

Course Outline

COURSE: LAWS 4308 B - Sentencing

TERM: Fall 2009

PREREQUISITES: LAWS 2004 and Fourth year honours standing

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

INSTRUCTOR: Stephen J. Donoghue
(CONTRACT)

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"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 **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

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 - (All components must be completed in order to get a passing grade)

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.

SCHEDULE**Class Date Sentencing Topic*****Part I – Introduction***

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|----|---------|--|
| 1. | Sept 14 | a) Introduction to the Course <ul style="list-style-type: none"> • Review of the course outline with elaboration on the course objectives, expectations, and method of evaluation. • <i>Course Outline</i> • <i>Handout #1 – Peer Evaluation Form</i> b) Overview of Sentencing <ul style="list-style-type: none"> • <i>Manson</i>, chapters 1-4 |
| 2. | Sept 21 | Overview of Sentencing (con'd) <ul style="list-style-type: none"> • <i>Manson</i>, chapters 1-4 |
| 3. | Sept 28 | Overview of Sentencing (con'd) <ul style="list-style-type: none"> • <i>Manson</i>, chapters 1-4 |
| 4. | Oct 5 | a) Demonstration of a Sentencing Hearing <ul style="list-style-type: none"> • <i>Handout #2 – Sentencing Hearing Demonstration</i> b) Overview of Sentencing (con'd) <ul style="list-style-type: none"> • <i>Manson</i>, chapters 1-4 |
| | Oct 12 | Thanksgiving |

Part II – Principles of Sentencing

5. Oct 19
- a) **Fundamental Principles of Sentencing**
 - Gravity of the offence, deterrence, denunciation, rehabilitation, protection of society, parity, proportionality
 - *Manson*, chapter 5
 -
 - b) **Aggravating & Mitigating Factors**
 - Existence/absence of criminal record, planning and deliberation, breach of trust, vulnerable victim, plea of guilt, remorse, provocation and duress, prior good character
 - *Manson*, chapter 7
 -
 - c) **Rules of Sentencing**
 - *Kienapple* principle, multiple sentences, maximum and minimum sentences, pre-sentence custody, step principle
 - *Manson*, chapter 6
 -

Part III – Sentencing Options

6. Oct 26
- 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
 -
7. Nov 2
- a) **Ancillary Orders**
 - DNA orders, weapons prohibitions, driving prohibitions, restitution orders, forfeiture orders, animal prohibitions, public place prohibitions (*Code* s. 161)
 - *Manson*, chapter 9 F-G
 -

Part IV – Sentencing Procedure

- b) **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
 -

c) 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
-

Part V – Sentencing for Particular Offences

8. Nov 9

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 1
-

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 2
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9. Nov 16

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 3
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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 4
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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 5
-

Part VI – Sentencing of Specific Offenders

10. Nov 23

a) Young Offender Dispositions

- Principles in the *YCJA*, sentencing options, restrictions to custody, maximum and minimum sentences, transfer to adult court, serious violent offence designations
 - *Coursepack*, tab 6
-

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 7
-

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. Nov 30

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 8

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

- Mental disorders, diversion of mentally disordered accused, not criminally responsible finding, mitigation of sentence, mental health court
- *Coursepack*, tab 9

**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 10

**Part VIII – Review**

12. Dec 7

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.