

Course Outline

COURSE:	LAWS 2302B and 2302C – Criminal Law
TERM:	FALL 2022
PREREQUISITES:	LAWS 1001 and LAWS 1002
CLASS:	Day & Time: Please check Carleton Central for current Class Schedule. As of August 17, 2022 the lectures are scheduled on Wednesdays at 2:35-5:25 PM for section C, and at 6:05-8:55 PM for section B.
	Room: Section B (6:05 PM): Tory Building (TB) 340 Section C (2:35 PM): University Centre (UC) 180
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 2022

After two full years of teaching this course remotely, I taught a small section of this course in person in the summer of 2022. This will be my first time back in a regular-enrolment Fall/Winter classroom since March 2020. I confess to being very excited to be in the same room as my students once again; as much as I enjoyed the flexibility that doing lectures by Zoom offered, I have missed the opportunity to interact with a classroom of students.

Lectures will all be in person, subject to last-minute issues that may arise, in which case the lecture will be taught by Zoom. Because of commitments that I made prior to accepting these courses, there are a few times where I am not available to come to campus; those lectures will be recorded on Zoom, and you will receive invitations to join in remotely. Any recorded lectures will be uploaded to Brightspace so that students who are unable to join in live can still watch the lecture.

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 provisions of the *Charter of Rights*, and with the procedures set out in 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 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 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.

There are two required texts for this course.

The first required text 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. You should be able to buy a used copy of the 15th edition, and you should also have no difficulty selling a new or used copy as the next edition will not come out until 2024.

The second required text is any version of the *Criminal Code*. Avoid buying older used *Criminal Codes*, as significant amendments in November 2019 render old *Codes* somewhat obsolete: the current edition is 2023 (released summer 2022), although a 2022 *Code* should be satisfactory. I have asked the two bookstores (Carleton and Haven) to order the *Martin's Annotated Criminal Code 2023*, 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.

A schedule of planned topics is set out below. I am providing the readings from the 15th edition, as well as from the 14th and 13th editions, 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, which is largely a collection of case excerpts, you will be expected to read cases which I will upload 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 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 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 exams are open-book, I strongly encourage you to come to 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)

***Martin's Annotated Criminal Code 2023 (Student Edition)* (Thomson Reuters 2022).**

OTHER CRIMINAL CODE OPTIONS

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

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

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, following the 3rd, 6th and 9th lectures. Each quiz will cover 3 lectures (so lectures 1-3, 4-6 and 7-9). For each quiz you will have at least a 4-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 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 10-22, 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.

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. 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 by email **PRIOR TO STARTING THE QUIZ** if you are unable to write the quiz during the 107-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 7, 2022	Fall Term begins. Fall and Fall/Winter classes begin
October 10, 2022	Statutory holiday, University closed
October 24-28, 2022	Fall Break, no classes
December 9, 2022	Full Fall Term ends; last day of Fall Term classes
December 10-22, 2022	Formally scheduled final exams may be held (7 days/wk)

<u>Class No.</u> ¹	<u>Readings</u> ²	<u>Topic(s)</u>
1 September 7	143-148; 81-84 ; (74-78) 148-165, 172-176; 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 14	195-253; 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 4) Omissions 5) Voluntariness 6) Causation
3 September 21	253-270; 258-297 ; (248-287) 270-282; 297-313 ; (287-303) 282-320; 313-358 ; (303-348)	
September 26-30		QUIZ #1 Covers Lectures 1-3 Online quiz to be done between 12 PM September 26 and 9 PM September 30

1 Lectures highlighted in yellow will be taught remotely, specific date and time TBA.

2 All readings are from Stuart and Coughlan, *Learning Canadian Criminal Law*. The first set of page numbers (not bold) are pages in the 15th Edition; the second set – **in bold** - is from the 14th Edition. The third set (in parentheses) is from the 13th Edition.

<u>Class No.</u> ¹	<u>Readings</u> ²	<u>Topic(s)</u>
4 September 28	321-323; 359-361 ; (349-351) 323-329; 361-367 ; (351-357) 329-378; 367-424 ; (357-414)	B. The Fault Requirement (<i>mens rea</i> or negligence) 1) Introduction 2) Subjective/objective distinction 3) Public welfare offences
5 October 5	379-420; 424-471 ; (414-461) 421-422; 471-472 ; (461-462) 422-458; 473-509 ; (462-499) 458-499; 509-555 ; (499-542) 499-519; 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 subjective awareness ii. Crimes of objective fault iii. Crimes based on predicate offences
6 October 12 ³	955-984; 1079-1109 ; (1045-75) 985-1003; 1111-1135 ; (1077-1101)	C. Parties to a Crime D. Inchoate Crimes (1) Attempts
October 17-21		<u>QUIZ #2</u> Covers Lectures 4-6 Online quiz to be done between 12 PM October 26 and 11 PM October 30
7 October 19 ⁴	1003-9; 1135-49 ; (1101-19) 1009-24; 1149-65 ; (1119-31) 525-540; 589-621 ;	(2) Conspiracy (3) Counseling IV. Rape and Sexual Assault A. Lack of consent (review) B. Rape laws

³ I will be in court in the Northwest Territories October 10-21.

⁴ I will be in court in the Northwest Territories October 10-21.

<u>Class No.</u> ¹	<u>Readings</u> ²	<u>Topic(s)</u>
	(575-606) 541-624; 621-724 ; (606-698)	C. Crimes of Sexual Assault
8 November 2	625-641; 725-747 ; (699-721) 641-668; 747-776 ; (721-755) Part XX.1 C.C. 670-699; 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 9	699-747; 806-867 ; (785-847) 747-796; 867-925 ; (848-893)	2. Automatism 3. Intoxication
November 14-18		<u>QUIZ #3</u> Covers Lectures 7-9 Online quiz to be done between 12 PM No- vember 14 and 11 PM November 18
10 November 16 ⁵	797-804; 927-933 ; (895-900) 804-836; 933-957 ; (901-920) 836-838; 957-959 ; (920-925)	VI. JUSTIFICATIONS AND EXCUSES A. Introduction / Air of reality B. Defence of Person C. Defence of Property
11 November 23	838-864; 959-985 ; (925-951) 864-900; 986-1022 ; (951-986)	D. Necessity E. Duress
12 November 30 ⁶	NO CLASS	NO CLASS

⁵ I will be in trial in Perth on November 16.

⁶ I will be in trial in Ottawa on November 30. Rather than record a remote class, I will make up the lecture on December 7th.

<u>Class No.</u> ¹	<u>Readings</u> ²	<u>Topic(s)</u>
12 December 7	900-933; 1022-49 ; (986-1016) 934-954; 1056-77 ; (1023-43) 16-18, 48-54; 1198-1203 ; (1164-1168)	F. Provocation VII. POLICY DEFENCES A. <i>Entrapment</i> VIII. SPECIAL TOPIC (TIME PERMITTING) A. <i>Sentencing of Indigenous Offenders: The Impact of R. v. Gladue and R. v. Ipelee</i> EXAM REVIEW
December 10-22		<u>FINAL EXAM</u> Date TBD: 3-hour online exam covering Lectures 10-12, to be done in 4-day period

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](#).

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

[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. 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/>.

COVID Update

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

Masks: Carleton has paused the [COVID-19 Mask Policy](#), but continues to strongly recommend masking when indoors, particularly if physical distancing cannot be maintained. It may become necessary to quickly reinstate the mask requirement if pandemic circumstances were to change.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.