

Carleton University**Department of Law and Legal Studies****COURSE OUTLINE**

COURSE: LAWS 4308 A – Sentencing

TERM: Fall 2015

PREREQUISITES: LAWS 2301, LAWS 2302
Fourth Year Honours Standing

CLASS: Thursday 6:00 – 9:00 pm
Please check with Carleton Central for current room location.

INSTRUCTOR: Stephen J. Donoghue

OFFICE HOURS: By Appointment at Loeb B442

CONTACT: Email: Stephen.Donoghue@Ontario.ca
Tel: (613) 239-1086

Academic Accommodations

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/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://www.carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <http://www.carleton.ca/law/student-resources/department-polices/>

COURSE OBJECTIVES

By the end of the course students should have a solid understanding of how the sentencing process actually works in Canadian criminal cases. Students should understand and be able to critically analyze the basis upon which sentences are imposed, and feel comfortable and confident to argue in favour of or against a given sentence.

COURSE DESCRIPTION

The aim of the course is to help students develop a critical understanding of the sentencing process and gain an appreciation of the important role of sentencing in the Canadian criminal justice system. A substantive examination of sentencing will be presented with extensive reference to the *Criminal Code of Canada*, other legislation, and case law. A brief overview of the historical perspective of sentencing will provide some understanding of the shift in societal values and perspectives on punishment. The focus of the course will be on the current sentencing regime in Canada with emphasis on sentencing principles and procedure, sentencing options, sentencing for particular offences and of specific offenders, and the role of victims in the sentencing process. As the class is crafted in a seminar style, there will be extensive analysis and discussion concerning the purpose and effect of modern day sentencing practices and what they reveal about Canadian society.

TEACHING METHOD

Primarily a seminar style with class discussions.

MATERIALS USED

Required Text – A. Manson, *The Law of Sentencing* (Toronto, Ont.: Irwin Law, 2001)

- Available at the Carleton bookstore.

Required Text – Course Pack

- Available at the Carleton bookstore.

Optional Text – Criminal Code of Canada

Additional material may be distributed in class.

METHOD OF EVALUATION

The final grade for the course will be based on the following components:

1. **Student Presentation & Handout** (30%)
 - Individually, or in groups of two, students will select a sentencing topic to present to the class.
 - Presentations should last about 45 minutes and should review the topic selected for the class while also initiating discussion of critical sentencing issues related to the topic.
 - Students must also prepare a handout for their classmates in attendance. The handout should be provided at the beginning of the presentation.
 - The presentation and handout will be graded according to three factors:
 - (a) Demonstration of the students' understanding of the topic (40%),
 - (b) Ability to identify and initiate discussion on critical sentencing issues related to the topic (40%), and
 - (c) Style of presentation (20%).
2. **Peer Evaluation** (10%)
 - Students will grade their fellow classmates on the student presentations.
 - There will be a form for students to complete after each student presentation.
3. **Participation** (10%)
 - Student grades will incorporate recognition of attendance at class, participation in class discussions, and completion of the peer evaluation forms.
 - As this is a seminar style class, student participation is an essential element of the learning process.
4. **Final Exam** (50%)
 - 2-hour closed book examination (during the formal examination period, December 9-21, 2015).
 - Exam will be based on assigned readings, class lectures, and class presentations from throughout the full term.
 - Exam will represent a combination of multiple choice, short answer, and long answer questions.

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

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

SCHEDULE

Class Date Sentencing Topic

Part I – Introduction

1. September 3 a) **Introduction to the Course**
 - Review of the course outline with elaboration on the course objectives, expectations, and method of evaluation.
 - *Course Outline*
 - *Handout #1 – Peer Evaluation Form*
- b) **Overview of Sentencing**
 - *Manson*, chapters 1-4
2. September 10 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
3. September 17 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
4. September 24 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
5. October 1 a) **Demonstration of a Sentencing Hearing**
 - *Handout #2 – Sentencing Hearing Demonstration*
- b) **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
6. October 8 a) **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4

Part II – Principles of Sentencing

- b) **Discussion of Current Events**
 - Class discussion of recently decided sentencing cases.
 - The discussion will focus on the fundamental principles of sentencing, aggravating and mitigating factors, and the rules of sentencing evident in the cases covered.
 - *Manson*, chapters 5, 6, and 7

Part III – Sentencing Options

7. October 15
- a) **Non-Custodial Dispositions**
 - Diversion, absolute and conditional discharges, fines, probation orders
 - *Manson*, chapter 9 A-E
 - b) **Custodial Dispositions**
 - Conditional sentences, intermittent sentences, jail (reformatory and penitentiary)
 - *Manson*, chapter 9 H-J
 - c) **Preventative Detention**
 - Dangerous offenders, long-term offenders, recognizances under section 810 of the *Code*
 - *Manson*, chapter 11

Part IV – Sentencing Procedure

8. October 22
- a) **The Sentencing Hearing**
 - Admissibility of evidence, burden of proof, proving a criminal record, pre-sentence reports, offender's right to speak, medical reports
 - *Manson*, chapter 8
 - b) **Sentence Appeals**
 - Standard of review, deference to the sentencing judge, launching a sentence appeal, stay pending appeal, admission of fresh evidence on appeal
 - *Manson*, chapter 12
 - c) **Record Suspensions and Clemency**
 - Record suspensions (pardons), clemency, the Royal Prerogative of Mercy, the process for obtaining pardons
 - *Coursepack*, tab 1
- October 29 **Fall Break** (no class)

Part V – Sentencing for Particular Offences

9. November 5
- a) **Sentencing in Homicide Cases**
- Life sentences, parole ineligibility, faint hope clause, manslaughter sentences
 - *Manson*, chapter 10
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- b) **Sentencing in Domestic Violence Cases**
- Resolution by peace bond, New Directions program, reluctant/uncooperative victims, *de minimus* assaults
 - *Coursepack*, tab 2
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- c) **Sentencing in Sexual Offence Cases**
- Pertinent sentencing principles, appropriateness of conditional sentences, DNA orders, sexual offender registry, public place prohibitions (*Code s. 161*)
 - *Coursepack*, tab 3
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10. November 12
- a) **Sentencing in Drinking and Driving Cases**
- Minimum sentences, notice of increased penalty, driving prohibitions, ignition interlock, provincial license suspensions, cases involving death or bodily harm
 - *Coursepack*, tab 4
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- b) **Sentencing in Drug Cases**
- Drug offences, nature of the substance involved, sentencing principles under the *CDSA*, effect of addiction, forfeiture of property, drug court
 - *Coursepack*, tab 5
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- c) **Sentencing in Firearms Offence Cases**
- What is a firearm?, firearm offences, the big ten offences, minimum sentences where a firearm is used, implications of minimum sentences, weapons prohibitions
 - *Coursepack*, tab 6
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Part VI – Sentencing of Specific Offenders

11. November 19 a) **Young Offender Dispositions**

- Principles in the *YCJA*, sentencing options, murder sentences, restrictions to custody, annual reviews, serious violent offence designations, adult sentences
 - *Coursepack*, tab 7
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b) **Sentencing and Women’s Issues**

- Treatment of women offenders by the courts, prostitution offences, welfare fraud cases, infanticide, sentencing pregnant offenders, battered woman’s syndrome
 - *Coursepack*, tab 8
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c) **Sentencing and Socio-Economic Factors**

- Different justice for the rich than the poor?, developments to address inequalities, legal aid, choice of counsel, inability to pay a fine and/or make restitution, sentencing white collar crime
 - *Manson*, chapter 13 B
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12. November 26 a) **Sentencing and Aboriginal Issues**

- The *Gladue* decision, section 718.2(e) of the *Code*, disproportional representation of Aboriginals in custody, restorative justice, sentencing circles
- *Manson*, chapter 13 D
- *Coursepack*, tab 9

b) **Sentencing Offenders with Mental Health Issues**

- Mental disorders, diversion of mentally disordered accused, not criminally responsible finding, mitigation of sentence, mental health court
 - *Coursepack*, tab 10
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Part VII – Victims and the Sentencing Process

c) Victims and the Sentencing Process

- Who qualifies as a “victim”?, victim impact statements, child and/or other vulnerable victims, testimonial aides, victim witness assistance program (VWAP), victim surcharge, victim interest groups (MADD)
 - *Manson*, chapter 13 C
 - *Coursepack*, tab 11
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Part VIII – Review

13. December 3 a) **Professor Evaluation**

b) **Return of Student Evaluations**

c) **Sample Sentencing Submission Exercise**

- *Handout #3 – Sentencing Submission Exercise*

d) **Review of the Course**

- Review of the subject material covered during the course of the academic year.
- Answer student questions concerning the upcoming final examination.