

Course Outline

COURSE:	LAWS 4308 D - Sentencing: Theories & Practice
PREREQUISITES:	LAWS 2004 and Fourth-Year Honours Standing
TERM:	Fall 2007
CLASS:	Day & Time: Tuesday, 18:05-20:55 p.m.
	Room: 280 UC
INSTRUCTOR:	Alan Brass
CONTACT:	Office: C476 LA
	Office Hrs: By appointment
	Telephone: (613) 238-5757 (office)
	Email: abrass@alanbrass.ca

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9, 2007 for December examinations and March 14, 2008 for April examinations. With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

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 given 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 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.

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 ZI84-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. Students will 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.

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 2007 (subject to revision)

September 11 Course aims and introduction.

September 18 Sentencing nature, history and justifications, overview.

Required reading:

- *Manson* Chapters 1-4.
- Sections 718-731 and Section 742 *Criminal Code*.

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.

- September 25 General deterrence, specific deterrence and rehabilitation.
 Role of the Complainant (Victim) - factors to be assessed at a sentencing hearing.
Required reading:
- *Manson* Chapters 5 and 7.
- October 2 Aggravating and mitigating factors.
Required reading:
- *Manson Chapter 6.*
 Presentations 1 and 2.
- October 9 Rules of sentencing hearing and the sentencing hearing.
Required reading:
- *Manson Chapters 6 and 8.*
 Presentations 3 and 4.
- October 16 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:
- Summary of Bill C-10.
http://www.prisonjustice.ca/current/Bill_c10_summary.pdf
 - Canadian Criminal Justice Association Position Paper C-10 Gun Sentencing.
<http://www.ccja-acjp.ca/en/c10en.html>
 - John Howard Society Brief regarding C-10
<http://www.johnhoward.ca/document/billC-10/billC10.pdf>
 - Canadian Association of Elizabeth Fry Position on C-10
<http://www.elizabethfry.ca/billC-10/billC-10-nov06.pdf>
 (The above noted links can also be accessed at the Resources on these bills noted at:
[Http://www.prisonjustice.ca/current/call_to_action_0607.html](http://www.prisonjustice.ca/current/call_to_action_0607.html)
Optional Reading: (Recommended)
 - Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and justice System expenditures by Gabor and Crutcher
[Http://www.canada.justice.gc.ca/en/ps/rs/rep/2002/rr2002_1A.pdf](http://www.canada.justice.gc.ca/en/ps/rs/rep/2002/rr2002_1A.pdf)
- Presentations 5 and 6.
- October 23 Conditional Jail Sentences - Are they an appropriate mechanism to deal with offenders. Was Bill C-9 a departure from the fundamental principles of sentencing.
Required readings:

- Summary of Bill C-9.
[Http://www.prisonjustice.ca/current/Bill_c9_summary.pdf](http://www.prisonjustice.ca/current/Bill_c9_summary.pdf)
- 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 7 and 8.

October 30

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](http://www.justicecanada.ca/en/ps/yi/ycja/explan.html)

Female offenders

Required Reading:

R. v. Hamilton

[Http://www.ontariocourts.on.ca/decisions/2006/august/c397.16.html](http://www.ontariocourts.on.ca/decisions/2006/august/c397.16.html)

Presentations 9 and 10.

November 6

Sentencing of Aboriginal Offenders.

Required Readings:

- Section 718.2 of the Criminal Code.
- *R. v. Gladue*, [1999] 1 S.C.R. 688 at:
[Http://www.scc.1exam.4montreal.ca/en/1999/rcs1-688/1999/rcs1688.html](http://www.scc.1exam.4montreal.ca/en/1999/rcs1-688/1999/rcs1688.html)

Miscarriages of justice.

Presentations 11 and 12.

November 13 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 13 and 14.

November 20 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.cja-acjp.ca/en/c27en.html](http://www.cja-acjp.ca/en/c27en.html)

Public Attitude and the Media.

Presentations 15 and 16

November 27 Are specialized courts the future, a look at drug and mental health courts.
Appellate review.

Handouts to be provided.

Appellate Review

Required Reading:

Manson Chapter 12

The Role of Collaborative Justice.

Sentencing: The Future.

Handout to be provided.

Required Reading:

Manson Chapter 13

Essays due.

December 4

Summary of class, question and answer, preparation for the examination.