

CJ-4130/3
Advanced Criminal Law
Course Outline
University of Winnipeg
Room: 3MC02N

CONTACT INFORMATION

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PURPOSE OF THIS DOCUMENT

This syllabus is an outline and is merely a roadmap of what to expect in this course. While the obligations imposed on students in this document are binding, this document is not a legal contract. This document does not bind the instructor or university in any express or implied manner. Its sole purpose is to inform students of their rough obligations for the duration of this course. The contents of this document may therefore not form the basis of any appeals process. The contents of this document are subject to change as the course progresses. Students are responsible for obtaining up to date and current information by attending class; all other attempts to stay up to date on course developments are insufficient. By remaining enrolled in this course you are accepting this responsibility. In return you get the reasonable services of the University and its staff and the opportunity for post-secondary education.

REQUIRED BOOKS

1. **Textbook:** Delisle et al., *Learning Canadian Criminal Procedure*, 9th Edition (Toronto: Thomson, Carswell). (This is the same text that we use in criminal procedure. The 8th edition is available used and has 95 percent similar content. Although we will only cover some of this book, please remember that is intended for 2 courses)
2. **Online Readings:** Custom Course Readings available online
3. **The Code:** Pocket Criminal Code of Canada 2009, Thomson-Nelson, 6th Edition

OTHER REQUIRED MATERIALS

Students should also obtain copies of the relevant sections of the Constitution Acts 1867, and 1982; both are accessible online.

Other materials may be made available on the course website from time to time. Students should check the course website at least once a week for announcements and readings.

COURSE DESCRIPTION AND TOPICS OF COVERAGE

An extension of CJS 90.2130/3 (crim law) and also 90.3130/3 (crim pro), this course examines Canadian criminal law in greater depth with a particular emphasis on the Constitutional issues affecting the disposition of the criminal trial. The interrogation phase of the criminal process is examined in detail, as well as the remedies available at trial for accuseds whose rights have been violated during interrogation. After a brief review of introductory criminal law matters, advanced substantive criminal law topics are covered including advanced issues in *actus reus*, *mens rea*, modes of participation, inchoate offences, regulatory law and corporate crime.

TEACHING METHOD

The primary method of instruction for this class is a seminar format. The course will be conducted through a combination of presentations & discussions led by students including student discussion/presentations, and small group discussions. Participation (which includes attendance and active engagement) is essential to the success of this course. Students are expected to come to class prepared to discuss the assigned readings in a thorough and comprehensive manner.

LIST OF READING UNITS

Please note that this is a tentative reading list which may be modified throughout the term. Students will be advised of any changes in class.

The following is a list of required readings for the course. Where the phrase “independent reading” appears below it connotes that no one is responsible for presenting this material. However you are still responsible for covering this material for potential quizzes or assignments in this course. “Supplemental Readings” are intended for those who want further details on a topic. All readings are available on the web except those entitled “Learning Canadian Criminal Procedure.”

The italicized readings below indicate materials that students are responsible for presenting in class by way of seminar. In the first week of class we will assign these seminars to the appropriate amount of students. Students will be responsible for arranging a presentation for 2.5 to 3 hours including leading an in class discussion or exercise pertaining to the material. Where 2 or more students are assigned to the week they must divide the workload amongst themselves in as fair and equitable a manner as possible.

Class 1:

[Argumentation, Legal Writing and Legal Reasoning](#)

Independent Reading: Legal Citation:

Pages 1-16

Independent Reading: About Mooting:

Pages 1-5

Independent Reading: Sample Factum

Pages 1-30

Class 2:

[Introductory Materials](#)

Independent Reading: Introductory Readings in Criminal Law

Pages 1-10

Independent Reading: Review of Constitutional Principles

Pages 1-13

Independent Reading: Introduction to Procedure

Pages 1-16

Independent Reading: Textbook - Learning Canadian Criminal Procedure:

Chapter 1

Charter Remedies: Chapter 5, 485-510

NB All members of the class will be asked to report on elements of these readings. This class will be a group seminar with each student charged with responsibility for certain topics. This will factor into your participation grades.

Class 3:

[Right to Counsel.](#)

Textbook - Learning Canadian Criminal Procedure: Right to Counsel

Pages 291-312 - Key cases: Therens, Thomsen, Moran, Mickey, Hawkins, Feeney, Bartle

Pages 313-342 – Key cases: Brydges, Bartle, Manninen, Baig, Leclair, Burlingham, Clarkson, Smith

By-Passing the Tell-Tale Heart: The Right to Counsel and the Exclusion of Evidence

Pages 2-13

From Flappers to Rappers

Pages 1-2, 8-9

2 students:

Class 4:

[Right to Silence.](#)

Textbook - Learning Canadian Criminal Procedure: Right to Silence

Pages 343-372 – Key cases: Wray, Ref. re 94(2), Hebert, Turcotte. Key Articles: Salhany and Carter

Pages 386-402, 406 – Key Cases: Oickle, Singh. Other key areas: non compellability, self incrimination

From Flappers to Rappers

Pages 2-7, 9-10

Addressing the Divide between the Section 7 Right to Silence and the Common Law Confessions Rule

Pages 1-4

2 students:

Class 5:

[Exclusion of Evidence.](#)

The Unprincipled Use of Originalism and Section 24(2) of the Charter

Pages 1-47

Taking Deterrence Seriously: Excluding Unconstitutionally Obtained Evidence under Section 24(2) of the Charter

Pages 1-44

By-Passing the Tell-Tale Heart: The Right to Counsel and the Exclusion of Evidence

Pages 1-2, 13-36

From Flappers to Rappers

Pages 10-14

2 students:

Independent Reading: Exclusion of Evidence
Pages 1-10

Supplemental Reading: Textbook - Learning Canadian Criminal Procedure: Chapter 5:
419-484

Class 6:
Midterm Quiz

Reading Week Feb 16-20

Class 7:
[Review of Basic Criminal Law](#)
Criminal Law Review
Pages 1-8

Criminal Law review (II)
Pages 1-19

2 students:

Class 8:
[Special Issues of Actus Reus](#)
R. Labaye 2005 SCC 80
Pages 1-70

2 students:

Class 9:
[Special Issues in Mens Rea](#)
A Principled Approach to the Constitutional Requirement of Fault
Pages 1-38

Subjective and Objective Standards of Fault for Offences and Defences

Pages 1-23

2 students:

Class 10:

[Special Issues in Mens Rea](#) continued

R. v. Beatty, 2008 SCC 5

Pages 1-52

2 students:

Class 11: [Attempts to Inchoate: Conceptually Difficult Crimes](#)

Unfulfilled Crimes and Participation in Crimes

Pages 1-20

Desert and Punishment for Acts Preparatory to the Commission of a Crime

Pages 1-34

2 students:

Class 12:

[Regulatory Offences and the Use of "Regulatory" in Criminal Law](#)

Regulatory and Corporate Crime

Pages 1-13

Justice Peter de Carteret Cory and his Charter Approach to Regulatory Offences

Pages 1-33

2 students:

METHODS AND MODES OF EXAMINATIONS

Mid Term Comprehensive Examination (open book)	20%
In Class Presentation Dates TBA	20% (10 percent presentation + 5 percent outline + 5 Percent peer evaluation)
Class Participation (see below)	20%
Factum	20%
Moot (oral argument) TBA – during exam period	20%

The **Midterm Quiz** will be held in class and will be an opportunity to demonstrate that you have been keeping up with class materials. The tests will consist of written questions. Its main purpose is to ensure you have 20 percent of your mark by the drop date.

The **In Class Presentation** will be an oral group assignment where students present a set of readings assigned for class. Prior to the beginning of these assignments, a detailed guideline sheet will be distributed. An outline of the lecture will form $\frac{1}{4}$ of the mark. One quarter of the mark will be formulated from an evaluation by your co-presenters (if due to withdrawal or other circumstances you present the seminar alone, the instructor will grade you on this peer evaluation component - and with sufficient sympathy). One half of your mark will be based on in class performance during the presentation. You must present your seminar as scheduled or else you will be inconveniencing the entire class and leaving the seminar in the lurch. If for some reason you happen to experience a tragedy on the day of your scheduled presentation you must notify the instructor as soon as possible and provide legitimate documentation. A makeup class will be scheduled in the evening in order for the students in the class to receive this information by way of your seminar. **Failing to present a seminar will result in a grade of F in this course.**

The course will culminate in a **Factum** for you to write (either alone or in groups, depending on enrollment). This will be a factum based on a judgment which I will hand out in the last $\frac{1}{2}$ of the term. The factum is the document of appeal that lays out the legal arguments for appeal and will be judged using the marking sheets available in the “About Mooting” reading online. A detailed guideline sheet will be distributed in advance of the due date for the factum. You must use the Legal Citation guide posted online rather than the APA style citations.

During the final exam scheduled you will argue the appeal orally before a panel of 2-3 judges in a **Moot**. This is the oral component of your appeal and will be judged using the marking sheets available in the “About Mooting” reading online. A detailed guideline sheet will be distributed in advance of oral argument. You should view the links of notable moots provided online.

CLASS PARTICIPATION

In order to benefit from this course, you must attend regularly and have completed the readings prior to class. Attendance will be taken and participation assessed - it will form part of your grade. This is a measurement of your participation outside of your own seminar presentation.

The evaluation of **class participation** is based on your understanding of the material as well as your ability to foster discussion and demonstrate understanding of diverse viewpoints and perspectives. Discussion is essential to the development and articulation of ideas. Like writing, it is often hard work, requiring preparation and commitment. It also takes practice. We all need to work to ensure that the class is a respectful place where everyone has a turn to speak and no one monopolizes the discussion. You are expected to monitor yourself to ensure you are learning as well as speaking. If you are uncertain about something or need clarification, say so. You are probably not the only one and you will help the group as a whole to clarify ideas. If you have continuing problems in speaking, please see me. Class participation will be assessed as follows:

- a. **Attendance: 10 %**
- b. **Participates in seminars of classmates on a regular basis, week to week, in a thoughtful manner, demonstrating competence in the readings: 10%**

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.

However if you miss the final moot you must avail yourself of the formal application for deferral through the University of Winnipeg. The instructor has no control over this process.

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. **Office hours are 4PM-6PM Tuesday afternoons and by appointment.** Other times can be arranged by appointment.

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%

DROP DATE: The final date to withdraw from the course without academic penalty is.

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

SERVICES FOR STUDENTS WITH DISABILITIES: Students with documented disabilities requiring academic accommodations for tests/exams (e.g., private space) or lectures/laboratories (e.g., access to volunteer note-takers) are encouraged to contact the Coordinator of Disability Services at disability@uwinnipeg.ca or 786-9771 to discuss options. All information about disability is 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 (Part VII). Cheating of any kind, including conduct which contravenes the university's academic misconduct code will not be tolerated.

PREPARING YOUR SEMINAR:

(The following is adapted from How to Get High Grades as a Student in Systems Graduate Seminars at ETH Zurich by Timothy Roscoe, May 2007)

The students who do tend to do well in seminars are generally those who are most engaged: they are interested in the material, they ask a lot of questions, and they have well-thought out opinions about the work they are reading. Bear in mind that what the professor wants most out of these seminars (apart from teaching credits) is to get a good discussion going. This is usually the best way to learn from the papers as well.

Here is what you need to know about this honours seminar course:

- 1) ***You and your peers are your own teachers and collaborators.*** Seminars are collaborative group learning endeavours in which a group of people lead each other through the course materials. This may be unlike any course you have taken before. If you seek a traditional undergraduate course experience you have probably chosen the wrong course.
- 2) ***This is not a lecture and you should know this going in.*** If you are looking for a class where an instructor teaches you about law for 3 hours and you take notes in order to think about the topic later you have come to the wrong place. With the exception of the first week you will be hearing very little lecturing by the instructor. Once the seminar presentations begin, the instructor's role will shift to that of a facilitator and supervisor of the proceedings.
- 3) ***Holy crap - there is lots of reading here!!!*** Seminars are reading intensive. In this seminar there are over 600 pages of assigned readings. For many students looking for an "easy course experience" this may seem daunting. However, this reading load is still small compared to traditional grad school or law school experiences. Indeed, this seminar is intended to be a prelude to what the grad school experience might feel like. For those moving on to law school, this seminar format will mimic what small study groups may feel like at law school (i.e. where groups of students band into collectivities to teach each other the curriculum across a variety of topics).

Ground rules of this seminar:

- 1) A list of readings is compiled and scheduled for each class.
- 2) Each student will read his or her assigned readings and in the assigned group allotments prepare a presentation on the subject. Students presenting the materials will divide the workload fairly and equitably and a failure to do so will be reflected by the peer evaluation instrument.
- 3) By the Monday prior to one's seminar, the student presenters must meet with the professor to review the outline of their intended presentation. In some cases, the

professor may have provided the student presenters with questions they must address in their seminar.

- 4) Each seminar is scheduled for 2.5 hours (you may use up to 3 hours if necessary). This time is intended to include about 90 minutes of teaching time by the presenters and about 60 minutes of group discussion and exercises that the presenters may prepare. The exact order and arrangement of this time is flexible.
- 5) When presenting a set of readings feel free to throw in your own ideas – do not be shy, be prepared to be confronted by queries. If there is something that you did not understand from the readings say so in your presentation. Another student might happen to know, or perhaps the professor might help out.
- 6) Answering questions and playing a role in the ensuing discussion is also important. Answering questions from the audience is a useful skill not just in research but all manner of other jobs as well.

Being in the audience:

- 1) Every student in the seminar must read in advance the materials to be presented each week, and prepare a list of questions to ask of the presenters.
- 2) It's perfectly acceptable, even encouraged, to ask clarifying questions, or to chip in if you think you know something that the presenter might have missed (give them a chance to say something first).
- 3) Remember not to be hostile to the presenter – they did not write the cases, nor did they write the papers presented. Instead, try to get a discussion going about the subject of the readings.
- 4) If there is something you genuinely did not understand, ask a question about it. Do not be concerned about asking apparently dumb questions: what you do not tend to see as a student is that professors and other researchers sit in the bar at a conference asking the same apparently dumb questions to each other after the original presentation.