

Course Outline
Sex and the Criminal Law
CJ 3133 (3)

COURSE DESCRIPTION

This course surveys selected issues involving sexual performances and expression and the criminal law. The main focus of the course is on the development of obscenity and indecency laws in the Canadian context and in attempting to place these developments in a broader socio-legal context. The course thus explores theories underpinning freedom of expression, the development of anti-pornography law, the development of anti-indecency law in Canada and the development of the criminalization of prostitution related laws in Canada. The course does not consider sexual assault law since the law of sexual assault is dealt with in other criminal justice offerings (for instance in advanced criminal law and criminal law).

WARNING

This course contains strong sexual content, both in print and in film. The discussions, readings and visual representations may be extremely disturbing to some students. In particular language with strong sexual content may be studied. The documentary we will be showing has strong adult content and often depicts graphic displays of sexuality and nudity. Students are advised that remaining enrolled in this course is an acceptance of viewing this content.

REQUIRED ACADEMIC BOOKS

Jochelson and Kramar. *Sex and the Supreme Court: Obscenity and Indecency Laws in Canada*. (Manitoba and New Brunswick: Fernwood)

REQUIRED FILMS

Pornography: The Secret History of Civilization – a six part series on the history of pornography, Bailey and Barbato (Producers)

OTHER REQUIRED MATERIALS

Pocket Criminal Code of Canada – Any copy after the 10th Edition (Toronto: Thomson, Carswell)

Students should also obtain copies of the Constitution Acts 1867, and 1982; both are accessible on the Internet.

CASE LAW READING (links available on Website)

R. V. BUTLER (1992) SCC

LITTLE SISTERS BOOK AND ART EMPORIUM V. CANADA (2000) SCC

R. V. LABAYE (2005) SCC

R. V. MARA (1997) SCC

R. V. TREMBLAY (1993) SCC

PROSTITUTION REFERENCE (1990)

R. V. MALMO-LEVINE; V. CAINE (2003)
BEDFORD V. CANADA (2010) ONSC and ONCA (2012) (and possibly 2013 SCC)
SEX WORKERS CASE (2012) AND THE COURT BLOGPOST

APPROXIMATE LIST OF READING UNITS (subject to alteration in the interests of time). New cases not in the text may be discussed in class as appropriate.

Week 1-2: Chapter 1: Theoretical Debates

- 1) Law and the Censorship of Obscenity
- 2) Liberalism and Harm
- 3) The Harm Principle
- 4) Canadian Censorship Debates
- 5) Governmentalities of Law

Week 3-5: Chapter 2; Butler; Little Sisters

- 1) The Hicklin Era
- 2) Community Standards Era
- 3) Post Charter Community Standards in Butler
- 4) Homophobia after Butler
- 5) Little Sisters

Week 6-8: Chapter 3: Tremblay, Mara, Labaye

- 1) The Private/Public Debate
- 2) Factual Harm era
- 3) Labaye
- 4) Functionalism
- 5) Risks of Harm
- 6) Abstracted Legal Subjects
- 7) Illiberal Harm

Week 9-11: Chapter 4: Prostitution Reference, Bedford (2010 and 2012), Malmo Levine

- 1) Prostitution and its links to Indecency
- 2) Old Challenges – the Reference
- 3) New Challenges – Bedford (lower court and appeal), Sex Workers
- 4) When the Law is the Source of Harm

Week 12: Concluding Chapter, Review

- 1) Governing Through Harm
- 2) Tying it all together

METHODS AND MODES OF EXAMINATIONS

Midterm Quiz

25%

Memorandum Assignment:

Due in our last class: **25%**

The assignment asks the student to use the entirety of the course to advise a client about a legal problem she faces. The student is asked to pretend they are the client's legal counsel and to draft a mock memorandum giving the client legal advice. The assignment is to be under 4000 words. Students can work in groups of up to 4 or alone. If students fail to complete this assignment the 25 percent will be divided equally between the midterm and the final exam.

Final Test:**Cumulative Final Take Home Test (50%)**

It covers the entire course book, all cases covered and the DVD Documentary. Students will have a choice between a written group exam (up to 4 people) or an online nexus based examination.

GRADE DISTRIBUTION

A+ = 96-100%	B+ = 79-84%	C = 60-64%
A = 90-95%	B = 70-78%	D = 50-59%
A- = 85-89%	C+ = 65-69%	F = 0-49%

A TA may mark portions of your coursework.

POLICY ON MISSED TESTS

Under no circumstances will a test be given earlier than the scheduled date. Makeup tests may be scheduled if a student can produce suitable documentation (a doctor's note for instance) to indicate illness or family emergency. The documentation should verify that the student was either legitimately ill or otherwise indisposed by virtue of family emergency and it should outline the time frame for which the illness or emergency transpired. Make up tests will not necessarily be the same format or duration as the scheduled test and they will be scheduled at the convenience of the instructor.

POLICY ON ATTENDANCE AND PARTICIPATION

In order to benefit from this course, you will need to have attended regularly and have completed the readings prior to class.

PROFESSIONAL COURTESY

Talking out of turn, early departures, late arrivals, instant messaging, crude behaviour or other similar conduct are all matters which distract your fellow students and the instructor. Please be suitably courteous.

CONTACTING THE INSTRUCTOR

All phone calls or emails will be responded to in due course. This will usually be within one business days of receipt of the message. Please be advised that University of

Winnipeg email is designed to work best when emails are sent and received by University of Winnipeg accounts and that its spam filter can be over active. It is therefore recommended that students leave a phone message if they wish to contact the instructor. Substantive questions or important issues must be discussed in person. Please set up an appointment if you wish to discuss such matters

APPEALS: Students are able to appeal marks if they are so inclined. Please consult the academic calendar for details.

SERVICES FOR STUDENTS WITH ALTERNATE ABILITIES:

Students with documented disabilities, temporary or chronic medical conditions, requiring academic accommodations for tests/exams (e.g., private space) or during lectures/laboratories (e.g., access to volunteer note-takers) are encouraged to contact Accessibility Services (AS) at 786-9771 or email accessibilityservices@uwinnipeg.ca to discuss appropriate options. Specific information about AS is available on-line at <http://www.uwinnipeg.ca/accessibility>. All information about a student's disability or medical condition remains confidential.

ACADEMIC POLICIES: It is expected that you have acquainted yourselves with the university's academic regulations and policies found in the current calendar. You should carefully read the policy on academic misconduct (found in this year's calendar). Cheating of any kind, including conduct which contravenes the university's academic misconduct code will not be tolerated. Writing online or nexus exams together is a form of academic misconduct.

