

MEMORANDUM

TO: Students Enrolled in Mental Disability Law: Criminal; Fall Term 2017; Thursday, 4:00 p.m. – 5:50 p.m., Room 308

FROM: Professor H.A. Kaiser (Room W421; 494-1003 (office); archie.kaiser@dal.ca)

DATE: September 7, 2017

RE: SCHEDULE, EVALUATION AND OTHER INTRODUCTORY ISSUES

Mental Disability Law: Criminal LAWS 2235.01 (2 credit hours) / 2236.01 (3 credit hours);

Course Description

This seminar provides an opportunity for students to explore the range of complex issues at the intersection of mental disability and criminal justice. Persons with mental health problems and intellectual disabilities have tended to be overrepresented in criminal courts and prisons and have been poorly served by institutions that concentrate on conventional concepts of moral blameworthiness and punishment.

The course covers a wide range of topics, which vary from year to year, such as an introduction to mental disorder, intellectual disability and the criminal justice system; historical overview; the *Convention on the Rights of Persons with Disabilities*; Criminalization: causes and potential responses; not criminally responsible and unfitness determinations and dispositions; mental health courts; youth, mental disability and crime; Intellectual disability and the justice system; mental disorder in sentencing; corrections law; concurrent disorders (mental health and substance abuse co-morbidities) or dual diagnoses (mental health problems and intellectual disabilities); specific challenges, such as anti-social personality disorders and sexual paraphilias; policing; recent criminal law “reforms”.

ASSESSMENT METHOD: Major paper (**LAWS 2236** 3 credit hours) or term assignments (**LAWS 2235** 2 credit hours); a class presentation and class participation are also required for each student.

General University Policies and Notices:

Students with Special Needs/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 the Director of Student Services as soon as possible, **before** a scheduled exam or a deadline for an assignment,

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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.

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.

Submission of Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

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CLASS TOPICS and MATERIALS

With only 11 regular classes after our first session (no class on November 9: Fall Study Break), some topics probably cannot be addressed as thoroughly as I would like and others will simply be left out. Nonetheless, I have tried to select issues which will likely be novel to you and which are both significant and contemporary.

Major readings for the course will be available in hard copy form as a handout at least the week before the relevant class. There will often be materials given out during classes. It is the student's responsibility to ensure he or she obtains all the required readings, including the class hand-outs. Please inform me if you have any difficulties in gaining access to the materials and I will ensure you receive a copy.

The Course Syllabus for each week will contain a detailed review of the coverage for each class.

List of Topics

I have tried to allocate the time required to study the topics based upon their complexity and importance. Depending upon the extent of class discussion, we should be able to keep up with this schedule.

Week 1	Introduction to the course and to Mental Disability Law in general
Week 2	Historical Glimpses and Contemporary Overviews
Week 3	Police Services and Persons with Mental Health Problems
Week 4	Police Services and Persons Labelled with an Intellectual Disability
Week 5	Police Services and Persons with Mental Disabilities: Use of Force
Week 6	Prisons and Persons with Mental Health Problems
Week 7	Prisons and Persons with Mental Health Problems II
Week 8	The Hyde Inquiry: A Case Study of the Intersection of Mental Health and Criminal Justice. (tentative)
Week 9	Fitness to Stand Trial
Week 10	The NCR Dispositional Regime: Introducing the Basic Law

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Subsequent Weeks:

- The number of classes where we will be covering new substantive topics will be settled once we know how the class presentations can be fitted into the class times. This will depend on when the presentations commence and students' availability for special sessions.
- **Students who enrol in the course are advised that extra sessions outside scheduled class times may be required to accommodate class presentations.**

EVALUATION: 2 or 3 CREDITS

The course can be taken either as a two credit course evaluated by a series of assignments or a three credit course, evaluated by major paper.

As far as I am concerned, there is no obstacle to your changing the basis of your enrolment from two to three credits or *vice versa*. However, you must check with the Associate Dean's Office, which can require confirmation from me. All Faculty rules must be complied with. Lori Vaughan (lori.vaughan@dal.ca) may be able to assist you.

TOPICS TO BE CHOSEN FROM THE "CRIMINAL" REALM

For both class presentations and paper topics (for three credit students), subjects must be chosen from the criminal domain. I offer another class, Mental Disability Law: Civil, which provides intensive coverage of general mental disability law issues such as Treatment, Incapacity and Hospitalization, and so on.

If you wish to pursue a topic in the realm of exclusively civil matters, you should enrol in that course for 2018/19.

CLASS PARTICIPATION: Mandatory for 2 and 3 Credit Students

General Class Participation

Regardless of the form of evaluation which you have selected, 10% of your final grade will be allocated to class participation.

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Although it is somewhat difficult to be precise, I do try to look at each person with respect to certain categories. To de-mystify things, the criteria I use include: attendance (taken in each regular and, special session), preparation, frequency of participation, quality of comments, collegiality and contribution to the learning environment.

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CLASS PRESENTATION: Mandatory for 2 and 3 Credit Students**Individual Class Presentation: Mandatory Component for All Students**

20% of your final grade will be calculated on the basis of your presentation of a particular issue or theme to the whole class.

CHOOSE ONE OR THE OTHER APPROACH (OR COMBINE THEM)

Depending on the number of students in the course and when the presentations actually commence, it may be necessary to hold one or two sessions outside normal class hours to give each student a fair opportunity to present his or her topic and also to cover the rest of the syllabus. My previous experience suggests that this is a very valuable part of the course. The dates will be announced later in the term if they are required. Depending upon the extent of this extra commitment, we may use regular class time towards the end of the term solely for presentations.

Please note that it is not acceptable to merely discuss your research paper unless the presentation takes one of the approaches below.

OPTION A: COMMUNITY OUTREACH

The emphasis will be on trying to reach beyond the classroom and the library to the local community where one can observe and comment upon problems in Mental Disability Law: Criminal. The topic will be of your own choosing, but I will suggest some examples which might inspire you to think about alternatives.

The class discussion which students will lead will be based upon their research and must be completed within 30 minutes including questions. Students will usually do these projects on an individual basis, but I am certainly open to students working together. If you are enrolled for 3 credits, these class presentation topics may or may not relate to your actual major paper subject. Some of you may be inspired by this exposure to the real world setting to complete your papers in an extended manner. Others may just use this opportunity to delve into another topic.

Students should complete and distribute in advance, or during your presentation, a basic set of materials. Usually this takes the form of a short commentary, outline, copies of slides or overheads. This would normally be in the range of 5-10 pages. You can send electronic copies to me and I will distribute them to the class electronically and in paper form in class.

OPTION B: CONTEMPORARY DEVELOPMENTS

As an alternative to the "Community Outreach" variant, students may elect to provide the class with a presentation offering the most contemporary information on an extremely current topic in mental disability law and policy. This would not require the methods and commentary suggested for the other option, such as site visits or interviews, although students should distribute materials as noted above.

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The key to selecting a topic for this approach would be ensuring that there are *very recent developments* (say within the last year) of ongoing significance in the chosen area. The emphasis would be on timely issues, often which are still unfolding. In addition to bringing the class up to date in an authoritative manner, the presenter might predict the future and preferred directions for the debate, law or policy and may draw upon international or foreign sources.

ASSIGNMENTS AND MAJOR PAPERS

2 Credit Assignments

Students who have chosen the two credit stream will be evaluated by way of two assignments. The First Assignment will be distributed on **September 21, 2017** and will be due **October 19 at the start of class**. The Second Assignment will be distributed on **October 19, 2017** and will be due **November 23 at the start of class**.

3 Credit Major Paper

As far as major papers are concerned, you should review the Faculty of Law guidelines with respect to major papers in the Calendar. *Particularly if this is your first major paper in Law School, pay close attention to these standards.*

You should discuss your proposed topic in advance with me. I am prepared to comment upon research/plans and outlines.

You should have settled upon the general area of your research by early October. I appreciate that there may be some fluctuation between the initial discussion of your topic and the final version of your paper. *The paper must be submitted by Friday, December 8, 2017 at 4:00 p.m.*

Penalties may be assessed for lateness within Faculty guidelines by the Studies Committee. If this deadline is unsuitable for your schedule, you may petition the Studies Committee for accommodation in advance, although they will normally provide extensions only in exceptional circumstances.

POSSIBLE TOPICS FOR CLASS PRESENTATIONS (or RESEARCH PAPERS)

You should discuss the topic(s) in which you are interested with me before you invest too much time in pursuing it.

Many of these topics could also be adapted for a research paper.

1. The “Excited Delerium” Controversy.
2. Lessons from fatality-related inquiries.

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3. The interpretation of *Conway* (or other S.C.C. cases) by local Review Boards and obstacles to its use in different jurisdictions, with a possible concentration on jurisdiction and remedies.
4. Local assessment practices in NCR and unfitness cases.
5. The *Hyde Fatality Inquiry*: specialized topic(s)
6. The local mental health court: current issues.
7. Observation on a hearing(s) before the Criminal Review Board.
8. Interviews and commentary: professors or practitioners of psychiatry or other related professions on a legally related topic; media representatives with an interest in the area; judges; lawyers; government officials; members of a tribunal.
9. Mental health services for inmates in provincial remand and correctional facilities (or federal).
10. Special topics in policing.
11. Case study of a recent noteworthy NCR or unfitness case, local or further afield.
12. Assessments and Dispositions for NCR/Unfit “young persons.”
13. The use of amicus curiae in criminal proceedings.
14. Housing options for post-hospital NCR accused.
15. Developments following the André Denny case regarding hospital policies.
16. The availability of conjugal visits for long-term NCR detainees.
17. Diversion policies in Nova Scotia for persons with mental illness.
18. Tactical considerations in choosing whether to advance a NCR defence.
19. The permanent “unfit to stand trial” verdict/stay of proceedings.
20. Locating assessments for unfitness/NCR: community-based or inpatient.
21. A critical review of any Bill in Parliament (or a Legislature) with criminal justice and mental disorder and/or intellectual disability implications.
22. The *CRPD*: suggestions for abolition of the special NCR verdict.

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23. Post-Incident developments regarding mental health following recent U.S. mass shootings.
24. Segregation policies in forensic hospitals.
25. Advocacy services for people with mental health problems in the criminal justice system.
26. Criminal Review Boards: training and rules.
27. Lawyers, accused of crimes, who have mental health problems.
28. The Justice Minister's Mandate: Issues with mental health/illness and intellectual disability implications.
29. Will Bill C-14, the *NCR Reform Act*, survive?
30. The Denny case and similar precedents: implications for sentencing.
31. The Office of the NS DPP: policies touching upon mental disability issues.
32. Nova Scotia Legal Aid: capacity issues regarding mental disability in service delivery in criminal cases.
33. The Death of Camille Strickland-Murphy in Nova Institution.
34. The Mentally Ill Offender Unit at the (Burnside) Correctional Centre.
35. Training of psychiatrists in Canada in forensic issues.
36. Sources of lobbying pressure on disability issues: the CBA; special interest groups; Minister's consultations.
37. The police lock-up units in Nova Scotia and prisoners with mental disabilities.

The above list is obviously not exhaustive and I look forward to hearing other proposals. Basically, the exercise should involve a few hours of preparatory research, followed by whatever time is required to select your topic, plan your methodology, and to complete the actual community contacts (if applicable), and then explaining and critically commenting upon your topic in your class presentation.

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EXAMPLES OF POSSIBLE TOPICS FOR RESEARCH FOR MAJOR PAPERS (OR CLASS PRESENTATIONS)

By no means am I intending here to offer an exhaustive list for you. If anything, given the relative paucity of scholarship in Canada, the field is wide open to your creative efforts. There is some prospect of getting your work published. **The list of possible topics for class presentations may be useful here too.**

The list should begin to stimulate your thinking on the kinds of issues which you could consider in your research.

1. The U.N. Convention on the Rights of Persons with Disabilities: Potential and Limits in the Criminal Justice System.
2. The potential of the Mental Health Commission of Canada as shown in their Strategy and following publications for the criminal justice system.
3. Decisions regarding psychiatric or non-psychiatric treatment for patients detained under the Mental Disorder Provisions of the Criminal Code.
4. Legal approaches to anti-stigma campaigns: the relevance to criminal justice.
5. What is the current state of not criminally responsible determinations following the recent case law, especially from the Supreme Court of Canada?
6. Should the conditional sentencing provisions of the Code be available to dangerous accuseds who have mental health problems? Consider *Knoblauch* and more recent cases in light of the Code amendments on conditional sentences of imprisonment and pending amendments.
7. Are survivors of sexual assault with a history of mental health problems subject to new attacks in the criminal justice system?
8. Lawyer's ethical and competence standards in assessing client capacity to instruct.
9. Infanticide: the Criminal Law and mental disability.
10. Housing issues for people with serious mental health problems with prior criminal justice involvements.
11. Specialized mental health courts: antidote to the criminalization of the mentally ill?
12. Mental illness prejudice in the news media and its legal effects: coverage of criminal cases.
13. Canadian diversion policies for people with mental disabilities.

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14. Regulation of ECT under the Criminal Code.
15. U.S. (or European or other) efforts to confront criminalization of people with mental health problems.
16. Personality disorders: the NCR verdict; treatability in the civil setting.
17. Rendering accuseds “fit to be executed” in the U.S.
18. Emerging policy and legal issues in DSM 5: prospective impacts on the criminal justice system.
19. Mental disability in police training programs: comparative insights.
20. Dual diagnosis and the criminal justice system.
21. The dilemmas of concurrent diagnoses.
22. Editorials and mental health and criminal justice issues: content and influence.
23. Legal responses to “spectacular” criminal justice cases involving mental health.
24. Learning from other jurisdictions: comparative approaches to dispositions for NCR accused.
25. Historical approaches to the rehabilitation of NCR accused.
26. Segregation and torture in prisons and forensic hospitals.
27. Office of the Correctional Investigator Reports and Government Responses concerning prisoners with mental health problems.
28. Self-mutilation (or suicides) among Canadian prisoners.
29. The Ashley Smith case and its effects.
30. Bail support services for accused with mental health problems.
31. Correctional officer training regarding mental health.
32. PTSD and criminal justice professionals.
33. Judicial education programs: criminal justice and mental health implications.
34. The Mandela Rules and people with mental disabilities.
35. The Torture Convention and its potential use in the forensic justice system.

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36. The *Carter* case: mental disability issues.
37. The first voice: are we listening in criminal justice policy formulations?
38. The Optional Protocol to the *CRPD*: should Canada ratify it, what are the criminal justice/mental disability implications?
39. The intersection of personality disorders and criminal justice.
40. Mental disability and the risk of wrongful convictions.