
COURSE:	LAWS 2302B and 2302D – Criminal Law
TERM:	FALL 2020
PREREQUISITES:	LAWS 1001 and LAWS 1002
CLASS:	Day & Time: Please check Carleton Central for current Class Schedule. Room: All Courses in the Fall 2020 term are offered online. Lectures will be prerecorded and uploaded to Kaltura Media Space (https://mediaspace.carleton.ca/user/login) and cuLearn each week, prior to 2:30 PM Wednesdays.
INSTRUCTOR: (CONTRACT)	John HALE, B.Sc., LL.B., B.C.L., member of the Bars of Ontario and the Northwest Territories
CONTACT:	Office: Office There are no set office hours. Meetings with students can Hrs: be conducted by phone or by Zoom. Tele- 613.695.4253 phone: Email: John.Hale@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

I have adapted my usual course description – and the course itself – to take into account the reality that, for the first time, I will not be teaching this course live to students in a classroom. There may 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 this year. We will all have to adjust to this new way of teaching and learning, at least for a little while longer.

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.

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 recommended 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 main text recommended 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 14th edition (2018), as the 13th edition (2015) is out-of-date. Avoid buying used *Criminal Codes*, as significant amendments in November 2019 render old *Codes* somewhat obsolete: the current edition is 2021 (released summer 2020), although a 2020 *Code* should be satisfactory.

A schedule of planned topics is set out below. I have set out readings for those of you who choose to buy 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 either provide you links to or which I will upload as PDFs to cuLearn 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 until the final days before the exams. 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 weeks 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 cuLearn course website. Review problems and 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

There are no required texts.

RECOMMENDED TEXTS

I *recommend* that you purchase the text that is normally used in this course, plus 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>.

RECOMMENDED READING

- (1) **Stuart, Don and Steve Coughlan:**
***Learning Canadian Criminal Law* (14th ed.), Carswell, 2018**
- (2) ***Pocket Criminal Code 2021* (Thomson Reuters, 2020) OR**
***Tremeeear's Annotated Criminal Code 2021* (Thomson Reuters, 2020) OR**
***Martin's Annotated Criminal Code 2021 (Student Edition)* (Thomson Reuters, 2020)**

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 online quizzes in this course, on September 30, October 21 and November 11 and December 2. Each quiz will cover the previous 3 lectures. The quizzes have been scheduled such that you can do them during your actual class time, i.e., between 2:30-5:30 PM (Section B) or between 6:00-9:00 PM (Section D), or any time between 2:00-9:30. On each of these dates, you will have a 7.5-hour window (2:00-9:30 PM) in which to access the exam. Once you start the exam you will have 2 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 12-23, exact date to be determined), similar to the quizzes. It will cover the lectures not covered by the 3 quizzes. It will be done online, and you will have 3 hours to complete it once you start.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

For each quiz you will have 7.5 hours in which to write a 2-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 EXAM if you are unable to write the exam during the 12-hour window.

Once you start writing the quiz/exam, you must submit it within the specified time (2 or 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 7, 2020	Statutory Holiday, University Closed
September 9, 2020	Fall Term Begins. Fall and Fall/Winter Classes Begin
October 12, 2020	Statutory Holiday, University Closed
October 26 – 30, 2020	Fall Break, No Classes
December 11, 2020	Fall Term Ends; Last Day of Fall Term Classes
December 12 – 23, 2020	Formally Scheduled Final Exams May Be Held
December 25 – 31, 2020	University Closed
January 1, 2021	University Closed

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
1 September 9	81-84 (74-78) ² 84-102, 109-112 (78-98, 105-108)	I. Introduction and Overview <ol style="list-style-type: none"> (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 <ol style="list-style-type: none"> 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	177-258 (169-248)	III. Elements of an Offence <ol style="list-style-type: none"> A. The "Voluntary Act" Requirement (<i>actus reus</i>) <ol style="list-style-type: none"> 1) Introduction 2) "<i>Actus reus</i>" = [voluntary] activity, circumstances and consequences 3) Commission of an unlawful act
3 September 23	258-297 (248-287) 297-313 (287-303) 313-358 (303-348)	<ol style="list-style-type: none"> 4) Omissions 5) Voluntariness 6) Causation
September 30		TEST #1 Covers Lectures 1-3 2-hour online quiz to be done between 12 noon and 12 midnight (Ottawa time)
4 September 30	359-361 (349-351) 361-367 (351-357) 367-424 (357-414)	<ol style="list-style-type: none"> B. The Fault Requirement (<i>mens rea</i> or negligence) <ol style="list-style-type: none"> 1) Introduction 2) Subjective/objective distinction 3) Public welfare offences
5 October 7	424-471 (414-461) 471-472 (461-462)	<ol style="list-style-type: none"> 4) Crimes <ol style="list-style-type: none"> i. Murder and the <i>Charter</i> ii. Subjective awareness rarely required 5) 3 types of crime since <i>Creighton</i>

1 All readings are from Stuart and Coughlan, *Learning Canadian Criminal Law* (14th ed.)

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>
	473-509 (462-499) 509-555 (499-542) 555-579 (542-566)	i. Crimes requiring subjective awareness ii. Crimes of objective fault iii. Crimes based on predicate offences
6 October 14	1079-1109 (1045-75) 1111-1135 (1077-1101)	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
October 21		TEST #2 Covers Lectures 4-6 2-hour online quiz to be done between 12 noon and 12 midnight (Ottawa time)
7 October 21	1135-49 (1101-19) 1149-65 (1119-31) 589-621 (575-606) 621-724 (606-698)	(2) Conspiracy (3) Counseling IV. Rape and Sexual Assault A. Lack of consent (review) B. Rape laws C. Crimes of Sexual Assault
Fall Break October 26-30		No Lecture
8 November 4	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 B. Incapacity and Impairment 1. Insanity / Mental Disorder (a) Statutory provisions (b) Jurisprudence
9 November 11	806-867 (785-847) 867-925 (848-893)	2. Automatism 3. Intoxication
November 18		TEST #3 Covers Lectures 7-9 2-hour online quiz to be done between 12 noon and 12 midnight (Ottawa time)
10 November 18	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

<u>Class No.</u>	<u>Readings¹</u>	<u>Topic(s)</u>
11 November 25	959-985 (925-951) 986-1022 (951-986)	D. Necessity E. Duress
12 December 2	1022-49 (986-1016)	F. Provocation
	1056-77 (1023-43)	VII. POLICY DEFENCES A. <i>Entrapment</i>
	1198-1203 (1164-1168)	VIII. SPECIAL TOPIC (TIME PERMITTING) A. <i>Sentencing of Aboriginal Offenders: The Impact of R. v. Gladue and R. v. Ipelee</i>
		EXAM REVIEW
13 December 9		Reserved in case needed in the event of a lecture being cancelled
December 12-23		<u>FINAL EXAM</u> Date TBD: 3-hour online quiz covering Lectures 9-12

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

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/>