

**Course Outline**

<b>COURSE:</b>	<b>LAWS 4308 C</b>
<b>TERM:</b>	<b>Winter 2012</b>
<b>PREREQUISITES:</b>	<b>Fourth-year Honours standing and LAWS 2302. This course may not be taken by students who have completed the course as a special topics course.</b>
<b>CLASS:</b>	<b>Day &amp; Time: Tuesdays, 8:35-11:25</b> <b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR:</b>	<b>Professor Diana Young</b>
<b>CONTACT:</b>	<b>Office: LA D498</b> <b>Office Hrs: Tuesdays 12 p.m. to 1 p.m. or by appointment</b> <b>Telephone: 613-520-2600 ex 1981</b> <b>Email: Diana_Young@carleton.ca</b>

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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://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 7 March 2012 for April exams. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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**COURSE DESCRIPTION**

The Criminal Justice System carries a heavy burden in our society. The process of sentencing brings this burden into sharp focus. We look to punishment as a means of restoring and maintaining order, articulating society's values, recognizing the harm caused to victims and reasserting their moral worth, and perhaps affirming our own status as members of the law-abiding public through the creation of a stigmatized criminal class. But we also expect sentences to rehabilitate the offender, by encouraging a sense of personal responsibility for the harm caused by the offence and by attempting to address the underlying problems - addiction, psychological disorders, social location - that may have contributed to its commission.

This course aims to provide students with a grasp of general sentencing theory and principles, the variety of sentencing options that are available to judges and the considerations that may influence sentencing decisions. The material will also cover a discussion of some alternatives to traditional forms of punishment and their potential, if any, for reconciling the often conflicting principles and interests at stake in the sentencing process.

The course will also explore the diffuse nature of the power to punish. Legal doctrine and principle only tell part of the story with respect to sentencing practices, and we will see that a complete discussion of the realities of sentencing must include an examination of a complex web of interactions between the law, the discretionary powers exercised by such actors as police, probation officers and Crown Attorneys, and the influences flowing from other kinds of professionals and various communities in society as a whole. Finally, the course will include consideration of the offender's actual experience of punishment, particularly imprisonment, over which the sentencing court has limited control.

## **REQUIRED TEXTS**

The required text for this course is a coursepack that will be available at Allegra Print and Imaging at 1069 Bank Street near Sunnyside. Case law included in the readings will be posted on WebCT.

## **EVALUATION**

### ***Take-Home Assignment – 25% of final grade:***

You will be given a brief take-home assignment, for which you will be required to write a response to two out of three questions. The assignment will be distributed in class on March 6 and will be due on March 20. Your response to each question should be three or four pages in length, double spaced.

### ***Research Paper – 50% of final grade:***

You will be required to submit a research paper dealing with a sentencing issue of your choice. Your essay should be 10-12 pages in length. You will also be asked to submit a very brief outline of your topic to the instructor for approval. This will help to ensure that your proposed topic is feasible and that it will meet the course requirements. The paper is due on December 5.

### ***Group Presentations - 20% of final grade:***

Students will be divided into six groups, each of which will be responsible for presenting a sentencing topic to the rest of the class. Groups may distribute a handout or readings to the class the week prior to the scheduled presentations. The presentations will be 45 minutes to an hour in length, and will be followed by discussion. Other members of the class will be asked to provide brief written feedback on the presentations.

### ***Class Participation – 5% of final grade***

***Extensions on assignments will only be granted in extenuating circumstances, such as a verifiable medical condition or family emergency. Students requesting extensions will be required to provide appropriate documentation.***

## **SCHEDULE**

### **January 10**

Introduction to course

*Readings:* Robert Cover, "Violence and the Word" (1986) 95 Yale L.J. 1601

**January 17**

*Readings:* R.A. Duff, "Consequentialists, Retributivists, and Abolitionists" in *Punishment, Communication, and Community* (New York: Oxford University Press, Inc., 2001)

*R. v. Brush* [1995] O.J. No. 656

*R. v. Sinclair* [2004] M.J. No. 144

Dianne Martin, "Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences and Wrongful Convictions" (2001) 39 Osgoode Hall L. J. 513

*Canadian Centre for Justice Statistics*, "Adult Criminal Court Statistics, 2006/2007"

- a) Why punish?
  - theories of punishment: justifications for the infliction of harm
- b) Judicial discretion
  - discretion and the rule of law
  - Mandatory minimum sentences
- c) Resource management and the public face of fairness
  - Non-judicial sites of discretion
    - i) plea bargains: private negotiations and public consequences
    - ii) defining the offence

**January 24**

*Readings:* *R. v. Arcand* (2010) ABCA 363, 264 C.C.C. (3d) 134, 40 Alta. L.R. (5<sup>th</sup>) **paras. 1-70**

*R. v. Hamilton* (2004) O.R. (3d) 1

- a) Sentencing reform
  - legislative attempts to circumscribe judicial discretion and the problem of disparity
  - sentencing principles and purposes
- b) Special cases – Social location, civil unrest and the politics of sentencing

**January 31**

*Readings:* *R. v. Arcand* **paras 92-181**

Michelle S. Lawrence and Simon N. Verdun-Jones, *Sentencing Hate: An Examination of the Application of s. 718.2(a)(i) of the Criminal Code on the Sentencing of Hate-Motivated Offences* (2011) 57 Crim. L.Q. 28

Leslie J. Moran, *The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform* (2004) 49 McGill L.J. 925

*R. v. F.A.G.* [2003] Y.J. No. 130;

- a) Ranges and starting points
- b) aggravating and mitigating factors
- Hate crimes
- The identity of victims
- The politics of sentencing

**February 7**

*Readings:*

*R. v. Poorman* (1991), 93 Sask. R. 1, 66 C.C.C. (3d) 82.

*R. v. Hildebrandt* (2005), SKPC 35, Sask. R. 163, 198 C.C.C. (3d) 546.

Kelly Hannah-Moffat et al., *Negotiated Risk: Actuarial Illusions and Discretion in Probation* (2009) 24 Can. J. of Law and Society 391.

- a) fact-finding
  - the evidentiary basis for discretion
  - the role of experts

## February 14

Readings:

*R. v. Arcand* **paras. 71-91, 182-298;**

Nicola Lacey and Lucia Zedner, "Discourses of Community in Criminal Justice" (1995) 22 J. of Law and Society 301.

Diana Young, "Power and Resistance in Community-Based Sentencing" in Dawn Moore and Aaron Doyle, eds., *Critical Criminology in Canada* (Vancouver: UBC Press, 2011).

Excerpt from Julian Roberts, *The Virtual Prison* (Cambridge: Cambridge University Press, 2004)

*R. v. Latimer* [2001] 1 S.C.R. 3.

- a) Sentencing and Courts of Appeal
  - disparity and deference
- b) Charter issues in sentencing
  - the rule of law and conceptions of equality

## Sentencing Options

- a) Sentencing options and the principles of sentencing
- b) "Community based" sentencing
  - Decreasing the prison population
  - Conditional sentences
  - Communities and the criminal justice system – policy and commitment

## February 21

\*\*\*\*\*Reading Week\*\*\*\*\*

## February 28

Readings: Michael Jackson, "Administrative Segregation, The Litmus Test of Legitimacy" in Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Vancouver: Douglas & McIntyre, 2002) 287

Mary E. Campbell, "Gone but Not Forgotten: Should Judges Be Allowed to Remedy by Re-Sentencing?" (2006) Canadian Journal of Criminology and Criminal Justice 48

Martin Silverstein, "The Ties that Bind: Family Surveillance of Canadian Parolees" (2001) 42 The Sociological Quarterly 395.

- a) Prison
  - Corrections and the legitimacy of sentencing – "Violence and the Word" and the prison experience
  - Parole as imprisonment

**March 6**

Readings: *R. v. Gladue* [1999] 1 S.C.R. 688; *R. v. Moses* [1992] Y.J. No. 50

Jane Dickson-Gilmore and Carole La Prairie, "Testing the "Magic": Sentencing Circles in Aboriginal Community Restorative Justice" in Jane Dickson-Gilmore and Carol La Prairie, *Will the Circle Be Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2007) 132.

- a) Aboriginal people and the criminal justice system
  - Problems in equality and the rule of law
  - Sentencing as a means of addressing discrimination and discrimination in sentencing

**Take-home assignment distributed****March 13**

Readings: Murder Victims' Families for Reconciliation, *"Dignity Denied: The Experience of Murder Victims' Family Members who Oppose the Death Penalty"* (Cambridge, Mass.: Murder Victims Families for Reconciliation, 2002)

Rob White, "Restorative Justice and Social Inequality" in Bernard Schissel and Carolyn Brooks, eds., *Marginality and Condemnation* (Black Point, N.S.: Fernwood Publishing, 2002) 381

Rahmi Goel, "Aboriginal Women and Political Pursuit in Canadian Sentencing Circles" in James Ptacek, ed., *Restorative Justice and Violence Against Women* (Oxford: Oxford University Press, 2010) 60.

- a) Sentencing and the Role of Victims
- b) Restorative justice
  - Some restorative justice initiatives – what are we restoring?
  - Community based sentencing revisited – Who are victims and what do we mean by "community"?

**March 20**

Readings: Bryan R. Hogeveen, *"Unsettling Youth Justice and Cultural Norms: The Youth Restorative Action Project"* (2006) 9 J. of Youth Studies, 47.

- a) More on Restorative Justice
  - Other sentencing alternatives: Family Group Conferences and Victim-Offender Mediation
  - Sentencing circles and Aboriginal justice – self-determination and the criminal justice system's conception of Aboriginal culture

**Take-home assignment due****March 27**

Group Presentations:

Group 1 – Drug Treatment Courts

Group 2 – Dangerous Offenders

**April 3**

Group Presentations:

Group 3 – Post-sentence surveillance of sex offenders: Offender Registration programs, Criminal

Code s. 810.1

Group 4 – Mentally Ill Offenders

**December 1**

Group Presentations:

Group 5 – Sentencing Youth

Group 6 – Women and Prison