

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

COURSE: LAWS 4308 C – Sentencing

TERM: Winter 2023

PREREQUISITES: LAWS 2908, CRCJ 3001 or CRCJ 3002, LAWS 2301, LAWS 2302, and Fourth Year Honours Standing

CLASS: Thursday 18:05 – 20:55 pm
St. Patrick’s Building 400
In-Person Section

INSTRUCTOR: Stephen J. Donoghue

OFFICE HOURS: By Appointment at Loeb B442

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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 on Brightspace.
- 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 – April 15-27, 2023).
 - 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. 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 penalty may be applied to the grade.

SCHEDULE

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

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| 1. January 12 | <p>a) Introduction to the Course</p> <ul style="list-style-type: none"> • Review of the course outline with elaboration on the course objectives, expectations, and method of evaluation. • <u>Handouts</u>: Course Outline, Handout #1 – Peer Evaluation Form <p>b) Overview of Sentencing</p> <ul style="list-style-type: none"> • A comprehensive overview of sentencing in Canada. • <u>Text</u>: <i>Manson</i>, chapters 1-4 – pages 1-82 |
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2. January 19 **Overview of Sentencing (con'd)**
 - A comprehensive overview of sentencing in Canada.
 - Text: *Manson*, chapters 1-4 – pages 1-82

3. January 26 **Overview of Sentencing (con'd)**
 - A comprehensive overview of sentencing in Canada.
 - Text: *Manson*, chapters 1-4 – pages 1-82

4. February 2 a) **Demonstration of a Sentencing Hearing**
 - Demonstration of a sentencing hearing.
 - Handout: Handout #2 – Sentencing Hearing Demonstration
 - b) **Overview of Sentencing (con'd)**
 - A comprehensive overview of sentencing in Canada.
 - Text: *Manson*, chapters 1-4 – pages 1-82

5. February 9 a) **Overview of Sentencing (con'd)**
 - A comprehensive overview of sentencing in Canada.
 - Text: *Manson*, chapters 1-4 – pages 1-82

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.
 - Text: *Manson*, chapter 5 – pages 83-97; chapter 6 – pages 98-129; chapter 7 – pages 130-161

Part III – Sentencing Options

6. February 16 a) **Non-Custodial Dispositions**
 - Sentencing options short of incarceration.
 - Topics: diversion, absolute and conditional discharges, fines, probation orders
 - Textbook: *Manson*, chapter 9 A-E – pages 208-250
 - b) **Custodial Dispositions**
 - The various types of jail sentences.
 - Topics: conditional sentences, intermittent sentences, reformatory jail, penitentiary jail
 - Textbook: *Manson*, chapter 9 H-J – pages 260-291

c) **Preventative Detention**

- Confinement based on a perception of risk or fear of future crimes.
- Topics: dangerous offenders, long-term offenders, recognizances under section 810 of the *Code*
- Textbook: *Manson*, chapter 11 – 314-353

February 23 **Fall Break** (no class)

Part IV – Sentencing Procedure

7. March 2

a) **The Sentencing Hearing**

- The court process where a sentence is initially imposed after a finding of guilt.
- Topics: admissibility of evidence, burden of proof, proving a criminal record, pre-sentence reports, offender's right to speak, medical reports
- Textbook: *Manson*, chapter 8 – pages 162-207

b) **Sentence Appeals**

- A higher court reviews a sentence imposed.
- Topics: standard of review, deference to the sentencing judge, launching a sentence appeal, stay pending appeal, admission of fresh evidence on appeal
- Textbook: *Manson*, chapter 12 – pages 354-364

c) **Record Suspensions and Clemency**

- Offenders can apply to vary their sentence after the appellate process is complete.
- Topics: Record suspensions (pardons), clemency, the Royal Prerogative of Mercy, the process for obtaining record suspensions
- Coursepack: tab 1 – pages 1-12

Part V – Sentencing for Particular Offences

8. March 9
- a) **Sentencing in Homicide Cases**
- Offences involving the loss of human life.
 - Topics: life sentences, parole ineligibility, faint hope clause, manslaughter sentences
 - Textbook: *Manson*, chapter 10 – pages 292-313
- b) **Sentencing in Domestic Violence Cases**
- Offences occurring within an intimate partner relationship.
 - Topics: resolution by peace bond, Partner Assault Response (PAR) programs, reluctant/uncooperative victims, *de minimus* assaults
 - Coursepack: tab 2 – pages 1-3
- c) **Sentencing in Sexual Offence Cases**
- Offences involving a violation of the victim’s sexual integrity.
 - Topics: pertinent sentencing principles, appropriateness of conditional sentences, DNA orders, sexual offender registry, public place prohibitions (*Code s. 161*)
 - Coursepack: tab 3 – pages 1-11
9. March 16
- a) **Sentencing in Impaired Driving Cases**
- Offences involving the operation of a motor vehicle after consuming alcohol or drugs.
 - Topics: minimum sentences, notice of increased penalty, driving prohibitions, ignition interlock, provincial license suspensions, cases involving death or bodily harm
 - Coursepack: tab 4 – pages 1-7
- b) **Sentencing in Drug Cases**
- Offences involving illegal narcotics.
 - Topics: drug offences, nature of the substance involved, sentencing principles under the *CDSA*, effect of addiction, forfeiture of property, drug treatment court
 - Coursepack: tab 5 – pages 1-12

c) **Sentencing in Firearms Offence Cases**

- Offences involving the use of firearm.
 - Topics: 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 – pages 1-3
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Part VI – Sentencing of Specific Offenders

10. March 23

a) **Young Offender Dispositions**

- Sentencing offenders under 18 years old.
 - Topics: principles in the *YCJA*, sentencing options, murder sentences, restrictions to custody, annual reviews, adult sentences
 - Coursepack: tab 7 – pages 1-6
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b) **Sentencing and Gender Issues**

- Sentencing implications from the offender's gender.
 - Topics: treatment of women offenders by the courts, welfare fraud cases, infanticide, sentencing pregnant offenders, battered woman's syndrome, transgendered offenders
 - Coursepack: tab 8 – pages 1-18
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c) **Sentencing and Socio-Economic Factors**

- Sentencing implications from the offender's financial situation.
 - Topics: 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
 - Textbook: *Manson*, chapter 13 B – pages 366-368
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11. March 30

a) **Sentencing and Aboriginal Issues**

- Sentencing Indigenous offenders.
- Topics: the *Gladue* decision, section 718.2(e) of the *Code*, disproportional representation of Aboriginals in custody, restorative justice, sentencing circles
- Textbook: *Manson*, chapter 13 D – pages 371-374
- Coursepack: tab 9 – pages 1-23

b) Sentencing Offenders with Mental Health Issues

- Sentencing offenders with mental health issues.
 - Topics: mental disorders, diversion of mentally disordered accused, not criminally responsible finding, mitigation of sentence, mental health court
 - Coursepack: tab 10 – pages 1-10
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Part VII – Over-Arching Matters

c) Victims and the Sentencing Process

- The involvement of those adversely affected by crime in the sentencing process.
- Topics: 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)
- Textbook: *Manson*, chapter 13 C – pages 368-371
- Coursepack: tab 11 – pages 1-10

Part VIII – Review

12. April 6

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: *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.
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Winter 2023 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website:</i> https://calendar.carleton.ca/academicyear/	
January 9, 2023	Winter term begins.
January 20, 2023	Last day for registration and course changes (including auditing) in full winter and late winter courses.
February 20, 2023	Statutory holiday. University closed.
February 20-24, 2023	Winter break. No classes.
March 15, 2023	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
April 7, 2023	Statutory holiday. University closed.
April 12, 2023	Winter term ends. Last day of full winter, late winter, and fall/winter classes.
April 15-27, 2023	Final examinations in full winter, late winter, and fall/winter courses will be held. Examinations are normally held all seven days of the week.
April 27, 2023	All final take-home examinations are due on this day.

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:

(<https://students.carleton.ca/course-outline/>).

Pregnancy Obligation: Please 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/>.

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: 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 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/>.