

**CRIMINAL LAW AND PROCEDURE, CML1203D
&
LEGAL WRITING**

SYLLABUS

Professor: Natasha Bakht
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Office Hours: Tuesdays 10:30am-12pm or by appointment

A. TIMETABLE:

Criminal Law	Tuesday	8:30 to 10:00	FTX 235
	Thursday	16:00 to 17:30	FTX 402
Legal Writing	Thursday	17:30 to 18:30	FTX 402

B. MATERIALS:

The following mandatory books are available at Benjamin Books, 122 Osgoode St., 613 232 7495:

- **J. Abell and E. Sheehy, *Criminal Law and Procedure: Cases, Context, Critique*, 4th ed. (North York: Captus Press, 2007) [hereinafter CB].**
- **Carswells, *2010 Pocket Criminal Code*.**
- **McGill Law Journal, *Canadian Guide to Uniform Legal Citation*, 6th ed. (2006).**

The following optional book is available at Benjamin Books, 122 Osgoode St., 613 232 7495 and on reserve at the library:

- M. Fitzgerald, *Legal Problem Solving: Reasoning, Research and Writing*, 4th ed. (LexisNexis, 2007) *KE 250.F57 2007*

The following optional books are available on reserve at the library

- Kwaw, *The Guide to Legal Analysis, Legal Methodology and Legal Writing* (Emond Montgomery, 1992) *KE 250.K92 1992*
- T. Tjaden, *Legal Research and Writing*, 2nd ed., (Irwin Law, 2004) *KE 250.T53 2004*

The following is available online: <http://www.lsuc.on.ca/regulation/a/profconduct/>

- **Law Society of Upper Canada, Rules of Professional Conduct.**

Supplementary Materials will be made available to students in class or emailed to in electronic format. **Additional materials** are on reserve in the law library under CML 1223 (Criminal Law and Procedure) and CML 1111 (Legal Research and Writing).

C. OBJECTIVES

In this course students will be introduced to the basic concepts, legal institutions, and governing principles for Criminal Procedure and Criminal Law in Canada. They will be required to use the *Criminal Code*, the *Charter of Rights and Freedoms*, the common law, and secondary sources such as law review articles, books, and reports from commissions of inquiry, in order to develop their capacity to think analytically and critically about the Criminal Law.

In the Fall term students will first examine the parameters of and the historical context, including colonization, for our current Criminal Law, as well as the forms and effects of systemic inequalities and discrimination on Criminal Law and the remedies available to lawyers. Sentencing, prisons, and policing are studied next in the Fall term, grounding the students in the lived reality of criminal law processes for people accused of crime, as part of students' preparation as advocates. Finally, students will be introduced to the law and practice of Criminal Procedure and the *Charter* jurisprudence governing equality rights, search and seizure, arrest and detention, the right to counsel, bail, and the powers of prosecution.

The Legal Writing (LW) portion of this course will give students the opportunity to practice preparation of a case brief (often the basic teaching and studying tool in the First Year law curriculum), a case comment (allowing students a more in-depth examination of a case or legal issue) and correct legal citation style.

This course will prepare students to:

- understand the historical, social, political, and economic context that shapes Canadian Criminal Law and Procedure as defined, enforced, and adjudicated;
- describe and apply the relevant law and constitutional principles to factual patterns involving the definition of crime; sentencing; post conviction remedies; search and seizure; arrest and detention; the right to counsel; bail; and the exercise of prosecutorial powers;
- identify the contextual materials studied this term on the experiences of Aboriginal peoples, women, racialized people and particularly African-Canadians, lesbians and gays, people with disabilities, prisoners, and the poor, and bring this context to bear on the legal issues studied;
- craft arguments that integrate legal and social context materials
- critically assess legal arguments and principles in light of the *Charter* equality guarantee and lawyers' professional obligations

In the Winter Term, students in this course will study the elements of proof by the prosecution in a criminal case: *Actus Reus* and *Mens Rea*. They will then study Defences to criminal charges, including Mistake of Fact; Mistake of Law; Colour of Right; Automatism; Intoxication; Extreme Intoxication; Provocation; Self-Defence; Necessity; and Duress.

In the Legal Writing part of the Winter Term, students will write a legal memo, factum and will present an oral argument in a moot court format. More information about the Winter Term will be provided in due course.

D. EVALUATION:

Assignments:	Value:	Due Date:
Case Brief	2.5%	Fri. Sept. 18 th
Case Comment	20%	Wed. Oct. 28 th
Mid-term Exam	25%	Tues. Dec. 22 nd at 1:30pm
Class Participation	<u>2.5%</u>	
Total	<u>50%</u>	

NOTE: This course is taught in a Small Group format in part to enable students to participate actively in the course. The course objectives depend upon regular class preparation and engagement with the teaching materials by students. Some of these materials are challenging and may tread upon personal experiences, strongly held beliefs, and indeed your prior academic background. In order to create a learning environment that is intellectual, respectful, and supportive of new ideas and challenges, please:

- Do the assigned readings and base your comments and questions upon the readings so that we have a common base for class discussion.
- Anticipate that your classmates may have experienced sexual assault, racial profiling, homophobia, or other forms of systemic bias that we discuss in class and use appropriate language and care in discussing these issues.
- Treat your professor and colleagues with respect and professionalism: you are now entering the legal profession, where your classmates will be your lifelong colleagues and your reputation for integrity, open-mindedness and generosity of spirit will be forged here in your classrooms.
- Be prepared to re-think your views, share your knowledge from your experience and prior academic preparation, and to ask for help, from your professor and your colleagues, when you need it.

Student participation is evaluated on the basis of attendance and quality participation that demonstrates class preparation.

E. RULES FOR COMPLETING ASSIGNMENTS

1. All assignments must be handed in to the Secretariat (FTX 105) no later than the date and time specified in the assignment. You must sign off on a class list provided and the assignment will be stamped with the date and time received.
2. All requests for extensions, as provided in the Faculty Regulations, must be addressed directly to Ms. Chantale Foré, Manager, Academic Affairs. Neither professors nor staff at the Secretariat are authorized to accept late assignments. **Assignments handed in late without the appropriate authorization will neither be accepted nor graded.**
3. All work that is handed in must be your own. You are urged to familiarize yourself with the University Regulations on Academic Fraud. Academic fraud will implicate the student in the

University disciplinary process, which may culminate in penalties ranging from loss of credits for the course to expulsion. Academic fraud will also be reported to the Law Society of Upper Canada, which in turn may refuse admission to practice law in the province.

For a full description of the definition, procedures, sanctions and appeals related to academic fraud, see: <http://www.commonlaw.uottawa.ca/en/list/academics-affairs/academic-fraud>

4. Unless otherwise specified in the assignment, all assignments must be typed using 12 point Times New Roman font, one inch margins, and double spacing of the lines. The individual professor will specify the page length for each assignment. Failure to comply with the length or format requirements will result in:

- (a) rejection of the assignment in its entirety and entry of a grade of zero for the assignment;
- (b) refusal by the professor to grade those portions of the assignment that fail to comply with the length or format requirements; or
- (c) imposition of a grade penalty reflecting the failure to comply with the length or format requirements;

as determined by the professor in his or her discretion, having regard to the nature and extent of the non-compliance.

5. All grades on assignments are provisional only and are subject to adjustment prior to or consequent upon submission of final grades to Faculty Council for approval in accordance with the Faculty Regulations. The GPA guideline for first year courses is 6.0 or B.

F. FOR STUDENTS IN NEED OF LEARNING SUPPORTS

Students who require accommodations or academic support because of a physical or learning disability, or any condition that affects their ability to learn, are invited to register with **ACCESS SERVICE**:

Office:	UCU 339
Telephone:	613.562.5976
TTY:	613.562.5214
E-mail:	adapt@uottawa.ca
Web:	www.sass.uottawa.ca/access/

Students can meet with an Access Service specialist to identify their individual needs and to discuss appropriate strategies. **All information provided to Access Services and all accommodations received remain strictly confidential.**

Deadlines to request accommodations for final exams:

Fall Semester: *before 15 November*

Winter Semester: *before 15 March*

For additional information about Access Services you may contact Jessica Simon in Student Services at jsimon@uottawa.ca or at 613.562.5800 x 8891.

G. SCHEDULE:

- Tues. Sept. 8th:** **Definition of Crime, CB 11-26**
- Thurs. Sept. 10th:** **Definition of Crime, CB 27-43**
LW: Case Brief, Suggested reading: Fitzgerald, c. 10, Kwaw 93-110
- Tues. Sept. 15th:** **Colonization and the Imposition of the Criminal Law, CB 44-54**
Film: "Potlatch: A Strict Law Bids Us Dance"
- Thurs. Sept. 17th:** **Colonization and the Imposition of the Criminal Law CB 54-81**
- Tues. Sept. 22nd:** **Aboriginal Peoples and Criminal Law CB 82-109**
Video: "Two Worlds Colliding"
- Thurs. Sept. 24th:** **Enforcement of the Law CB 110-128**
LW: Take up Case Brief
- Tues. Sept. 29th:** **Enforcement of the Law CB 129-143**
- Thurs. Oct. 1st:** **Sentencing CB 144-167**
LW: Citations, McGill Guide
- Tues. Oct. 6th:** **Sentencing CB168-204**
- Thurs. Oct. 8th:** **Sentencing CB 204-230**
LW: Case Comment, Suggested reading: Fitzgerald c. 10, Kwaw c. 4
- Tues. Oct. 13th:** **Introduction to Criminal Procedure CB 280-282**
Policing CB 283-317
- Thurs. Oct. 15th:** **NOTE Classroom and Time Change: 1-2:30pm in FTX 147**
Guest Lecture: Kim Pate, Executive Director CAEFS (Canadian Association of Elizabeth Fry Societies)
Prisons and Parole, CB 231-259
Video: "The Ultimate Response"
- Tues. Oct. 20th:** **Policing CB 317-344**
- Thurs. Oct. 22nd:** **NOTE Classroom and time change: 1-2:30pm in FTX 147**
Guest Lecture: Prof. Blair Crew
Policing CB 318-344 (R. v. R.D.S.), CB 333-342 (R. v. Brown),

CB 366-371 (legal responses to Policing)

- Tues. Oct. 27th:** **NOTE Classroom and time change: 2:30 – 4:00pm in Marion Hall**
Guest Lecture: Jane Doe: The Politics of Rape
CB 344-365: *Jane Doe v. Metropolitan Toronto Commissioners of Police*
(Ont. Ct. Gen. Div.).
- Thurs. Oct. 29th:** **Search and Seizure** CB 372-396
- Tues. Nov. 3rd:** **Search and Seizure** CB 396-414
- Thurs. Nov. 5th:** **Search and Seizure** CB 414-433
R. v. Grant, 2009 SCC 32 (excerpt to be provided)
LW: Meeting with Dean
- Tues. Nov. 10th:** **Arrest and Detention** CB 434-452
- Thurs. Nov. 12th:** **Arrest and Detention** CB 453-467
R. v. Grant, 2009 SCC 32 (excerpt to be provided)
- Tues. Nov. 17th:** **Right to Counsel** CB 468-480
R. v. Suberu, 2009 SCC 33 (excerpt to be provided)
- Thurs. Nov. 19th:** **Right to Counsel** CB 480-500
- Tues. Nov. 24th:** **Bail** CB 501-519
- Thurs. Nov. 26th:** **Powers of Prosecution** CB 520-542
- Tues. Dec. 1st:** No class
- Thurs. Dec. 3rd:** Exam Review