

Course Outline

COURSE:	LAWS 3308B – Punishment and the Law
TERM:	FALL 2023
PREREQUISITES:	LAWS 2301 and 0.5 credit in LAWS at the 2000 level
CLASS:	Day & Time: Thursdays from September 7 to November 30, 11:35 AM to 2:25 PM
	Modality: Lectures will be recorded on Zoom, asynchronously; students may join live by Zoom, or may download or stream audio or video versions of the lectures at their own convenience
INSTRUCTOR:	John HALE, B.Sc., LL.B., B.C.L., member of the Bars of Ontario and the Northwest Territories
TEACHING ASSISTANT	Kayla Prystanski, kaylaprystanski@cmail.carleton.ca
CONTACT:	Office: N/A; my physical office is off-campus, at 101-116 Lisgar St., Ottawa
	Office Hrs: There are no set office hours. Meetings with students can be conducted by phone or by Zoom or in person, by appointment.
	Telephone: 613.290.5247 (cell); 613.695.4253 (office)
	Email: JohnHale@cunet.carleton.ca

CALENDAR COURSE DESCRIPTION

This course explores justifications and practices of punishment and social control from a socio-legal perspective. Rationalizations and justifications for punishment are considered. Different forms of punishment and control within the law will be examined as well as different theoretical perspectives of punishment.

COURSE DESCRIPTION – FALL 2023

I have been teaching at Carleton University continuously since September 1990, in the pre-internet days. I have taught various courses over the years, most recently (for the past 20 years) Laws 2302 and Laws 3307. This is my first time teaching Laws 3308, so I appreciate your patience as I iron out any kinks as we go. It is difficult to gauge in advance how long it will take to cover specific topics, so it may become necessary to adjust the schedule as the course progresses.

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 (since 1989) who has argued hundreds, if not thousands, of sentencing cases in Court, who has decades of lived experience with what matters to Judges and Crowns at sentence hearings, and most importantly who has come to know thousands of clients – from all walks of life, charged with every type of crime imaginable – and to hear directly from them how their lives are impacted by the criminal justice system. My views on punishment, particularly in the form of incarceration, are informed by what I have witnessed firsthand.

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 some other sections, and is inclined to treat the course as a “law school course”. (In fact our textbook is used by several law schools as their Sentencing textbook.) The instructor’s objective is to instill in the students a solid understanding of the principles and objectives of sentencing, as well as of how these policies are implemented at ground zero – in the courtrooms where human beings are sentenced.

Discussion of these concepts will inevitably include discussions of the social policies that led to the creation of various sentencing options, and to guidance from appellate courts as to appropriate sentencing ranges and policies, 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 specific sentencing decisions do so on the basis of facts rather than on emotion, gut feeling and anecdotal evidence.

While people face punishment for all sorts of municipal, provincial, territorial and non-criminal federal offences, the focus in this course will be on sentencing in the context of (federal) criminal law. For the most part we will be talking about sentencing of adults, but we will spend a little time discussing sentencing of young persons under the *Youth Criminal Justice Act*.

There is one required text for this course. Students will need a copy of *Sentencing and Penal Policy in Canada: Cases, Materials and Commentary* (Fourth Edition), edited by Allan Manson and several others. This is a brand-new text, released by Emond Publishing in August 2023. If you are able to find an earlier edition at a lower price, it is probably fine. However I do not have an earlier edition myself so I am unable to comment on what page numbers in prior editions you should be reading. In addition there have been several important new cases since the Third Edition (2016), as well as significant changes to the *Criminal Code*, so it is best to steer clear of older editions.

You will also require any version of the *Criminal Code*. You can either buy a *Criminal Code* or access it online. If you are buying, avoid buying older used *Criminal Codes*, as significant amendments in November 2019 render old *Codes* somewhat obsolete: the current edition is 2024 (released summer 2023), although a 2022 or 2023 *Code* should be satisfactory. I have asked the two bookstores (Carleton and Haven) to order the *Martin’s Annotated Criminal Code 2024*, but if you can find another *Code* that will be fine. You can also download the *Criminal Code* and related statutes from the Justice Canada website as a PDF. For example, you can find the *Criminal Code* here: <https://laws-lois.justice.gc.ca/PDF/C-46.pdf>

A schedule of planned topics 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.

I expect that most weeks I will upload cases and other resources as PDFs or Word documents to Brightspace before each lecture. 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 quizzes. 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 lectures and you will find the prospect unpleasantly daunting. It is best to do the readings before the lecture, rather than after, as I really want you to be personally familiar with the cases and not just take my word on what they say.

The lecture notes and slides will be posted prior to each lecture on the Brightspace course website. Resources such as cases and statistics, as well as sample exams, will also be posted.

Even though lecture notes and slides are being posted weekly, and the quizzes and exam are open-book, I strongly encourage you to join the lectures by Zoom whenever possible. The material that we are covering is best understood from hearing it explained and ideally by 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.

The class is “officially” scheduled as taking place every Thursday from 11:35 AM to 2:25 PM. I will not normally be recording at that time, and the day and time that I record will vary from week to week depending on my court schedule. For example, I will be doing circuit court in the Northwest Territories the week of September 11-15, therefore I expect that I will record Lecture 1 (September 7) and Lecture 2 (September 14) in the first week of classes. Similarly I will be doing a murder trial in Yellowknife for almost the entire month of November, going into December, so I will record lectures likely on weekends from Yellowknife. I will always break the lecture into two halves, and may not record the first and second half on the same day.

I will send out an email in advance of recording a lecture, including a Zoom link, so that you can join in if the timing is good. I prefer to have students join in and ask questions. If you do attend a lecture by Zoom, please mute yourself and turn off your camera. If you have a question, by all means turn your camera on if you’re comfortable with that, otherwise put your question in the chat. If you would like to ask a question with your sound and/or video on, please “raise your hand” in Zoom and I’ll call on you within a minute or so, when there’s a natural break.

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

Allan Manson et al., *Sentencing and Penal Policy in Canada: Cases, Materials, and Commentary (Fourth Edition)* (Emond Montgomery Publications Ltd., Copyright 2024)

Martin's Annotated Criminal Code 2024 (Student Edition) (Thomson Reuters 2023), or any other recent version of the Criminal Code.

**OTHER CRIMINAL
CODE OPTIONS**

Pocket Criminal Code 2024 (Thomson Reuters, 2023) OR

Tremeear's Annotated Criminal Code 2024 (Thomson Reuters, 2023) OR

The (unannotated) *Criminal Code* is available as a free downloadable PDF at the Justice Canada website: <https://laws-lois.justice.gc.ca/PDF/C-46.pdf>

The (unannotated) *Youth Criminal Justice Act* is available as a free downloadable PDF here: <https://laws.justice.gc.ca/PDF/Y-1.5.pdf>

The *Charter of Rights* is available as a free downloadable PDF here, starting at p. 47: https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf

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.

1. **QUIZZES (70%)**: There will be two 3-hour non-cumulative online quizzes in this course, following the 4th and 8th lectures. Each quiz will cover 4 lectures (so lectures 1-4 and 5-8). For each quiz you will have a roughly 4.5-day window in which to access the quiz on Brightspace. Once you start the quiz you will have 3 hours in which to complete it (some Paul Menton Centre students will have additional time). The quizzes will consist of a combination of Multiple Choice, True/False, Short Answer and Short Essay questions.

The weight of these quizzes will be as follows:

- The quiz with the lower grade will be worth 30% of your final grade
- The quiz with the higher grade will be worth 40% of your final grade

2. **TAKE-HOME EXAM (30%)**: There will be a "take-home" exam, identical in almost every way to the quizzes, covering Lectures 9-12. In order to comply with University regulations it is being categorized as an exam rather than as a quiz. It will be done online; students will have 3 hours to complete the exam on Brightspace once they start. The exam will open on December 4th at 12:00 PM, and will close on December 22nd (the last day of exams) at 11:00 PM. It will consist of Multiple Choice, True/False, Short Answer and Short Essay questions.

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

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

For each quiz you will have 107 hours in which to write a 3-hour quiz. For the take-home exam you will have 18.5 days. I have set aside a large window of time in order to avoid fielding numerous extension requests: barring illness or other unforeseen events I do not expect requests for extensions or deferrals. Please contact the instructor or teaching assistant by email PRIOR TO STARTING THE QUIZ OR TAKE-HOME EXAM if you are unable to write the test during the 4.5 or 18.5 day window.

Once you start writing the quiz/exam, you must submit it within the specified time (3 hours, or longer for some PMC students). Once you start the quiz/exam I cannot give an extension.

SCHEDULE

Fall 2023 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website: https://calendar.carleton.ca/academicyear/</i>	
September 6, 2023	Fall term begins.
September 19, 2023	Last day for registration and course changes (including auditing) in fall and fall/winter courses.
September 30, 2023	Last day to withdraw from full fall and fall/winter courses with a full fee adjustment.
October 9, 2023	Statutory holiday. University closed.
October 23-27, 2023	Fall break, no classes.
November 15, 2023	Last day for academic withdrawal from full fall courses.
November 24, 2023	Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, in fall term or fall/winter undergraduate courses, before the official December final examination period (see examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).
December 8, 2023	Fall term ends.
	Last day of fall classes.
	Classes follow a Monday schedule.
	Last day for final take-home examinations to be assigned, with the exception of those conforming to the examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar.
	Last day that can be specified by an instructor as a due date for term work for full and late fall courses.
	Last day for receipt of applications for undergraduate degree program transfers for winter term.
December 10-22, 2023	Final examinations in full fall and late fall courses and mid-term examinations in fall/winter courses will be held. Examinations are normally held all seven days of the week.
December 22, 2023	All final take-home examinations are due on this day, with the exception of those conforming to the examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar.

SCHEDULE OF READINGS AND TOPICS

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
1 September 7	No readings	I. Introduction and Course Overview A. Administrative matters B. Expectations (instructor's and students') II. Criminal Procedure in a Nutshell A. Classification of offences B. Court structure in Ontario – overview; appeals C. Pre-Trial procedures III. Statistics A. StatsCan crime statistics B. StatsCan statistics re persons in custody (remand and sentence) and on probation
2 September 14	Chapter 1 Chapter 2	IV. Introduction to Legal Punishment V. Judicial Methodology and the Legislative Context
3 September 21	Chapter 8 Chapter 9 Chapter 10 Chapter 11	VI. Available sentencing options A. Discharges B. Probation C. Monetary sanctions D. Imprisonment
4 September 28	Chapter 12 Chapter 13 Chapter 14	VI. Available sentencing options (cont'd) E. Conditional sentences F. Ancillary orders VII. Sentencing for Murder
October 2-6		<u>Quiz #1</u> Covers Lectures 1-4 (as taught) Online quiz to be done between 12:00 PM October 2 and 11:00 PM October 6

¹ All readings are from Allan Manson et al., *Sentencing and Penal Policy in Canada: Cases, Materials and Commentary* (4th Edition).

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
5 October 5	Chapter 7 Chapter 3 Chapter 4	VIII. Arriving at the appropriate sentence A. Plea discussions and joint submissions B. Aggravating and mitigating factors; factors that are NOT relevant C. Facts of the offence
6 October 12	Chapter 5 Chapter 6 Chapter 14	VIII. Arriving at the appropriate sentence (cont'd) D. Sources of information relating to the offender E. Victim participation at sentencing IX. Sentencing for Murder
7 October 19	Chapter 15	X. Dangerous and Long Term Offenders
8 November 2	ss. 42 ff. of the <i>Youth Criminal Justice Act</i>	XI. Sentencing of youths
November 6-10		<u>QUIZ #2</u> Covers Lectures 5-8 (as taught) Online quiz to be done between 12:00 PM November 6 and 11:00 PM November 10
9 November 9	Chapter 16	XII. Sentencing of Indigenous Offenders
10 November 16	Chapter 17	XIII. Sentencing of Black Offenders
11 November 23	Chapter 18	XIV. The <i>Charter</i> and Sentencing
12 November 30	Chapter 20	XV. Parole and Conditional Release
December 4-22		<u>TAKE-HOME EXAM</u> Covers Lectures 9-12 (as taught) Online exam to be done between 12 :00PM December 4 and 11:00 PM December 22

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

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/>.

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 accommodation regarding a formally-scheduled final exam, you must complete the Pregnancy Accommodation Form that can be found at:

<https://carleton.ca/equity/contact/form-pregnancy-accommodation/>

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, please go to:

<https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

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 for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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).

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 where 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/equity/sexual-assault-support-services>

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

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.