

Course Outline

COURSE:	LAWS 2302A and 2302E – Criminal Law
TERM:	FALL 2021
PREREQUISITES:	LAWS 1001 and LAWS 1002
CLASS:	Day & Time: Please check Carleton Central for current Class Schedule. As of August 29, 2021 the lectures are scheduled Tuesday (2302E) and Thursday (2302A) evenings from 6:05-8:55. Tuesday classes begin September 14 and end on December 7. Thursday classes begin on September 9 and end on December 9.
	Room: Both sections of this course are being offered online, asynchronously. Lectures will be prerecorded and will be uploaded to Brightspace prior to the start time of the lecture.
INSTRUCTOR: (CONTRACT)	John HALE, B.Sc., LL.B., B.C.L., member of the Bars of Ontario and the Northwest Territories
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. Telephone: 613.290.5247 (cell) Email: JohnHale@cunet.carleton.ca

CALENDAR COURSE DESCRIPTION

The legal and social dimensions of criminal liability and responsibility in Canada, including issues and problems surrounding *mens rea*, *actus reus*, and the attachment of liability. Excuses and justifications, the Canadian Criminal Code and the role of the Charter in the criminal legal system.

COURSE DESCRIPTION – FALL 2021

I have adapted my usual course description – and the course itself – to take into account the reality that, for the second year, I will not be teaching this course live to students in a classroom. There may continue to be some growing pains as we discover what works, what doesn't work, and as I receive your feedback; as a result, this outline is not carved in stone.

I have always enjoyed having back-and-forth with students in the classroom, and will miss that again this year. We will all have to continue adjusting to this new way of teaching and learning, at least for a little while longer.

That said, it is my intention to conduct two live classes, in the classroom, during the term, as an experiment to see (a) whether there is interest on the part of students, and (b) whether it is feasible to teach live, on Zoom, in a classroom. I will provide more details later, but the plan is to teach once on a Tuesday evening from 6-9 PM, and once on a Thursday from 6-9 PM. These lectures will be recorded and uploaded so that, if you can't make it in person, you can either watch live via Zoom or watch later at your convenience.

In order to generate some participation, I invite students to send me questions about the lectures, either by email or, if you like, as a video message that I can play to the class. I will start each lecture by answering questions that I have received about the previous lecture. If you have done the readings in advance and have a question about a case, I will answer your question at the appropriate point in the lecture.

I will also be recording a few Live Q&A sessions via Zoom. Students will be able to join in and ask questions. These sessions tend to go anywhere from 15-60 minutes, and should be considered as part of the lectures.

What follows is the version of the course description that I would normally provide, adapted to online teaching during the pandemic.

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 agrees with the following:

- (1) the paramountcy and necessity of the Rule of Law;
- (2) the notion that a person is presumed to be innocent of any criminal wrongdoing, subject to a guilty plea or unless proven guilty beyond a reasonable doubt, on the basis of probative and relevant evidence that is legally admissible, and following a trial which accords with the principles of fundamental justice and with the procedures set out in the *Charter of Rights*, the *Criminal Code*, and other legislation;
- (3) the statement that the Canadian criminal justice system, despite its identifiable flaws, is fundamentally sound at least in theory, and that the flaws within the system are attributable to individuals within the system at least as often as they are attributable to the system's inherent structural flaws and limitations.

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 other sections, and is inclined to treat the course as a "law school course". (In fact our textbook is used by several law schools for their first-year Criminal Law courses.) The instructor's objective is to instill in the students a solid understanding of basic criminal law concepts, including the essential elements of crimes (*actus reus* and *mens rea*), the burden of proof, and the more common defences to criminal charges.

Discussion of these concepts will inevitably include discussions of the social policies that led to the creation of various offences, defences, and procedural rules, 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 the criminal justice system do so on the basis of facts rather than on emotion, gut feeling and anecdotal evidence.

The one text required for the course is *Learning Canadian Criminal Law* by Stuart and Coughlan. This text is intended for use by first-year law school students. Please buy the 15th edition (2021), as the 14th edition (2018) is somewhat out-of-date. Avoid buying used *Criminal Codes*, as significant amendments in November 2019 render old *Codes* somewhat obsolete: the current edition is 2022 (released summer 2021), although a 2021 *Code* should be satisfactory.

A schedule of planned topics is set out below. I will provide a schedule of readings from the 15th edition shortly, as I do not yet have a copy; in the meantime, I am providing the readings from the 14th edition, which you will find useful if you buy a used copy of the textbook. 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.

If you do not buy the textbook, you will be expected to read cases which I will upload as PDFs or Word documents to Brightspace each week. 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 and lectures until the final days before the quizzes and exam. 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 watching 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 weekly 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 exams are open-book, I strongly encourage you to watch the lectures. 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.

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

Don Stuart and Steve Coughlan, *Learning Canadian Criminal Law (15th Edition)* (Thomson/Reuters / Éditions Yvon Blais, 2021)

RECOMMENDED TEXTS

I recommend that you a *Criminal Code of Canada*. Please note that 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>.

**CRIMINAL CODE
OPTIONS**

***Pocket Criminal Code 2022* (Thomson Reuters, 2021) OR**

***Tremear's Annotated Criminal Code 2022* (Thomson Reuters, 2021) OR**

***Martin's Annotated Criminal Code 2022 (Student Edition)* (Thomson Reuters, 2021)**

The texts will be available at the University bookstore and at Haven Books.

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 three 3-hour online quizzes in this course, on September 30 to October 5, November 2-4 and November 23-25. Each quiz will cover 3 lectures (so lectures 1-3, 4-6 and 7-9). The quizzes have been scheduled such that you can do them during your actual class time, i.e., on Tuesdays or Thursdays from 6-9 PM. For each quiz you will have at least a 48-hour window in which to access the quiz. 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 weight of these quizzes will be as follows:

- Your lowest grade will be worth 10% of your final grade
 - Each of the other two grades will be worth 30% of your final grade
2. **FINAL EXAM (30%)**: There will be a final exam in the exam period (December 11-23, exact date to be determined), similar to the quizzes. It will cover lectures 10-12. It will be done online on Brightspace, and you will have a 4-day window during which you will have 3 hours to complete it once you start.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

For each quiz you will have at least 48 hours in which to write a 3-hour quiz. The quizzes are scheduled such that they include the class time where you are already available, so – barring illness or other unforeseen events – I do not expect requests for deferrals. Please contact the instructor by email PRIOR TO STARTING THE QUIZ if you are unable to write the quiz during the 48-hour 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.

If you cannot write the FINAL EXAM on the exam date, you will need to apply to defer the exam.

SCHEDULE

September 8, 2021	Fall Term begins. Fall classes begin
October 11, 2021	Statutory holiday, University closed
October 25-29, 2021	Fall Break, no classes
December 10, 2021	Fall Term ends; last day of Fall Term classes
	Classes follow a Monday schedule
December 11-23, 2021	Formally scheduled final exams may be held (7 days/wk)

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
1 September 9 (A) September 14 (E)	81-84 (74-78) ² 84-102, 109-112 (78-98, 105-108)	I. Introduction and Overview (1) Administrative matters (2) Expectations (instructor's and students') (3) Analysis: Approaches to defining "crimes". (4) Briefing a case II. Criminal Procedure in a Nutshell A. Classification of offences B. Court structure in Ontario – overview; appeals C. Compelling attendance in Court D. Bail E. Pre-Trial procedures F. Trial procedure, including the burden of proof
2 September 16 (A) September 21 (E)	177-258 (169-248)	III. Elements of an Offence A. The "Voluntary Act" Requirement (<i>actus reus</i>) 1) Introduction 2) " <i>Actus reus</i> " = [voluntary] activity, circumstances and consequences 3) Commission of an unlawful act

1 All readings are from Stuart and Coughlan, *Learning Canadian Criminal Law* (14th ed.); readings will be revised to reflect page numbers of the 15th edition

2 Page numbers in parentheses are page numbers in the 13th edition of the text

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
3 September 23 (A) September 28 (E)	258-297 (248-287) 297-313 (287-303) 313-358 (303-348)	4) Omissions 5) Voluntariness 6) Causation
September 30 to October 5		<u>QUIZ #1</u> Covers Lectures 1-3 Online quiz to be done between 6 PM Sep- tember 30 and 11 PM October 5 (Ottawa time)
4 September 30 (A) October 5 (E)	359-361 (349-351) 361-367 (351-357) 367-424 (357-414)	B. The Fault Requirement (mens rea or negligence) 1) Introduction 2) Subjective/objective distinc- tion 3) Public welfare offences
5 October 7 (A) October 12 (E)	424-471 (414-461) 471-472 (461-462) 473-509 (462-499) 509-555 (499-542) 555-579 (542-566)	4) Crimes i. Murder and the <i>Charter</i> ii. Subjective awareness rarely required 5) 3 types of crime since <i>Creighton</i> i. Crimes requiring subjek- tive awareness ii. Crimes of objective fault iii. Crimes based on predi- cate offences
6 October 14 (A) October 19 (E) Tentative: to be recorded live on campus on Octo- ber 14 at 6 PM	1079-1109 (1045-75) 1111-1135 (1077- 1101)	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
October 25-29	Fall Break	The October 21 lecture for Section A is can- celled.
November 2 to 4		<u>QUIZ #2</u> Covers Lectures 4-6 Online quiz to be done between 6 PM Novem- ber 2 and 11 PM November 4 (Ottawa time)
7 November 2 (E) November 4 (A)	1135-49 (1101-19) 1149-65 (1119-31) 589-621 (575-606)	(2) Conspiracy (3) Counseling IV. Rape and Sexual Assault A. Lack of consent (review) B. Rape laws

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
	621-724 (606-698)	C. Crimes of Sexual Assault
8 November 9 (E) November 11 (A)	725-747 (699-721) 747-776 (721-755) Part XX.1 C.C. 778-806 (757-785)	V. True Defences A. Mistake 1. Mistake of fact 2. Mistake of law VIII. Incapacity and Impairment 1. Insanity / Mental Disorder (a) Statutory provisions (b) Jurisprudence
9 November 16 (E) November 18 (A)	806-867 (785-847) 867-925 (848-893)	VIII. Automatism 3. Intoxication
November 23 to 25		QUIZ #3 Covers Lectures 7-9 Online quiz to be done between 6 PM November 23 and 11 PM November 25 (Ottawa time)
10 November 23 (E) November 25 (A)	927-933 (895-900) 933-957 (901-920) 957-959 (920-925)	VI. JUSTIFICATIONS AND EXCUSES A. Introduction / Air of reality B. Defence of Person C. Defence of Property
11 November 30 (E) December 2 (A)	959-985 (925-951) 986-1022 (951-986)	D. Necessity E. Duress
12 December 7 (E) December 9 (A) Tentative: to be recorded live on campus on December 7 at 6 PM	1022-49 (986-1016) 1056-77 (1023-43) 1198-1203 (1164-1168)	F. Provocation VII. POLICY DEFENCES A. <i>Entrapment</i> VIII. SPECIAL TOPIC (TIME PERMITTING) A. <i>Sentencing of Aboriginal Offenders: The Impact of R. v. Gladue and R. v. Ipelee</i> EXAM REVIEW
December 11-23		FINAL EXAM Date TBD: 3-hour online exam covering Lectures 10-12

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

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](#).

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 [click here](#).

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/student-experience-resources/>.