

## Criminal Law Problems Syllabus, Winter 2019

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Winter term, Thursdays, 4:30 – 6:20, room 411. Three credits.

### Purpose of the Course:

Criminal law seems to be in a state of constant flux. Up until somewhere in the early to mid 1990s, most Criminal Law academics would probably have said that they understood reasonably well what the rules were: there was scope for disagreement on how particular cases might get decided, but generally speaking we had limited police powers, crimes defined in advance, an act requirement and a need for subjective *mens rea*, and rules of evidence. Around that time, the Supreme Court began handing down decisions that seemed to contradict some of the most fundamental expectations - only to render a further decision months later re-affirming the fundamentals. It became difficult to say with any confidence what the rules were, or indeed whether there were rules after all.

This course will focus on the current state of the criminal law which, as noted, keeps changing. As a result, there is no essential subject matter for this course. Rather, following some introductory sessions, the topics to be covered will be dictated by the choices of the participants in the class, potentially but not necessarily based on suggested topics I will distribute. My hope is that we will have a series of discussions which will be interesting and inter-related, but whether the actual subject matter of those discussions is search of electronic devices, prosecutorial discretion, or sex offender registries is of secondary importance. Broadly speaking, topics relating to substantive criminal law, criminal procedure, evidence or sentencing would all be suitable subjects. The course is aimed at evaluating whether the current state of the law on various matters is good or bad, not simply at determining what the current state of the law is.

### Materials:

There will be handouts for the first several classes which will guide the discussion. Later classes will be centred around two student presentations per week. For those classes, each presenter will be responsible for distributing materials a week in advance. These materials can be entire cases, selections from several cases, secondary materials, or whatever else is sufficient to inform others and spark discussion. I am happy to work with you to help you choose appropriate materials (especially for those who will be presenting earliest in the term). You should bring a copy of the *Criminal Code* to class, since it is likely to be relevant, but there is no need to purchase the most recent edition.

One piece of non-material: do not use laptops in class. There is no exam and no need to take notes: the main point of the course is the discussions that we will have, and an open laptop in front of everyone is a hindrance to that.

### Evaluation:

This is a major paper course, and so evaluation is required to be based primarily on the paper. However, having a complete and active discussion of all the topics covered is also a major goal. Accordingly 60% of the marks are allocated to the paper and 40% to various aspects of

classroom discussion. (Personally I think of this as an “interesting discussion course”, but that category is not available in the calendar.)

The paper must be a minimum of 25 pages long, in accordance with the requirements for a major paper course. Given that you will be expected to do work in connection with your own and other presentations, the papers should not be much longer than that: your paper should be in the 25-30 page range. Use footnotes rather than endnotes, but the page limit does not include the cover page or bibliography. If you feel it is not possible to do justice to your topic within that range, you should speak to me well before handing it in to get permission to go over that limit. I am also quite happy to review outlines or drafts and to discuss them, provided they are submitted to me by, at the latest, Friday March 22<sup>nd</sup> (electronic submission is best for this). The papers are due by 4:00 p.m. on Monday April 8<sup>th</sup>, 2018 (the last day of classes). Major papers must be submitted in hard copy, and should be handed in to the reception desk on the ground floor to ensure they are date and time stamped. The paper will be worth 60% and will be evaluated according to the criteria for major papers set out in the Law School Calendar.

The other 40% will be assigned to four aspects of the classroom experience. They are:

1) Class presentation: Every student will do a class presentation which will take up one half of a class: this will be on the same topic about which you will eventually write your essay. You should plan to speak for 20-25 minutes and to have discussion fill the rest of the 50 minute total, but that needn't be divided into two separate chunks of time – you can work it out however you like. You will need to prepare materials which will leave your fellow students sufficiently informed about the issue in question to be able to form some preliminary thoughts, and these should be distributed in class one week ahead. These readings can be excerpts from a series of cases, a single case, an article, something you have written yourself to introduce the subject matter, or a combination of those. (Geordie in the Materials Room will print these for you, if you get them to him the day before you need them.)

The readings should be a maximum of 20 legal size pages, and they can certainly be shorter (12-15 pages is usually enough): they only need to be sufficient to inform people and spark discussion. It would be helpful if you have formed a preliminary thesis about your subject matter by the time of your presentation, but this will be less possible for those going earlier in the term, and is not mandatory. Even if you do have a thesis at the time of your presentation, you might change your view by the time you complete the paper.

2) Being a “primary respondent” to one other presenter: the primary respondent's task is to do some independent research and independent thought, and to be prepared to comment on those issues. The primary respondent is not required to disagree with the presenter's view, but is expected to have done a bit of independent research and to have something original to say. This might involve presenting for a few minutes after the main presenter, or it might consist of being particularly involved in the class discussion for that session. When you are the primary respondent you should check in advance with the presenter, to see whether she/he plans to invite participation throughout or to put off questions and comments from others to the end. (When you are the presenter, please keep the primary respondent apprised of your plans.)

3) Advance Brightspace “reactions”. For at least two presentations by others, you must write a short (half a page to one page) reaction to the readings, to be posted before midnight a day in

advance on the Brightspace page for the course (that is, by midnight Wednesday at the latest). Your reaction can do anything relevant, but suggesting what you see as the most important issues to be discussed and perhaps expressing an opinion would be helpful. The point of these is to spark discussion by giving everyone food for thought before we arrive.

You cannot react to the presentation for which you are the primary respondent. If you are only doing two reactions, you must choose presentations on two different days. You might wish to do more than two reactions, depending on how many marks you choose to allocate to this component (see below), in which case you can react to two presentations on the same day (Marks for this component are based on quality rather than quantity, however). In practice people often leave doing reactions until late in the term and have been rushed, so “start early” is good advice.

4) Participation, which is simply taking part in the class discussions. This component will be evaluated not merely on whether you have said anything, but on how useful that contribution was to furthering the discussion.

I have not said how many marks each of those components is worth, because it is variable. Some people are more comfortable participating spontaneously, while others prefer the chance to think out their remarks in advance, or to participate in writing rather than orally. I am trying to allow for those peculiarities in the evaluation process.

The class presentation must be worth at least 10%. Each of the other components must be worth at least 5%. That leaves a further 15% of the grade to be allocated. You may allocate that 15% however you wish (in increments of 5%) among the four “classroom experience” components. For example, you could make class participation worth 20% of your grade (rather than 5%) and keep the others at a minimum: alternatively you could make the email reactions worth 15%, and add 5% to your presentation.

In sum, evaluation will be based on this formula:

- 1) paper: 60%
- 2) presentation: minimum 10%
- 3) responding: minimum 5%
- 4) participation: minimum 5%
- 5) reactions: minimum 5%
- 6) a further 15% allocated between 2) through 5)

You must let me know, by email, by Thursday January 31<sup>st</sup> at the latest, how you wish to allocate your extra 15%. If I do not hear from you, I will add 5% to each of 2) through 4).

The curve does not apply to major paper courses, but a median of 73-75% is enforced.

### Boilerplate

Plagiarism:

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the <http://academicintegrity.dal.ca/>

website, and the Law School policy on plagiarism, available online at <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.

### Student Requests for 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 Dana-Lyn Mackenzie, 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](http://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.