

Course Outline

COURSE: LAWS 4308C – Sentencing

TERM: WINTER 2021

PREREQUISITES: LAWS 2908, CRCJ 3001 or CRCJ 3002 and LAWS 2301, LAWS 2302 and fourth-year Honours standing.

CLASS: **Day & Time:**
 Room: Please check Carleton Central for current Class Schedule.
 All Courses in the Fall 2020 term are offered online.
 Lectures in this course will be delivered online through the Zoom platform. See below for more details.

INSTRUCTOR: Roger Rickwood, Ph.D., LL.M., LL.B.
(CONTRACT)

CONTACT: **Office:**
 Office Hrs: WEDNESDAYS – 4:00-5:00 p.m. These will be conducted on a dedicated mobile phone. Should you wish to talk to me at a different time, please set up an appointment with me by email.

Telephone: 613-712-2811
Email: Roger.rickwood@carleton.ca

CALENDAR COURSE DESCRIPTION

Theories of sentencing, current sentencing laws and practices, perceptions of sentencing. Data on sentencing practice across Canada. Reforms in other jurisdictions. Critical review of the Canadian Sentencing Commission. Multidisciplinary approach using research and theory in law, criminology, social psychology and sociology.

DEFINITION OF SENTENCING AND GENERAL COURSE DESCRIPTION

Sentencing is not defined in the *Criminal Code of Canada* by the Parliament of Canada. The 1987 *Report of the Canadian Sentencing Commission (RCSC)* chaired by His Honour J. R. Archambault, S.P.C.J. defined “sentencing” as “the judicial determination of a legal sanction to be imposed on a person guilty of an offence”. The *RCSC* stated that “definition implies that sentencing is a different concept from punishment, though obviously most sentences do involve some degree of punishment and coercion.” According to the *RCSC* a “sentence” ... “is something that must be carried out, and therefore, there must be a reasonable level of accountability in the administration of sentences”. The *RCSC* then stated that sentences “... should be what they are said to be”.

The *RCSC* suggested the fundamental purpose of sentencing is to preserve the authority of and to promote respect for the law through the imposition of just sanctions. The *RCSC* made this suggestion in the context of the overall purpose of criminal law as being the maintenance of a just, peaceful and safe

society. Thus, the role of sentencing is to enhance the protection of society. This philosophical statement has been adopted with approval by Canadian courts, in particular by the BCCA in *R. v. Sweeney (1992)*. It also formed the foundation for Bill C-41 which came into force in 1996 and declared in the *Criminal Code of Canada* the “Purpose and Principles of Sentencing” in ss. 718, 718.1 and 718.2 and made a number of specific amendments to sentencing powers and the sentencing process. Subsequently, special provisions regarding aboriginal sentencing were added to the *Criminal Code*.

In a nutshell, the *Criminal Code* sets out four basic principles for sentencing:

1. Denunciation
2. Deterrence (specific and general)
3. Rehabilitation
4. Protection of the public

In addition, the *Code* also includes two further principles:

1. Reparation
2. Responsibility

These principles are shaped by the concept that any sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. The *Code* requires consideration of aggravating or mitigating factors, similar sentences for similar crimes and offenders and special consideration for aboriginal offenders. The underlying philosophy is that the sentence should be most severe for the worst offence and the worst offender. These principles have been influenced by utilitarianism and the ideas of Emile Durkheim.

Sentencing is regulated by the *Charter of Rights and Freedoms*, although the term does not appear in the text. See Sections 7 to 14 and S. 15. Most important are ss. 7 and 12. Sentencing is also impacted by the *Canadian Victims Bill of Rights* (S.C. 2015, c.13, sc.1), (although no definition is provided there). See also the *Corrections and Conditional Release Act*, sections 3 and 3.1.

This course will cover the tools of sentencing as set out in the *Criminal Code*. These tools are:

1. Discharges
2. Fines
3. Probation
4. Restitution
5. Community service
6. Intermittent sentence
7. Recognizance to keep the peace
8. Imprisonment
9. Conditional sentences
10. Sentencing hearing

The course will consider the Harper Government’s “get tough” on crime law changes, such as the *Safe Streets and Communities Act (2011)* which set off successful court challenges and was finally modified in part by the first Trudeau government in *Bill C-75, An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts* (enacted and received Royal Assent on June 21, 2019). A new minority

government and COVID-19 events have slowed further changes.

TEACHING/LEARNING METHODOLOGY

LAWS 4308 this semester will be delivered online through synchronous methodology. Lectures and exercises will be recorded and posted on cuLearn. The Zoom conferencing platform will be used. These synchronous discussions will follow lecture modules and exercises. Zoom will also be used for group presentations.

Assignments & Exams will be posted on cuLearn and the students will send their work to me by email.

Set office hours will be conducted through a dedicated mobile phone to ensure confidentiality. If you wish to speak to me at a time other than the designated office hours, please contact me by email to set up an appointment time.

LAWS 4308 uses learning outcomes to inform students of evaluation expectations and to enhance their abilities to perform in their active learning domains, i.e. cognitive, psychomotor and affective. Students will acquire core substantive knowledge of sentencing, learn analytic problem solving and preparation and communication of findings. Students will observe and identify values inherent and expressed in the institutional sentencing and corrections system, reflect on them, and recommend reforms to facilitate greater equity.

The Department of Laws and Legal Studies encourages respectful discussion, debate and exploration of ideas in class environments. LAWS 4308 will be an environment where people of differing values, abilities, identities, backgrounds and ways of expression are equally included and respected.

LEARNING OUTCOMES

- 1) At the end of the course students should understand the role and importance of the sentencing process in the criminal law and justice system in our free, diverse and democratic society.
- 2) Students should know the theories, goals, justifications of sentencing and be able to focus on the evolving Canadian experience in law, policy and institutions.
- 3) Students should know the statutory purposes and principles of Canadian sentencing law and policy, as approved by Parliament and applied through judges using rules, case law, judicial discretion and the *Charter*.
- 4) Students should comprehend the sentencing hearing process after conviction, and be able to outline steps and methodologies used by institutional actors and stake-holders to produce appropriate determinations.
- 5) Students should understand different sentencing options and tools available to judges to fit offender, societal and victim needs by community and correctional arrangements.
- 6) Students should be able to identify, reflect and value the ethical, moral and societal beliefs underlying sentencing and correction approaches in order to assess their efficiency, effectiveness, and social consequences with a view to reform and establish equitable standards.

- 7) Students should develop analytic, advocacy and communication skills in doing assignments, such as reflections, reports, submissions, determinations, correction plans, case studies, hypothetical appeals and judicial review and legislation change policy briefs

REQUIRED TEXTS, MATERIALS AND STATUTES

Manson, Allan S., Healy, Patrick et al -*Sentencing and Penal Policy in Canada: Cases, Materials and Commentary*, 3rd edition (Toronto: Emond Montgomery Publications Ltd., 2016) ISBN: 978- 1-555239-655-1, hardback (Available at Carleton University Bookstore) (Available on e-book service through MacOrdm Library) (A digital version is available from the publisher.) Cited as Manson & Healy in readings

Manson, Allan, *The Law of Sentencing*, (Toronto: Irwin Law, Inc.: 2001), ISBN 978-1-552-029- 1, paperback (Available at Carleton University Bookstore) (Available on e-book service through MacOrdm Library) Cited as Manson in readings

Bedu, Hugo Adam and Kelly Erin, “Punishment”, *The Stanford Encyclopedia of Philosophy*, Fall 2015 edition) on line at <https://plato.stanford.edu/archives/fall2015/entries/punishment/>

Criminal Code of Canada, <https://laws-lois.justice.gc.ca/eng/acts/C-46/> (complete Criminal Code) or at <http://www.criminal-code.ca/criminal-code-of-canada-alphabetical-A.html> (Alphabetical, numerical and categorical listings of Criminal Code) Cited as CCC.

Corrections and Conditional Release Act, at <https://laws-lois.justice.gc.ca/eng/acts/C-44.6/> cited as CCRA

Universal Declaration of Human Rights, 1948 (UNGA) at <https://www.un.org/en/universal-declaration-human-rights/> Cited as UDHR

Canadian Victims Bill of Rights, (S.C. 2015, c. 13, c. 2) at <https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html>

Youth Criminal Justice Act, at <https://laws-lois.justice.gc.ca/eng/acts/y-1.5/> Cited as YCJA

Controlled Drugs and Substances Act, at <https://laws-lois.justice.gc.ca/eng/acts/C-38.8/page-1.html#docCont> Cited as CDSA

Canadian Charter of Rights and Freedoms, Part I, CA 1982 – at <https://laws-lois.justice.gc.ca/eng/const/page-15.html>

Fetherston, Donald N., “The Law and Young Offender”, chapter 4 in John Winterdyk, ed., *Issues and Perspectives on Young Offenders in Canada*, (Toronto: Nwlaon ollww, 2004), ISBN: 978-0176416676.

The required chapter posted on cuLearn.

Rickwood, Roger, *Synopsis of Star Trek Episode – “Repentance”* from January 31, 2001, Season 7, Episode 13 (in some locations it states that it is episode 12).

Selected additional materials as posted on cuLearn.

All Power Point materials from Class Group Presentations as posted on cuLearn.

RESEARCH RESOURCE

Henein, Marie, *Martin’s Annual Criminal Code*, 2020, (Toronto: Thompson Reuters). This book provides comments on sections of the *Code* and chart of average sentences imposed on convicted felons in B.C. It provides updates of cited case law.

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.

Reflective Review of “Repentance” – Star Trek episode	- 15%	Due by email – January 27
Mid-Term Test	- Posted on cuLearn	- 25% Due by email – Feb. 10 (Open Book)
Group Presentation	- Through Zoom	- 20% (Weeks 7-12 – Mar. 3-Apr. 7)
Reflections on One Group Presentation	-	- 5% Due by email – April 9
Take-Home Final Exam-Policy Case Study (Open Book) - Posted on cuLearn	-	- 25% -Due in exam period (Apr. 11-23) – to be sent to me by email.
Course Participation	- In discussions and exercises	- 10% -Based on days’ discussions and activities – weeks 1 to 12

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

There will be a penalty of 2 per cent per calendar day for late Reflective Essay and mid-term exam.

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the

longer extension (up to a maximum of 14 days).

Reflective Essay - (Total course value mark 15%) - Due January 27 by email

This is a review of the television episode of Star Trek entitled “Repentance” from January 31, 2001, Season 7, episode 13 (some places say it is Episode 12). The Library could not obtain permission to access this episode. I have written up a synopsis of the episode and posted it on cuLearn. You will need to write your essay on the positive and negative values of the Nygean sentencing and corrections process, principles and outcomes compared to those of the United Federation of Planets and our sentencing process, principles and outcomes approach.

The assignment will be a minimum of 5 pages of text double spaced and no longer than 10 pages of text. It must include a title page, table of contents, page numbers and bibliography and your reasoned opinion. Noncompliance with these rules will mean a reduction of marks.

The late penalty of 2% per calendar day applies.

Class Participation (Total course mark value 10%) (weeks 1-12, Jan. 13-Apr. 7, 2021)

There will be no attendance registration taken. Your participation mark is based on active participation in zoom class discussions and completion of small activities and exercises.

Group Presentations (Total course mark value 20%) – Power Points and/or Aide Memoire to be sent by email after presentation (weeks 7-12, March 3-April 7, 2021)

“In class” presentations will be done in groups of students after the mid-term test using concepts, laws, practices and cases set out in the texts. Presentations will normally be based on reading topics for the selected week. However, this can be modified. Presentations can also be done on organizations that are active in sentencing and penal reform such as John Howard Society, Elizabeth Fry Society, Canadian Civil Liberties Association, Corrections Canada and the Parole Board of Canada.

The same mark will be given for all members of a group. Students failing to attend their group presentation must present appropriate documentation for their absence or be penalized.

There are 8 presentation slots. Form your group as soon as possible and e-mail me with the names of the members of your group. If you do not know anybody in class, I will assign you to a group or help you form one. Teams should be composed of 3-4 members. Registration of a date topic is on a first come basis. Time in class will be set aside to form groups.

Presentations will be done on Zoom. Each group must provide the instructor with an electronic copy of their Power Point slides and/or an *aide memoire* of at least one page summarizing the presentation. The instructor will be posting them on cuLearn. **Failure to provide an electronic copy of the power points and/or aide memoire means no grade will be entered for all members of the group.** Presentations should be 30 minutes long plus discussion time. Marks are awarded on content (60%), presentation

style (20%) and engagement (20%) of other students in discussions, simulations or game exercises. A schedule will be drawn up. Students may post or send to me sample illustrative materials to their student colleagues. Students can use formats, such as panel discussions, news and talk shows, tribunal and court simulations and debates as well as use videos from media outlets. The whole time of a presentation cannot be used up in a game. Respect for views different from your own and use of short preambles to questions is encouraged.

Reflection on a Group Presentation (Total course mark value 5%) – Due before or on Apr. 9 by email

Reflection must be on a group presentation other than on the one you have delivered as a group member. The reflection must be 3 typed pages, double-spaced, in length.

Take-Home Final Exam-Policy Case Study (open book) (Total course mark value 25%) – Due during final exam period-Apr. 11-23-To be sent by email no later than 11:59 p.m. on Apr. 23

Students will write a policy case study on a sentencing or corrections issue in the form of an essay. Students will submit this paper in the Apr. 11-23 final exam period. The final date for submission is Apr. 23rd. If a student is unable to complete the paper by Apr. 23rd, a deferral will have to be requested through the Registrar.

Details: Topics for policy case study will be posted on cuLearn on March 31. The policy case study will be a minimum of 10 typed pages, double-spaced and a maximum of 20 such pages. Students should use (A) headings to divide paper into section for clarity purposes, (B) title page, (C) page numbers, (D) table of contents and (E) bibliography. Please cite sources of materials used.

The policy case study involves analysing a case topic description along with posted documents. Students will identify the issue, values, laws and practices involved as well as the stakeholders. Students will present recommendation(s) for solution(s) and reform(s) for major stakeholders, such as counsel, Corrections Canada, prison guard unions, police, prisoner support/reform groups. Students will reach reasoned conclusions on proposals for policy reform and indicate costs and benefits involved. Controversial statements and facts will require supporting documentation.

SELECTION OF GROUP MEMBERS FOR PRESENTATIONS – Finalization on January 27

Students will form presentation groups of two to four members. A list of student members of the class will be posted on cuLearn to facilitate group formation. I understand that it may be difficult to form groups in the on-line environment. Students have traditionally formed such groups based on prior association or engagement in introductory icebreaking sessions. If students have not formed groups after the first two weeks after the course starts, students will be assigned to provisional groups of four. Let me know if there are any difficulties. After 2 week for discussion between members and instructor, groups will be finalized on January 27th and presentation dates assigned based on topic dates set out in course outline.

SCHEDULE

- Jan. 13
Week 1 **Introduction – Course Overview – Evaluation Scheme**
Discussion of course Teaching/Learn Methodology
-Manson, Chapter 1, Introduction, pp. 1-4, Chapter 2
-UDHR (UNGA 1948) at: <https://www.un.org/en/universal-declaration-human-rights/>
-CCRF (CA 1982, Part 1) at:
<https://laws-lois.justice.gc.ca/eng/const/page-15.html>
- A History of Sentencing and Punishment (Adult and Youth)**
-Bedu, Hugo Adam & Erin Kelly, “Punishment”, *The Stanford Encyclopedia of Philosophy*, (Fall, 2015 Edition) On line at:
<https://plato.stanford.edu/archives/fall2015/entries/punishment/>
-Manson, Chapter 2, pp. 5-29 and Chapter 3, pp.31-54
-Fetherston, *The Law and Young Offenders*, Chapter 4 (on cuLearn)
-Rickwood, *Synopsis of StarTrek episode “Repentance”*, from Jan. 31, 2001
- Jan. 20
Week 2 **Justification of Legal Punishment and Corrections. Philosophy and Objectives**
-Manson, Chapters 2 & 3
-Manson & Healy, Chapter 1
-*Corrections & Conditional Release Act*, Sections 3 and 3.1
- Jan. 25 **LAST DAY TO REGISTER/CHANGE COURSES OR SECTIONS**
- Jan. 27
Week 3 **Judicial Discretion and Methodology of Sentencing: Substantive Principles**
-Criminal Code of Canada, ss. 718, 718.1 and 718.2 -at Justice Canada at : <https://laws-lois.justice.gc.ca/eng/acts/C-46/>
-Manson, Chapter 4, pp. 56-81, Chapter 5, pp.83-97
- REFLECTIVE ESSAY ON REPENTANCE DUE (15%)**
- Feb. 3
Week 4 **Sentencing Rules and Aggravating and Mitigating Factors**
-Manson, Chapter 6, pp. 98-129 & Chapter 7, ppp.130-161
-Manson & Healy, Chapter 3
- Feb. 10
Week 5 **MID-TERM EXAM (Weeks 1-4) - To be posted on cuLearn**
25% of course total
Open book-In two parts – Part 1 Quiz (30 points) Part 2 Essay (30 points) (Optional topics) Due by 11:59 p.m. on February 10, 2021 – To be sent by email to instructor
- Feb. 12 April examination schedule on line.
- Feb. 15 FAMILY DAY – STAT. HOLIDAY – UNIVERSITY CLOSED

Feb. 16-19 WINTER BREAK – NO CLASSES, NO OFFICE HOURS

Feb. 24 **Sentencing Process – Hearing & Sources of Information**

Week 6

- Manson, Chapter 8
- Manson & Healy, Chapters 5 & 6

Mar. 3 **Sentencing Process – Victim Participation, Pleas and Joint Submissions**

Week 7

- Manson, Chapter 8
- Manson & Healy, Chapters 5 & 6

PRESENTATION

Mar. 9 **LAST DATE TO REQUEST FORMAL EXAM ACCOMMODATIONS FOR APRIL EXAMINATIONS TO THE PAUL MENTON CENTRE.**

Mar. 10 **Sentencing Options and Tools – Alternatives to Incarceration: Absolute & Conditional Discharges, Conditional Sentencing, Diversion, Probation & Money Sanctions**

Week 8

- Manson, Chapter 9, pp. 208-259
- Manson & Healy, Chapters 8, 9 & 10

PRESENTATION

Mar. 17 **Sentencing Options and Tools: Conditional Sentences & Collateral Sentencing Orders, Imprisonment, Intermittent Sentences, Temporary Absences and Parole**

Week 9

- Manson, Chapter 9, pp. 260-291
- Manson & Healy, Chapter 11, 12, 13

PRESENTATION

Mar. 24 **Sentencing Options and Tools: Murder and Manslaughter – Imprisonment Terms and Parole Eligibility**

Week 10

- Manson, Chapter 10
- Manson & Healy Chapter 14
- Criminal Code of Canada* Sections 745 to 745.5 on line at:
<https://laws-lois.justice.gc.ca/eng/acts/C-46/>

Preventative Detention & Preventative Supervision

- Manson, Chapter 11
- Manson & Healy Chapter 1

PRESENTATION

Mar. 31
Week 11 **Special Sentencing and Correctional Issues involving Indigenous Peoples, People of Colour, LGBTQ People, People with Disabilities, Youth and Elderly People**

- Manson & Healy, Chapters 28 & 19
- Fetherston, *The Law and Young Offenders*, Chapter 4 (on cuLearn)
- *Criminal Code of Canada*, Part IV (enacted by Bill C-75 (2019) at <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-30.html#h-117813>)
- Bill C-75 (2019) amendments to Youth Criminal Justice Act – see interpretation at <https://www.thelawyersdaily.ca/articles/16666>

PRESENTATION

Details of Policy Brief Questions for Take-home Final Exam will be posted on cuLearn and discussed in class.

April 7
Week 12 **Sentencing Appeals and Post Appeal Sentencing Issues and Future of Sentencing**

- Manson, Chapters 12 & 13
- Manson & Healy, Chapter 18 & 19

PRESENTATION

April 9 **WINTER TERM ENDS – ALL PRESENTATION REFLECTIONS DUE TODAY**

LAST DAY ACADEMIC WITHDRAWAL FROM WINTER TERM COURSE

April 11-23 **FINAL EXAMINATION PERIOD**

April 23 **TAKE-HOME FINAL EXAM-POLICY CASE STUDY DUE – SENT BY EMAIL TO INSTRUCTOR**

May 14-26 **WINTER TERM DEFERRED FINAL EXAMINATIONS TO BE HELD**

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

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 Department of Equity

and Inclusive Communities (EIC): <https://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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

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>

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/studentssupport/svpolicy/>

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://students.carleton.ca/services/accommodation/>

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