

**Carleton University****Department of Law and Legal Studies****COURSE OUTLINE**

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**COURSE:** LAWS 4308 B – Sentencing**TERM:** Fall 2021**PREREQUISITES:** LAWS 2908, CRCJ 3001, or CRCJ 3002  
LAWS 2301, LAWS 2302  
Fourth Year Honours Standing**CLASS:** Thursday 6:00 – 9:00 pm  
Please check Carleton Central for current class schedule.  
In-Person Section**INSTRUCTOR:** Stephen J. Donoghue**OFFICE HOURS:** Online, by appointment**CONTACT:** Email: [SJDonoghue14@gmail.com](mailto:SJDonoghue14@gmail.com)  
[stephendonoghue@cunet.carleton.ca](mailto:stephendonoghue@cunet.carleton.ca)  
Tel: (613) 239-1086

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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**

The aim of the course is to help students develop a critical understanding of the sentencing process and gain an appreciation of the important role of sentencing in the Canadian criminal justice system. A substantive examination of sentencing will be presented with extensive reference to the *Criminal Code of Canada*, other legislation, and case law. A brief overview of the historical perspective of sentencing will provide some understanding of the shift in societal values and perspectives on punishment. The focus of the course will be on the current sentencing regime in Canada with emphasis on sentencing principles and procedure, sentencing options, sentencing for particular offences and of specific offenders, and the role of victims in the sentencing process. As the class is crafted in a seminar style, there will be extensive analysis and discussion concerning the purpose and effect of modern-day sentencing practices and what they reveal about Canadian society.

## **COURSE OBJECTIVES**

By the end of the course students should have a solid understanding of how the sentencing process actually works in Canadian criminal cases. Students should understand and be able to critically analyze the basis upon which sentences are imposed, and feel comfortable and confident to argue in favour of or against a given sentence.

## **TEACHING METHOD**

Primarily a seminar style with class discussions.

## **REQUIRED TEXTS**

- Manson, *The Law of Sentencing* (Toronto, Ont.: Irwin Law, 2001)
  - Available at the Carleton bookstore.
- Course Pack
  - Available at the Carleton bookstore and prepared by The Print Shop.
- Additional material may be distributed in class.

## **SUPPLEMENTARY TEXTS**

- Criminal Code of Canada

## **METHOD OF 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.

The final grade for the course will be based on the following components:

1. **Student Presentation & Handout (30%)**
  - Individually, or in groups of two, students will select a sentencing topic to present to the class.
  - Presentations should last about 45 minutes and should review the topic selected for the class while also initiating discussion of critical sentencing issues related to the topic.
  - Students must also prepare a handout for their classmates in attendance. The handout should be provided at the beginning of the presentation.
  - The presentation and handout will be graded according to three factors:
    - (a) Demonstration of the students' understanding of the topic (40%),
    - (b) Ability to identify and initiate discussion on critical sentencing issues related to the topic (40%), and
    - (c) Style of presentation (20%).

2. **Peer Evaluation** (10%)
  - Students will grade their fellow classmates on the student presentations.
  - There will be a form for students to complete after each student presentation.
3. **Participation** (10%)
  - Student grades will incorporate recognition of attendance at class, participation in class discussions, and completion of the peer evaluation forms.
  - As this is a seminar style class, student participation is an essential element of the learning process.
4. **Final Exam** (50%)
  - 2-hour closed book examination (Held during the formal examination period – December 11-23, 2021).
  - Exam will be based on assigned readings, class lectures, and class presentations from throughout the full term.
  - Exam will represent a combination of multiple choice, short answer, and long answer questions.

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

### **LATE PENALTIES AND REQUESTS FOR EXTENSIONS**

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. Please be advised that extensions will generally not be granted as there is limited time available to reschedule presentation dates. In those extraordinary cases where an extension is granted, the student may first be required to provide additional information to justify the extension, and a 5% penalty will be applied to the presentation grade.

### **SCHEDULE**

<b><u>Class Date</u></b>	<b><u>Sentencing Topic</u></b>
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*Part I – Introduction*

1. September 9
  - a) **Introduction to the Course**
    - Review of the course outline with elaboration on the course objectives, expectations, and method of evaluation.
    - *Course Outline*
    - *Handout #1 – Peer Evaluation Form*
  - b) **Overview of Sentencing**
    - *Manson*, chapters 1-4
2. September 16 **Overview of Sentencing (con'd)**
  - *Manson*, chapters 1-4

3. September 23 **Overview of Sentencing (con'd)**
  - *Manson*, chapters 1-4
4. September 30 a) **Demonstration of a Sentencing Hearing**
  - *Handout #2 – Sentencing Hearing Demonstration*

b) **Overview of Sentencing (con'd)**

  - *Manson*, chapters 1-4
5. October 7 a) **Overview of Sentencing (con'd)**
  - *Manson*, chapters 1-4
6. October 14 a) **Overview of Sentencing (con'd)**
  - *Manson*, chapters 1-4

### *Part II – Principles of Sentencing*

#### **b) Sentencing Game**

- Class review of material covered to date.
- The discussion will focus on the fundamental principles of sentencing, aggravating and mitigating factors, and the rules of sentencing.
- *Manson*, chapters 5, 6, and 7

### *Part III – Sentencing Options*

7. October 21 a) **Non-Custodial Dispositions**
  - Diversion, absolute and conditional discharges, fines, probation orders
  - *Manson*, chapter 9 A-E
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b) **Custodial Dispositions**

  - Conditional sentences, intermittent sentences, jail (reformatory and penitentiary)
  - *Manson*, chapter 9 H-J
  -

c) **Preventative Detention**

  - Dangerous offenders, long-term offenders, recognizances under section 810 of the *Code*
  - *Manson*, chapter 11
  -
- October 28 **Fall Break** (no class)

## Part IV – Sentencing Procedure

### 8. November 4 a) **The Sentencing Hearing**

- Admissibility of evidence, burden of proof, proving a criminal record, pre-sentence reports, offender's right to speak, medical reports
  - *Manson*, chapter 8
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### b) **Sentence Appeals**

- Standard of review, deference to the sentencing judge, launching a sentence appeal, stay pending appeal, admission of fresh evidence on appeal
  - *Manson*, chapter 12
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### c) **Record Suspensions and Clemency**

- Record suspensions (pardons), clemency, the Royal Prerogative of Mercy, the process for obtaining record suspensions
  - *Coursepack*, tab 1
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## Part V – Sentencing for Particular Offences

### 9. November 11 a) **Sentencing in Homicide Cases**

- Life sentences, parole ineligibility, faint hope clause, manslaughter sentences
  - *Manson*, chapter 10
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### b) **Sentencing in Domestic Violence Cases**

- Resolution by peace bond, Partner Assault Response (PAR) programs, reluctant/uncooperative victims, *de minimus* assaults
  - *Coursepack*, tab 2
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### c) **Sentencing in Sexual Offence Cases**

- Pertinent sentencing principles, appropriateness of conditional sentences, DNA orders, sexual offender registry, public place prohibitions (*Code* s. 161)
  - *Coursepack*, tab 3
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**10. November 18 a) Sentencing in Drinking and Driving Cases**

- Minimum sentences, notice of increased penalty, driving prohibitions, ignition interlock, provincial license suspensions, cases involving death or bodily harm
  - *Coursepack*, tab 4
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**b) Sentencing in Drug Cases**

- Drug offences, nature of the substance involved, sentencing principles under the *CDSA*, effect of addiction, forfeiture of property, drug treatment court
  - *Coursepack*, tab 5
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**c) Sentencing in Firearms Offence Cases**

- What is a firearm?, firearm offences, the big eleven offences, minimum sentences where a firearm is used, implications of minimum sentences, weapons prohibitions
  - *Coursepack*, tab 6
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*Part VI – Sentencing of Specific Offenders*

**11. November 25 a) Young Offender Dispositions**

- Principles in the *YCJA*, sentencing options, murder sentences, restrictions to custody, annual reviews, adult sentences
  - *Coursepack*, tab 7
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**b) Sentencing and Gender Issues**

- Treatment of women offenders by the courts, welfare fraud cases, infanticide, sentencing pregnant offenders, battered woman's syndrome, transgendered offenders
  - *Coursepack*, tab 8
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**c) Sentencing and Socio-Economic Factors**

- Different justice for the rich than the poor?, developments to address inequalities, legal aid, choice of counsel, inability to pay a fine and/or make restitution, sentencing white collar crime
  - *Manson*, chapter 13 B
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## 12. December 2 a) **Sentencing and Aboriginal Issues**

- The *Gladue* decision, section 718.2(e) of the *Code*, disproportional representation of Aboriginals in custody, restorative justice, sentencing circles
  - *Manson*, chapter 13 D
  - *Coursepack*, tab 9
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### b) **Sentencing Offenders with Mental Health Issues**

- Mental disorders, diversion of mentally disordered accused, not criminally responsible finding, mitigation of sentence, mental health court
  - *Coursepack*, tab 10
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## *Part VII – Victims and the Sentencing Process*

### c) **Victims and the Sentencing Process**

- Who qualifies as a “victim”?, victim impact statements, the Victim’s Bill of Rights, child/vulnerable victims, testimonial aides, Victim Witness Assistance Program (VWAP), victim surcharge, victim interest groups (MADD)
  - *Manson*, chapter 13 C
  - *Coursepack*, tab 11
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## *Part VIII – Review*

## 13. December 9 a) **Professor Evaluation**

### b) **Return of Student Evaluations**

- All evaluations will be provided together at the same time as the course does not lend itself to early evaluations.

### c) **Sample Sentencing Submission Exercise**

- *Handout #3 – Sentencing Submission Exercise*

### d) **Review of the Course**

- Review of the subject material covered during the course of the academic year.
- Answer student questions concerning the upcoming final examination.

Please find a full list of important academic dates on the calendar website:

<http://calendar.carleton.ca/academicyear/>

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## **COVID-19 PREVENTION MEASURES**

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact [covidinfo@carleton.ca](mailto:covidinfo@carleton.ca)

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

## **ACADEMIC ACCOMMODATIONS**

### **Academic Accommodation**

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](mailto: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 will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

### **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/>.

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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/>.

### **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/>.