1. **COURSE DESCRIPTION**

This is a course about substantive criminal law in Canada. Although it is entitled Criminal Law and Procedure, we will not be examining any aspects of procedure or sentencing.

2. **LEARNING OUTCOMES**

The successful student will be able to:

**First Term**

1. Identify the sources of criminal law
2. Successfully marshal Charter arguments to challenge Parliament’s decision to criminalize conduct
3. Identify the defining characteristics of a criminal law
4. Identify some of the systemic failings of the criminal justice system including systemic racism
5. Critically assess the extent to which the system has responded to systemic racism
6. Identify some of the relevant ethical principles that govern the conduct of criminal lawyers
7. Identify and critically assess the elements of the physical act (actus reus) requirement for offences

**Second Term**

1. Identify and critically assess the relevant fault requirements for regulatory offences and true crimes
2. Understand the elements of homicide offences – manslaughter and murder as well as partial defences to murder such as provocation and intoxication
3. Critically assess the mistake of fact and law defences
4. Identify the extent to which incapacity (i.e. mental disorder, automatism and intoxication) is (or should be) relevant to criminal liability
5. Identify the elements of excuses and justifications such as necessity, duress, self-defence, and entrapment
6. Critically assess the extent to which the system has responded to gender bias

In order to accomplish these goals, it is imperative that you read the assigned material and think about it before coming to class. You should come to class prepared to answer questions.

In the Fall term, I have assigned approximately 15 pages of reading for each class. In the Winter term, I have assigned approximately 23 pages for each class.

Many of the issues that we will explore in this class are personal, painful, and complex. Given that all of you will come to this class with different lived and learned experiences, not everyone will be on the same page. Therefore, it is critical to ensure that everyone be given an opportunity to express their understanding or perspective without fear of ridicule or unfounded criticism. No one should feel uncomfortable in contributing to the dialogue. That said, statements or opinions must be based on a reasoned analysis of the issue with reference to the relevant social context or the materials assigned for class.

3. **CLASSES**

   *Fall Term*
   Mon/Wed
   1:30 - 2:30 p.m.
   2102

   *Winter Term*
   Mon/Wed
   1:30-3:00 p.m.
   1100 (Moot Court)

4. **TEXTS**

   **Required (All Texts on Reserve)**

   Stuart, Delisle & Coughlan, *Learning Canadian Criminal Law* 10th ed. (2006) (available at bookstore) [all references will be to this book]
   Rodrigues, *2009 Pocket Criminal Code* (available at bookstore)

   There will be some additional cases that will be assigned. These will be posted on CLEW.
5. EVALUATION

(i) Method

There are three different methods of evaluation that will be used during this course:

1. Court report 15%
2. In-class mid-term exam 30%
3. In-class final exam 55%

1. Court Report (15%)

This first assignment is designed to familiarize students with the criminal courtroom. Students are required to attend and report on a short trial in the Ontario Court of Justice. The Ontario Court of Justice is located at 200 Chatham Street East.

I would like you to prepare a 5-6 page (double-spaced, 12 point font) report with your observations and reflections on the following questions that are relevant to your trial:

1. Who was presiding over the trial?
2. What was the accused charged with? Please ensure to provide *Criminal Code* section numbers.
3. Was the accused represented by a lawyer? If not, what problems did this pose? How was it handled?
4. Describe the atmosphere in the courtroom? Is it what you expected?
5. Did the conduct of the trial raise any ethical or professional responsibility issues that you could identify?
6. Did you get a sense that the accused understood what was going on? Did it appear that he or she felt that they were part of the proceedings?
7. To what extent did the trial judge maintain control over the proceedings?
8. To what extent was case-law relied upon by the lawyers?
10. Did the client testify? If yes, how prepared was he or she?
11. Were defence witnesses called? How prepared were they to testify?
12. How helpful were the defence lawyer’s submissions to the trial judge at the end of the case?
13. To what extent did counsel rely on case-law in their closing submissions?
14. Identify any other issues that you think are relevant and provide a brief commentary on why you have identified them and whether the issue was handled appropriately.
The court report must be submitted to Thuy-Binh Shiu no later than Friday, November 7, 2008 at 12:00 p.m. The report will be stamped with the date and time it was submitted. A report submitted after 12:00 p.m. will not be graded without authorization from the Associate Dean.

While students can report on the same trial, they cannot collaborate in the preparation of their court report.

2. Mid-Term Exam (30%)

Date: December 9, 2008 (Tuesday) (9:00 a.m.)
Length: 2 hours
Format: Open Book (only required texts, power point notes and student notes will be permitted. Annotated Criminal Code will not be permitted)
More details will be provided in November.

There will be an optional mock exam and take-up on December 6 (Saturday) from 10:00-12:00 pm.

3. Final Exam (55%)

Date: April 15, 2009 (Wednesday) (9:00 am)
Length: 3 hours
Format: Open Book (only required texts, power point notes and student notes will be permitted. Annotated Criminal Code will not be permitted)
More details will be provided in March.

(ii) Numerical Grade Distribution

Grades in this class will conform to the guidelines issued by the law school.

The following grading scheme will be used:

A+ 93 - 100
A 86 - 92.9
   A- 80 - 85.9
B+ 77 - 79.9
B 73 - 76.9
B- 70 - 72.9
C+ 67 - 69.9
C 63 - 66.9
C- 60 - 62.9
D+ 57 - 59.9

-4-
D  53 - 56.9  
D-  50 - 52.9  
F   35 - 49.9  
F-  0 - 34.9

(iii)  Student Evaluations

Official student evaluations will take place in the last two weeks of the winter term. I will be conducting my own informal evaluation in the last week of November to get some preliminary feedback on what you like about the course and how you think I could improve on delivering its content.

6.  OFFICE HOURS

Office: Room 2123
(519) 253-3000 (ext. 2966)  
tanovich@uwindsor.ca (e-mail)  
http://athena.uwindsor.ca/law/tanovich (website)

Hours: Tuesday
1:00-3:00 pm
Students may arrange to see me by either dropping by (I am almost always in my office) or sending me an e-mail.

7.  CLASS TOPICS AND READINGS

September 8
Introduction
Quiz – How much do you really know about criminal law?

September 10
Thinking like a Criminal Lawyer

September 15
Sources: Common Law and Statute (General Principles of Statutory Interpretation)
Pages 1-10
Key Cases:   R. v. Henry (SCC)
**September 17**  
Sources: Statute (General Principles and Strict Construction)  
Pages 10-16; 22-28  
Key Cases:  
R. v. Clark (SCC); R. v. Pare (SCC)

**September 22/24**  
Sources [in the sense of limiting the ability of Parliament to enact crimes]: Charter of Rights and Freedoms (Overbreadth, Arbitrariness and Vagueness)  
Pages 39-61  
Key Cases:  
R. v. Heywood (SCC); R. v. Malmo-Levine (SCC); Canadian Foundation for Children v. Canada (SCC)

**September 29**  
Procedural Overview: Offences, Evidence, Presumption of Innocence, Reasonable Doubt and Wrongful Convictions  
Pages 62-73; 73-79  
Key Cases:  
R. v. Mullins-Johnson (Ont. C.A.) [additional reading (CLEW)]; R. v. W.(D.) (SCC); R. v. Lifchus (SCC); R. v. Starr (SCC); USA v. Burns (SCC) [additional reading (CLEW)]

**October 1/6** [October 1 is Rosh Hashanah, this lecture will be recorded and available to students who are unable to come to class]  
The Defining Characteristics of Criminal Offences  
Pages 28-38; 109-125  
Key Cases:  
R. v. Malmo-Levine (SCC); R. v. Labaye (SCC)

**October 8**  
To What Extent is there a Legitimacy Crisis in the Criminal Justice System?  
Pages 108-109; 134-140; 145-151

**October 13**  
No Class -- Thanksgiving

**October 15/20**  
How Well Has the System Responded? The Case of Systemic Racism  
Pages: 154-171  
Key Cases:  
October 22
Legal Ethics and Criminal Defence Work
Pages 172-184 (Please also review Law’s Ambition article from Orientation and Rules 2.01; 2.02(5),(5.1), (5.2); 2.03; 2.08; 2.09; 4.01; 5.03; 5.04 of the LSUC Rules of Professional Conduct [copy provided during Orientation])

October 27
Legal Ethics Problems
The class will be divided up into ten groups and assigned problems to work through and then each group will present answers in class

October 29
Actus Reus: The Crown’s Obligation to Prove a Physical Element
Pages: 187-201
Key Cases: R. v. Thorne (NBCA); R. v. Lohnes (SCC)

November 3
Actus Reus: De Minimus and Possession as a Case Study
Pages: 206-220
Key Cases: R. v. Marshall (Alta. C.A.); R. v. Terrence (SCC); R. v. Pham (Ont. C.A.); R. v. Kubassek (Ont. C.A.) [additional reading (CLEW)]

November 5
Actus Reus: When Will Consent Render the Act Lawful?
Pages: 220-232
Key Case: R. v. Jobidon (SCC)

November 10
Actus Reus: Consent and Non-Disclosure of HIV Status
Pages: 233-247
Key Cases: R. v. Cuerrier (SCC); R. v. Williams (SCC)

November 12/17
Actus Reus: Omissions and the Duty to Act
Pages: 254-260; 276-295
Key Cases: Fagan v. CMP (C.A.); R. v. Miller (H.L.); R. v. Thorton (SCC); R. v. Browne (Ont. C.A.); R. v. Peterson (Ont. C.A.)
November 19
Actus Reus: The Voluntariness Element
Pages: 296-308

November 24/26
Actus Reus: Causation
Pages: 315-336; 340-344

December 1
Catch-Up
Mid-Term Course Evaluations

December 6 (Saturday)
Optional Mock Exam and Take-Up
10-12 pm
Moot Court 1100
WINTER TERM

January 5
Fault Requirement: Distinguishing Subjective and Objective Fault and Distinguishing True Crimes from Regulatory Offences
Pages: 351-358; 375-382
Key Cases: \( R. \text{ v. Hundal} \text{ (SCC)}; R. \text{ v. Theroux} \text{ (SCC)}; R. \text{ v. Wholesale Travel} \text{ (SCC)} \)

January 7/12
Fault Requirement: Regulatory Offences (Public Welfare Offences)
Pages: 358-374; 388-396; 408-413; 416
Key Cases: \( R. \text{ v. Beaver} \text{ (SCC)}; R. \text{ v. Sault Ste. Marie} \text{ (SCC)}; Levis \text{ (City)} \text{ v. Tetreault} \text{ (SCC)}; Reference Re Section 94(2) of the Motor Vehicle Act \text{ (BC)} \text{ (SCC)}; R. \text{ v. Transport Robert} \text{ (Ont. C.A.)} \)

January 14
Fault Requirement: True Crimes and Subjective Fault; Murder (the fault elements)
Pages: 421-425; 440-457; 460-465
Key Cases: \( R. \text{ v. Edelenbos} \text{ (Ont. C.A.)}; R. \text{ v. Martineau} \text{ (SCC)}; R. \text{ v. Smith} \text{ (Sask. C.A.)}; R. \text{ v. Nygaard} \text{ (S.C.C.)}; R. \text{ v. Collins} \text{ (Ont. C.A.)}; R. \text{ v. Arkell} \text{ (SCC)} \)

January 19
Fault Requirement: Intention or Knowledge
Pages: 466-477; 485-494
Key Cases: \( R. \text{ v. Lewis} \text{ (SCC)}; R. \text{ v. Hibbert} \text{ (SCC)}; R. \text{ v. Buzzanga} \text{ (SCC)} \)

January 21
Fault Requirement: Recklessness or Wilful Blindness
Pages: 494-508
Key Cases: \( R. \text{ v. Theroux} \text{ (SCC)}; R. \text{ v. Sansregret} \text{ (SCC)}; R. \text{ v. Blondin} \text{ (BCCA)}; R. \text{ v. Duong} \text{ (Ont. C.A.)}; R. \text{ v. Lagace} \text{ (Ont. C.A.)} \text{ [additional reading on CLEW]} \)

January 26/28
Fault Requirement: Objective Fault and Predicate Offences
Pages: 509; 528-531; 541-548; 549-564; 568-569
Key Cases: \( R. \text{ v. Anderson} \text{ (SCC)}; R. \text{ v. Creighton} \text{ (SCC)}; R. \text{ v. Beatty} \text{ (SCC)} \text{ [additional reading on CLEW]}; R. \text{ v. DeSousa} \text{ (SCC)} \)
February 2/4
Mistake of Fact: Consent and Sexual Assault
Pages: 577-584; 606-612; 640-641; 647-662; 669-676
Key Cases: R. v. Ewanchuk (SCC); R. v. Darrach (SCC)

February 9
Mistake of Fact: Other Cases
Pages: 677-696
Key Cases: R. v. Hess (SCC); R. v. Ladue (Y.T.C.A.); R. v. Kundeus (SCC)

February 11
Mistake of Law
Pages: 697; 699-722
Key Cases: R. v. Campbell (Alta. D.C.); R. v. Prue (SCC); R. v. Dorosh (Sask. C.A.); R. v. Drainville (Ont. P.C.); Levis v. Tetreault (SCC)

February 16
No Class (Family Day)

February 18
Incapacity: Age and Mental Disorder
Pages: 727-754
Key Cases: R. v. Swain (SCC); R. v. Cooper (SCC); R. v. Kjeldsen (SCC); R. v. Abbey (SCC); R. v. Chaulk (SCC); R. v. Oommen (SCC)

February 23-27
Reading Week (No Classes)

March 2
Catch-Up

March 4
Incapacity: Automatism
Pages: 769-799
Key Cases: R. v. Parks (SCC); R. v. Stone (SCC); R. v. Fontaine (SCC)
**March 9**
Incapacity: Intoxication
Pages: 802-804; 826-841
Key Cases:  R. v. Daviault (SCC)

**March 11**
Excuses and Justifications: Necessity
Pages: 856-878
Key Cases:  R. v. Dudley and Stephens (CCR); R. v. Perka (SCC); R. v. Latimer (SCC)

**March 16**
Excuses and Justification: Duress
Pages: 880-904
Key Cases:  R. v. Carker (SCC); R. v. Paquette (SCC); R. v. Hibbert (SCC); R. v. Ruzic (SCC)

**March 18/23**
Excuses and Justifications: Self-Defence
Pages: 904-908; 914-932
Key Cases:  R. v. Pintar (Ont. C.A.); R. v. Deegan (Alta. C.A.); R. v. Lavallee (SCC); R. v. Petel (SCC); R. v. Malott (SCC)

**March 25/30**
Partial Defences to Murder: Provocation and Intoxication
Pages: 939-955; 962-971; 841-846
Key Cases:  R. v. Hill (SCC); R. v. Thibert (SCC); R. v. Humaid (Ont. C.A.); R. v. Parent (SCC); R. v. Cameron (Ont. C.A.); R. v. Robinson (SCC); R. v. Nealy (Ont. C.A.)

**April 1**
Entrapment
Pages: 972-991
Key Cases:  R. v. Mack (SCC); R. v. Barnes (SCC)

**April 6**
Catch-Up

**April 8**
Mock Exam Take-Up
Excerpts: University of Windsor Human Rights Policy

The University of Windsor is committed to providing an equitable working and learning environment that promotes and supports academic achievement. To this end, the University will strive to ensure the applicability of the rules of natural justice to achieve fair treatment of all members of the University community and will endeavour to create an environment free of harassment and all forms of prohibited discrimination.

By this Policy, the University declares that all members of the University community are obligated to interact on the basis of mutual respect and that the University will not tolerate any form of harassment, sexual harassment or discrimination in any University-related activity involving a member of the University community.

Behaviour constituting a violation of this Policy and/or the Ontario Human Rights Code is considered by the University to be a serious offense and is subject to a range of disciplinary measures up to and including dismissal or expulsion by the University.

The Ontario Human Rights Code prohibits harassment and discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance or record of offences. It is understood that a person may experience discrimination and/or harassment on multiple grounds and that discrimination can be overt or systemic.

Every individual at the University is entitled to work/study in an environment free of discrimination and harassment and in particular to work/study in an environment free of discrimination and harassment including but not limited to discrimination and harassment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance or record of offences.

**Discrimination** is defined as a distinction, whether intentional or not, based on grounds relating to personal characteristics of an individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.

**Harassment** is defined as vexatious comment or conduct in relation to a person or group of persons which has the effect or purpose of creating a hostile or intimidating working or educational environment when:

- such treatment has the effect or purpose of threatening or intimidating a person; or
- such treatment abuses the power that one person holds over another or misuses authority; or
- such treatment has the effect or purpose of offending or demeaning a person or group of persons on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, receipt of public assistance, or record of offences.
Harassment may occur during one incident, or over a series of incidents including incidents which, in isolation, would not necessarily constitute harassment. Harassment prevents or impairs the full and equal enjoyment of employment and educational services, benefits and/or opportunities and may occur between people of the same or different status within the University community, regardless of age or sex. Harassment may also be directed at a group as well as at an individual. Harassment may be psychological, verbal or physical or may be all of these.

Prohibited behaviours include but are not limited to:

■ **Verbal Behaviour**
  Using stereotypes to describe a particular group; name calling; insults; threats; slurs; degrading or unwelcoming remarks; jokes or innuendos about a person/persons in relation to the prohibited grounds in the Ontario Human Rights Code.

■ **Written Materials**
  Displaying or distributing racist/sexist derogatory or otherwise offensive materials or graffiti; displaying or distributing derogatory pictures or cartoons.

■ **Physical Behaviour**
  Making threatening or rude gestures; using physical intimidation or assault; leering; unwanted touching, kissing, patting, pinching; insulting actions or practical jokes based on the prohibited grounds in the Ontario Human Rights Code.

■ **Non-Verbal Behaviour**
  Avoidance, exclusion and inaction: refusing to talk or work with another member of the University community because of personal, physical, racial or ethnic characteristics; condescension, paternalism or patronising behaviour; failure to provide accommodation for persons with disabilities or for persons engaged in religious observation unless the accommodation causes undue hardship.

"Sexual harassment" includes:

a) any unwanted sexual attention or behaviour by a person who knows or ought reasonably to know that such conduct is unwanted; or

b) any implied or expressed promise or reward for complying with a sexually oriented request; or

c) any implied or expressed threat of reprisal, in the form either of actual reprisal or the denial of opportunity for the refusal to comply with a sexually oriented request; or

d) any inappropriate verbal or physical conduct that has a focus on sexuality or sexual identity in what reasonably may be perceived as a hostile, intimidating or offensive manner; or

e) the communication or display of material with a focus on sexuality or sexual identity which has the effect or purpose of creating a hostile or intimidating working or educational environment.

Examples of sexual harassment:

■ verbal abuse including but not limited to graphic commentaries on the victim’s body and sexual remarks which demean a person and are known or ought to have been known to be unwanted;

■ using sexually degrading words to describe a person;

■ insulting and offensive gestures, innuendoes, language, joking and or taunting about another person’s body which causes awkwardness and or embarrassment;

■ leering (suggestive staring) or other gestures;

■ asking inappropriate questions about the person’s sexuality or any sexual relationships past, present or future;

■ unnecessary physical contact such as brushing up against a person’s body, touching, patting, pinching and invasion of personal space for the purpose of sexually harassing a person;

■ demanding sexual favours accompanied by implied or overt threats concerning a person(s)’ employment (economic livelihood) grades (academic failure hence loss of future livelihood), reputation and/or letters of
recommendation;

- sexual solicitation or advance made with implied reprisals if rejected;

- backlash or the threat of backlash, or retaliation or the threat of retaliation, for the lodging of a complaint or participation in an investigation;

- behaviour including but not limited to attention and/or conduct that is known or ought to be known to be unwanted after the end of a consensual relationship; and

- inappropriate display of sexually offensive material and/or pornography such as pin up posters (of any size), magazines etc.

* A full copy of the Human Rights Policy can be found at www.uwindsor.ca/hrights
POLICY STATEMENT ON STUDENT DISCIPLINE PLAGIARISM

Plagiarism is defined by Black’s Law Dictionary (revised 4th edition):
The act of appropriating the literary composition of another of parts or passages of his writing, or the ideas or language of the same, and passing them off as the product of one's own mind.

The Oxford English dictionary defines plagiarism:
the wrongful appropriation or purloining, and publication as one's own, of the ideas or the expression of the ideas (literary, artistic, musical, mechanical, etc.) of another.

Comment: Merely taking the ideas or expression of another is not in itself plagiarism. The substance of plagiarism is that the plagiarist passes off the ideas or expression of another as his or her own. Thus, the application of the precepts and practices learned in legal writing, particularly the full acknowledgement of sources, is the best safeguard against plagiarism. When a student is in doubt as to the proper treatment and acknowledgement of the ideas or expressions of another, the best course of conduct is to consult the professor for whom the work is being prepared. Plagiarism will be presumed in any case of appropriating the expression or ideas of another without full acknowledgement of sources.

Examples:
(f) submitting as his or her own work an exam or other piece of academic work which has been authored or prepared either wholly or partly by someone else;
(g) submitting academic work containing passages taken either verbatim or with occasional word changes from the works of others where such passages are not properly acknowledged;
(h) submitting a paper or other academic work which adopts the ideas of other authors without giving appropriate acknowledgement.

The following examples of plagiarism have recently been the subject of disciplinary complaints:
1. Failure to use quotation marks or offset the paragraph when directly quoting a source even when the source is footnoted;
2. Failure to cite a source when the source is paraphrased;
3. Failure to attribute a directly quoted or paraphrased passage to the correct source (e.g. quoting directly from or paraphrasing material from a textbook, treatise, article, etc., and reproducing the footnotes appearing in this source rather than footnoting the source itself);
4. Reproduction of another student's table of authorities, bibliography, footnotes, etc.;
5. Failure to cite a passage quoted or paraphrased from a website;

In addition, the Policy Statement on Student Discipline identifies as improper conduct a student submitting his or her own academic work in a course without disclosing to the professor that this academic work was authored or prepared, either wholly or partly, for another course or purpose.

The Policy Statement on Student Discipline also:
1. addresses improper conduct relating to exams (cheating),
2. provides the sanctions that can be imposed by the Discipline Committee for improper conduct.

Copies of the Policy are available in the General Office.