

Course Outline

COURSE:	LAWS 2302 B/D – Criminal Law
TERM:	FALL 2019
PREREQUISITES:	LAWS 1001 and LAWS 1002
CLASS:	Day & Time: Wednesday, 14:35 – 17:25 (Section B); Wednesday 18:05 – 20:55 (Section D)
	Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	John HALE, B.Sc., LL.B., B.C.L., member of the Bars of Ontario and NWT
CONTACT:	Office: Room B442 Loeb Building (Contract Instructor’s Office) Office Hrs: By appointment only Telephone: 613.695.4253 Email: John.Hale@Carleton.ca

CALENDAR COURSE DESCRIPTION

The legal and social dimensions of criminal liability and responsibility in Canada, including issues and problems surrounding *mens rea*, *actus reus*, and the attachment of liability. Excuses and justifications, the Canadian Criminal Code and the role of the Charter in the criminal legal system.

COURSE DESCRIPTION SPECIFIC TO THESE SECTIONS OF THE COURSE (SECTIONS B & D)

It is only fair to set out the instructor’s bias at the outset of the course. The course is taught by a practising criminal defence lawyer who agrees with the following:

- (1) the paramountcy and necessity of the Rule of Law;
- (2) the notion that a person is presumed to be innocent of any criminal wrongdoing, subject to a guilty plea or unless proven guilty beyond a reasonable doubt, on the basis of probative and relevant evidence that is legally admissible, and following a trial which accords with the principles of fundamental justice and with the procedures set out in the *Charter of Rights*, the *Criminal Code*, and other legislation;
- (3) the statement that the Canadian criminal justice system, despite its flaws, is fundamentally sound, and that the perceived flaws within the system are attributable to individuals within the system at least as often as they are attributable to the system’s inherent flaws and limitations.

The course is practice-oriented rather than theory-oriented. The instructor, recognizing his innumerable yet still growing number of limitations, tends to de-emphasize the “sociology” aspect of the course that is emphasized in other sections, and is inclined to treat the course as a “law school course”. (In fact our textbook is used by several law schools for their first-year Criminal Law courses.) The instructor’s objective is to instill in the students a solid understanding of basic criminal law concepts, including the essential elements of crimes (*actus reus* and *mens rea*), the burden of proof, and the more common defences to criminal charges.

Discussion of these concepts will inevitably include discussions of the social policies that led to the creation of various offences and defences, but the approach is generally pragmatic. It is the instructor's ultimate objective that students be informed about the workings of the criminal justice system in Canada, with all its strengths and deficiencies, and that students who wish to criticize or defend the criminal justice system do so on the basis of facts rather than on emotion, gut feeling and anecdotal evidence.

The main text for the course is *Learning Canadian Criminal Law* by Stuart and Coughlan. This text is intended for use by first-year law school students. Please buy the 14th edition (2018), as the 13th edition (2015) is out-of-date. Avoid buying used *Criminal Codes*, as recent amendments render old *Codes* obsolete: the current edition is 2020, although a 2019 *Code* should be satisfactory.

A schedule of planned topics and readings is set out below. There may be changes to the schedule, as some topics may take more or less time to discuss than foreseen at present; the accuracy of the schedule will also depend on the release of new decisions from the Supreme Court of Canada and lower courts, and also on questions asked by the class. Unless otherwise advised, students are responsible for doing the readings in the order set out on the Course Outline.

Given the volume of readings expected of you, and the complexity of the material, you are strongly advised to avoid the temptation to save up the readings until the final days before the exams. Experience has shown that such a strategy monumentally backfires in the vast majority of cases. Keep up with the readings from the very beginning of the course and you will find the course material to be engaging, thought provoking and easily digestible; wait a few weeks and you will find the prospect unpleasantly daunting.

I acknowledge that the readings are quite heavy. There is no way that we can cover all the material within the 2.5 hours or so of class time each week. Therefore I will touch on what I think are the most important concepts, and will make reference to the cases, but will not go over all of the readings with you in class. It is important that you do the readings in advance so that my explanations may help you understand what you have read. Please never hesitate to ask questions in class about the readings, or even about cases that may currently be in the news.

The lecture notes will be posted weekly, in summary form, on the course website. I will also post the slides, and will do my best to post them in advance of class. Review problems and sample exams will also be posted later on in the term.

Even though lecture notes and slides are being posted weekly, and the exams are open-book, I strongly encourage you to attend class regularly. The material that we are covering is best understood from discussing it, not just reading about it. By the same token, I strongly encourage students to set up study groups in order to discuss course material. The more you talk about it, the better you will understand it.

I hope that you enjoy the course, and I look forward to hearing from you as we go along. Course-content-related questions sent to me by e-mail may be answered to the class as a whole so that all students have the same information.

REQUIRED TEXTS

- REQUIRED READING**
- (1) **Stuart, Don and Steve Coughlan:**
Learning Canadian Criminal Law (14th ed.), Carswell, 2018
 - (2) *Pocket Criminal Code 2020* (Carswell, 2019) **OR**
Tremear's Annotated Criminal Code 2020 (Carswell, 2019)

OR

Martin's Annotated Criminal Code 2020 (Student Edition)
(Thomson Reuters, 2019)

All of the above are *required purchases*, i.e., you must have the Stuart & Coughlan text and one version of the *Criminal Code*. The texts are available at the University bookstore and at Haven Books. Used copies of the *2019 Criminal Code* are more than adequate; earlier editions are useful but in many respects obsolete, and you may purchase them at your own risk. Try to avoid used versions of the 13th Edition of the Stuart and Coughlan text, no matter how cheap you find it, as the book has been substantially revised in the 14th edition and page references will be very confusing. You are permitted to bring copies of these required and recommended readings to the exams in February and April.

In lieu of buying a *Criminal Code*, you may download the *Code* (and related statutes) from the Justice Canada website: <http://laws.justice.gc.ca/en/>.

SUPPLEMENTARY TEXTS – N/A**EVALUATION**

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

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

- (1) **Take-home mid-term examination (distributed online on October 30 and due November 1)**, covering the first 6 lectures *as taught* as opposed to *as per the course outline* (hopefully the same).
- (2) **Final examination**, 3-hour open-book, to be held in the formal exam periods at the end of the course (December 9-21, 2019), covering lectures 7-12; again, the exam covers the lectures *as taught*.

“Open book”, for the purpose of the final exam, means that the following materials may be brought into the examination room: (1) any required text, including an annotated *Criminal Code*; (2) your lecture notes (or any notes that you shared with a study group or that you have with the permission of their author), and (3) any material downloaded from the course website on cuLearn, including the instructor’s lecture notes and Keynote/PowerPoint slides; (4) any e-mails sent by the instructor. You may make use of a computer or tablet during the exams, as long as your device is in Airplane Mode (i.e., not connected to the internet or to other computers).

Grade breakdown: The exam that you do better on will be worth 60% of your final grade; the other exam will be worth 40% of your grade.

SCHEDULE**COURSE OUTLINE¹**

<u>Class No.</u>	<u>Readings²</u>	<u>Topic(s)</u>
1 September 4	81-84 (74-78) ³ 84-102, 109-112 (78-98, 105-108)	I. Introduction and Overview (1) Administrative matters (2) Expectations (instructor's and students') (3) Analysis: Approaches to defining "crimes". (4) Briefing a case II. Criminal Procedure in a Nutshell A. Classification of offences B. Court structure in Ontario – overview; appeals C. Compelling attendance in Court D. Bail E. Pre-Trial procedures F. Trial procedure, including the burden of proof
2 September 11	177-258 (169-248)	III. Elements of an Offence A. The "Voluntary Act" Requirement (<i>actus reus</i>) 1) Introduction 2) "Actus reus" = [voluntary] activity, circumstances and consequences 3) Commission of an unlawful act
3 September 18	258-297 (248-287) 297-313 (287-303) 313-358 (303-348)	1) Omissions 2) Voluntariness 3) Causation
4 September 25	359-361 (349-351) 361-367 (351-357) 367-424 (357-414)	B. The Fault Requirement (mens rea or negligence) 1) Introduction 2) Subjective/objective distinction 3) Public welfare (regulatory) offences
5 October 2	424-471 (414-461) 471-472 (461-462)	4) Crimes i. Murder and the <i>Charter</i> ii. Subjective awareness rarely required 5) 3 types of crime since <i>Creighton</i> i. Crimes requiring subjective

¹ Tentative outline, subject to change depending on the release of noteworthy cases throughout the term

² All readings are from Stuart and Coughlan, *Learning Canadian Criminal Law* (14th ed.)

³ Page numbers in parentheses are page numbers in the 13th edition of the text

<u>Class No.</u>	<u>Readings²</u>	<u>Topic(s)</u>
	473-509 (462-499) 509-555 (499-542) 555-579 (542-566)	awareness ii. Crimes of objective fault iii. Crimes based on predicate offences
October 9		No Lecture (Prof in NWT)
6 October 16	1079-1109 (1045-75) 1111-1135 (1077-1101)	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
Fall Break October 22-26		No Lecture
October 30		Midterm exam to be distributed via email at 9am, due November 1 at 5pm. Based on lectures 1-6 as taught, not as per the syllabus.

7 October 30	1135-49 (1101-19) 1149-65 (1119-31) 589-621 (575-606) 621-724 (606-698)	(2) Conspiracy (3) Counseling IV. Rape and Sexual Assault A. Lack of consent (review) B. Rape laws C. Crimes of Sexual Assault
8 November 6	725-747 (699-721) 747-776 (721-755) Part XX.1 C.C. 778-806 (757-785)	V. True Defences A. Mistake 1. Mistake of fact 2. Mistake of law B. Incapacity and Impairment 1. Insanity / Mental Disorder (a) Statutory provisions (b) Jurisprudence
9 November 13	806-867 (785-847) 867-925 (848-893)	1. Automatism 2. Intoxication
10 November 20	927-933 (895-900) 933-957 (901-920) 957-959 (920-925)	IV. JUSTIFICATIONS AND EXCUSES A. Introduction / Air of reality B. Defence of Person C. Defence of Property
11 November 27	959-985 (925-951) 986-1022 (951-986)	D. Necessity E. Duress
12 December 4	1022-49 (986-1016)	F. Provocation

	1056-77 (1023-43)	V. POLICY DEFENCES <i>A. Entrapment</i>
	1198-1203 (1164-1168)	VI. SPECIAL TOPIC (TIME PERMITTING) <i>A. Sentencing of Aboriginal Offenders: The Impact of R. v. Gladue</i>
		EXAM REVIEW
December 9-21		FINAL EXAMINATION (LECTURES 7-12) (Date, time and location TBA)

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website:

<https://carleton.ca/equity/accommodation/academic/students/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable).

<https://carleton.ca/pmc/students/accommodations/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at:

<https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit:

<https://carleton.ca/sexual-violence-support/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist.

<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://carleton.ca/equity/accommodation/academic/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>