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**Course Outline**

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<b>COURSE:</b>		<b>LAWS 4306 C - Criminal Law Issues</b>
<b>TERM:</b>		<b>Fall 2016</b>
<b>PREREQUISITES:</b>		<b>Fourth-year Honours standing and LAWS 2301, LAWS 2302</b>
<b>CLASS:</b>	<b>Day &amp; Time:</b>	<b>Mondays 6:00 – 9:00 PM</b>
	<b>Room:</b>	<b>Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>		<b>Adriana Poloz</b>
<b>CONTACT:</b>	<b>Office:</b>	<b>B442 Loeb Building</b>
	<b>Office Hrs:</b>	<b>By appointment only</b>
	<b>Email:</b>	<b>adriana.poloz@carleton.ca</b>

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**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:** 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: <http://carleton.ca/equity/>

**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: <http://carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder

(ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto: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 to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

### **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/>

### **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/>

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## **COURSE DESCRIPTION**

This course will explore the delicate balance between the investigation of crime and the protection of individual rights, with a particular focus on some of the more controversial aspects of fact finding and criminal evidence. Topics will include the use of investigative tools used to elicit confessions, current legal and procedural protections against the admission of unreliable evidence and the prospect of wrongful convictions.

## **REQUIRED READINGS AND COURSE MATERIALS**

All materials will be available through cuLearn.

## **EVALUATION**

### **All components must be completed**

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

#### **i) Participation: (20%)**

Student grades will reflect attendance and participation in class discussions. As this is a seminar style class, student participation is an essential element of the learning process.

#### **ii) Student-led Presentation & Handouts (30%)**

Groups of two students will be required to present on select readings to the class.

Presentations are expected to last approximately 45 minutes and should provide an overview of the author's central thesis, a description of the supporting arguments, and critical reflection on the strengths of these points. Students are further required to develop 2 questions reflecting the article to guide class discussions.

Students must also prepare a handout for classmates in attendance to be provided at the beginning of the presentation.

The presentation and handout will be graded using the following criteria:

- (a) Demonstration of the students' understanding of the topic (40%),
- (b) Ability to identify and initiate discussion on critical issues related to the topic (40%),
- and (c) Delivery of presentation (20%).

**iii) Final Assignment (50%)**

Students are required to submit a *reflective paper* not to exceed 3000 words that draw on the readings from at least *two* discrete areas of the course, *beyond* the subject matter of their in-class presentation. Students are therefore encouraged to consider and engage the whole curriculum and spectrum of issues in their approach. The use of outside materials is not required. Format: PDF document, size 12 font. NB: word count must be respected with use of footnotes and full citation of articles. Footnotes and bibliography do not count towards word count. Final assignments are to be submitted by December 9<sup>th</sup>, 2016 at 6PM.

**Final Assignment Grading****Style**

Has the author used proper formatting, referencing and grammar? Has the word count been respected?

**Structure**

Has the author presented a clear and persuasive argument for the reader? Was the introduction and overview concise and reflective of the supporting points?

**Content**

Has the author demonstrated a clear understanding of the subject matter? Have arguments been supported by course materials and references? Has the author demonstrated thoughtful, reflective and concise analysis of the subject matter?

**Research**

Has the author's approach been thoroughly researched, substantiated and properly referenced?

**Analysis**

Has the author presented a thorough understanding and engagement of the course materials? Has the author satisfied the stated requirements of preparing a set of reflections that engage at least two other areas of the course beyond the section that was the subject of their in-class presentation? Has the author demonstrated critical treatment and analysis of the subject matter?

**Referencing**

The Law Department recommends that you follow the Legal Style set out here:

[http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal\\_style\\_sheet.pdf](http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf)

However, if you prefer another referencing style you may use it provided that you are consistent throughout and the style is academically recognized (e.g. Harvard, MLA, Chicago). If you are unsure about the proper format of a particular referencing style, please consult a referencing style guide from the library.

The Academic Writing Centre and Writing Tutorial Services provide students and faculty assistance with the teaching and learning of academic writing. Please contact them in advance and make use of their services:  
<http://www.carleton.ca/wts/>

### **Tips for avoiding plagiarism:**

- Allow yourself enough time to work on your assignment, so you are not tempted to copy text from other sources.
- Take notes carefully so that you include specific sources and page numbers. Be sure to clearly identify which ideas are your own and which come from your sources.
- Reference as you write, rather than leaving all the referencing to the end. Even if you just use shorthand as you write (i.e. note the author's last name and page number), you can then go back and do the formatting later. It is always better to reference as you go – it will save you time in the long run and you are less likely to forget something.
- Consult a referencing guide! If you are unsure about referencing format or procedure, check a referencing style guide.
- For more help see: <http://www.library.carleton.ca/help/citing-your-sources>

### **SEMINAR SCHEDULE**

#### **September 12, 2016**

- Introduction
- Charter provisions and protections
- Common law confessions rule
- The principle against self-incrimination
- Fundamental Justice

**September 19, 2016**

- Jurisprudence on confessions
- Police questioning, admissions and evidence
- State vs. Accused interests
- Unreliable evidence

**September 26, 2016**

- Case Study: Introducing Mr. Big
- Documentary: Mr. Big Stings: Cops, Criminals and Confessions; Fifth Estate – CBC (2015)
- Implications of *R. v. Hart*, 2014 SCC 52, on the legal landscape and the admissibility of “Mr. Big” confessions
  - Probative value vs. prejudicial effect
  - Abuse of process determinations
  - Markers of reliability
  - Judicial application and tactical effect post-*Hart*

**Student-led presentations / required readings for discussion****October 3, 2016**

- Paciocco, David, "Charter Tracks: Twenty-Five Years of Constitutional Influence on the Criminal Trial Process and Rules of Evidence." *Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 40. (2008).
- Nader R. Hasan, Three Theories of "Principles of Fundamental Justice," (2013), 63 S.C.L.R. (2d).

**October 10, 2016** [Thanksgiving - no class]**October 17, 2016**

- David M. Paciocco, Self-Incrimination: Removing the Coffin Nails. *McGill Law Journal*, (1989), Vol. 35.
- Lisa Dufraimont, The Patchwork Principle against Self-Incrimination under the Charter, (2012), 57 S.C.L.R. (2d).

**October 24 2016** [Fall Reading Week – no class]

**October 31, 2016**

- Steven Penney, What's wrong with self-incrimination? The wayward path of self-incrimination in the post-Charter era, (2003): Part I: Justifications For Rules Preventing Self-Incrimination (2003), 48 Criminal Law Quarterly pp 249- 266 and Part II: Self-Incrimination in Police Investigations (2004), 48 Criminal Law Quarterly, pp. 280 – 336.
- Hamish Stewart, The Confessions Rule and the Charter, (2009) 54 McGill L.J. 517.

**November 7, 2016**

- Lisa Dufraimont, Common Law Confessions Rule in the Charter Era: Current Law and Future Directions. Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference, (2008).
- Steven M. Smith, et al., Using the Mr. Big technique to elicit confession, Psychology, Public Policy, and Law, (2009), Vol. 15, No. 3, 168–193.

**November 14, 2006**

- Jamie Klukach and Diana Lumba, The Right to Pre-trial Silence: Where Does It Stand and What's Next after Singh? Supreme Court Law Review (2008), 42 S.C.L.R. (2d).
- Timothy E. Moore, Peter Copeland, and Regina A. Schuller, Deceit, Betrayal and the Search for truth: Legal and Psychological Perspectives on the 'Mr. Big' Strategy, (2009) 55(3) C.L.Q. 348.
- Scenario-based discussions

**November 21, 2016**

- Timothy E. Moore, Lying for the Truth: Do 'Mr. Big' tactics generate reliable admissions? Osgoode Hall, (2009).
- Steven Penney, Police Questioning in the Charter Era: Adjudicative versus Regulatory Rule-making and the Problem of False Confessions, (2012), 57 S.C.L.R. (2d).

**November 28, 2016**

- Lisa Dufraimont. Realizing the potential of the principled approach to evidence, (2013) *Queen's Law Journal*.
- David Milward, Opposing Mr. Big in Principle, (2013) 46 UBC L Rev 81 – 119.

**December 5, 2016**

- Christopher Sherrin, False Confessions and Admissions in Canadian Law, (2005), 30 Queen's Law Journal. 659.
- Timothy Moore and C. Lindsay Fitzsimmons, Justice Imperiled: False Confessions and the Reid Technique, (2012), 57 C.L.Q. 509.

**December 9, 2016**

- Wrap Up session