

Course Outline

COURSE:	LAWS 4308D - Sentencing
TERM:	WINTER 2019
PREREQUISITES:	LAWS 2908, LAWS 2301, LAWS 2302 and Fourth-Year Honours standing
CLASS:	Day & Time: Fridays, 8:35am - 11:25am
	Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Dr. Roger R. Rickwood, LL.M., LL.B.
CONTACT:	Office: B442 Loeb Building (Contract Instructor's Office)
	Office Hrs: Thursdays, 10:00am - 11:30am
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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.

COURSE DESCRIPTION
DEFINITION OF SENTENCING

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) and the *Corrections and Conditional Release Act*.

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 impact of the controversial Harper Conservative Government's *Safe Streets and Communities Act*, Bill c-10 of 2011 which limited conditional sentences by enacting Section 742.1 of the *Criminal Code*. These provisions may be amended by the Trudeau Liberal Government and, if it does, will return the sentencing provisions to the more positive theory as enunciated by former Liberal and Progressive Conservative Governments favouring reduced use of incarceration especially for youth. Alternatives to incarceration will be considered.

GENERAL LEARNING OBJECTIVES

There is no definition of punishment in the *Criminal Code*. In ordinary language, it is the imposition of a fine, penalty or confinement or the removal or denial of something pleasant or desirable. Beyond this there is little agreement.

Students will learn:-

- why sentencing and the related field of punishment theory is as important in the study of criminal law in a free and democratic society as *Charter* rights, human rights, criminal law procedure, criminal law substantive charging provisions, police roles, prosecutions, defence duties, evidentiary rules, and accountability for justice ministers, judges, counsel, police and corrections officers.
- to understand the evolution of sentencing theory and the related field of punishment theory and the role that not-for-profit voluntary organizations and research institutions played and continue to play in developments
- how to conduct an ethical analysis of typical sentencing dilemmas and decide what specific actors should do or should have done to meet equitable standards in the context of public opinion, fairness, professional conduct and knowledge, multiculturalism, due process, public and victim safety, as well as rational crime control
- the principles and reasons for sentencing and strategies for enforcing standardization while still allowing acceptable variance upon identification of unfairness and extenuating circumstances
- the mechanisms developed in Canada to ensure that elected politicians (federal, provincial and municipal), citizens, corporations and justice officials understand the rules and comply with them
- the theory behind sentencing principles and processes and how to assess their effectiveness using comparative models and examples from selected democratic jurisdictions (U.S.A., U.K., Ireland, Australia and New Zealand).
- to understand and apply tools of sentencing and the dynamics of sentence hearings.

REQUIRED TEXTS, STATUTES AND INSTRUMENTS

-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) (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) Cited as Manson in readings

-Woolford, Andrew, The Politics of Restorative Justice: A Critical Introduction, (Blackpoint, Nova Scotia: Fernwood Publishing, 2009), ISBN 978-1-55266-316-5, Paperback (Available at Carleton University Bookstore)

-*Criminal Code of Canada*, on Justice Canada website. Cited as CCC.

-*Corrections and Conditional Release Act*, on Justice Canada website, cited as CCRA

-*Universal Declaration of Human Rights*, 1948 (UNGA) on UN.org website and in handout. Cited as UDHR

-*Canadian Victims Bill of Rights*, (S.C. 2015, c. 13, c. 2) on Justice Canada Website.

-*Youth Justice Act*, on Justice Canada website. Cited as YJA

-*Controlled Drugs and Substances Act*, on Justice Canada Website. Cited as CDSA

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/>

Canadian Charter of Rights and Freedoms, Part I, CA 1982 – On Justice Canada website

RECOMMENDED TEXT

Henein, Marie, *Martin's Annual Criminal Code*, 2017 (Toronto: Thompson Reuters, 2016).

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.

Final Exam Period is April 12-27, 2019

Mid-term test (2 hours) (closed book)	25% - February 8 th , 2019
Constructive Book Review	15% - Due March 15 th 2019
Group Presentation	20% - During weeks 7 to 12) (March 1-April 5, 2019)
Final examination (3 hours) (closed book)	30% - (TBA in examination period April 12-27, 2019
Class/lecture participation	10%- (in-class registration taken)

Attendance & Class Participation (Total course mark value 10%)

ALL STUDENTS are required to sign the register at every class. Your participation mark is based in part on attendance and in part on active participation in class discussions. Explanation of your absence for medical and compassionate reasons will be considered in adjusting the registration record. Excuses that you did not know there is a sign-in registration will not be accepted. ONLY ATTENDING AN IN-CLASS EXAM WILL NOT BE CONSIDERED ATTENDANCE FOR PURPOSES OF THE PARTICIPATION MARK.

Constructive Book Review (Total course mark value 15%) Due March 15th, 2019

Students will produce a constructive book review of Andrew Woolford's *The Politics of Restorative Justice*. 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 opinion of the validity of the recommendations in the text. Noncompliance with these rules will mean a reduction of marks.

This assignment is due on March 15th. There will be a late penalty of 2 per cent per calendar day after March 15th. Constructive book reviews will **only** be accepted for marking in **hard copy format**. Electronic copy will be accepted as the receipt date of a paper. However, this version will not be printed off or marked. A hard copy must be submitted. No review will be accepted after March 22nd.

Group Presentations (Total course mark value 20%) Weeks 7 - 12) March 1 to April 5)

"In class" presentations will be done by groups of students in one class before the mid-term exam and in the rest of the classes after the mid-term test using concepts and specific cases or groups of cases set out in the texts. Presentations will normally be done based on the specific reading topics for the selected week. However, this can be modified. Presentations can also be done on specific organizations that are active in sentencing and penal reform such as John Howard Society, Elizabeth Fry Society and Canadian Civil Liberties Union.

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 ??presentation slots. Dates and topics are assigned on a first come basis. If you do not know anybody in the class, I will assign you to a group or help you form one. Teams should be composed of 3-4 members.

Students requiring computerized equipment and other audio visual materials for their presentations should notify the instructor in advance. Each group is required to provide the course instructor with a copy of their Power Point slides and/or an *aide memoire* of at least one page summarizing the presentation. The groups are to provide the instructor with an electronic copy of their power points and/or an *aide memoire* of at least one page summarizing the presentation as the instructor will be posting them to cuLearn. **Key content points in presentations will be tested in the final exam.** **Failure to provide the instructor with the 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 at least 30 minutes long plus discussion time. Marks are awarded on content (60%), presentation style (20%) and engagement (20%) of the other students in discussions, simulations or game exercises (Jeopardy, Who Wants to Be a Millionaire etc.). A schedule of presentations will be drawn up on a first-come first-served basis. So identify your topic and the members of your group in writing to the instructor as soon as possible. Students are free to handout sample illustrative materials to assist their student colleagues to understand content and processes. Students can use formats, such as panel discussions, news and talk shows, tribunal and court case proceedings, simulations and debates as well as videos from You Tube and Media outlets. The whole time of a group presentation cannot be used up in a game show format activity or activities. Nominal candy rewards to elicit audience participation and the use of stage props and costumes can sometimes enhance class presentations. Respect for viewpoints different from your own and use of limited preambles to questions is encouraged.

SCHEDULE

January 2 = University reopens

January 7 – Winter term begins

Jan. 11 **Introduction – Course Overview – Evaluation Scheme**
Week 1

Manson, Chapter 1, Introduction, pp. 1-4, Chapter 2
Handouts on UDHR (*UNGA 1948*) and *CCRF (CA 1982, Part 1)*

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.
Manson, Chapter 2, pp. 5-29 and Chapter 3, pp.31-54

Jan. 18 **LAST DAY TO REGISTER/CHANGE COURSES OR SECTIONS**

Jan. 18 **Justification of Legal Punishment and Corrections, Philosophy**
Week 2 **and Objectives**

Manson, Chapters 2 & 3
Manson & Healy, Chapter 1

- Jan. 25
Week 3 **Judicial Discretion and Methodology of Sentencing; Substantive Principles**
Criminal Code of Canada, ss. 718, 718.1 and 718.2 (handout)(on line at Justice Canada site)
Manson, Chapter 4, pp. 56-81, Chapter 5, pp.83-97
- Jan. 31 **LAST DAY TO WITHDRAW FROM COURSE WITH FULL FEE ADJUSTMENT**
- Feb. 1
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. 8
Week 5 MID-TERM EXAM (Weeks 1-4)
30% of course total
In two parts – Part 1 Quiz (30 points) Part 2 Essay (30 points) (Optional topics)
Closed book – 2 hours
- Feb. 15
Week 6 **Sentencing Process – Hearing & Sources of Information**
Manson, Chapter 8
Manson & Healy, Chapters 5 & 6
- Feb. 18-22 WINTER BREAK – NO CLASS – NO OFFICE HOURS
- Mar. 1
Week 7 **Sentencing Process – Victim Participation, Pleas and Joint Submissions**
Manson, Chapter 8
Manson & Healy, Chapters 5 & 6

Discussion of Constructive Book Review Assignment on Woolford’s Politics of Restorative Justice – Worth 15% - 5-10 pages – Due ?????????????????? in class.

PRESENTATION
- Mar. 8
Week 8 **Sentencing Options: Absolute & Conditional Discharges, Probation & Money Sanctions**
Manson, Chapter 9, pp. 208-259
Manson & Healy, Chapters 8, 9 & 10

PRESENTATION

Mar. 15 **LAST DATE TO REQUEST FORMAL EXAM ACCOMMODATIONS FOR APRIL EXAMINATIONS TO THE PAUL MENTON CENTRE.**

Mar. 15 **Sentencing Options: Imprisonment, Conditional Sentences & Collateral**
Week 9 **Sentencing Orders**

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

PRESENTATION

CONSTRUCTIVE BOOK REVIEW DUE IN CLASS

Mar. 22 **Sentencing Options Murder and Manslaughter**
Week 10

Manson, Chapter 10
Manson & Healy Chapter 14
Criminal Code of Canada sections on homicide (handout) (On line on Justice Canada site)

Preventative Detention & Preventative Supervision

Manson, Chapter 11
Manson & Healy Chapter 15

PRESENTATION

Mar. 29 **Sentencing Issues involving Indigenous Peoples**
Week 11

Manson & Healy, Chapters 28 & 19

PRESENTATION

Apr. 5 **Sentencing Appeals and Post Appeal Sentencing Issues and Future of**
Week 12 **Sentencing**

Manson, Chapters 12 & 13
Manson & Healy, Chapter 18 & 19
Brief exam review and Conclusions

PRESENTATION

Apr. 9 **WINTER TERM ENDS**

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:

<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: 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/>