

CRIMINAL LAW PROCESS

Professor Gerry Ferguson

COURSE OUTLINE

Fall 2011

This outline is a *guide only*, and may be adjusted once the pace at which we go through these readings has been established.

I will sometimes give guidance before a class as to which sections of the readings should be focused upon and which can be skimmed. If I do not give instructions, presume that I want you to read the whole section carefully.

"RBHS" means Roach, Berger, Healy and Stribopoulos, *Criminal Law and Procedure: Cases and Materials*, (10th ed., 2010).

"CP" refers to the 2011-2012 Course Pack for Law 102: Criminal Law Process (available on the course website: moodle.uvic.ca).

Tuesday, Sept. 20

Introduction to the Criminal Law Process Course

Readings: RBHS: 3–6

Overview of the Criminal Law

Thursday, Sept. 22

Basic Principles and the Objectives of the Criminal Law and Sentencing

Readings: CP: 1–21

- *R. v. Gladue*

Tuesday, Sept. 27

Limits of the Criminal Law: Morality, Consensual Sex Marijuana and the Harm Principle

Readings: RBHS: 45–84

- *Devlin, "The Enforcement of Morals"*
- *Hart, "Immorality and Treason"*
- *R. v. Malmo-Levine*
- *R. v. Labaye*
- Fraser Committee

Thursday, Sept. 29

The Criminal Law, the Constitution, and Codification

Readings: RBHS: 8–26

- *Friedland, "Criminal Justice and the Division of Power in Canada"*
- *Switzman v. Elbling*
- *R. v. Morgentaler*

- *Reference re Firearms Act*
- Mewett, “*The Criminal Law, 1867–1967*”
- *Amato v. The Queen*
- *Frey v. Fedoruk*
- *Jobidon v. The Queen*

Tuesday, Oct. 4

The Interpretation of Criminal Laws

Readings: RBHS: 26–44

- Read note on *Nova Scotia Pharmaceuticals* carefully - p. 26-27
- *R. v. Heywood*
- *Canadian Foundation for Children, Youth and the Law*
- *R. v. Paré*

Thursday, Oct. 6

The Criminal Law and the Charter of Rights and Freedoms I

Readings: RBHS: 6–8; 284–289

Read the *Charter*, ss. 1, 2, 7-15, 24-28, 32, 33, 52

- *R. v. Oakes*

Tuesday, Oct. 11

The Criminal Law and the Charter of Rights and Freedoms II

Readings: CP: 61–89

- *A Note on the Exclusion of Evidence*
 - *Collins; Stillman; Buhay; Grant*

Thursday, Oct. 13

Catch-up/Review

The Investigation of Crime

Tuesday, Oct. 18

Introduction to the Investigation and Prosecution of Crime

Readings: CP: 22–28 (Gender Segment 1)

RBHS: 111–116; 233–238

- *Roach, “Due Process and Victims’ Rights”*
- *M.E. Turpel on Aboriginal Conceptions of Justice*

Thursday, Oct. 20

Search and Seizure

Readings: RBHS: 151–168

CP: 90–96

Read in this order:

- *Hunter v. Southam*
- *R. v. Wong*
- *R. v. Tessling*
- *Recent Developments in the Law of Search & Seizure* [CP: 90-96]
 - *R. v. Kang-Brown; R. v. A.M.*
 - *R. v. Patrick*

Tuesday, Oct. 25

Arrest and Detention I

Readings: RBHS: 168–171; 184–191
CP: 97–99

- *The Deaths of Helen Betty Osborne and John Josphe Harper*
- *Cloutier v. Langlois*
- *R. v. Golden*
- *Contextual Note on Strip Searches*

Thursday, Oct. 27

Arrest and Detention II

Readings: RBHS: 178–184
CP: 100–109

Read in this order:

- *R. v. Simpson* [CP: 100-101]
- *Note on Detentions, Police Powers, and Arbitrariness in the Criminal Law* [CP: 102-106]
- *R. v. Mann* [RBHS: 178-184]
- *R. v. Clayton* [CP: 106-109]

Tuesday, Nov. 1

Arrest and Detention III

Readings: RBHS: 171–173
CP: 110–117

- *R. v. Grant*
- *R. v. Suberu*

Thursday, Nov. 3

Confessions: Voluntariness

Readings: RBHS: 116–123
CP: 118–127

Read in this order:

- *Boudreau v. The King* [RBHS: 116-117]
- *Rothman v. The Queen* [CP: 118]
- *Clarkson v. The Queen* (focus on operating mind section) [RBHS: 118-120]
- *R. v. Oickle* [CP: 122]
- *R. v. Spencer* [CP: 126]

Tuesday, Nov. 8

Confessions: The Right to Counsel and The Right to Silence

Readings: RBHS: 117–141
CP: 128-134

Read in this order:

- *Clarkson v. The Queen* (review from last class; focus on the right to counsel issue) [RBHS: 121-123]
- *R. v. Manninen*
- *R. v. Brydges*
- *R. v. Prosper* (Note on RBHS: 128-29)
- *R. v. Hebert*

- *R. v. Singh*
- *R. v. Sinclair*

Thursday, Nov. 10

A Case Study on Traffic Stops

Readings: CP: 135-145

- *R. v. Therens*
- *R. v. Thomsen*
- *R. v. Hufsky*
- *R. v. Ladouceur*
- *R. v. Mellenthin*
- *Further Issues in Impaired Driving:*
 - *R. v. Orbanski; R. v. Elias*
 - *2008 Criminal Code Amendments*

Prosecution of Crime and the Trial

Tuesday, Nov. 15

Introduction to the Trial Process

Readings: RBHS: 199, 212-233; 238-248
CP: 146-155

- *Royal Commission on the Donald Marshall Jr. Prosecution*
- *Wildsmith, "Getting at Racism: The Marshall Inquiry"*
- *R.D.S. v. The Queen*
- *Report of the Aboriginal Justice Inquiry of Manitoba*
- *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*
- *U.S.A. v. Burns and Rafay*

Thursday, Nov. 17

The Role of Counsel

Readings: RBHS: 248-259

- *Boucher v. The Queen*
- *R. v. Stinchcombe*
- *Law Society of Upper Canada, "Defending a Criminal Case"*

Tuesday, Nov. 22

Pre-Trial Release

Readings: RBHS: 259-271
CP: 156-159

- *R. v. Bray*
- *R. v. Pugsley*
- *R. v. Pearson*
- *R. v. Morales*
- *R. v. Hall*
- Excerpt from *Justice and the Poor* on Bail

Thursday, Nov. 24

The Classification of Offences and Preliminary Inquiries

Readings: CP: 160-163

- Excerpts on the Classification of Offences and Preliminary Inquiries

Tuesday, Nov. 29

Juries

Readings: RBHS: 271–279

- *R. v. Parks*
- *R. v. Williams*

Thursday, Dec. 1

Catch-up/Review Class

Friday, Dec. 9
1:00pm

December Examination