
Course Outline

COURSE: LAWS 4308 B - Sentencing
TERM: Fall 2008-09
PREREQUISITES: LAWS 2004 and fourth-year Honours standing
CLASS: Day & Time: Tuesday - 6:05-8:55 pm
Room: 279 UC (University Centre)
INSTRUCTOR: Alan Brass
(Contract)
CONTACT: Office Hrs.: By appointment
Telephone: 613-238-5757 (Office)
Email: abrass@alanbrass.ca

"Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre, 613-520-6608, every term to ensure that I receive your letter of accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by November 7, 2008, for December examinations, and March 6, 2009, for April examinations."With regard to accommodations for religious obligations and pregnancy, please see http://www.carleton.ca/pmc/students/accom_policy.html

COURSE OBJECTIVES AND DESCRIPTION

The Canadian Sentencing Commission in 1987 defined sentencing as "the judicial determination of a legal sanction to be imposed on a person found guilty of an offence." The realities of the sentencing process are complex. A sentence passed by a judge is the result of many conflicting pressures. This course will examine these countervailing values and why the sentencing aspects of the judicial system have been a lightning rod at times for the public, the media and seized on by politicians. The theory of sentencing, current practices and the perceptions of the role of sentencing in the judicial process will be reviewed.

Sentencing does not end with the passing of a sentence and issues such as parole, probation and penal law will be examined.

As this is a seminar class, students will be relied upon to contribute and analyze issues in sentencing and what role it plays in Canadian democratic values.

COURSE MATERIAL - REQUIRED TEXT

Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001). (Hereinafter referred to as Manson).

Students should possess a current edition of the *Canadian Criminal Code*. It is also available at <http://www.canlii.org/ca/sta/c-46/>. Students may wish to review any of the annotated Criminal Codes available at the Carleton Library.

WEB SITE

The notes and/or PowerPoint presentations used in class may be posed on the course Web site along with course announcements, grades, and other materials. To logon, go to <http://webct.carleton.ca/>. Only students registered in the course have access to the site; your Username and Password to sign on are the same as those for your Connect account (make sure that your Connect account has been activated first). **It is imperative that the student have access to the course Web site.**

REFERENCE TEXTS

Students should **not** purchase the texts noted below. They are only provided as resources that may assist in clarifying points raised during seminars. These texts will be placed on reserve at the library.

1. *Sentencing Reform a Canadian Approach*, Report of a Canadian Sentencing Commission, February 1987 - available at floor 2 of the Carleton Library, documents ddd, call number CAI Z184-FO1ENG.
2. *Making Sense of Sentencing*, Julian V. Roberts and David P. Cole, University of Toronto Press 1998, call number KE9355.M34.
3. *Criminal Justice in Canada*, Colin Goff, Third Edition, Thompson Canada Limited, call number HV9960C2C73 2003.
4. *Criminal Justice in Canada, A Reader*, Second Edition, Julian Roberts, Michelle Grossman, Thompson Canada Limited, Call number HV 9960C2C73 2004.
5. *The Virtual Prison, Community Custody and the Evolution of Imprisonment*, Julian V. Roberts, Cambridge University Press, 2004, call number HV 9279R63 2004.

COURSE EVALUATION

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

Class Attendance and Participation 10%

This aspect includes granting marks for attendance and participation in class discussion. This is seen as essential given that this is a seminar class benefitting all the students.

Student Class Presentation 15%

Either working with a group or individually a student will present a topic to the class that has been chosen from the provided essay list and in conjunction with the instructor. Students are encouraged to work in a group setting and take responsibility after the presentation of leading a discussion on the topic.

Student Paper 35%

Students are expected to write a ten (10) page paper (double-spaced) with footnotes and a bibliography. The paper will be graded according to the following factors:

- grasp of the subject of the essay and critical analysis of the topic.
- presentation in proper English style.

A list of suggested essay topics is attached. An alternative subject may be selected upon approval of the instructor. The subject can be related to the presentation topic. Students should pick subjects early in the term. An outline of the essay can be presented to the instructor for review. Original research and thought are encouraged.

Final Examination 40%

A two hour (2) closed book examination will be given. It will be based upon the readings and the lectures.

The exam will include one long essay question, short answers and multiple choice questions.

GUEST LECTURES

The instructor will endeavor to have guest lecturers attend class to present a perspective from their expertise.

CLASS SCHEDULE FALL 2008 (subject to revision)

Sept 9 Course aims and introduction.

Sept 16 Sentencing nature, history and justifications, overview.

Required reading:

- *Manson* Chapters 1-4.
- Sections 718-731 and Section 742 *Criminal Code*.
- Role of the complainant (victim) and factors to be assessed
Victim Impact Statements: Lessons Learned and Future Priorities
By Julian Roberts. <http://www.justice.ca.ca/>
- Victim Impact Statements at Sentencing: Judicial Experiences and Perceptions. A Survey of Three-Jurisdictions, by Julian Roberts
www.canada-justice.com/eng/pi/rs/rep-rap/2006/rr06_vic3/rr06_vic3
- Victim Impact Statements at Sentencing ..
www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_vic3/p0.html

Optional reading:

- Chapter 1 of *Making Sense in Sentencing* - "Introduction to Sentencing and Parole", pages 3-30, Julian V. Roberts and David P. Cole.
- "Legislating a Purpose and Principle of Sentencing", pages 48-62, *Making Sense of Sentencing*, Julian v. Roberts and Andrew Vaughan Hirsch.
- Chapter 5 of the *Sentencing Reform a Canadian Approach*, Nature of Sentencing, pages 105-125.
- Chapter 9 of "*Sentencing and Punishment*", *Criminal Justice in Canada*, pages 213-233, Colin Goff.

The readings in this category are not mandatory, however will facilitate understanding of the course material and should aid students in selecting presentation and essay topics.

Sept 23 General deterrence, specific deterrence and rehabilitation.

Role of the media

Required reading:

- *Manson* Chapters 5 and 7.
- Presentations.

Sept 30 Guest Lecturer -Aggravating and mitigating factors: Role of Collaborative Justice

Required reading:

- *Manson Chapter 6*.
- Guest Lecturer - Role of Collaborative Justice
Lessons from the Front Lines in Canada's Restorative Justice Experiment: The Experience of Sentencing Judges, Author Meghan Stephens, *Queen's Law Journal* (2007), 33 *Queen's Law Journal* 19-78.

Oct 7 Rules of sentencing hearing and the sentencing hearing.

Required reading:

- *Manson Chapters 6 and 8*.
- Presentations.

Oct 14 **Specific Sentencing Issues.** Mandatory minimum sentences, homicides and domestic violence issues. Was Bill C-10 wrong in bringing forward proposed punishment inconsistent with the fundamental principles of sentencing.

Required readings:

- John Howard Society Brief to the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Human Preparedness Re Bill C-10
www.johnhoward.ca/document/billC-10/billC10.pdf
- C-10 Gun Sentencing - Position Paper - CCJA
www.ccja-acjp.ca/en/c10en.html
- Legislative Summary Library of Parliament Re Bill C-10
www.parl.gc.ca/common/bills/_ls.asp?lang=E&ls=c10&source=library_prb&Parl=39&Ses=1
- Mandatory Minimum Sentences by Library of Parliament
www.parl.gc.ca/information/libary/PRBpubs/prb0553-e.htm
- Mandatory Minimum Sentences by the Elizabeth Fry Society
www.elizabethfry.ca/eweek08/pdf/minsentc.pdf

Optional Reading: (Recommended)

- Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and justice System expenditures by Gabor and Crutcher
http://www.canada.justice.cg.ca/en/ps/rs/rep/2002/rr2002_1A.pdf
- Presentations.

Oct 21 **Conditional Jail Sentences** - Are they an appropriate mechanism to deal with offenders. Was Bill C-9 a departure from the fundamental principles of sentencing. Sentencing RE: Sexual Assaults.

Required readings:

- John Howard Society Brief to the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Human Preparedness Re Bill C-9
www.johnhoward.ca/document/billC9/billC9.pdf
(Go to Supreme Court of Canada and link through Judgments)
- 1. R. v. Proulx [2000] 1 S.C.R. 61
- 2. R. v. L.M. [2008] S.C.C. 31
- 3. R. v. D.D. Court, Court of Appeal for Ontario dated 20020321, Docket C33 289 (Go to Ontario Court of Appeal 2002 Judgments)

Recommended reading:

- Canadian Criminal Justice Association Position Paper C-19 Gun Sentencing.
<http://www.ccja-acjp.ca/en/c9en.html>
- John Howard Society Brief regarding C-9
<http://www.johnhoward.ca/document/billC9/billC9.pdf>
- Canadian Association of Elizabeth Fry and Native Women's Association Position on Bill C-19
<http://www.elizabethfry.ca/billC-9/billC-9.pdf>
- Presentations.

Oct 28 **A review of the principles of the Youth Criminal Justice Act.**
Youth sentencing: Are the provisions too lenient

Required Readings:

- Youth Criminal Justice Act, Section 3, 38, 39, 40, 41, 42
<http://www.justicecanada.ca/ps/yi/ycja/explan.html>
- Department of Justice Canada, "The Youth Criminal Justice Act: Summary and Background."
<http://www.justicecanada.ca/en/ps/yi/ycja/explan.html>

Female offenders

Required Reading:*R. v. Hamilton*www.ontariocourts.on.ca/decisions/2006/august/c397.16.html

Presentations.

Nov 4 Sentencing of Aboriginal Offenders.Required Readings:

- Section 718.2 of the Criminal Code.
- R. v. Gladue, [1999] 1 S.C.R. 688 at:
www.scc.1exam.4montreal.ca/en/1999/rcs1-688/1999/rcs1688.html (Go to Supreme Court of Canada Cite and link through Judgments).

Miscarriages of justice.

- Hate Crimes
Sentencing in cases of Hate-Motivated Crime: An Analysis of Subparagraph 718.2(a)(l) of the Criminal Code. 2001 21 Queen's Law Journal 93-127
- Racism
Mandatory Minimum Prison Sentencing and Systemic Racism (2001),
Faizal R. Mirza (2001) 39 Osgoode Hall L.J. 491-512.
- Presentations.

**Nov 11 The role of Parole and Probation and what happens to adults when sentences of incarceration are given.
Conditional release.**

Handout to be provided.

Optional Reading:

- M. Jackson, *Justice Behind the Walls*: Introduction, Sector 1, Chapter 1
[Http://justicebehindthewalls.net/book.asp2.cid=1](http://justicebehindthewalls.net/book.asp2.cid=1)
- Chapter 23 Community Corrections in Roberts J.V. and Grossman. Criminal Justice in Canada Second Edition.
- Presentations.

Nov 18 Preventative detention. Dangerous and long term offenders.Required Readings:

- Manson Chapter 11
- Canadian Criminal Justice Association Position Paper on C-27 Dangerous Offenders and Recognizance to keep the Peace at:
[Http://www.ccja-acjp.ca/en/c27en.html](http://www.ccja-acjp.ca/en/c27en.html)

Presentations.

• **ESSAYS DUE.****Nov 25 Summary of class, question and answer, preparation for the examination.**