

LAWS 4308 B – SENTENCING

COURSE OUTLINE

COURSE: LAWS 4308 B – Sentencing

TERM: Fall 2012

PREREQUISITES: LAWS 2004
Fourth Year Honours Standing

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

INSTRUCTOR: Stephen J. Donoghue

OFFICE HOURS: By Appointment

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Tel: (613) 239-1086

Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities could include but are not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions.

Registered PMC students are required to contact the PMC, **613-520-6608**, every term to ensure that I receive your Letter of Accommodation, no later than two weeks before the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the deadlines published on the PMC website. <http://www1.carleton.ca/PMC/students/dates-and-deadlines/>.

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

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)

Required Text – Course Pack

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 student's 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.
 - 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.
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SCHEDULE

Class Date Sentencing Topic

Part I – Introduction

1. September 11 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 18 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
3. September 25 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
4. October 2 a) **Demonstration of a Sentencing Hearing**
 - *Handout #2 – Sentencing Hearing Demonstration*

b) **Overview of Sentencing (con'd)**

 - *Manson*, chapters 1-4
5. October 9 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4

Part II – Principles of Sentencing

6. October 16 a) **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

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

Part IV – Sentencing Procedure

7. October 23 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) **Pardons and Clemency**

- Pardons, clemency, the Royal Prerogative of Mercy, the process for obtaining pardons
- *Coursepack*, tab 1

Part V – Sentencing for Particular Offences

8. October 30
- a) **Sentencing in Homicide Cases**
- Life sentences, parole ineligibility, faint hope clause, manslaughter sentences
 - *Manson*, chapter 10
- b) **Sentencing in Domestic Violence Cases**
- Resolution by peace bond, New Directions program, reluctant/uncooperative victims, *de minimus* assaults
 - *Coursepack*, tab 2
- 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
9. November 6
- 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
- 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

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

Part VI – Sentencing of Specific Offenders

10. November 13 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

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

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

11. November 20 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

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, victim fine surcharge, victim interest groups (MADD)
- *Manson*, chapter 13 C
- *Coursepack*, tab 11

Part VIII – Review

12. November 27 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.