

CRIMINAL JUSTICE
Professor Alana Klein
LAWG 102D1
Fall 2016-Winter 2017
Mondays and Wednesdays, 2:30-4
New Chancellor Day Hall, Moot Court (Room 100)

CONTACT INFORMATION

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(Email is my preferred method of communication).

MATERIALS

All readings will be available through MyCourses.

Students must also purchase Watt & Fuerst, *2017 Annotated Tremear's Criminal Code* (Carswell 2017). Copies of the Annotated Criminal Code can be purchased at McGill University Bookstore; see <http://www.mcgill.ca/bookstore/>

A current copy of the *Criminal Code* (annotated or not) will be required for the final exam.

DESCRIPTION

This course will introduce the basis, nature and functioning of criminal justice within and across legal orders, with a focus on Canadian criminal justice. It will examine the main determinants of crime and explore the rationales for criminalizing certain conduct, presenting criminalization as one among a number of possible models for responding to different types of conflicts, behaviours and phenomena. Further, the course will introduce key substantive, procedural, evidentiary and sentencing aspects of the criminal law, with attention to formal but also informal sources of law, including the exercise of discretionary powers by police, prosecutors, and judges, as well as the role of the different participants in the criminal justice process. Finally, the course will engage closely with the social impact of criminal justice, with particular attention to race, class, gender, indigeneity, ethnicity and power.

Topics covered include: theories of criminal punishment; criminological theories on crime, fundamental principles of criminal law including elements of offences and defences; Indigenous conceptions of justice; restorative justice; problem-solving courts; policing; the concept of a fair trial; sentencing; victims' rights; the role of communities; penal reform; the impact of rights frameworks, including the *Charter of Rights and Freedoms*; comparative perspectives; interdisciplinary approaches; pluralism in criminal law, and the internationalization of criminal law..

OBJECTIVES

By the end of the course, students are expected to be able to meet the following objectives, across different legal systems and disciplines:

- a. Understand different conceptions and constructions of crime.
- b. Recognize formal and informal sources of criminal law and justice, including the role of the state itself, particular state actors, as well as non-state actors.
- c. Situate developments in criminal law and justice in their historical, political and social context and appreciate the way criminal laws are both shaped by its context and impacts upon social context (especially in light of aboriginal, poverty, gender and disability issues).
- d. Explain and critically evaluate principles underlying the criminal process, criminal liability, proof of criminal wrongs, and responses to criminal wrongs.
- e. Explain and critically evaluate the impact of fundamental rights on criminal justice.
- f. Recognize that actions, decisions, and frameworks in criminal justice reflect the traditions from which they emerge; be aware of these traditions and their importance in the formulation of principles of criminal justice.

METHODOLOGY

Lecture and discussion methods will be used. Students are expected to

1. Have read the assignment materials prior to class;
2. Be able to identify and state the issues presented by the assigned materials; and
3. Participate in class discussion of the assigned materials and any exercises relating to the assigned materials. Students will also learn through the development of a public education presentation, described below.

EVALUATION

1. Fall term assignment: Bail Court Visit [30%]

For this assignment, students will be asked to attend a session of bail court at the *Cour du Québec*, and draw connections between their observations and the themes and issues explored in the course. Further information on the assignment will be distributed during the term.

2. Winter term assignment: Public Legal Education Presentation [20%]

Students will give presentation to the class, designed to educate a particular demographic of the public to educate them about an aspect of criminal justice assigned for the class in question. Presentations will be done in groups, and each group will receive a shared grade. Each group must submit a short paper (~1000 words) explaining the methodology, objectives and choice of content for the presentation with reference to course materials. Students are expected to be both educational and analytic in their presentations. Further details will be provided during the term.

3. Final open-book exam [50%]

STUDENTS WITH DISABILITIES:

If you have any type of disability, there are support systems, resources and accommodation available to you. If you wish to access any of these support systems, resources, or accommodations, please consult with Nancy Czettel, Director (Student Life and Learning), and/or consult the McGill Office for Students with Disabilities Website, at <http://www.mcgill.ca/osd>. Note that deadlines to assure some accommodations may be quite early. Please also feel free to contact me to discuss any concerns or questions, or if you require clarification.

STUDENT SUPPORT:

If, during the course of the year, you encounter any problem (academic or personal) that affects your studies, please do not hesitate to contact the Student Affairs Office (SAO.Law@mcgill.ca) and request an appointment with a Student Advisor.

EXAMINATION ARRANGEMENTS:

Students may apply for special examination arrangements for an examination that falls during religious holy days. Students must contact Nancy Czettel in the SAO to make arrangements for examinations as soon as possible. See <https://www.mcgill.ca/students/exams/keyword/Regulations> for more details.

MCGILL POLICY STATEMENTS

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/students/srr/honest/ for more information).

In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

CRIMINAL JUSTICE
Professor Alana Klein
LAWG 102D1
Evolving reading list

(This reading list is a guide only and is subject to change as the course progresses)

| Class | Subject | Readings |
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| 1 12 Sept | I. Introduction to Criminal Justice | <p>Final Report of the Truth and Reconciliation Report, Volume One: Summary, pp. 164-183.</p> <p>Recommended: Rebecca Johnson, "Justice and the Colonial Collision: Reflections on Stories of Intercultural Encounter in Law, Literature, Sculpture, and Film" (2012) 9 No Foundations 68.</p> |
| 2 14 Sept | A. Criminal justice as a social phenomenon | <p>Office of the Correctional Investigator, "Annual Report of the Office of the Correctional Investigator 2014-2015", "Correctional Investigator's Message"</p> <p>The National Council of Welfare, "Justice and the Poor" (2002) "Introduction", "The Police and the Poor", "Recommendations", "Conclusion"</p> <p>Forrest Stuart, "Becoming "Copwise": Policing, Culture, and the Collateral Consequences of Street-Level Criminalization" (2016) 50:2 <i>Law & Society Review</i> 279-313</p> <p><i>Recommended</i> Deborah H. Drake and and Andrew J. Henley, "Victims' Versus 'Offenders' in British Political Discourse: The Construction of a False Dichotomy" (2014) 53:2 <i>The Howard Journal of Criminal Justice</i> 141-157</p> |
| 3 19 Sept and 21 Sept | B. What is a crime? | <p>Positivist/moralist perspectives</p> <p>R v Wholesale Travel Group, [1991] 3 SCR 154 at 171-72, 216-24.</p> <p>R v Malmo-Levine, [2003] 3 SCR 571 at paras 1, 7-9, 102-29, 244; 285-304.</p> <p>Canada v PHS Community Services Society [2011] 3</p> |

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| | | <p>SCR 134 (headnote).</p> <p>Bedford v. Canada [2013] 3 SCR 1101 (headnote)</p> <p>R. v. Labaye [2005] 3 SCR 728 (headnote)</p> <p>Napoleon and Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Markus D. Dubber and Tatjana Hörnle, <i>The Oxford Handbook of Criminal Law</i> 225-247. (read <i>only</i> sections, II.2 Minimal Content and II.3, The <i>Wetiko</i> example.)</p> <p>Critical perspectives</p> <p>Lisa Monchalin, <i>The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada</i> (Toronto: University of Toronto Press, 2016) (“Indian’-Specific Liquor Laws and Regulating Pool Hall Entry” & “Outlawing ‘Indian’ Culture, Dancing, and Ceremonies”), at. 116-118</p> <p>Stuntz, "The Pathological Politics of Criminal Law, 100(3) Michigan Law Review (2001), 505-560 at 505-512.</p> <p>Philippe Robert, « Les statistiques criminelles et la recherche : réflexions conceptuelles » (1977) 1 :1 <i>Déviance et Société</i>, at 11-16.</p> |
| <p>4 26 Sept</p> | <p>C. Historical development D. pluralism</p> | <p>JR Spencer, “Introduction” in Mireille Delmas-Marty and JR Spencer, <i>European Criminal Procedures</i> (Cambridge: Cambridge University Press, 2002) at 5-20.</p> <p>FP Walton, “The Legal System of Quebec” (1913) 13 <i>Colum L Rev</i> 213 at 213–15.</p> <p>Mewett, "The Criminal Law, 1967-1967" (1967 <i>Can Bar Rev</i> 726 at 726-30.</p> <p>Napoleon and Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Markus D. Dubber and Tatjana Hörnle, <i>The Oxford Handbook of Criminal Law</i> 225-247.</p> <p>Edward Cavanagh, “A Company with Sovereignty and Subjects of Its Own? The Case of the Hudson’s Bay</p> |

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| | | <p>Company, 1670-1763" (2011) 26:1 CJLS 25 at abstract, 35-43</p> <p><i>Recommended:</i> <i>Van Cott, Donna Lee "A Political Analysis of Legal Pluralism in Bolivia and Colombia" 32 J Lat Amer Stud 207 (207-224)</i></p> |
| 5 28 Sept | <p>E. The nature of criminal justice</p> <p>F. How should we respond and why?</p> | <p>Distinguishing criminal justice FW Maitland, <i>Justice and Police</i> (London: Macmillan and Co, 1885), ch 2 at 12-14 ("Civil and Criminal Justice").</p> <p><u>Department of Justice, Civil and Criminal Cases</u></p> <p>Nils Christie, "Conflicts as Property", (1977) 17 <i>British Journal of Criminology</i> , 1-15, at 2-10</p> <p>R. v. Wigglesworth, [1987] 2 SCR 541 (extracts)</p> <p><i>Recommended:</i> <i>John Coffee, Paradigms Lost:</i> http://www.jstor.org/stable/pdf/796949.pdf</p> <p>http://www.bustle.com/articles/152048-what-does-oj-simpsons-civil-trial-verdict-mean-liable-does-not-mean-guilty</p> <p>https://verdict.justia.com/2013/04/08/the-constitution-and-punitive-damages</p> <p>Justification and purpose</p> <p>Emmanuel Melissaris, <u>Theories of Crime and Punishment</u>, in Markus D. Dubber and Tatjana Hörnle, <i>The Oxford Handbook of Criminal Law</i>, 355-378, read only section III, "The Justification of Crime and Punishment"</p> <p>Hadley Friedland, <i>Assessing Justice and Reconciliation: Cree Traditions Report</i> (Cree package) 61; 66-70. <i>Recommended:</i> To understand how the conclusions at 67-69 were arrived at, I recommend looking over 28-38.</p> |

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| <p><i>Oct 3 -- class cancelled</i></p> <p><i>Make up class 6 October</i></p> | | |
| <p>6</p> <p>5 October and 6 October</p> | <p>G. Basic principles of criminal law/justice</p> <p>i. Indigenous traditions</p> <p>ii. Liberal traditions</p> <p>a. The principle of legality</p> | <p>A: Indigenous traditions</p> <p>Cree Package: 72-75; 3rd para at p. 32; 40-54.</p> <p>Articles 6 and 7 of the European Convention on Human Rights</p> <p>Section 7-14 of the Canadian Charter of Rights and Freedoms</p> <p>Haveman, Roelof. "The Principle of Legality" in Roelof Haveman, Olga Kavran & Julian Nicholls (LL M), eds, <i>Supranational Criminal Law: A System Sui Generis</i> (2003), at. 40 to 52</p> <p>Package of extracts from Roach et al, "Criminal Law and Procedure: Cases and Material (11th ed):</p> <p style="padding-left: 40px;">Frey v Fedoruk [1950] SCR 517</p> <p style="padding-left: 40px;">R v Jobidon [1991] SCR 714</p> <p style="padding-left: 40px;">Note on Codification and Certainty in the Criminal Law</p> <p style="padding-left: 40px;">R. v. Heywood [1994] 3 SCR 761</p> <p>Canadian Foundation for Children, Youth and the Law v. Canada [2004] 1 SCR 76 ("The spanking case") (extracts)</p> <p>Travis Vader verdict report.</p> |

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| <p>10 -12 October</p> <p>No class -- Thanksgivi ng and Yom Kippur</p> | | |
| <p>7 13 October</p> | <p>Basic principles of criminal justice cont'd.</p> <p>b. The presumption of innocence</p> <p>c. The right to a fair trial</p> <p>d. Individual responsibility</p> | <p>R v Layton, [2009] 2 SCR 540, (extracts)</p> <p><i>Optional: R v W(D) [1991] 1 SCR 742 (majority judgment)</i></p> <p>JR Spencer, "Introduction" in Mireille Delmas-Marty and JR Spencer, <i>European Criminal Procedures</i> (Cambridge: Cambridge University Press, 2002) at 22-23</p> <p>Paul Lemmens, "The right to a fair trial and its multiple manifestations," in In E. Brems & J. Gerards (Eds.), <i>Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights</i> (2014), at 299-314.</p> <p>R. v. Ruzic [2001] 1 SCR 687 (extract) (consider here pp. 368-371 of Melissaris, which you have read previously).</p> |

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| 8 17 October | <p>H. A brief introduction to institutional dimensions of criminal processes</p> <p>a. European traditions</p> <p>b. Cree tradition</p> <p>c. Canadian tradition</p> <p>I. Theorizing the institutional dimensions</p> | <p>R Spencer, "Introduction" in Mireille Delmas-Marty and JR Spencer, <i>European Criminal Procedures</i> (Cambridge: Cambridge University Press, 2002) at 20-36 (note you have read 22-23 already) diagrams.</p> <p>Cree Package at 13-27</p> <p>Steven Penney et al, "Jurisdiction over criminal procedure and criminal prosecutions" in <i>Criminal Procedure in Canada</i> (2011) (selected pages).</p> <p>Kent Roach, "Packer's Two Models of Criminal Justice," in <i>Due Process and Victims' Rights: the New Law and Politics of Criminal Justice</i> (1999) (selected pages, plus commentary).</p> <p>Government of Canada, <i>The Effects of Restorative Justice Programming, A Review of the Empirical</i> (2000), at 4-7</p> |
| 9 19 October | <p>II. Identifying wrongful behaviour/taking appropriate safety measures</p> <p>A. History and structure of policing in</p> | <p>Continue to bear in mind Cree package at 13-27</p> <p>Clifford D. Shearing and Philip G. Stenning, "Police" in <i>The Canadian Encyclopedia</i>,</p> <p>T Newburn and R Reiner, "Policing and the Police" in Mike Maguire, Rod Morgan & Robert Reiner, eds, <i>Oxford Handbook of Criminology</i>, 5th ed at 818-31.</p> <p>R. v. Beaudry (headnote and paras. 35-48).</p> |

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| | Canada B. Models of policing C. Police discretion | |
| 10 24 October and 26 October | D. Police powers 1. Police stopping powers | Supplement on policing stopping powers in Canada For 26 October, read: " Carding Across Canada : Data show practice of 'street checks' lacks a mandated set of procedures" Globe and Mail, 17 August, 2015. " The man police can't stop carding ", Toronto Star, 14 August, 2016. Ontario Human Rights Commission Submission to the Ministry of Community Safety and Correctional Services on street checks News Release : Ontario Prohibits Carding and Street Checks, Sets Out New Rules for Police Interactions |
| 11 31 October | 2. Search, seizure, surveillance | Package on police stopping powers 2 Christopher Slobogin, "An Empirically-Based Analysis of American and European Regulatory Approaches to Police Investigation" (2002) 23 Michigan Journal of International Law, 423 (extract). |
| 12 2 November r | 3. Interrogations - selected issues | Timothy E Moore & Lindsay Fitzsimmons, "Justice Imperiled: False Confessions and the Reid Technique" (2011) 57 Crim LQ 509 at 512-18, 522-530. R v Sinclair [2010] 2 SCR 310 (excerpts) R. v. Hebert [1990] 2 SCR 1 (excerpts) "What to do when the police want to talk to you" <i>The National Blog</i> , CBC |

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| | | <p>Stephen C Thaman, “<i>Miranda</i> in Comparative Law” (2001) 45 St Louis LJ 581-624 (read conclusion only at 618-24)</p> <p><i>Recommended:</i> State of the State podcast: Why are kids more likely to give false confessions (9 minutes)</p> <p>Christopher Slobogin, “An Empirically-Based Analysis of American and European Regulatory Approaches to Police Investigation” (2002) 23 Michigan Journal of International Law, 423 at 439-454</p> |
| <p>13</p> <p>7 November</p> | <p>4. Arrests</p> | <p>Charter, s 9</p> <p>Criminal Code, ss. 493, 494, 495, 496, 497, 498, 499, 501, 502, Form 9 (Read them. It might take a while, but read them!)</p> <p>R v Storrey, [1990] 1 SCR 241</p> <p>R v Nasogaluak [2010] 1 SCR 206, paras 1-13, 32-38.</p> <p>Ontario Ministry of Community Safety and Correctional Services, “Private Security & Investigative Services – Security Guard Test Preparation Guide”/</p> <p>Darcie Bennett, “Is BC’s Private Security Industry Accountable?” in <i>Pivot Points Blog</i> (Pivot Legal Society, 30 April 2012)</p> <p>Curtis Rush and Jennifer Yang, “Grocer not guilty in citizen's arrest case”, Toronto Star, 29 October 2010</p> <p>“Quand la police est une menace pour les femmes autochtones de Val-d'Or” <i>CBC News</i></p> <p><i>Recommended</i> Steven Penney et al, "Arrests" in <i>Criminal Procedure in Canada</i> (2011) 124-136.</p> <p>Tasha Hubbard, “Two Worlds Colliding” (National Film Board of Canada).</p> |

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| <p>14 9 November</p> | <p>III. Public confrontation and deliberation</p> <p>1. First appearances before a justice and bail</p> | <p>Criminal Code of Canada, ss. 503, 515 (the whole thing!), 516.</p> <p>Cheryl Marie Webster, Anthony N Doob & Nicole M Myers, “The Parable of Ms Baker: Understanding Pre-Trial Detention in Canada” (2009) Current Issue Crim J, <i>Special Issue: Bail in Australia, the United Kingdom and Canada</i>, 79.</p> <p>Case law package:</p> <p style="padding-left: 40px;">Toronto Star Newspapers Ltd. v. Canada [2010] SCC 21</p> <p style="padding-left: 40px;">R c Anoussis, 2008 QCCQ 8100.</p> <p style="padding-left: 40px;">R v St Cloud [2015] SCC 27</p> <p style="padding-left: 40px;">R v Wesley, 2002 BCPC 717</p> <p>“Qu’est-ce que la detention provisoire?” <i>Vie-Public</i>, online: <http://www.vie-publique.fr/decouverte-institutions/justice/fonctionnement/justice-penale/qu-est-ce-que-detention-provisoire.html>.</p> <p>Art 149 CPP, France, online: <http://www.codes-et-lois.fr/code-de-procedure-penale/article-149>.</p> <p><i>Highly recommended, particularly as you complete your assignment:</i></p> <p>Canadian Civil Liberties Association, Set up to Fail: Bail and the Revolving Door of Pre-trial Detention, 2014), especially pp. 21–34</p> |
| <p>14 November</p> | <p>Guest speakers Sylvia de Sousa (SPVM) Nina Segalowitz (Native Friendship Centre of Montreal)</p> | <p>No additional readings</p> |
| <p>16 November</p> | <p>Catch-up on citizen's arrest</p> <p>Introduction to the prosecutorial</p> | <p>No additional readings. Materials introduced during the class session include</p> <p>Boucher v R [1955] SCR 16 (Judgment of Justice Rand at 22-24.</p> |

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| | function | <p>Directives DPCP Québec, especially Art 6 : "moralement convaincu"; Art. 9, 10 "intérêt public."</p> <p>Crown Prosecution Services of Canada, Guideline of the Director on the Decision to Prosecute</p> <p><i>R v Anderson</i>, 2014 SCC 41 at paras 1-6, 34-50</p> |
| 15 21 November | <p>Plea bargaining and the prosecutorial role</p> <p>Panel discussion with Me. Sara Henningsson Me. Louis Belleau Justice Carol Cohen</p> <p>Please do the readings and come prepared with questions</p> | <p>Simon Verdun-Jones, "Plea Bargaining" in JV Roberts and M Grossman, eds, <i>Criminal Justice in Canada</i>, 5th ed, 2015 at 168-180.</p> <p>Kristin Smyth (2008), Losing the Bargain: Wrongful Convictions in Plea Bargaining, <i>Innocence Canada</i></p> <p>Top jurist urges review of 'coercive' plea bargaining system, <i>The Globe and Mail</i></p> <p>R v Anthony-Cook, 2016 SCR 43</p> <p>Criminal Code ss. 606 (1) and (2)</p> |
| 16 23 November | <p>Prosecutorial function cont'd.</p> <p>Delays</p> | <p><i>R v Anderson</i>, 2014 SCC 41 at paras 1-6, 34-50</p> <p>English approach: Code for Crown Prosecutors ss. 10.1-10.2 (UK)</p> <p>Example of judicial review in England</p> <p><i>R v Jordan</i> 2016 SCC 27 (excerpts).</p> <p>Highly recommended, and you should at least skim: Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada, Report of the Standing Committee on Legal and Constitutional Affairs (August 2016).</p> |

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| 28 November | Class cancelled to make space for court visits | |
| 17 30 November | Exclusion of illegally obtained evidence | <p><i>Ohio v Strieff</i> (136 S. Ct. 2056 (2016) (excerpts)</p> <p><i>R. v. Grant</i>, [2009] 2 S.C.R. 353 (excerpts)</p> <p>Mirjan Damaška, "The Competing Visions of Fairness: The Basic Choice for International Criminal Tribunals" (2010) 36 North Carolina Journal of International Law and Commercial Regulation 365 (read ONLY pp 384-387.</p> |
| Winter Break | | |
| 18 18 January | <p>III. Public confrontation and deliberation – cont'd</p> <p>Introduction to the trial</p> | <p>Cree Package at 25-29</p> <p>Lewis Carroll, Alice and Wonderland (1 page excerpt)</p> <p>“Adult Criminal Justice Process” Justice Québec, online: http://www.justice.gouv.qc.ca/english/publications/generale/processus-a.htm#Anchor-Tria-55779</p> <p>Janet Ainsworth, “Legal Discourse and Legal Narratives: Adversarial versus Inquisitorial Models (2015) 2 Language and Law, 1 at 2-3.</p> |

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| | <p>Right to counsel at trial – Canada</p> <p>Truth-seeking: adversarial and inquisitorial themes</p> | <p>Thomas Wiegend, “Is the Criminal Process about Truth: A German Perspective”, (2003) 26 Harv J L& Pub Pol’y 157-164</p> <p>Jennifer Bond, “The Cost of Canada’s Legal Aid Crisis: Breaching the Right to State-Funded Counsel Within a Reasonable Time” (2012) 59 Crim LQ 28 at 31– 37.</p> <p><i>Recommended:</i> Kent Roach, “Wrongful Convictions: Adversarial and Inquisitorial Themes” (2010) 35 N Carolina J Int’l L & Com Reg 387.</p> |
| <p>19 20 January</p> | <p>Introduction to Liability</p> | <p>George Fletcher, “Criminal Theory in the 20th Century” (2001) 2 Theoretical Inquiries in Law 265.</p> |
| <p>20 25 January</p> | <p>Criminal Acts (actus reus, l’élément matériel/der Tatbestand) Acts vs omissions Voluntariness Contemporaneity</p> | <p>Fagan v Metropolitan Police Commissioner, [1968] 3 All ER 442 (excerpt)</p> <p>Andrew Ashworth and Eva Steiner, “Criminal Omissions and Public Duties: The French Experience” (1990) 10 Legal Studies 153</p> <p>Read ss. 219-221 of the Criminal Code of Canada; Then read ss. 215-218 of the Criminal Code of Canada</p> |

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| <p>27 January</p> | <p>Criminal Acts (actus reus, l'élément matériel/der Tatbestand) con'td. Causation</p> | <p>R v Thornton [1991 OJ No 25 (ONCA). R v Thornton[1993] 2 SCR 334 (SCC) Paul K. Ryu, "Causation in Criminal Law" (1958) 106 University of Pennsylvania Law Review 773 (read only 790-796; 804-805) R v Maybin, [2012] 2 S.C.R. 30 (excerpts)</p> |
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| <p>21</p> <p>1 February</p> | <p>The Mental Element</p> <p>Subjective and objective liability elements</p> <p>Exceptions to the fault requirement: Strict and absolute liability</p> | <p>Supplement on criminal intent, including:</p> <p>Thomas Wiegend, "Subjective Elements of Criminal Liability" Oxford Handbook of Criminal Law, 2014) 490-492</p> <p>In R. v. Tolson [1889 Q.B.D. 168] (excerpt)</p> <p>Model Penal Code, Section 2.02: General Requirements of Liability</p> <p>Alternative Draft, German Criminal Code (1969)</p> <p>Law Reform Commission of Canada, <i>Recodifying Criminal Law</i>, Report 31, (1987) at 143-144</p> <p>R v. Buzzanga and Durocher 1979 49 CCC (2d) 369 (Ontario Court of Appeal) (excerpt)</p> <p>R. v. Tennant and Naccarato (1975) 23 CCC (2d) 80 (excerpt)</p> <p>R v ADH [2013] 2 SCR 269</p> <p>Australian Law Reform Commission, <i>Traditional Rights and Freedoms—Encroachments by Commonwealth Laws</i> (IP 46), released on 10 December 2014, Section 12. Strict and Absolute Liability.</p> |
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| <p>22</p> <p>3 February</p> | <p>Primer on evidence</p> <p>Do we need rules of evidence? Why?</p> <p>Some examples of evidentiary rules:</p> <p>Hearsay</p> <p>Original documents rule</p> <p>Character Evidence rule</p> | <p>Frederick Schauer, "On the Supposed Jury-Dependence of Evidence Law." (2006) 155 University of Pennsylvania Law Review 165, at 165-180; 185-193; 195-198.</p> <p>Immigration and Refugee Board of Canada. Memorandum on Weighing Evidence(2003), Appendix A: The Rules of Evidence and the Canada Evidence Act. See also Table of Contents, sections on Admissibility, and on Weighing Evidence.</p> |
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| <p>23 8 February</p> | <p>Triers of fact: bias, representativeness, lay participation</p> | <p>John Langbein, 'Mixed Court and Jury Court : Could the Continental Alternative Fill the American Need?' (1981) Am. B Found. Res. J. 195. (read only 195-208)</p> <p>Magistrate Courts in England and Wales</p> <p>R v Kokopenace, [2015] 2 SCR 398 (excerpts)</p> <p>Consider, again, Cree Package, Participation/Decision-makers p. 25-29</p> |
| <p>24 10 February</p> | <p>Homicide 1: Classification</p> <p>1. Classification of homicide offences across (European) legal traditions</p> <p>2. Homicide in the Criminal Code of Canada</p> <p>3. Distinguishing the fault requirement in murder and manslaughter</p> | <p>Homicide package #1, which contains:</p> <p>Charles Sumner Lobingier. "The Homicide Concept. A Study in Comparative Criminal Law" (1918) 9 (3) Journal of the American Institute of Criminal Law and Criminology, pp. 373-377 (excerpt)</p> <p>Jeremy Horder and David Hughes, "Comparative Issues in the Law of Homicide" in Jeremy Horder (ed.) Homicide in Comparative Perspective (2007), 1-17, at 4-8.</p> <p>Criminal Code of Canada, ss. 219, 220, 222, 229, 231, 234, 235, 236.</p> <p>R v Creighton [1993 3 SCR 3.</p> |

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| <p>25 15 February</p> | <p>Homicide 2: “Constructive Murder”/“Felony Murder”</p> <p>1. The problem with felony murder: US perspectives</p> <p>2. Constructive Murder in Canada: Constitutional Considerations</p> | <p>Adam Liptak, “Serving Life for Providing Car to Killers” New York Times, Dec 4, 2007</p> <p>Guyora Binder, “Making the Best of Felony Murder” (2011) 91 Boston University Law Review 402 at 404-411.</p> <p>Guyora Binder, “The Culpability of Felony Murder” (2008) 83 Notre Dame Law Review 965, at 965-970.</p> <p>Homicide Package #2, which contains: Criminal Code of Canada, ss. 229, 230</p> <p>Reference re Section 94(2) of the BC Motor Vehicle Act, [1985] 2 SCR 486 (extracts)</p> <p>Vaillancourt v The Queen [1987] 2 SCR 636 (extracts)</p> <p>R. v. Martineau, [1990] 2 SCR 633 (extracts)</p> <p>Dennis Baker & Troy Riddell: Elimination of felony-murder may help Rafferty, National Post, May 11, 2012</p> |
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| <p>26</p> <p>17 February</p> | <p>Responsibility for killing in cultural context: self-defence as justified killing</p> | <p>Homicide Package #3, which contains:</p> <p>Mary Anne Franks, “Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women’s Syndrome, and Violence as Male Privilege (2004) 68 University of Miami Law Review 1099.</p> <p>Joseph E. Kennedy, “Why It Was Too Easy for George Zimmerman to Get off for Self-Defense: The problem isn’t Stand Your Ground. It’s who has to prove what.” 13 July, 2016.</p> <p>R v Lavallee [1990] 1 SCR 852 (excerpts)</p> <p>R. v. Malott [1998] 1 SCR 123 (exceprts)</p> <p>Kerstin Braun, “Till Death Us Do Part: Homicide Defenses for Women in Abusive Relationships – Similar Problems – Different Responses in Germany and Australia <i>Violence against women</i> (24 August 2016) (excerpts).</p> |
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| <p>27</p> <p>22 February</p> | <p>Responsibility for killing in cultural context 2: "In the Heat of Passion" and the Partial Defence of Provocation</p> | <p>See Caroline Piquet, "Le 'crime passionnel' est-il un crime à part" Le Figaro, 28 August, 2015.</p> <p>CBC News, "Race linked to how courts view 'crimes of passion'", 17 April, 2012</p> <p>Homicide Package #4, which contains</p> <p style="padding-left: 40px;">Samuel H. Pillsbury, <i>Judging Evil: Rethinking the Law of Murder and Manslaughter</i>, 128-129</p> <p style="padding-left: 40px;">Isabel Grant, Dorothy Chunn & Christine Boyle, <i>The Law of Homicide</i> (1999) at 6-3</p> <p style="padding-left: 40px;">Benjamin L Berger, "Emotions and the Veil of Voluntarism: The Loss of Judgment in Canadian Criminal Defences" (2006) 51 McGill L.J. 99 (excerpts)</p> <p style="padding-left: 40px;">Jeremy Horder, <i>Provocation and Responsibility</i> (1992) at 192-194.</p> <p style="padding-left: 40px;">R v Hill [1986] 1 SCR 313</p> <p style="padding-left: 40px;">R v Thibert [1996] 1 SCR 37</p> <p style="padding-left: 40px;">R v Tran [2010] SCR 350</p> <p style="padding-left: 40px;">Note on legislative reform in Canada, and in England and Wales.</p> |
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| <p>28 24 February</p> | <p>Sexual violence 1 -- Introduction, culture, history</p> | <p>Constance Backhouse, "Nineteenth-Century Canadian Rape Law 1800-1892" (1983) in David H. Flaherty, ed. <i>Essays in the History of Canadian Law</i> v.1 212-248. (excerpts)</p> <p>Susan Brownmiller, <i>Against our Will</i> (1975) (365-374).</p> <p>Sarah Deer, "Toward an Indigenous Theory of Rape" (2004) 14 <i>Kansas Journal of Law and Public Policy</i> 121, (read only 129-137 for now).</p> <p>Susan Estrich, "Rape" <i>Yale JL</i> 1121-1132; 1136-1144.</p> <p>Sherene Razack, "What Is to Be Gained by Looking White People in the Eye? Culture, Race and Gender in Cases of Sexual Violence" (1994) 19 <i>Signs</i> 894 at 897-903</p> <p><i>Recommended</i></p> <p>Recent Globe and Mail series on "unfounding" and police handling of sexual assault allegations</p> <p>Rachel A Van Cleave, "Rape and the Querela in Italy: False Protection of Victim Agency," (2007) 13 <i>Michigan J. Gender & L</i> 273, at 273-289.</p> <p><i>Also recommended (and a quick read):</i> Susan Estrich, "Teaching Rape Law" (1992) 102 <i>Yale LJ</i> 509.</p> |
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| <p>29 8 March</p> | <p>Sexual violence 2 – Defining the “wrong”</p> <p>A. Conceptual matters: Force, non-consent, or coercion</p> <p>B. The legal elements of sexual assault in Canada</p> <p>C. Challenges to defining the wrongful act – advance consent and some factors vitiating consent</p> | <p>Catharine A MacKinnon, “Defining Rape Internationally: A Comment on Akayesu” 44 Columbia Journal of Transnational Law 940 at 940-41 (be sure to read footnote 1).</p> <p>Vanessa E Munro, “An Unholy Trinity? Non-Consent, Coercion and Exploitation in Contemporary Legal Responses to Sexual Violence in England and Wales” (2010) 63 Current Legal Problems 45 at 45-46, 50-55.</p> <p>Criminal Code of Canada, ss. 265, 266, 271, 273 (1), 273.1, 273.2.</p> <p>R v Ewanchuk [1999] 1 SCR 330 (excerpts)</p> <p>R v JA [2011] 2 SCR 440 (excerpts)</p> <p>R v. Mabior [2012] 2 SCR 584 (excerpts)</p> <p>Tomer Zarchin, “Arab Man Who Posed as Jew to Seduce Woman Convicted of Rape” Ha’aretz, 20 July 2010.</p> <p>National Post, Woman who pretended to be a man to have sex with friend sentenced to eight years in prison, 12 November, 2015</p> <p>R v Newland, Sentencing remarks of Judge Dutton, 12 November 2015.</p> <p>The Independent, Gayle Newland: Woman jailed for tricking friend into sex [...] wins challenge against conviction, 12 October, 2016</p> |
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| <p>31 22 March</p> | <p>Sexual violence 4: Beyond law reform, and alternative models of justice</p> <p>(Defence ethics, restorative justice, aboriginal conceptions)</p> | <p>David M Tanovich, "Whack' No more: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases" (2013) 45 Ottawa L Rev 495, excerpts (5 pages)</p> <p>R v. Ghomeshi, 2016 ONCJ 155 (edited)</p> <p>Media reactions: Carissima Mathen, "Ghomeshi trial wasn't a judgment on sexual assault laws", Globe and Mail, 25 March, 2016.; Gillian Calder and Rebecca Johnson, "Ghomeshi case raises disturbing legal issues", Times Colonist, 5 April, 2016; Laura Wright, "Sexual assault trials: Experts call for alternatives to Canada's current court system" CBC News, 18 February, 2016; Sara Boesfeld, "Exclusive: Lucy DeCoutere on the Ghomeshi disaster", Chatelaine, 22 July, 2016.</p> <p>Barbara Hudson, "Restorative Justice and Gendered Violence: Diversion of Effective Justice?" (2002) 42 British Journal of Criminology 616 at 616, 621-629.</p> <p>Sarah Deer, "Toward an Indigenous Theory of Rape" (2004) 14 Kansas Journal of Law and Public Policy 121, 137-143. (8 pgs)</p> <p>Angela Cameron, "Stopping the violence: Canadian feminist debates on restorative justice and intimate violence" (2006) 10(1) Theoretical Criminology 49. (read only pages 55-58, the rest is optional).</p> <p>Aboriginal Women's Action Network Restorative Justice Policy: The Implications of Restorative Justice in Cases of Violence Against Aboriginal Women and Children. (1 page)</p> <p><i>Optional but FASCINATING:</i></p> <p>Emma Cunliffe and Angela Cameron, "Writing the Circle: Judicially Convened Sentencing Circles and the Textual Organization of Criminal Justice, (2007) 19 (1) Canadian Journal of Women and the Law 1.</p> <p>Gillian Balfour, "Do law reforms matter? Exploring the victimization-criminalization continuum in the sentencing of Aboriginal women in Canada" (2012) 19(1) International Review of Victimology 85.</p> <p>Sarah Deer, "Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty" (2009) 24(2) Wicazo Sa Review 149, 153-163. (10 pgs)</p> |
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24 March

In this class, we examine the interaction between criminal and regulatory law in two contexts: corporate crime and driving offences. The main article (Bittle and Snider) is situated within a particular anti-capitalist discourse. The purpose of the article is not to convince you of the political point, but to contextualize key concepts including

- a) rationate for regulatory offences
- b) the distinction and overlap between criminal (and therefore, in Canada, Federal) and regulatory (in Canada, either federal or provincial) offences.
- c) the different mental elements
- d) overlap, distinction and malleability in enforcement mechanisms.

[Baroness Barbara Wootton. *Crime and the criminal law: Reflections of a magistrate and social scientist* \(1963\), read pages 42-51. \(reflecting on why strict liability has troubled jurists so much, and whether it ought to\).](#)

Picanili, the Denial of Procedural Safeguards for Regulatory Offences: A Justification (2016) Criminal Law and Philosophy (4 pages, clarifying the concept of regulatory offences).

You have already read, but I am reposting to remind you to look again: R v Wholesale Travel (excerpts).

Further on mental elements in criminal and regulatory offences:

[R. v. Transport Robert; R. v. 1260448 Ontario](#) (legal and constitutional standards for regulatory offences).

[R. v. Hundal](#) (extract).

Steven Bittle and Laureen Snider, "Law, Regulation, and Safety Crimes: Exploring the Boundaries of Criminalizing Powerful Corporate Actors" (2015) 30(3) Canadian Journal of Law and Society 445.

Canadian Centre for Occupational Health and Safety, [Fact Sheet on Bill C-45](#).

Optional (Good for background)

Law Commission of Ontario, [Regulatory Offences and Sentencing Provisions](#), Sections 1-6.

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| <p>33</p> <p>29 March</p> | <p>Regulatory Offences 2: Poverty and homelessness</p> | <p>Marie-Ève Sylvestre and Céline Bellot, “Challenging Discriminatory and Punitive Responses to Homelessness in Canada in Martha Jackman and Bruce Porter, eds, <i>Advocating Social Rights in Canada</i> (2014) at 155 (excerpts, summarizing key parts of Campbell and Eid below)</p> <p>R. v. Banks 275 D.L.R. (4th) 640 (2007), 216 C.C.C. (3d) 19 (2007) (ONCA) (excerpts).</p> <p>News release: The Commission des droits de la personne et des droits de la jeunesse speaks out against the social profiling of the homeless in Montreal.</p> <p>Christine Campbell & Paul Eid, , La judiciarisation des personnes itinérantes à Montréal: Un profilage social” (Commission des droits de la personne et des droits de la jeunesse, Novembre 2009), Read only: Table des matières, pages i-iv; 42-43 146-148; 157. The rest of the report is optional – read what’s of interest!)</p> <p>Jeremy Waldron, “Why indigence is not a justification,” in William Heffernan and John Kleinig, eds., <i>From Social Justice to Criminal Justice: Poverty and the Administration of Criminal Law</i> (2000), 98-113.</p> <p><i>Optional: A Short, enlightening, often entertaining ethnography to accompany the Banks case:</i></p> <p>Bill O’Grady and Roger Bright, “Squeezed to the point of exclusion: The case of the Toronto Squeegee Cleaners” in Joe Hermer and Janet Mosher, <i>Disorderly People: Law and the Politics of Exclusion in Ontario</i> (2002) pp. 24-40</p> |
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| <p>31 March PART1</p> | <p>Mental Health</p> <p>a. Prevalence of mental health problems in prisons</p> <p>b. Mental health and exclusion from criminal liability</p> <p>i. Fitness to stand trial</p> <p>ii. NCRMD (Not Criminally Responsible by reason of Mental Disorder)</p> | <p>Short news clip on Ashley Smith (warning - disturbing footage re: suicide in prison).</p> <p>Package on mental health and exclusion from criminal liability (18 pages).</p> <p>Benjamin L Berger, "Mental Disorder and the Instability of Blame in Criminal Law" in James Stribopoulos and François Tanguay-Renaud, eds, <i>Rethinking Criminal Law Theory: New Canadian Perspectives in the Philosophy of Domestic, Transnational, and International Criminal Law</i>. Hart Publishing (2012) 117 (Read: 121, first para only; last paragraph of 122-135).</p> |
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| <p>31 March PART 2</p> | <p>Mental health in sentencing and incarceration</p> <p>The narrowness of the NCRMD defence and the fitness to stand trial test means that the question of how mental health bears on blameworthiness will often not be addressed at the “on-off” stage of determining culpability, but at other stages in the criminal process.</p> <p>In this class, we examine how mental health issues (particular FASD-related ones) factor into sentencing, both for the intrinsic value of the inquiry and as a window into sentencing processes.</p> | <p>Criminal Code, ss 718, 718.01, 718.02, 718.1, 718.2, 717 (please read carefully).</p> <p>Kent Roach et al, Criminal Law and Procedure: Cases and Materials (2015) at 990.</p> <p>Available sentencing tools</p> <p>Sentencing discretion and its limits</p> <p>R. v. M (C.A.) [1996] 1 SCR 00</p> <p>Kent Roach and Andrea Bailey, “The Relevance of Fetal Alcohol Spectrum Disorder in Canadian Criminal Law From Investigation to Sentencing, (2009) 42 UBC L Rev 1, at 1-4; 7-9; 45-68.</p> <p><i>Highly recommended:</i></p> <p>R v. Ramsay 2012 ABCA 257, paras 13-33.</p> <p><i>Optional:</i></p> <p>R v. Maier 2015 ABCA 59.</p> |
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