

Course Outline

COURSE:	LAWS 4308 A – Sentencing
TERM:	Summer 2010
PREREQUISITES:	LAWS 2004 and Fourth-year honours standing
CLASS:	Day & Time: Tuesday and Thursday—1805-2055 Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Kyle Kirkup
CONTACT:	Office: LA C476 Office Hrs: By appointment Email: kkirk100@uottawa.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **June 11, 2010 for June exams and July 30, 2010 for August exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

By the end of the course, students should understand the doctrinal dimensions of sentencing in Canada. Students should also be able to situate these dimensions in their broader socio-legal context, with a particular emphasis on the complex relationships between sentencing and gender, race, sexuality, disability and indigenous perspectives.

The aim of the course is to help students develop a critical understanding of the sentencing process and to gain an appreciation of its importance in the Canadian criminal justice system. The focus of the course will be on the intersections between sentencing and gender, race, sexuality, disability and indigenous perspectives. Students should be prepared to address and explore the ways in which the doctrinal dimensions of sentencing may reflect and exacerbate contemporary social inequalities in Canada. They should also be prepared to consider how the current sentencing regime in Canada might be reformed to better address these inequalities.

REQUIRED TEXTS

Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001). New copies are available at the Carleton University bookstore. Students are encouraged to obtain used copies of the text.

All other required materials will be posted on WebCT.

EVALUATION

(All components must be completed in order to earn a passing grade)

1. Student Facilitation (10%)

Each student will select one reading or case from the list circulated on the first day of class. Each student will provide a very short summary of the assigned material and facilitate a critical discussion with the class. For example, what assumptions does the author make? How does the article or case connect to other themes we have explored in the course? What is the strongest argument developed in the article or case? What is the weakest?

2. Participation (20%)

Student grades will incorporate recognition of attendance and participation in the class. Students who come to class prepared and contribute to the class discussion will be given higher grades. Students who come to class unprepared and who fail to contribute to the class discussion will be given lower grades.

3. Critical Reflections (20%)

Students will submit **four** critical reflection pieces over the term. Each reflection should reference the assigned readings being covered during the selected class, and should develop a short argument. Each reflection will be 2 pages (12 pt. Times New Roman font with one-inch margins). The reflection must be submitted to the instructor at the **beginning of the class**. Each reflection will be worth 5%. Students are encouraged to submit their reflections early in the term to obtain feedback from the instructor.

4. Final Essay (50%): Outline (5%) & Essay (45%)

Students will select a sentencing topic of their choice related to some aspect of the course. Students will prepare a 2 page outline **due on July 13, 2010**. The first page of the outline will summarize the proposed argument, and the second page will provide a working annotated bibliography. On July 13, 2010, each student should come to class prepared to briefly discuss their topic and to obtain feedback from the class. The instructor will return the outlines on July 15, 2010 and will provide feedback. Students will submit a final essay (12-15 double-spaced pages in 12 pt. Time New Roman font with one-inch margins) on **August 10, 2010**. **Late papers will be reduced by 2% for every day they are late.**

SCHEDULE

- July 6, 2010** **Introductions: Justifications of Punishment**
Note: Each student to select an article or case for class facilitation. Instructor to circulate sign-up sheet.
- Readings:* Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001), pp. 1-4, 31-55.
Michel Foucault, "Illegalities and Delinquency" in *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1977), pp. 257-292.
- July 8, 2010** **Principles and Rules of Sentencing; Aggravating and Mitigating Factors**
- Readings:* Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001), pp. 56-78; 83-161
R. v. Nasogaluak, 2010 SCC 6.
Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 718.2(a)(i).
- July 13, 2010** **Sentencing Options**
Note: Essay outline due. Students should come to class prepared to briefly discuss their essay topics and to obtain feedback from the class.
- Readings:* Allan Manson, *The Law of Sentencing* (Toronto: Irwin Law, 2001), pp. 208-291.
- July 15, 2010** **Colonialism and Indigenous Perspectives on Sentencing (Part I)**
- Readings:* Sherene H. Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George" (2000) 15 *Canadian Journal of Law and Society* 91.
Elizabeth Adjin-Tettey, "Sentencing Aboriginal offenders: Balancing offenders' needs, the interests of victims and society, and the decolonization of Aboriginal peoples" (2007) 19 *Canadian Journal of Women and the Law* 179.
R. v. Gladue, [1999] 1 S.C.R. 688.
Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 718.2(e).
- July 20, 2010** **Colonialism and Indigenous Perspectives on Sentencing (Part II)**
- Readings:* Patricia Monture-Angus, "The Lived Experience of Discrimination: Aboriginal Women who are Federally Sentenced" (2002), available online at: <<http://www.elizabethfry.ca/submissn/aborigin/aborigin.pdf>>.
Jena McGill, "An Institutional Suicide Machine: Discrimination Against Federally Sentenced Aboriginal Women in Canada" (2008) 2 *Race/Ethnicity Multidisciplinary Global Perspectives* 89.
- July 22, 2010** **Race, 'Drug Mules' and Sentencing**
- Readings:* Sonia N. Lawrence & Toni Williams, "Swallowed Up: Drug Couriers at the Borders of Canadian Sentencing" (2006) 56 *University of Toronto Law Journal* 285.
R. v. Hamilton, 2003 CanLII 2862 (Ont. S.C.).
R. v. Hamilton, 2004 CanLII 5549 (Ont. C.A.).

July 27, 2010 Gendered Violence, Sexual Assault, and Sentencing

Readings: Janice Du Mont, "Charging and Sentencing in Sexual Assault Cases: An Exploratory Study" (2003) 15 *Canadian Journal of Women and the Law* 305.
 Renate M. Mohr, "Sexual Assault Sentencing: Leaving Justice to Individual Conscience" in Julian V. Roberts and Renate M. Mohr, eds. *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto: University of Toronto Press, 1994), pp. 157-191.
R. v. Edmondson, [2005] S.J. No. 256 (C.A.).

July 29, 2010 Queer Hate Crimes

Readings: Dawn Moore and Angus MacLean Rennie, "Hated Identities: Queers and Canadian Anti-Hate Legislation" (2006) 48 *Canadian Journal of Criminology and Criminal Justice* 823.
 Douglas Victor Janoff, "Law, Homophobia, and Violence: Legislating against Hate" in *Pink Blood: Homophobic Violence in Canada* (Toronto, University of Toronto Press, 2005), pp. 105-129.
R. v. J.S., 2003 BCPC 442.
R. v. Cran, [2005] B.C.S.C. 171.

Aug 3, 2010 Mental 'Disorder' and Sentencing

Readings: Richard Devlin & Dianne Pothier, "Toward a Critical Theory of Dis-Citizenship" in *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (Vancouver: UBC Press, 2006), pp. 1-22.
R. v. Knoblauch, [2000] 2 S.C.R. 780.
R. v. Shahnawaz, [2000] O.J. No. 4151 (C.A.).

Aug 5, 2010 Constructions of Youth in the Sentencing Process

Readings: Bryan R. Hogeveen, "Unsettling Youth Justice and Cultural Norms: The Youth Restorative Action Project" (2006) 9 *Journal of Youth Studies* 47
Youth Criminal Justice Act, R.S.C. 2002, c. 1, ss. 3, 38, 39, 40, 41 and 42.
R. v. D.B., [2008] 2 S.C.R. 3.

Aug 10, 2010 The Lived Reality of Prisons and the Politics of Mandatory Minimum Sentences

Note: final essay due.

Readings: Louise Arbour, Commission of Inquiry into Certain Events at the Prison for Women in Kingston ("The Arbour Commission") (Ottawa: Public Works and Government Services, 1996), available online: <http://ww2.ps-sp.gc.ca/publications/corrections/pdf/199681_e.pdf>, pp. 179-197.
 Kim Pate & Debra L. Parkes, "Time for Accountability: Effective Oversight of Women's Prisons" (2006) 48 *Canadian Journal of Criminology and Criminal Justice* 251.
 Anthony N. Doob & Carla Cesaroni, "The Political Attractiveness of Mandatory Minimum Sentences" (2001) 39 *Osgoode Hall Law Journal* 287.
 Selected series of short news articles on proposed legislative changes to sentencing regime in Canada.

Aug 12, 2010 Looking Forward

Note: Students should come to class prepared to discuss one possible reform strategy for the current sentencing regime in Canada.

Readings: Mari Matsuda, "On Causation" (2000) 100 *Columbia Law Review* 2195.