

Course Outline

COURSE:	LAWS 4307A – Medical Criminal Law Issues
TERM:	Winter 2014
PREREQUISITES:	Fourth-year Honours standing and LAWS 2301, LAWS 2302
CLASS:	Day & Time: Tues, 6 to 9p.m. Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Michael Davies
CONTACT:	Office: Office Hrs: By Appointment Telephone: 613 866-0535 Email: mdavlaw@yahoo.ca

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/>

COURSE DESCRIPTION

This course examines the intersection of criminal law and medicine. The first part of the course deals with the relationship between criminal law, psychiatry and neuroscience. We will look at how the criminal law defines mental illness and at the concepts of fitness to stand trial and criminal responsibility. We will also look at the mechanisms by which the state restrains the liberty of mentally ill individuals.

The second part of the course deals with a variety of areas in which branches of medicine outside psychiatry intersect with the criminal law. We will look at underlying themes and principles, paying particular attention to the competing interests of the individuals involved and the wider community. This part of the course will involve student lead discussions of assigned topics.

REQUIRED TEXTS

There is no required text. Readings are assigned for each week. The readings are either cases or articles in academic journals. It is important that students complete all the assigned readings.

EVALUATION

(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
Readings: *R. v. Stone (1999), 134 C.C.C. (3d) 353 (S.C.C.)*
R. v. Luedecke 2008 ONCA 716
- Topic 2: The Defence of Intoxication
Readings: *R. v. Daviault (1994), 93 C.C.C. (3d) 21 (S.C.C.),*
R. v. Bouchard-Lebrun, [2011] 3 SCR.
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
Readings: *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 and Prosecutions

- Topic 1: The seizure of bodily samples from suspects in police custody
Readings: *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: Therapeutic Jurisprudence
Readings: C.S. Lewis, *The Humanitarian Theory of Punishment plus independent research on mental health courts and drug treatment courts.*

Topic 3: Coroner's Inquests
Readings: 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
Readings: 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
Readings: 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
Readings: *R. v. ADH* 2013 SCC 28, s. 233, s. 237, s.243, s. 215, s. 218
Criminal Code

Week 10: More Sex

Topic 1: Judicial intervention in pregnancy
Readings: *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
Readings: *R. v. Cuerrier* (1998) 127 C.C.C. (3d) 1 (S.C.C)
R.v. Mabior 2012 SCC 47
 "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
Readings: 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
Readings: *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
Readings: *Do your own internet search for arguments for and against the legalization of marijuana and other drugs.*

Week 12: **Final Class**

Final Paper Due