

Course Outline

COURSE: LAWS 4307 B – Medical Criminal Law Issues

TERM: Winter 2009-10

PREREQUISITES: LAWS 2004 and fourth-year Honours standing

CLASS: **Day & Time:** Tuesday – 1805-2055
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: **Michael Davies**
(CONTRACT)

CONTACT: **Telephone:** (613) 234-1110
 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.

"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

TEXT

There is a coursepack available in the bookstore containing the secondary sources which are mandatory. Students are expected to obtain the cases and optional readings set out above from Quicklaw.

GRADES

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:

- 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 definitions 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 Asignificant 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)

Part B: Medico-legal topics in Criminal Law**Week 6: 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" About 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 7: What to do with those who commit criminal offences?

- Topic 1: Treatment versus Punishment, a theoretical examination
Read: C.S. Lewis, *The Humanitarian Theory of Punishment* S.718 to 718.2 of the Criminal Code
- Topic 2: Dangerous Offenders and Long Term Offenders
Read: 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.

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 suspects= bodily samples in the possession of hospitals
Read: *Pohoretsky v. The Queen (1987)*, 33 C.C.C. (3d) 398 (S.C.C.)
R. v. Dymont (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) 348 (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.
 Angela Campbell, "A Place for Criminal Law in the Regulation of Reproductive Technologies"(2002) 10 Health L.J. 77-101.
- Topic 2: Status of the unborn child in criminal law
Read: s. 238 CCC & s. 223(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 Law Journal, 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, Bernard 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