

Course Outline

COURSE:	LAWS 4306A - Criminal Law Issues – National Security
TERM:	FALL 2018
PREREQUISITES:	Fourth-year Honours standing and LAWS 2908, LAWS 2301, LAWS 2302
CLASS:	Day & Time: Mondays, 6:05 p.m. – 8:55 p.m. Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Michael S. Purcell, B.A. (Hons.), J.D. Assistant Crown Attorney Ministry of the Attorney General Criminal Law Division
CONTACT:	Office: Upon Request Office Hrs: TBA Telephone: (613) 314-1449 Email: msplitigation@gmail.com

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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

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) www.carleton.ca/pmc

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 Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source.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:
<http://carleton.ca/studentaffairs/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: 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: students.carleton.ca/course-outline

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/>

CALENDAR COURSE DESCRIPTION

Selected issues and problems in the area of criminal law. The topics may vary from year to year depending on demand and interest and are announced in advance of registration.

COURSE DESCRIPTION

This course will explore contemporary issues in criminal law through the lens of national security.

Over the last fifteen years, Parliament has passed several laws to respond to the threat of terrorism. Some argue that the effect of these laws is the unnecessary infringement of *Charter* rights without any appreciable gain in national security. Others argue that neutering certain *Charter* rights is justifiable to support anti-terrorism objectives and effective law enforcement. One thing is certain: the relationship between citizen and state will be shaped by this debate for decades to come.

In an effort to find answers, this course will focus on three central questions: (1) When should personal privacy yield to state security? (2) When should thought become criminal? and (3) To what degree is rehabilitation an effective tool to combat extremism? In answering these questions, the law surrounding state surveillance, inchoate offences (acts that have yet to be committed), and forensic risk assessment will be explored with a comparative view to national security blueprints and criminal law in other countries.

Please note: *Any views or opinions expressed during the course are personal to the Instructor and do not represent the views or opinions of the Ministry of the Attorney General, Crown Law Criminal, or the Government of Ontario.*

REQUIRED TEXTS

There are no required texts for this course. All readings will be posted to CuLearn.

REQUIRED LISTENING

“Caliphate”, *The New York Times*, available on Apple Podcasts, RadioPublic, Stitcher, Spotify, and online: <https://www.nytimes.com/interactive/2018/podcasts/caliphate-isis-rukmini-callimachi.html>

SUPPLEMENTARY TEXTS

For additional context and analysis, I encourage you to consult the following sources:

- Canadian Network for Research on Terrorism, Security & Society, available at: www.tsas.ca
- Craig Forcese’s *National Security Law – Canadian Practice in Comparative Perspective* Blog, available at: <http://craigforcese.squarespace.com/national-security-law-blog/>
- Forcese, Craig & Kent Roach, *False Security: The Radicalization of Canadian Anti-terrorism*, (Toronto: Irwin Law, 2015)

EVALUATION

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.

PARTICIPATION	<p>This course is intended to promote critical thinking through meaningful exchange of ideas. For that to happen, students are expected to complete the assigned readings. Students are encouraged to share their comments and opinions, but they should be relevant to the themes and subject-matter of the course, clearly articulated and substantiated. There is no right or wrong answer or perspective.</p> <p>Attendance will be taken each class. Deductions from your participation grade will be made for unexcused absences (- 2%) and lateness (-1%).</p>	20%
IN-CLASS FACILITATION	<p>At the beginning of each class, selected students will facilitate a 10-minute facilitation based on the assigned reading(s).</p> <p>Additional information about the class facilitation is posted on CuLearn.</p>	20%
FINAL EXAM (Take-Home)	<p>Exams will be distributed <u>in-person</u> at the <u>end of class</u> on December 7, 2018.</p> <p>The exam will consist of short and long answer questions (total of 80 possible points) and multiple-choice questions (20 possible points). The short and long answer questions will evaluate tend toward evaluation of facts, whereas the short and long answers will tend toward analysis and comprehension of course issues.</p> <p>Due: Printed, <u>in-person</u> at the Department of Law and Legal Studies office, Room C473 Loeb Building, by 4:30 p.m. on December 21, 2018</p>	60%

SCHEDULE

WEEK 1: September 10, 2018

TOPIC: COURSE INTRODUCTION

- Review of course outline & expectations
- Class structure
- Overview of course themes & issues
- Q & A

WEEK 2: September 17, 2018

TOPIC: CRIMINAL LAW REFRESHER

- The role of Parliament, the Courts, the Crown, and the defence
- The *Charter of Rights and Freedoms*
- Criminal offence elements
- Rules of evidence & procedure
- Where national security and criminal law overlap

WEEK 3: September 24, 2018

TOPIC: THE PAST, PRESENT & FUTURE OF EXTREMISM/TERRORISM

- The political and philological origins of “terrorism”
- Terrorism/extremism/radicalism?
- The international context
- The domestic context

WEEK 4: October 1, 2018

TOPIC: THE NATIONAL SECURITY FRAMEWORK IN CANADA

- The national security apparatus in Canada
 - Parliament
 - Law Enforcement
 - Intelligence Agencies
 - Federal Departments/Ministries
 - Courts
- The domestic & international stakeholders
- Investigative tools & challenges

WEEK 5: October 8, 2018

*** THANKSGIVING BREAK ☺ ***

WEEK 6: October 15, 2018

TOPIC: THE LEGISLATIVE & JUDICIAL FRAMEWORK

- Counter-Terrorism Legislation
 - *Bill C-59, An Act Respecting National Security*
 - *Anti-Terrorism Act, 2015 (formerly Bill C-51)*
 - *Anti-Terrorism Act, 2001*
- Federal vs. Provincial jurisdiction
- The intelligence-to-evidence dynamic

WEEK 7: October 22, 2018

*** FALL BREAK ☺ ***

WEEK 8: October 29, 2018

TOPIC: THE LAW APPLIED

- Conspiracies: *R v Sher*, 2014 ONSC 4790
- Entrapment: *R v Nuttall*, 2016 BCSC 1404
- Online activity: *R v Hamdan*, 2017 BCSC 1770
- NCR: *R v Ali* 2018 ONSC 2838

WEEK 9: November 5, 2018

TOPIC: INCHOATE OFFENCES & PEACE BONDS

- When does thought become crime?
- *R. v. Hersi*, 2014 ONSC 2897
- Peace bond vs. criminal charge
- Law as a preventative tool

WEEK 10: November 12, 2018

TOPIC: SENTENCING

- Purpose and Principles of Sentencing
- Review of sentencing decisions in Canada
- Risk Assessment
- The state of counter-radicalization in Canada
- Is rehabilitation possible?

WEEK 11: November 19, 2018

TOPIC: THE SURVEILLANCE STATE

- Privacy & surveillance law in Canada
- Recent jurisprudence

WEEK 12: November 26, 2018

TOPIC: THE POWER OF “DISRUPTION”

- Collecting vs. acting on intelligence
- When is disruption necessary or justified?

WEEK 13: December 3, 2018

TOPIC: TBA

WEEK 13: December 7, 2018

TOPIC: REVIEW & EXAM DISTRIBUTION