

Criminal Law Problems Syllabus, Winter 2009

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Fall term, Wednesdays, 4:30 - 6:30. room 304. Three credits.

Purpose of the Course:

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.

This course will focus on recent changes in criminal law, and will broadly speaking be an exploration of the extent to which what might have been regarded as the traditional and orthodox approach has been abandoned. That does not necessarily mean the system is going to hell in a hand-basket. Some changes, such as acknowledgement of racial profiling, seem quite beneficial. Many others involve a balance between predictability and fairness - more rigid rules have the benefit of being knowable in advance, but decisions are then less adaptable to the facts of individual cases. There's room for argument about where the best balance is, and no obviously correct answer.

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 based on some suggested topics I will distribute. My hope is that we will have a series of discussions which will be interesting and inter-related around the theme above, but whether the actual subject matter of those discussions is roadside sobriety testing, corporate criminal liability or sex offender registries is of secondary importance. 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.

You should bring along 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.

Evaluation:

This is a major paper course, and so of course evaluation must primarily be based on the paper. However, having a complete and active discussion of all the topics covered is also an important 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 other presentations, the papers should not be much longer than that: you should aim for a paper in the 25-30 page range. If you feel it is not possible to do justice to your topic within that range, you should speak to me before handing it in. I am also quite happy to review outlines or drafts and to discuss them, up until one week before the due date for the papers. The papers will be due on **Monday April 6th**. The paper will be worth 60% and will be evaluated according to the criteria for major papers set out in the Calendar.

The other 40% will be assigned to classroom discussion. Every student will do a class presentation, which is worth 15% of the mark. The presentation will take up one half of a class, and so you should plan to speak for 20-25 minutes, and to have discussion fill the rest of the 50-55 minute total. You will need to prepare materials for distribution in class one week ahead which will leave your fellow students sufficiently informed about the issue in question to be able to form some preliminary thoughts. 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. The readings should be no more than the equivalent of 20 legal size pages, and they could be shorter if that is 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.

In addition, each student will be assigned as a “respondent” to one other presenter: the respondent’s task is to read the materials distributed by the presenter but also to do some independent research (or independent thought), and to be prepared to comment on the issues raised by the presenter. The respondent is not required to disagree with the presenter’s view, but is expected to have something original to say. Performing that role will constitute 10% of the mark. A further 10% will consist of participation, which is simply taking part in the class discussions.

Finally, 5% will be allocated to “reactions”. For two presentations by others, you must write a short (half a page to one page) reaction to the readings, to be distributed at least a day in advance to all members of the class (email will be fine), suggesting what you see as the most important issues to be discussed and perhaps expressing an opinion.. You must choose presentations on two different days and may not react when you are also respondent, but otherwise you can do these two reactions whenever you like. In practice people have tended to leave this too late.

In sum, evaluation will be based on this formula:

paper:	60%
presentation:	15%

responding: 10%
participation: 10%
reactions: 5%

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

Boilerplate

All requests for deferral of exams, or for any other type of accommodation, must be addressed to the Law School Studies Committee. The regulations provide that: "Where it can be established that, for medical or personal reasons, a student's ability to pursue a class or to write an examination or complete an assignment for credit was significantly hampered, the Faculty may allow the student to write a special examination or complete a special assignment."

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 plagiarism.dal.ca website, and the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/current_students/course_selectin_materials/regulations_handbook/ or the Orientation Handbook (provided to all first year students and available online at http://law.dal.ca/Files/First_Year_Handbook_2006-2007.pdf

Any paper or assignment submitted by a student at Dalhousie Law School 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.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.