. <u>Readings:</u> Simpson, Chapter 6 <u>AND 1 of the following</u> Ilias Bantekas. "Corporate Social Responsibility in International Law," Boston University International Law Journal (Fall 2004) 309. John Braithwaite, "Reintegrative shaming and white collar crime" in <i>Crime, Shame and Reintegration</i> (Cambridge: Cambridge University Press, 1989) 124. Steve Tombs, "Stemming the flow of blood? The Illusion of Self-Regulation" 3:2 J. of Human Justice 75.</p>
<p>Week 10 17th March</p>	<p>Empirical study of corporate crime control & directions for policy <u>Readings:</u> Simpson, Chapters 7 & 8</p>
<p>Week 11 24th March</p>	<p>Multinational corporations & international human rights law Gaps in human rights law. Civil and Political Rights v. Economic Social and Cultural Rights. Duty of government to protect. Problems of different legal standards and enforcement approaches in different jurisdictions. Problems for home and host State regulations. Extra-territorial application of home or host country law? <u>Readings:</u> <u>1 of the following</u> R. McCorquodale & P. Simons, "Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law" (2007) 70(4) Modern Law Review 598. M. Monshipouri et al., "Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities" (2003) 25 Human Rights Quarterly 965. D. Weissbrodt & M. Kruger, "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" (2003) 97(4) American Journal of International Law 901.</p>
<p>Week 12 31st March</p>	<p style="text-align: center;">Term Paper Due</p>