

# **LAW 102: CRIMINAL LAW PROCESS**

A01

**2009-2010**

**Professor Benjamin Berger**

Times and Locations:      Fall 2009

- Monday and Wednesday, 11:00 - 12:00
- Room 205

Spring 2009

- Monday and Wednesday, 1:30 – 3:00
- Library, Rm 265

Unit Value:    2 units

## **CONTACT INFORMATION:**

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## **REQUIRED TEXTS:**

1.    **Roach, Healy & Trotter**, *Criminal Law and Procedure*, 9th ed. (Emond Montgomery, 2004)
2.    **Greenspan & Rosenberg**, *2009 Martin's Annual Criminal Code* (Canada Law Book, 2006)
  - Both available for purchase at the University Bookstore
  - There may be copies of Roach, Healy & Trotter available at the bookstore or from upper-year students... just be sure that you have the correct edition.
  - Although it will be easiest if you have the copy of the *Criminal Code* made available in the bookstore, a very recent annotated *Criminal Code* (Martin's or Tremear's) will also suffice. Note, however, that page numbers used in class will not be the same, nor will the older editions include annotations of the most recent cases.
3.    **Course website:**
  - We are using a "moodle" site for our course. Visit [moodle.uvic.ca](http://moodle.uvic.ca) and sign in using your **netlink id** and **password**
  - Classes and readings are arranged there for your convenience. Overheads and

handouts will be posted under each class, as needed.

- There is a calendar on this site – it contains all of the relevant dates for our course, including cancelled classes.
- Resources, such as links to statutes, etc, can be found on this page as well.

#### 4. Law 102 Coursepack

- accessible through the course website

### **DESCRIPTION:**

This course is an introduction to criminal law, both substantive and procedural. The focus in the course is on the following topics:

1. The social, historical, political and constitutional context in which the criminal justice system operates.
2. Significant aspects of police and prosecutorial powers in the pre-trial and trial process.
3. Substantive criminal law, including the theory and doctrine behind the concepts of *mens rea*, *actus reus* and justifications and excuses.
4. The effect of the *Canadian Charter of Rights and Freedoms* upon both criminal procedure and substantive criminal law.

### **OBJECTIVES:**

The objective of this course is to provide students with a solid foundation in Canadian criminal law and procedure. In particular, students will be expected to:

1. understand and critically assess (a) the role of police, prosecutors, defence counsel and judges in the administration of the criminal law process; (b) the principles of criminal responsibility and punishment; and (c) the effect of the *Canadian Charter of Rights and Freedoms* upon both criminal procedure and substantive criminal law.
2. understand and critically assess various theories and perspectives on the purposes and functions of the criminal law and criminal justice system and on the competing interests that both serve;
3. appreciate the way in which the criminal law is both *shaped by* context (historical, social, political, etc.) and *impacts upon* social context (esp. Aboriginal, poverty, and gender issues);
4. develop their ability to engage in open and respectful discussion about legal issues;
5. demonstrate competence in identifying legal issues in a problem and to present, in an acceptable legal style, arguments in relation to such issues;
6. produce high-quality critical writing about themes and issues within the criminal law.

## **METHODOLOGY:**

Both lecture and discussion methods will be used. **Students are expected to:**

1. Have read the assignment materials prior to class;
2. Be able to *identify* and state the *issues* presented by the assigned materials; and
3. Participate in class discussion of the assigned materials and any exercises relating to the assigned materials. The purpose of the discussion is to develop an understanding of the issues presented by the materials; to develop the student's ability to analyze, synthesize, and present legal material; and to enable the instructor to gain a sense of the student's understanding of the materials and the abilities referred to above.

**Note on the small group sections:** The small group sections are designed to provide you with an environment that is particularly conducive to more group discussion, alternative modes of evaluation, and substantial feedback and contact with your instructor. Although you may well find that of your other larger classes incorporate many of these elements as well, the small group is a section specifically set up to ensure that every student has the opportunity to engage in this kind of environment.

Each small group instructor may approach the section somewhat differently. For my own part, I will seek to make our small group a setting in which you will not only study the criminal law, but will develop skills and discuss certain issues that will reach across your first year curriculum. To this end, you will see that many of the evaluation methods for the course are centred around criminal law but also draw upon skills and expose you to aspects of the study of law that will serve you in other subjects and in your upper years. The small group is also particularly suited to class discussion and you will find that there is a good deal of opportunity to explore current issues in the law through class conversation. I also endeavour to make myself particularly available to my small group students. I have an open door policy and you can drop by any time to discuss any questions you might have about criminal law, the study of law, or, more generally, the new path that you find yourself on here at law school. In addition, I will hold extra weekly "lounge hours" during which you can drop by the lounge and chat about any issues in your studies that are on your mind.

## **EVALUATION:**

1. Fall Writing Assignment: Case Brief and Analysis..... [pass/fail]
  - *As you will learn in all of your classes, briefing cases is an important skill for your legal education. This pass/fail assignment will ask you to write a very short as well as a somewhat more extensive case brief and a short critical analysis of the case that I assign to you. I will provide feedback on your assignment and will meet with each of you personally to go over your work so that you can begin to refine your case-briefing and writing skills early in the year.*
  - *Will be distributed on **Monday, October 19<sup>th</sup>**, and due on **Wednesday, October 28<sup>th</sup>**.*

2. December Examination..... [30%]  
[if higher than final exam]
  - *Currently Scheduled for **Friday, December 18<sup>th</sup>***
  
3. Court Journal..... [10%]
  - *The Court Journal is an opportunity to visit the courts and reflect critically on what you see there and how it compares and contrasts with what we have been learning in the rarefied environment of the law school classroom. The journal will be due on **Friday, January 15<sup>th</sup>**, and further information about the assignment will be distributed early in the first term. This will give you the whole fall term and the Winter break to make two visits to court and prepare your journal.*
  
4. Spring Writing Assignment ..... [25%]
  - *This will be a writing assignment geared towards critical analysis of a particular issue, theory, or perspective on criminal law and policy. Readings will be centred around a small number of academic articles and cases and there will be little additional research required. This is a chance to exercise another part of your criminal law brain, to work on your critical writing skills, and to engage with scholarly and theoretical debates in criminal law.*
  - *Will be distributed on **Monday, February 22<sup>nd</sup>** [after reading week!] and due on **Monday, March 8<sup>th</sup>**.*
  
5. April Examination..... [35-65%]  
[depending on December exam mark]
  - *Currently Scheduled for **Friday, April 16<sup>th</sup>***

December and April examinations will be **open book** (i.e. Students may bring in the *Criminal Code*, Roach, Healy & Trotter Coursebook, Law 102 Course Materials, any instructor handouts and student-prepared notes, but nothing else).

### ***The December Examination and the Calculation of Final Grades***

The December examination in this course is potentially worth 30% of your final grade for the course. However, it will count as 30% of the final grade in the course **ONLY** if it raises that grade. That is, if the December grade is lower than your April examination grade your December examination mark will not count and your April examination mark will count for 60% of your final grade. This means that the December examination can help your final grade but cannot hurt it.

The Law Faculty uses the following marking scheme to determine your final letter grade. The “narrative description” column reflects a rough general consensus among faculty members in regard to assessing student performance. We adopt this description in our grading for this course:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description	
A+	9	90-100%	Exceptional	Grades in this range are normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	Outstanding	
A-	7	80-84%	Excellent	
B+	6	75-79%	Very Good	Grades in this range are normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	Good	
B-	4	65-69%	Solid	
C+	3	60-64%	Satisfactory	These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	Minimally Satisfactory	
D	1	50-54%	Marginal	A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 and below	Unsatisfactory	

***December Exam is Mandatory – Penalty for Failure to Write the December Examination***

The December examination in this course MUST BE WRITTEN, *i.e.*, it is COMPULSORY. **In the absence of a documented medical or other acceptable reason, failure to write the examination in December will mean that a penalty of one grade point will be deducted from your grade in the final examination in April.** (For example, if this penalty were to be applied, a final grade of B+ would become a B.)

***Establishing Acceptable Reasons for Failure to Write December Examination***

An acceptable reason for not writing a December examination is a reason that would normally justify a Special Examination in a course (*i.e.* illness, family affliction or other pressing special circumstances) and the procedures to be followed to establish that an acceptable reason exists are the same as those that apply to Special Examinations. Among

other things, these procedures require that you contact the Associate Dean as soon as possible, and no later than five days after the scheduled date of the examination, to inform her of the problem and provide the documentation necessary to substantiate your grounds for missing the examination.

(All students should ensure that they are familiar with the Faculty's Regulations regarding Special Examinations that are set out in the calendar and posted on the main notice board.)

### ***Writing the December Examination on a Deferred Basis***

A student who establishes an acceptable reason for failing to write the December examination on the scheduled date may be granted special permission to write the examination on a deferred basis, provided that he or she is capable of doing so within the regular examination period in December. In such a case, the December examination grade will count in the calculation of the final grade for the course in the usual way. Arrangements to write an examination on a deferred basis must be made through the Associate Dean's office and an undertaking regarding non-discovery of the contents of the examination will be required.

A student who has an acceptable reason for failing to write a December examination on the scheduled date and who cannot write the examination within the regular examination period, will not be allowed to write the examination at a later date and have it count in the calculation of his/her final grade for the course. In such a case, the penalty for failure to write the examination will not apply and calculation of the final grade will be made on the basis of the final exam alone.

### ***Relevance of December Examination in Other Contexts***

Students should also be aware that, although writing the December examination in this course cannot adversely affect your final grade in the course, December grades for first year students have recently become relevant in other contexts. For example, you may be asked or required to provide your unofficial December grades to prospective employers. The law school will refer to these grades if you apply for a summer research position. And, the Director of Co-op may refer to them if a First Year student is not performing well in the Co-op preparation course, to help her determine whether that student should be allowed to apply for a summer work term.

In addition, in January, the faculty will meet to review the December grades in order to identify and, where necessary, assist students who are experiencing academic difficulties. A grade of D or F in the December examination in this course may result in remedial work of some kind being required.

### **OTHER IMPORTANT NOTES:**

#### ***Regulations:***

Students will wish to visit the Associate Dean's page at

<http://law.uvic.ca/current/associatedean.php> to familiarize themselves with policies and guidelines specific to the Faculty of Law.

Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2008-2009 (“U Vic Calendar”, available online at <http://web.uvic.ca/calendar2009/>), both generally and specifically for the Faculty of Law.

The Undergraduate Academic Regulations (2008-2009) of the UVic Calendar (<http://web.uvic.ca/calendar2008/FACS/UnIn/UARe/PoAcI.html>) set out the University’s expectations about attendance and assignments. The Faculty of Law’s Academic Regulations can also be found in the University Calendar at <http://web.uvic.ca/calendar2009/FACS/FoLa/FARe.html>.

### ***Classroom Climate:***

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, we must all endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment. For your reference, you may wish to consult the University’s Discrimination and Harassment Policy ([http://www.uvic.ca/shared/shared\\_usecdocs/policies/GV0205\\_1150.pdf](http://www.uvic.ca/shared/shared_usecdocs/policies/GV0205_1150.pdf)). The University of Victoria and the Faculty of Law are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. We expect all aspects of this class to be conducted with this commitment firmly in mind.

If you have any concerns about the climate of the class, please feel free to contact us or the Associate Dean.

### ***Academic Integrity:***

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the University Calendar for policies respecting paraphrasing, plagiarism, and cheating. **It is your responsibility to familiarize yourself with the university policy on academic integrity. If, after reviewing this policy, you have any concerns or questions, or require clarification, do not hesitate to drop by our offices or to send us an e-mail.**

The policy on academic integrity can be found on the web at the following address: <http://web.uvic.ca/calendar2009/FACS/UnIn/UARe/PoAcI.html>

### ***Accommodation, Health Concerns, and Counseling Services***

If any issues arise during the course of the term that may affect your ability to complete course requirements or meet deadlines, it is your responsibility to contact us and/or the Associate Dean as soon as reasonably possible to discuss available supports and possible accommodation.

We would like you to be aware of the services offered by UVic Counselling Services (<http://www.coun.uvic.ca/>) as well as UVic Health services (<http://health.uvic.ca/>).

***Accommodation for Students with a Disability:***

There are support systems, resources, and forms of accommodation available to students with a disability. If you wish to access any of these supports, resources or accommodations, we encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/>) and we would be more than happy to work with you to ensure your success in this course.

***Accommodation of Religious Observances:***

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday or observance (<http://web.uvic.ca/calendar2009/GI/GUPo.html>). If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday or observance, please speak with us (or the Associate Dean) and we will be pleased to work out some satisfactory form of accommodation.