

Course Outline

COURSE: LAWS 4308 D – Sentencing

TERM: Fall 2008/09

PREREQUISITES: LAWS 2004 and fourth-year Honours standing

CLASS: Day & Time: Wednesday – 18:05-2055
Room: B243 LA (Loeb)

INSTRUCTOR: Tim Wightman
(CONTRACT)

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"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 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.

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 confident to argue in favour of or against a given sentence.

MATERIALS USED

Required Text – A. Manson, *The Law of Sentencing* (Toronto, Ont.: Irwin Law, 2001)

Optional Supplemental Text – *Criminal Code of Canada*

Additional material may be distributed in class.

TEACHING METHOD

Primarily a seminar style with class discussions

METHOD OF EVALUATION

The final grade for the course will be based on the following components:

1. **Student Presentations** (40%)
 - Students will be responsible for presenting topics included in the course outline to the class. These will be group presentations.
2. **Final Exam** (60%)
 - Closed book Examination
 - Exam will be based on assigned readings, class lectures, and class presentations from the full term.

SENTENCING TOPICS**Class Date Topic*****Part I – Introduction***

1. Sept 3 a) **Introduction to the Course**
 - *Course Outline*
2. Sept 10 **Overview of Sentencing**
 - *Manson*, chapters 1-4
3. Sept 17 **Overview of Sentencing (con'd)**
 - *Manson*, chapters 1-4
4. Sept 24 a) **Demonstration of a Sentencing Hearing**

Part II – Principles of Sentencing

5. October 1 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**
 - Multiple sentences, maximum and minimum sentences, pre-sentence custody, restrictive bail conditions
 - *Manson*, chapter 6

Part III – Sentencing Options

6. October 8 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

d) Ancillary Orders

- DNA orders, weapons prohibitions, driving prohibitions, restitution orders, forfeiture orders, public place prohibitions (*Code* s. 161)
- *Manson*, chapter 9 F-G

Part IV – Sentencing Procedure

7. October 15
- a) **The Sentencing Hearing**
- Admissibility of evidence, proving the record, pre-sentence reports, offender's right to speak, joint positions
 - *Manson*, chapter 8
- b) **Sentence Appeals**
- Standard of review, deference to the sentencing judge, launching a sentence appeal, stay pending appeal
 - *Manson*, chapter 12

Part V – Sentencing for Particular Offences

8. October 22
- a) **Sentencing in Homicide Cases**
1. Life sentences, parole ineligibility, faint hope clause, manslaughter sentences
 2. *Manson*, chapter 10
- b) **Sentencing in Domestic Violence Cases**
3. Resolution by peace bond, New Directions program, reluctant/uncooperative victims, *de minimus* assaults
- c) **Sentencing in Sexual Offence Cases**
4. Pertinent sentencing principles, appropriateness of conditional sentences, the *Kienapple* principle, sexual offender registry, public place prohibitions, DNA orders
9. October 29
- a) **Sentencing in Drinking and Driving Cases**
1. Minimum sentences, constitutional exemptions, notice of increased penalty, cases involving death or bodily harm, driving prohibitions
- b) **Sentencing in Drug Cases**
2. Drug offences, sentencing principles under the *CDSA*, effect of addiction, forfeiture of property
- c) **Sentencing in Firearms Offence Cases**
3. What is a firearm, firearm offences, minimum sentences where firearm is used, weapons prohibitions

Part VI – Sentencing of Specific Offenders

10. November 5
- a) **Young Offender Dispositions**
1. Principles in the *YCJA*, sentencing options, restrictions to custody, maximum and minimum sentences, transfer to adult court, serious violent offence designations

b) Sentencing and Socio-Economic Factors

2. Different justice for the rich than the poor?, legal aid, choice of counsel, inability to pay a fine and/or make restitution, sentencing white collar crime
3. *Manson*, chapter 13 B

c) Sentencing and Aboriginal Issues

4. The *Gladue* decision, section 718.2(e) of the *Code*, disproportional representation of Aboriginals in custody, restorative justice, sentencing circles
5. *Manson*, chapter 13 D

Part VII – Victims and the Sentencing Process

11. November 12

a) Victims and the Sentencing Process

6. Victim impact statements, victim witness assistance program, victim fine surcharge, child victims, victim interest groups (MADD)
7. *Manson*, chapter 13 C

12. November 19

a) Professor Evaluation**Part VIII – Review**

13. November 26

a) Discussion of Current Events

1. Class discussion of sentencing recently decided sentencing cases.

b) Review of the Course

2. Review of the subject material covered during the course of the academic year
3. Answer student questions concerning the final examination