



1. COURSE NAME AND NUMBER: Criminal Law, LAWS 1001

2. COURSE INSTRUCTOR

Name: Professor Adelina Iftene

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Office Hours: Fall Term Tuesday: 2.00 – 3:45 pm

Winter: Wednesday: 2.00 - 4.00 pm

OR e-mail for appointment

NOTE: I do not answer substantive questions by e-mail – please come and see me in person.

3. COURSE INFORMATION

a. Class Times and Location:

Fall: Monday: 2.30 – 3.50 pm (Rm 305)
Wednesday: 1.30 – 2.40 pm (Rm 105)

Winter: Tuesday: 9.30 – 10.50 am (Rm 305)
Thursday: 9.30 – 10.50 am (Rm 505)

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b. Materials:

Required: Stuart & Coughlan, Learning Canadian Criminal Law, ed 14th, Carswell, 2018

Pocket Criminal Code, 2019, Carswell

Some materials added on Brightspace prior to class

Recommended: Kent Roach, Criminal Law, 7th ed, Irwin Law, 2018 (available on reserve in the library)

c. Objectives

When you have completed this course, you should have:

- become familiar with, and be able to utilize, the sources of criminal law, the Charter, the Criminal Code, and judicial decisions;
- acquired knowledge of the general principles of criminal law;
- be able to apply those principles to specific offences;
- acquired skills in legal analysis and writing, in the context of criminal law issues;
- acquired skills in applying law to fact situations;
- increased capacity to consider the impact of particular rules and practices on a range of groups, such as accused persons, women, and aboriginal people.

d. Learning criminal law

In this course, we will spend a lot of class time discussing challenging topics such as sexual assault, the over-representation of Indigenous people in the Canadian criminal justice system, and the discrimination against women and racial minorities within the system. Recognising that each of you will have a different experience of these topics, and come equipped with various levels of familiarity with the issues that these topics raise, here are some principles that we will use when discussing difficult issues such as these (these principles are adapted from some originally used by Tracy Lindberg at the University of Alberta):

1. We each have the right to make kind mistakes. We will make mistakes and it is each individual's responsibility to be as informed as possible when you get to class in order to ensure that your mistake is kind.

2. It actually does harm to hear stereotypes, generalizations and pejorative understandings about one's race, gender or subject position. While we can all make kind mistakes, let us also be fully informed and gentle as we are talking about people in the room.
3. You have the right to ask any question. If you are shy or uncomfortable, please write it down for me and I will answer it during / as part of a lecture.
4. The goal of these principles is to acknowledge that we have continuing relationships with each other. These relationships must be respectful and reciprocal in order for us to share space and ideas (inside of this classroom and out).

e. Evaluation:

- 100% final open book exam
- 30% Mid-term exam (December) ONLY IF IT BENEFITS YOU

5. POLICY & ADMINISTRATION

a. Special Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

b. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious

academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

6. COURSE OUTLINE

All prescribed readings are from the Stuart & Coughlan (the required book), unless otherwise specified. For greater certainty, in brackets I will list the cases you need to read. When there is a longer list of cases I will mention the ones of particular importance, on which you need to focus. You need to have your Criminal Code with you every class.

Fall term

Introduction

1. Wed, Sept. 12 – Introduction to Crime & Criminalization
Readings: 118-125 (Malmo-Levine – simply read it; here we will use it as an example for our discussion; we will learn how to properly read a case the next class)
2. Mon, Sept. 17st – Sources: Common Law (Reading a decision and using precedent)
Readings: 1-10 (Sedley, Frey, Henry)
3. Wed, Sept 19 – Sources: Statutes and Statutory Interpretation
Readings: 10 - 21 (read Goulis, focus on Clark and Pare)
4. Mon, Sept 24– Constitutional dimensions of criminal law: Federalism and the Charter (I)
Readings: 34 - 35
47 - 69 (Hunter, CFCYL, Bedford)
5. Wed, Sept 26 – Charter (II)
Readings: con't from last class
72 – 74; 79 - 81 (Oakes; Bedford)
NOTE: you will receive a take-home exercise for the following class
6. Mon, Oct. 1Th – Criminal Justice & Aboriginality
Readings: 117 - 118
211-215; 217- 228 from the Report of the Truth and Reconciliation Commission of Canada (“TRC Executive Summary” on Brightspace)

Excerpt from Turpel “On the Question of Adapting the Canadian Criminal Justice System for Aboriginal Peoples: Don’t Fence Me In” (“Turpel” on Brightspace)
In preparation for the class, please watch the documentary on the Kikkik case, its context and ramifications (link available on Brightspace). It is essential you watch and understand Kikkik. We will often come back to this case and its lessons through-out the year.

This class will not be lecture-based. Come prepared to discuss Kikkik and to work on the TRC excerpts.

NOTE: Your take-home exercise is due. You will receive one of your peer’s exercises to grade at home.

Procedural Overview

7. Wed, Oct 3 – The Adversary System & Classification of Offences
Readings: 134 – 136; 81 - 84
NOTE: your peer grading is due, we will debrief the exercise and the peer grading.

8. Wed, Oct 10th – Criminal Justice & Black Nova Scotians
Readings: On Brightspace: 155 – 162 (RDS) + Devlin, “We Can’t Go on Together with Suspicious Minds”: Judicial Bias and Racialized Perspective in R v RDS” (Brightspace)
Guest speakers: Rodney Small, Judge Whalen, and Professor Michelle Williams
This class will look at the impact of criminal law on non-white populations, in specific Nova Scotians of African descent and the importance on having diversity in the legal profession. Our guest speakers for the class are Rodney Small, the defendant in the RDS case that you have been assigned to read for the class, Judge Whalen of the Provincial Court, and Michelle Williams, Director of the IB&M Initiative.

9. Mon, Oct 15th – Presumption of Innocence (I)
Readings: 85 – 100 (Woolmington, Lifchus, Starr, S(JH))

10. Mon, Oct 22 – Presumption of Innocence (II)
Readings: 100 – 112 (Mullins-Johnson, Oakes, Downey)

Elements of Offences: Act Requirements

11. Wed, Oct 24 – What is Actus Reus? Commission & Possession
Readings: 177 – 186; 192 – 199 (Marshall, Terrence)

12. Mon, Oct 29 – Omissions
Readings: 261 – 268; 276 – 280 (Fagan, Miller, Thorne)
13. Wed, Oct 31 – Consent
Readings: 214 – 226; 231 - 252 (Jobidon, Cuerrier, Mabior, Hutchison)
14. Mon, Nov 5 - Voluntariness & causation as an element of AR I
Readings: 293 - 303; 316-323 (read Lucki, Wolfe, Swaby, Ryan, Kilbridge, focus on Smithers; and read the problem)
15. Wed, Nov 7: - Causation as an element of AR II
Readings: 323-334 (Harbottle); 339 – 357 (read Smith, Blaue, Bingsapore, focus on Maybin).
NOTE: You will receive an AR take-home exercise due after the reading week

Reading Week

16. Mon, Nov 19 – Revision of AR
NOTE: your take-home exercise is due; we will review it in class.

Elements of Offences: Fault Requirements

Subjective fault

17. Wed, Nov 21 – Fault for Crimes: objective and subjective. Introduction to subjective fault at common law
Readings: 361 – 364 (Hundal, Theroux); 473 – 478 (H (AD)).
18. Mon, Nov 26: Common Law Subjective *Mens Rea* 1: Intent and Knowledge
Readings: 478 – 494 (read Hibbert, focus on Buzzanga and Durocher).
19. Thu, Nov 28: Common Law Subjective *Mens Rea* 2: Recklessness and Wilful Blindness
Readings: 494 –505 (Theroux, Boulanger); 506 – 509 (read Briscoe, Lagace – focus on Sansregret and Blondin).
20. Mon, Dec 3 – Revision
NOTE: A practice exam will be made available on Brightspace. Please attempt to solve the exam and bring your questions to class. Alternatively, if you are shy, feel free to e-mail the questions ahead, and I will answer them (anonymously) in class.

END OF TERM

Winter term

21. Tue, Jan 15 – *Charter* Required Subjective *Mens Rea*: Murder

Readings: 431 – 452 (Vaillacourt and Martineau)

Objective fault

22. Thu, Jan 17 - Objective Fault: Criminal Negligence

Readings: 509 – 527 (read O’Grady and Waite, focus on Tutton and Anderson)

23. Tue, Jan 22 – Objective Fault: Marked departure test

Readings: 528 – 554 (Hundal, Creighton, Beatty, F(J))

24. Thu, Jan 24 – Objective fault: Predicated Offences & Fault Revision

Readings: 556 – 572 (DeSousa, Creighton)

Sexual assault

25. Jan, Tue 29: Rape Shield Law and Sexual assault I

Readings: 589-594; 621 – 627 (Chase)

26. Jan, Thu 31: Sexual Assault II: Consent

Readings: 666 – 681; 689 - 703 (Ewanchuck, A(J)) + Al-Rawi Excerpt (Brightspace)

27. Tue, Feb 5: Sexual Assault III: Case Study – *R v. Barton*

Readings: From the Supplement on Brightspace:

Contextual material on Murdered and Missing Indigenous Women (p 39-52)

R v Barton (p. 53-72)

Regulatory offences

28. Thu, Feb 7: Regulatory Offences I

Readings: 374 – 390 (Sault Ste. Marie, Wholesale Travel)

29. Tue, Feb 12: Regulatory Offences II

Readings: 398 – 412

30. Thu, Feb 14: Revision of MR

Reading week

Defences

31. Tue, Feb 26: Introduction to defences & mistake of fact

Readings: 929-933 (Cinous), 725; 738 – 747 (Ladue, Kundeus)

32. Thu, Feb 28 - Mental Disorder

Readings: 789 -803 (Cooper, Kjieldsen, Abbey, Chaulk)

NOTE: You will receive a take-home exercise

33. Tue, March 5 – Automatism I

Readings: 806 – 833 (Rabey, Parkes)
NOTE: Your take-home exercise is due

34. Thu, Mar 7– Automatism II

Readings: 833 – 864 (Stone, Luedecke, Bouchard-Lebrun, Fontaine)

35. Tue, Mar 12 – Intoxication

Readings: 892 – 919 (Davault, Daley, Bouchard-Lebrun, Tatton)

36. Thu, Mar 14 – Self-defense

Readings: 933- 956 (Lavallee, Malott, Cormier)

37. Tue, Mar 19 – Necessity

Readings: 959-983 (Stephens & Dudley, Perka, Latimer)

38. Thu, Mar 21 – Duress

Readings: 988-1019 (Paquette, Hibbert, Ruzic, Ryan)

39. Tue, Mar 26 - Revision on Defences

Readings: The two review problems page 1054 -1055; we will solve them together in class.

Other Issues

40. Tue, Mar 28 – Secondary Liability

Readings: 1079 – 1089 (Ball, Dunlop and Sylvester); 1093– 1107 (Briscoe, Logan, Gauthier, Duong)

41. April 2 – Attempts

Readings: 1111 – 1118 (Ancio); 1124-1135 (Deutsch, Dynar)

42. April 4 – Revision

Note: You will receive a practice exam in advance on Brightspace. Please attempt to solve it and bring your questions on it, or any other questions to class. Alternatively, you may send your questions to me in advance, and I will answer them anonymously in class.