

## **COURSE NAME AND NUMBER: Imprisonment and Prison Policy LAWS2276**

### **2. COURSE INSTRUCTOR**

Name: Professor Adelina Iftene

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Office Hours: Fall Term Tuesday: 2.00 – 3.45 pm

OR e-mail for appointment/ stop by if the door is open

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: Tuesday 4.00 – 5.50 pm (Room 309)

#### ***b. Materials:***

Corrections and Conditional Release Act, SC 1990, ch 20 (revised 2016): <http://canlii.ca/t/7vr2>  
Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act*, 1982, enacted by the Canada Act 1982 [U.K.] c.11.

Canadian Human Rights Act, R.S.C. 1985, c. H-6 (revised 2018): <http://canlii.ca/t/7vh5>

Mandela Rules (2015): <https://s16889.pcdn.co/wp-content/uploads/1957/06/ENG.pdf>

All other prescribed readings will be posted on Brightspace. Please check the course outline (below) for the materials you need to read for each week/topic.

#### **Useful sites:**

- Office of the Correctional Investigator (resources), <http://www.oci-bec.gc.ca/cnt/rpt/index-eng.aspx>
- West Coast Prison Justice Society, Prisoner Legal Services, <https://prisonjustice.org/pamphlets/>
- Canadian Human Rights Commission, Prisoner Rights, <http://www.chrc-ccdp.gc.ca/eng/content/prisoners-rights>

- Policy Options, Widening the Leans on Criminal Justice Reform, <http://policyoptions.irpp.org/magazines/april-2018/widening-lens-criminal-justice-reform/>.
- International Centre for Prison Studies, <http://www.prisonstudies.org/>.
- International Standards for Detention, Prisons, and Corrections, <https://www.inprol.org/rule-of-law-topics/international-standards-for-detention-prisons-and-corrections>.

*c. Course description:*

This course is a 3-credit seminar that focuses on the impact of imprisonment on law, communities and individuals, by using a multidisciplinary, multi-sectoral approach. There are three major sections to the seminar, designed to help students develop skills to represent and assist incarcerated clients in a variety of legal situations by developing a critical understanding of how incarceration can change the legal system's rules of engagement for such individuals. The first section is normative. We will look at the penological and legislative purpose of imprisonment, the different types of custodial institutions within Canada, the laws that regulate incarceration in Canada and in the provinces, the rights that apply to prisoners, the problems that may arise in the prison context, and the specific remedial mechanisms created to protect prisoners in the institutional setting. The second section is analytical and interdisciplinary. We will look at the specific issues that incarceration raises as it interacts with other aspects of law and society, including family, aboriginality, labour, etc. We will also look at the legal tools available to prisoners or former prisoners seeking to engage with these socio-legal issues, and ask how effective they are. The third section is practical. It will consist of a site visit to a prison, in order to familiarize students with the environment and to allow them to engage with prisoners. Please note that the field trip to prison is mandatory for the completion of the course, and it will take place outside of the regular class time.

By including normative, analytical, policy, and field components, this course caters to students who are passionate about criminal and social justice as well as those who simply wish to build skills and experience in representing or advocating on behalf of the diverse group of clients they may encounter in their careers.

*d. Objectives*

- a. From the perspective of the subject matter:
- understand incarceration as an integral part of the criminal justice system with ramifications far beyond the criminal justice system;
  - critically engage in a multidisciplinary assessment of the cost and benefits of the current prison system;

- develop a holistic understanding of the social and legal struggles of the people undergoing a custodial sentence;
- develop the tools to assess how other areas of law may be utilized to advocate on behalf of prisoners or for prison reform;
- think critically about prison reform;
- develop tools to represent and counsel prisoners and former prisoners.

b. From methodological perspective, beyond the subject matter:

- understand that law is not formed of unrelated disciplines, but rather it is a domino system, in which one piece directly impacts the rest;
- develop tools to critically assess the effects of law on individuals and communities, as subjects not objects of law;
- develop legal and interdisciplinary research skills;
- develop an ability to explain the law, orally and in writing, to lay people and engage with vulnerable clients;
- reflect on the fact that law does not exist for its own sake, but rather to make the life of a community better.

e. *Class etiquette*

In this course, we will spend a lot of class time discussing challenging topics such as the over-representation of Indigenous people in the Canadian criminal justice system, and discrimination against women, racial and other kinds of minorities within the system. In nearly each class we will discuss traumatic experiences lived by vulnerable people. 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 may be talking about people in the room.
3. You have the right to ask any question. If you have a question or an issue that you'd liked discussed but feel uncomfortable raising it in public, write it down or email it to me and I will address it without naming the source.

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).

Finally, please consider carefully your use of computer/ other technology during class. The use of technology for purposes not related to the course is disrespectful towards me and your peers who will be engaged in class related discussions.

*f. Evaluation (for due dates on assignments please refer to section g. Dates and Deadlines below)*

- 30% for the practical component of class (please refer to the Practical Course Component document on Brightspace for instructions and list of topics), as follows:
  - 20% - written document prepared for the prison visit.
  - 10% - presentation given to prisoners on the same topic on which you prepared the written document.

**PLEASE NOTE: The practical component is mandatory. You cannot complete this course if you don't partake in this practical activity.**

- 60% for the major research paper. For instructions on how to write a research paper, please read "Writing a Research Paper," especially Part I, pages 1-14, with focus on the portions highlighted in red for your guidance. You may also wish to review Part II of the same resource, called "Constructing Legal and Policy Arguments." See also "Evaluation Criteria for Research Paper" (Brightspace), based on which you will be graded. The papers must be between 25 – 30 pages in length (not including bibliography and cover page), double-spaced, with a font of 12. You must follow the McGill 9<sup>th</sup> ed citation style. You will need to submit the paper by December 10, both in hard copy and by e-mail.

For a recommended list of topics for the paper, please refer to "List of topics for research papers." (Brightspace). You will notice that most topics are related to the topics you may choose for the practical component. You do not have to pick the same topic for the practical component and the major research presentation, but, where feasible, it may make sense to. While the information you seek and the way you convey is different in the practical part from the research part, the practical part may still inform, at least at an initial stage, your research paper. (i.e. if you chose to present on certain aspects of custody, the information you collect may be useful – though clearly not enough - in a research paper addressing the legal challenges incarcerated women face in fighting a custody battle).

➤ 10% class participation

This is a seminar, not a lecture. Hence, the class is premised on students having done their readings, and it is structured around discussion and other class activities.

Your class participation will be evaluated based on: your attendance (unjustified absences will make it difficult for you to obtain maximum points for this portion) and regular, informed contributions to class discussion and engagement with group activities and exercises.

**g. Dates & Deadlines**

**September 12 - September 18** –you must choose your top 2 preferences for institutions and topics for the practical component. You will have to do so by filling in the excel sheet (see the Practical Course Component document on Brightspace for instructions). **[mandatory]**

**September 18 – September 21** – fill in your CPIC form for institutional clearance and return it to me. **[mandatory]**

**September 21-** Health Law Institute Lecture Series, 12:00 – 1:30 pm: Jennifer Metcalfe, Executive Director of Prisoners’ Legal Service, West Coast Prison Justice Society, Vancouver, “Challenging health care conditions in prisons.” **[optional]**

**September 21 – September 23** – The Canadian Prison Law Conference – attendance is optional, but as a student in this class you may partake for free (though you need to register). **[optional]**

**October 2** – submit a topic, a working title and an outline of your paper (no longer than 1 page). You are not graded for it, but you will get feedback on it. **The topic needs to be approved by me, and failure to submit the outline for me to review & provide you with feedback may prevent you from writing a good quality paper, and, therefore, may negatively impact your grade.** **[mandatory]**

**October 16** – the written document and any annexes (if applicable) for the practical component are due. **[mandatory]**

**October 22 – November 9** – the institutional visits will take place (exact day for each institution TBD based on student availability & institution). Each student will only do one visit. Because there are three different groups, going into three different places, visits will be outside the class time slot, but we will finish the course one week earlier to compensate. **[mandatory]**

**December 10** – research paper due. **[mandatory]**

## **h. Policy & Administration**

### **1. 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, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require 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 (902) 494-2836.

General Academic Support – [https://www.dal.ca/campus\\_life/academic-support/advising.html](https://www.dal.ca/campus_life/academic-support/advising.html)

### **2. Submission of Major 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

### **3. 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.

Fair Dealing Guidelines <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>

#### 4. Course Outline

1. **September 11, Topic 1:** Introduction to course; Right to Punish & Penological Theories

**READINGS:**

- Please read the syllabus carefully, as well as all related materials (instructions for practical component, lists of topics, etc.)
- Manson et al, Sentencing and Penal Policy in Canada, pages 1-33.

2. **September 18, Topic 2:** Overview of the Canadian Correctional Systems & Its Issues

**READINGS:**

- Canadian Criminal Code, ss. 743 – 743.1
- Mandela Rules, 2015 (Rule 1 – 5)
- Charter, ss 7, 12, 15.
- Corrections and Conditional Release Act, quick review of the table of content to see what issues are regulated.
- Allan Manson, “Canada”, in Van Der Smit, Imprisonment Today and Tomorrow, pages 124-151 (it is dated, but still the best overview of the different prison systems in Canada & the assigned pages are still relevant).
- Intersectional Analyst, Everything you were never taught about Canada’s prison systems (Primer), <http://www.intersectionalanalyst.com/intersectional-analyst/2017/7/20/everything-you-were-never-taught-about-canadas-prison-systems> (down to and including “Information about prisons in Canada is extremely difficult to access”)
- Corrections and Conditional Statistical Overview 2016, pages 1-5, 11-13, 25, 33-37, 43-47, 57-63, 69, 73-77 (These are the latest stats in corrections. It is good to review the whole document if you are keen but focus on these pages. These are just graphics and stats, so not a long read, just to give you an idea of the current trends)
- CBC, Interview with Paula Mallea [https://www.cbc.ca/amp/1.4648314?\\_\\_twitter\\_impression=true](https://www.cbc.ca/amp/1.4648314?__twitter_impression=true) (audio document; up to date overview of some of the problems in the Canadian correctional systems – we will discuss some of these through out the course)

3. **September 25, Topic 3:** The Remedial Toolbox

**READINGS:**

*Overview:*

- Michael Jackson, Corrections, the Courts, and the Constitution, in Jackson, Justice behind Walls, 47 -73.

### *Habeas Corpus, Grievances, Judicial Review*

- Mandela Rules, Rules 56 – 57. [on complaint mechanism]
- Office of the Correctional Investigator Annual report 2016 -2017, pages 39 – 40 [Grievances and Complaints].
- *May v Ferndale*, 2005, paragraphs cited in Manson et al, at 984 – 1002 [on grievances, judicial review, & habeas corpus]
- *Ewert v Canada*, 2018 SCC 80, paras 83 – 87. [on the grievance process]
- Hanna Garson, East Coast Prison Justice Society, “Habeas Corpus in Nova Scotia, An accessible guide”, [http://efrymns.ca/wp-content/uploads/2018/04/HabeasCorpusManualCover\\_web.pdf](http://efrymns.ca/wp-content/uploads/2018/04/HabeasCorpusManualCover_web.pdf), pages 8 – 12; 14 -16.

### *Charter:*

- Charter challenges to admin segregation: *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62 (excerpts on Brightspace); paras 247-255, 320, 326-335, 448 -449, 456-460, 465, 489, 525 – 534 [NOTE: If you have time, read the whole decision. It is important for prison law, and the evidence put forward by both sides is fascinating; but it is a long decision]

### *Human Rights:*

- Canadian Human Rights Act, s. 3.
- Prisoner Legal Services, West Coast Prison Justice Society, “Human Rights for Federal Prisoners” [filing a human rights complaint]

## 4. **October 2, Topic 4** – Pre-trial custody & bail

### **READINGS:**

- Charter s. 11(d)
- Criminal Code 515 (1), (2), (5), (6), (10), 516. [on pre-trial release and detention]
- Mandela Rules, Rules 11, 111 – 118. [on non-sentenced prisoners]
- Nicole Myers, “Eroding the Presumption of Innocence: Pre-Trial Detention and the Use of Conditional Release on Bail” (2017) 57 Brit J Criminol 664
- Richard L. Lippke, “Preventive Pre-Trial Detention without Punishment,” pages 119 – 126.
- Department of Justice Canada, “Spotlight on *Gladue*: Challenges, Experiences, and Possibilities in Canada’s Criminal Justice System,” pages 38 – 39.
- Marie Sylvester et al “Red Zones and other Spatial Conditions of Release Imposed on Marginalized People in Vancouver,” Report, 2017, pages 14-19; 23-27; 43-46; 69 – 72.

## 5. **October 9, Topic 5** – Health law and incarceration

### **READINGS:**

- CCRA, s 86 – 88
- Mandela Rules, Rules 24 – 27, 30 -34, 109 – 110. [on health conditions]
- Office of the Correctional Investigator Annual Report 2014-2015, pages 7 – 11 [Physical Health and Drug Formulary], 52-53 [Women-centered health care], 21-24 [Natural Mortality].
- Office of the Correctional Investigator Annual Report 2015-2016, pages 10-17 [Health Status].
- Office of the Correctional Investigator Annual report 2016 -2017, pages 18 – 20 [Medical Assistance in Dying]; 26 [Response to medical emergencies].

- Adam Miller, “Prison Health Inequality” (2013) CMAJ.
  - Lori Spadorcia, Policy Options, The overrepresentation of people with mental illness in our jails is a tragedy. Mental illness should be treated by policy-makers as a health issue, (2018) <http://policyoptions.irpp.org/magazines/april-2018/prevent-jails-serving-new-asylums/>.
  - Prisoners’ Legal Services , BC College of Physicians and Surgeons must address ethical issues surrounding solitary confinement, <https://prisonjustice.org/2018/08/14/bc-college-of-physicians-and-surgeons-must-address-ethical-issues-surrounding-solitary-confinement/>. [summary of the decision in Complainant v College of Physicians of British Columbia, Decision No. 2016 -HPA-235 (B), August 9, 2018].
  - British Columbia Civil Liberties Association v. Canada (Attorney General), 2018 BCSC 62, paras 491 – 494 [on discrimination based on mental illness]
- GUEST SPEAKERS (for first hour of class, in person):** Jodi McCulloch (lived experience in the NS provincial system) and Bianca Mercer (lived experience in the federal system)

## 6. **October 16, Topic 6** – Family law meets incarceration

### READINGS:

- Mandela Rules, Rules 28 – 29; 106 – 107. [family contact and visits]
- Annual Report of the Office of the Correctional Investigator 2016-2017, pages 44 – 45 [Prison visits and visitors]
- Kayliah Miller, “Canada’s Mother-Child Program and Incarcerated Aboriginal Mothers: How and Why the Program is Inaccessible to Aboriginal Female Offenders” 37 CFLQ 1 (page 5 onward)
- Robert Apel, “The Effects of Jail and Prison Confinement on Cohabitation and Marriage,” (2016) 655 ANNAL AAPSS 103, pages 103 – 105; 115 – 116.
- The Saskatchewan Human Rights Commission & Prince Albert Elks Club Inc. v. Ennis, 2002 SKCA 106, Paras 42 – 49, 52 – 55, 60 -61. [discrimination effects of incarceration on family members]
- Sophie de Saussure, Parents in Prison: A Public Policy Blind Spot, Policy Options, 2018, <http://policyoptions.irpp.org/magazines/may-2018/parents-in-prison-a-public-policy-blind-spot/>
- The Canadian Bar Association, Collateral Consequences of Criminal Convictions, Consideration for Lawyers, 2017, pages 33 -34. [Family matters]

## 7. **October 23, Topic 7** – Employment during and after incarceration

### READINGS:

- Mandela Rules, Rules 96 – 100, 103.
- Guerrin v Attorney General of Canada, 2018 FC 94, paras 9 -28; 58 (!), 63 – 66, 68, 74, 92 – 93, 100, 138 – 140. [Charter challenges to the decrease of labour wages in prison]
- Canadian Prisoners’ Labour Confederation V CSC, 2015 CIRB 779 [labour unions in prison, and whether there is an employment relationship between prisoners & CSC]

- Office of the Correctional Investigator Annual Report 2015-2016, pages 38 -41 [Impact of national cost-savings and prisoner wages], 51 – 54 [Vocational programs and work releases], 66 – 67 [Work releases for women]
- Helen Lam and Mark Harcourt, “The Use of Criminal Record in Employment Decisions; the Right of Ex-offenders, Employers and the Public,” (2003) 47 *Journal of Business Ethics* 237, pages 237 -245.
- Visser, Debus-Sherill, and Yahner, “Employment after Prison: A Longitudinal Study of Former Prisoners,” (2011) 28 *Justice Quarterly* 698, pages 699 – 703; 712 – 714.
- Parole Board of Canada, Executive Summary – Record Suspension User Fee Consultations (2016), Executive Summary; for a brief description of what a record suspension is and how it connects to employment see <https://www.canada.ca/en/parole-board/services/record-suspensions/what-is-a-record-suspension.html>
- The Canadian Bar Association, *Collateral Consequences of Criminal Convictions, Considerations for Lawyers*, 2017, pages 21 -25. [Pardons and Record Suspensions]

## **8. October 30, Topic 8 – Incarceration and Aboriginality**

### **READINGS:**

- *R v Gladue*, [1999] 1 SCR 688 - the excerpt on Brightspace.
- CCRA, ss. 79 – 84.1 [Aboriginal prisoners]
- Corrections and Conditional Statistical Overview, 2016, page 63
- Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (2013), Executive Summary, pages 3 -6.
- Office of the Correctional Investigator, Annual Report 2015 – 2016, pages 43 – 48. [Indigenous Corrections]
- Owusu-Bempah, Kanters, Druyts Toor, Muldoon, Farquhar, Mills, “Years of life lost to incarceration: inequities between Aboriginal and non-Aboriginal Canadian,” pages 1, 4-5.
- Jena McGill, “An Institutional Suicide Machine: Discrimination Against Federally Sentenced Aboriginal Women in Canada,” (2008), pages 92 – 95; 97 – 102
- *Ewert*, overview of Justice Wagner’s decision: pages 5 -9

**GUEST SPEAKER (for the second hour of the class, remotely via Zoom):** Dr. Gillian Balfour, Associate Dean of Teaching and Learning and Trent Online, Associate Professor, Department of Sociology, Trent University; co-author of “Power to Criminalize. Violence, Inequality and Law,” and co-editor of “Criminalizing Women. Gender and (In)justice in Neoliberal Times.”

## **9. November 6, Topic 9 – Minority rights: Black Nova Scotians and LGBTQ+**

### **READINGS:**

- Canadian Human Rights Act, s. 3.
- Office of the Correctional Investigator, *A Case Study in Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, 2013, pages 3 – 5, 12 – 15, 16 -18, 21 – 24.
- *Corrections in Nova Scotia: Key Indicators*, 2016, Page 11
- Michelle Williams, “African Nova Scotian restorative Justice: A Change Has Gotta Come,” (2013) 36 *Dalhousie LJ* 419, pages 424- 436.

- Anthony Morgan, Doing Justice by Black Canadians, Policy Options, 2018, <http://policyoptions.irpp.org/magazines/april-2018/doing-justice-by-black-canadians/>.
- Kavanagh and Canadian Human Rights Commission v Attorney General of Canada, 2001 CanLII 8496, paras 2 -9; 155 -167; 181-182; 192-193; 196 – 198.
- West Coast Prison Justice Society, CSC, and CHRC, Joint News Release: <https://prisonjustice.org/2018/01/31/joint-news-release-changes-to-the-way-transgender-offenders-are-accommodated-in-canadas-federal-prison-system/>
- Malbeauf, CBC, Gay man claims mistreatment, discrimination while in NWT jail, 2018.

### **November 12 – 16 READING WEEK**

#### **10. November 20, Topic 10 – Prison Monitoring Mechanisms**

##### **READINGS:**

- Iftene, Chapter 5: Democracy in Action: Implementation of Policy Reform and Prison Oversight

**GUEST SPEAKER (in person):** Howard Sapers, Independent Advisor on Corrections Reform to the Ontario provincial government; former Correctional Investigator of Canada (2004-2016).

#### **11. November 27, Topic 11 – Issues surrounding early release**

- CCRA, ss. 115, 119-121, 127, 128 (1).
- Corrections and Conditional Statistical Overview 2016, pages 79 – 81, 85 – 91, 93-97, 101.
- Manson, Sentencing and Prison Policy, pages 929 – 939.
- Hannah-Moffat & Yule, “Gaining Insight, Changing attitudes and managing ‘risk’: Parole release decisions for women convicted of violent crimes,” (2011) 13:2 Punishment & Society 149, pages 150-155, 161-168.
- Sarah Turnbull, “Aboriginalising the parole process: Culturally appropriate adaptations and the Canadian federal parole system,” (2014) 16:4 Punishment & Society 385, pages 386 – 388, 389, 397 – 400.
- Iftene, The Case for a New Statutory Compassionate Release Provision, (2017) 54:4 Alt LJ 929, pages 936-938.
- Office of the Correctional Investigator Annual Report 2016 -2017, pages 48 – 51 [Preparing Indigenous prisoners for release].
- Office of the Correctional Investigator Annual report 2015 -2016, pages 53 – 56 [Temporary absences and work release].

### **12. December 3 – NO CLASS**