

Course Outline

COURSE: LAWS 4307A – Medical Criminal Law Issues

TERM: Winter 2013

PREREQUITES: Fourth-year Honours standing and 1.0 credit from LAWS 2004 [1.0] (no longer offered), LAWS 2301, LAWS 2302.

CLASS: Day & Time: Mondays, 6:06pm – 8:55pm
Room: Please check with Carleton Central for current room location

INSTRUCTOR: Michael Davies

CONTACT: Telephone: (613) 866-0535
Email: mdavlaw@yahoo.ca

You may call me at or see me by appointment. Otherwise I am happy to stay after each class for anyone who wishes to talk to me

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 requiring 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/>

GRADES

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

25 MARKS: MID-TERM PAPER (5 PAGES) ON PSYCHIATRY AND CRIMINAL LAW

25 MARKS: PRESENTATION

40 MARKS: FINAL PAPER (12 PAGES) ON PRESENTATION TOPIC

10 MARKS: CLASS PARTICIPATION

SCHEDULE**Part A: Criminal Law and Psychiatry****Week 1: Introduction**

Introduction to the course

Week 2: What happens after a person with a mental disorder is arrested?

We will do the following:

- Examine how individuals with a mental disorder are detained in hospital under civil (i.e. non-criminal) legislation;
- Briefly review the various parts of the *Criminal Code* that deal with mental disorder;
- Examine the options available to police officers when they arrest individuals apparently suffering from a mental disorder;
- Review the bail provisions of the *Criminal Code*;
- Examine the power of criminal courts to order psychiatric assessments;
- Examine diversion options; and
- Compare psychiatric and legal definition of mental disorder.

Readings: *R v. Rabey, (1977) OJ 2356, Part XX.1 of the Criminal Code*

Week 3: Fitness to stand trial

We will examine the following:

- Criminal Code provisions dealing with fitness
- Tests for fitness as developed by the courts
- Unfit to stand trial for reasons other than mental disorder
- Unfit to stand trial in non-criminal cases

Readings: *Taylor, (1992) O.J. 2394, Steele, (1991) J.Q. 240, Roy, (1994) N.S.J. 82, Fast, (2001) F.C.J. 1730, Richard D. Schneider & Hy Bloom: "R. V. Taylor: A Decision Not in the Best Interests of Some Mentally Ill Accused" Crim. L. Q., Vol. 38 No. 2 (Optional)*

Week 4: Not Criminally Responsible on Account of a Mental Disorder (The Insanity Defence)

We will examine this defence to a criminal charge, paying particular attention to the following:

- Section 16 of the Criminal Code
- Who bears the onus of proof
- Can the prosecution raise this "defence"
- What is the meaning of "appreciates" in s. 16
- What is the meaning of "wrong" in s. 16
- Constitutionality of s. 16

Readings: *Chaulk, (1990) S.C.J. 139, s. 16 of the Criminal Code*

Week 5: The Role of the Ontario Review Board

We will examine what happens to individuals who are found not criminally responsible on account of a mental disorder. The class will be introduced to the Ontario Review Board and the role it plays in overseeing NCR or unfit accused. We will examine the dispositions available to it and look at the concept of a "significant threat to public safety".

Readings: *Winko, (1999) S.C.J. 31, s.672.54 of the Criminal Code Peter Carver and Cherie Langlois-Klassen, "The Role of Forensic Psychiatric Review Boards in Canada: recent Development" (2006), 14 Health L.J. 1. (Optional)*

Week 6: Neuroscience and Criminal Law

We will examine whether advances in neuroscience are undermining the theoretical foundations of criminal law and sentencing.

Readings: *Part XXIV of the Criminal Code*
R. v. Johnson (2003), 177 C.C.C. (3d) 97 (S.C.C.)
Jodi Libbey, “Dangerousness’ An Unsafe Criterion”
(1998) 7 Health L. Rev. No. 1, 14-25 (optional)
Jay Singh & Seena Fazel, “Forensic Risk
Assessment, A Metareview”(2010) Criminal Justice &
Behavior, Vol. 37, No.9, p.965 (optional).

Part B: Medico- legal topics in Criminal Law**Week 7: Medical Defences to Criminal Charges****Psychiatry & Criminal Law Paper Due**

Topic 1: The Defence of Non-Insane Automatism
Read: *R. v. Stone (1999), 134 C.C.C. (3d) 353 (S.C.C.)*

Topic 2: The Defence of Intoxication
Read: *R. v. Daviault (1994), 93 C.C.C. (3d) 21 (S.C.C.),*
s. 33.1 of the Criminal Code
Heather MacMillan-Brown, “No Longer “Leary”
Intoxication: In the Aftermath of R. v
Daviault” (1995), 59 Sask. L. Rev. 311.
(Optional)

Topic 3: Self-defence and the Battered Wife Syndrome
Read: *R. v. Lavallee (1990), 55 C.C.C. (3d) 97 (S.C.C.)*
s.34 of the Criminal Code
Donna Martinson, “Lavallee v. R. – The Supreme
Court of Canada Addresses Gender Bias in
the Courts” (1990), 24 U.B.C. L. Rev. 381-
386. (Optional)

Week 8: Medical Issues in Criminal Investigations

- Topic 1: The seizure of bodily samples from suspects in police custody
Read: *R. v. Stillman* (1997), 113 C.C.C. (3d) 321 (S.C.C.)
John Burchill, “Mr. Stillman, DNA and Discarded Evidence in Criminal Cases” (2008) 32 *Man. L. J.* 5-33
- Topic 2: The police in the E.R.: the seizure of bodily samples in the possession of hospitals
Read: *Pohoretsky v. The Queen* (1987), 33 C.C.C. (3d) 398 (S.C.C.)
R. v. Dyment (1989) 45 C.C.C. (3d) 244 (S.C.C.)
R. v. Dersch (1994) 85 C.C.C. (3d) 1 (S.C.C.)
R. v. Spidell (1996) 107 C.C.C (3d) 248 (N.S.C.A)
- Topic 3: Coroner’s Inquests
Read: *Franklin Moskoff & James Young “The Roles of Coroner and Counsel in Coroner’s Court”* (1987-88) *Criminal Law Quarterly*, v. 130,p.190.

Week 9: Sex and Criminal Law

- Topic 1: Pregnancy, reproductive technology and the criminal law
Read: *Patrick Healy, “Statutory Prohibition and the Regulation of New Reproductive Technologies under Federal Law in Canada”* (1995) 40 *McGill L.J.* 905
- Topic 2: Status of the unborn child in criminal law
Read: s. 233 CCC & s. 222(1)
R. v. Prince (1989) 44 C.C.C. (3d) 510 (Man. C. A)
R. v. Drummond (1996) O.J. No. 4597
- Topic 3: The newborn child and the criminal law: infanticide
Read: s. 233, s. 237, s.243, s. 215, s. 218 *Criminal Code*

Week 10: More Sex

- Topic 1: Judicial intervention in pregnancy
Read: *Judicial Intervention in Pregnancy*, (1995) 40
McGill L.J., p.947-991, Sheilah Martin &
Murray Coleman
- Topic 2: H.I.V. and the criminal law
Read: *R. v. Cuerrier* (1998) 127 C.C.C. (3d) 1 (S.C.C)
“Criminalization Confusion and Concerns: The
Decade Since the *Cuerrier* Decision”,
HIV/AIDS Policy & Law Review, Vol. 14,
No.1 May 2009 (Optional)
- Topic 3: Access to therapeutic records of complainants in sexual
assault trials
Read: s. 278.1-278.91 C.C.C
R. v. Mills (1993) 139 C.C.C. (3d) 321 (S.C.C.)

Week 11: The Right to Self-harm

- Topic 1: Euthanasia/Doctor assisted suicide
Read: *Medically Assisted Death: Nancy B. v. Hotel-Dieu
de Quebec*, Beernard M. Dickens
Rodriguez v. B.C. (1993) S.C.J. No. 94
- Topic 2: Drugs and the criminal law, including the medical use of
marijuana
Read: *Do your own internet search for arguments for and
against the legalization of marijuana and other
drugs*

Week 12: Final Class**Final Paper Due**