



Windsor Law

University of Windsor

2022-23 Term | Professor Tanovich

CRIMINAL LAW SYLLABUS (LAWG-5805-01)

1. DESCRIPTION

This is a course about substantive criminal law in Canada. It examines several broad themes and issues that dominate criminal justice discourse in Canada and around the common law world. Some of the themes include:

1. What is a crime? Who should decide what is a crime (Parliament or the courts)?
2. What is the purpose of criminal law? To what extent does that purpose impact how we think about substantive criminal law issues? Do we see a logical connection between criminalization of certain conduct and what we understand to be the purpose or objective of using the criminal law in that particular context?
3. What constitutional limits are there on Parliament's ability to criminalize conduct?
4. What legal values should guide courts in deciding substantive law questions? For example, morality, social utility or equality?
5. What is the legitimate role of the courts in determining what behaviour should be criminalized? When does judicial interpretation become judicial legislation?
6. How does systemic racism manifest itself in what we decide to criminalize and who we are prepared to excuse or exempt from criminal liability?
7. What relevant factors should be considered when determining the limits of culpability (i.e., when we should hold someone criminally accountable for their conduct)? Should culpability be measured subjectively (did the accused know or intend the consequences of their actions) or objectively (what measures should the accused have taken to prevent the harm)?
8. What circumstances should excuse or justify violating the law?
9. Is gender, race, Indigeneity, poverty, sexual orientation, mental illness relevant to thinking about substantive criminal law? Why or why not?

Unlike other areas of the law, criminal law receives considerable attention by Parliament and the courts and is influenced by *Charter* values such as equality, autonomy, proportionality, dignity, and the presumption of innocence. As we work through the materials, we will explore how well Parliament and the courts have done to give effect to these values. As a first-year course, one of the central objectives of this course is to provide another context wherein students can learn and apply basic skills that will enable them to "think like a lawyer" in any area of law. These objectives will be facilitated and evaluated

through readings, class discussion, tutorials, writing assignments and exams.

2. LEARNING OUTCOMES

By the end of the course, a student should be able to:

1. Identify what constitutes a criminal law “purpose” for assessing whether legislation is *ultra vires* under section 91(27) of the *Constitution Act, 1867*;
2. Understand the common law methodology and statutory interpretation and read a criminal statute;
3. Identify how section 7 of the *Charter* and judicial review have impacted the ability of Parliament to criminalize conduct;
4. Identify the limits of criminal law as a mechanism to control harmful behaviour including conduct deemed to be “immoral”;
5. Recognize manifestations of systemic racism (including anti-Indigenous and anti-Black racism) in the criminal justice system and identify ways in which this social context can be addressed/acknowledged in individual cases;
6. Understand ways to acknowledge and incorporate Indigenous legal traditions in criminal cases. This includes identifying the role of Indigenous courts, statutory reform and section 15 of the *Charter*;
7. Identify some of the causes of wrongful convictions particularly as they relate to systemic racism;
8. Identify some of the basic ethical obligations owed by lawyers (Crown and defence) in criminal cases and how ethical breaches contributed to Donald Marshall’s wrongful conviction;
9. Identify the constituent elements of a crime (act and fault) and distinguish true crimes from regulatory offences and civil torts;
10. Identify how (and explain why we impose) liability for criminal offences can extend beyond those that actually commit the offence;
11. Identify some of the stereotypical assumptions that continue to impact on the fair adjudication of sexual assault cases;
12. Understand the elements of sexual assault and challenges of defending and prosecuting sex assault cases;
13. Identify (including a critical evaluation of) the elements of the following defences: mistake of fact, automatism, mental disorder, intoxication (ordinary and extreme), provocation and self-defence;
14. Persuasively make a legal argument; and,
15. Apply the law to a hypothetical set of facts.

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. I have provided a detailed Syllabus which includes the key questions and issues that we will explore with each set of readings. 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. ANTI-INDIGENOUS & ANTI-BLACK RACISM

Anti-Indigenous and anti-Black racism are serious systemic problems in all adjudicative processes in Canada. This problem is particularly acute in the criminal justice system. While racism towards all racialized groups is a serious systemic problem, our focus is on Black and Indigenous communities because it is these communities who have been and, continue to be, disproportionately over and under-policed; disproportionately killed or seriously injured by the police; disproportionately denied bail or released with stricter conditions; disproportionately imprisoned; and, disproportionately the victims of wrongful convictions.

With respect to anti-Indigenous racism, the Supreme Court of Canada acknowledged in [R v Barton](#) 2019 SCC 33 that:

[1] We live in a time where myths, stereotypes, and sexual violence against women – particularly Indigenous women and sex workers – are tragically common. Our society has yet to come to grips with just how deep-rooted these issues truly are and just how devastating their consequences can be. Without a doubt, eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society. While serious efforts are being made by a range of actors to address and remedy these failings both within the criminal justice system and throughout Canadian society more broadly, this case attests to the fact that more needs to be done. Put simply, we can – and *must* – do better. ...

[199] ... In short, when it comes to truth and reconciliation from a criminal justice system perspective, much-needed work remains to be done.

With respect to anti-Black racism, the Ontario Court of Appeal in [R v Theriault](#) 2021 ONCA 517 observed that:

[143] The existence of anti-Black racism in Canadian society is beyond reasonable dispute and is properly the subject matter of judicial notice. It is well recognized that criminal justice institutions do not treat racialized groups equally ... This

reality may inform the conduct of any racialized person when interacting with the police, regardless of whether they are the accused or the complainant. ...

[146] In my view, it is incumbent on trial judges to consider relevant social context, such as systemic racism, when making credibility assessments. The trial judge did not err in doing so, and his findings are entitled to considerable deference on appeal.

Similarly, in *R v Morris* 2021 ONCA 680, the same Court held:

[1] It is beyond doubt that anti-Black racism, including both overt and systemic anti-Black racism, has been, and continues to be, a reality in Canadian society, and in particular in the Greater Toronto Area. That reality is reflected in many social institutions, most notably the criminal justice system. It is equally clear that anti-Black racism can have a profound and insidious impact on those who must endure it on a daily basis: see *R. v. Le*, [2019 SCC 34](#), [2019] 2 S.C.R. 692, at paras. 89-97; *R. v. Theriault*, [2021 ONCA 517](#), at para. 212, leave to appeal to S.C.C. requested, 39768 (July 19, 2021); *R. v. Parks* (1993), [1993 CanLII 3383 \(ON CA\)](#), 15 O.R. (3d) 324 (C.A.), at p. 342, leave to appeal refused, [1993] S.C.C.A. No. 481 ... Anti-Black racism must be acknowledged, confronted, mitigated and, ultimately, erased.

These are powerful exhortations from our highest courts that cannot be ignored by judges, Crown Attorneys, defence counsel and law students in criminal law courses. One of the themes of this first-year course will be an exploration of how anti-Indigenous and anti-Black racism manifests itself in the substantive criminal law and what steps can be taken to address it.

Windsor Law is committed to the Truth and Reconciliation Commission's (TRC) Calls to Action, which calls on law schools and many other social and socio-legal systems to both come to grips with the destructive role law and other systems have played in the lives of Indigenous and Métis communities, and to make significant reforms to improve our collective futures. You are encouraged to review the TRC Calls to Action, specifically Calls to Action numbers 27 & 28, at: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

We will also examine in a module in the Fall Term (Part II) whether reconciliation with Indigenous communities is possible in the criminal justice system and, if so, how it may manifest itself.

It needs to be said that it is disruptive and painful to talk about racism especially for our Indigenous and Black students. In addition, there is always a danger that in talking about these issues with respect to criminal (in)justice, that we will be triggering and furthering some of the harmful and untrue stereotypes that impose significant burdens on these communities. That said, change requires acknowledgment, understanding, a commitment

to take action and to devise creative solutions. The key is to ensure that the instruction and discussion is done in a sensitive and thoughtful manner. I make that commitment to my Indigenous and Black students. We also have supports for our Indigenous and Black students. These can be found here: <https://www.uwindsor.ca/law/1148/wellness>.

4. **MENTAL HEALTH RESOURCES**

“From time to time, students face obstacles that can affect academic performance. If you experience difficulties and need help, it is important to reach out to someone.” A full list of on- and off-campus resources is available at: <http://www.uwindsor.ca/wellness>. For a list of the resources available at the law school see: <https://www.uwindsor.ca/law/1148/wellness>.

5. **SEXUAL MISCONDUCT RESOURCES**

The University of Windsor values dignity, respect and equality for all individuals and strives to foster an atmosphere of healthy attitudes and behaviours towards sexuality, sex and gender. The University is committed to maintaining a healthy and safe learning, living, social, recreational and working environment. The University’s sexual misconduct policy can be found here: <https://www.uwindsor.ca/sexual-assault/301/university-policies>. If you wish to speak confidentially about an incident of sexual violence, please contact the Office of Sexual Violence Prevention, Resistance, and Support by email at svsupport@uwindsor.ca. Dusty or Anne will be happy to follow-up to discuss the supports and information that will be most helpful to you. Please note, you do *not* have to formally report your experience in order to receive support, resources, and guidance. If you would like to consider filing a formal complaint with the University, or have questions about policies and procedures regarding sexual misconduct, Dusty and Anne can also provide this information and assist with the process.

6. **RELEVANT ACADEMIC AND ACCOMMODATION POLICIES**

All relevant academic and accommodation policies for the law school can be accessed here: <https://www.uwindsor.ca/law/student-resources/41/forms-and-policies>.

7. **CLASSES**

Mondays

1:30 pm – 3:50 pm

Education Building 1123

There will be regular tutorial sessions throughout the year. The schedule will be available during the term.

Student evaluations will take place during the last two weeks of the term.

8. **RECORDING CLASS**

Virtual Classes

All online classes will be recorded and posted on Blackboard. They are normally posted within 24 hours of the end of class on Monday. They cannot be downloaded.

In-Person Classes

All students may record lectures, provided that the recording is for their own personal study use. Recordings are intended to permit lecture content review to enhance understanding of the topics presented. Recordings are not a substitute for attending class and, of course, you cannot record a class for personal use if you are not in class to conduct the recording.

Regulations and limits surrounding recording of lectures are covered in the fair dealings section of the Federal *Copyright Act*. The *Copyright Act* and copyright law protect lectures by University lecturers. It is therefore stressed that the material recorded still belongs to the instructor and can only be used for personal study in the course in question. Student who record lectures may not share, distribute, email or otherwise communicate or disseminate these materials.

If a student shares or disseminates a recorded lecture in any way (including transcription), thereby breaching copyright legislation, the student will be subject to University misconduct policies, at a minimum, and may be subject to other legal action including disclosure of the misconduct to the Law Society of Ontario as part of the “good character” requirement.

The University has implemented a new policy on recording guest lectures and student presentations as well as limits that may be placed on what is recorded: see <https://www.uwindsor.ca/law/student-resources/41/forms-and-policies>.

9. **OFFICE HOURS**

FALL TERM: TBD (extended office hours will be posted prior to the mid-term)

WINTER TERM: TBD (extended office hours will be posted prior to the final exam)

Always available by appointment - please contact my assistant Tiffany Brown (tiffanyb@uwindsor.ca) to set up an appointment.

10. **TEXTS**

(i) *Required*

Roach, Berger, Cunliffe, Kiyani, *Criminal Law and Procedure: Cases and Materials (12th ed) (2020)* (available at Bookstore) (all pages refer to this casebook unless otherwise indicated). This is a new edition and the casebook has been substantially revised. I do not recommend that you use an 11th edition. You will have no difficulty selling the book next year as all three sections use this book.

There is now a 12th Edition Supplement (Supp) that you will need to download for the course. It is available here:

https://emond.ca/Emond/media/Sample-chapters/clp12_supplement_2021_final.pdf.

Pocket Canadian Criminal Code 2023

You can access an online version of the *Criminal Code* from CanLII or the Department of Justice. You should have it open during class time. You will need a copy of the *Code* or online version downloaded to your computer. Commercially annotated *Criminal Codes* cannot be used. Annotated Codes are ones that have commentary provided by the author.

Supplementary Readings (posted on Blackboard) (BB)

(ii) *Recommended*

Roach, Kent, *Criminal Law (8th ed)* (Toronto: Irwin Law, 2022)

<https://irwinlaw.com/product/criminal-law-8-e/>

11. EVALUATION

Fall Term (40%)

- (i) *Supreme Court of Canada Opinion Piece (15%) (Due November 14, 2022, at 12:01 pm)*

Length & Format – 5-6 pages (double-spaced 12-point font). Do not use a cover page. Use your Fall term essay number and submit on Blackboard. There is no need for footnotes or endnotes or a bibliography as you are only using the judgment as the source for your opinion. If you wish to cite an external source then please use a footnote.

Purpose – to further develop your case reading skills and ability to take a position on a legal issue and to defend that position using the tools lawyers/judges rely on in arguing and deciding cases. A secondary purpose is to introduce you to criminal justice issues not covered in the readings (eg policing).

Methodology – you must choose one of these Supreme Court of Canada cases to read and assess:

R v Lafrance 2022 SCC 32

R v Stairs 2022 SCC 11

R v Albashir 2021 SCC 48

Each of these decisions have a majority and dissenting opinion. The assignment must include the following:

1. A title that identifies to the reader the subject matter of the case and gives the reader some insight into your thesis (ie why you found one opinion more persuasive than the other).
2. Clearly state at the beginning of the piece which opinion you found more persuasive. Ensure to identify the author(s) of the opinion.
3. Provide a brief summary of the opinion that reflects your understanding of how to read a case. In doing so, you must:
 - (i) identify the central legal question(s) that divided the court;
 - (ii) identify how the opinion you have selected approached the issue (eg what sources did they rely on in reaching their decision) and what conclusion(s) they reached on the issue(s); and,
 - (iii) identify how that opinion differed from the opposite opinion. For example, did they disagree about whether precedent resolved the issue? Did they disagree because of differing interpretations of the evidentiary record below? Did they disagree because of different philosophical approaches to judicial review, fairness or the application of the *Charter*?
4. Why did you find the opinion you chose to be more persuasive than the other opinion? For example, was it because they came to the result you would have reached if you were sitting on the Court? Did the opinion more effectively address the counter arguments? Did you find it more true to precedent? If the Court deviated from precedent, did you find there to be a lack of (or presence of) compelling reasons for the departure? Did you find the opinion to be on

more solid ground when thinking about policy, fairness and relevant legal principles? Please ensure to fully explain your answer.

Marking – the piece will be marked using the following rubric:

Excellent – 13-14/15

- Follows all of the instructions
- Has an informative and catchy title
- Reflects a strong understanding of how to read a case
- Reveals a strong understanding of the issues before the Court and what divided the justices
- Provides compelling and cogent reasons in defence of its opinion
- Strong writing style with minimal grammatical/spelling errors

Good – 11-12/15

- Follows all of the instructions
- Has a satisfactory title
- Reflects a good understanding of how to read a case
- Reflects some uncertainty about the issues before the Court and what divided the justices
- Provides some reasons in defence of its opinion
- Proficient writing style

Unsatisfactory – 9-10/15

- Fails to follow the majority of the instructions
- Fails to have a meaningful title
- Demonstrates confusion about the issues/approaches/conclusions of the different opinions offered by the Court
- Fails to offer cogent and/or compelling reasons to defend their view of the case
- Weak writing style with grammatical and spelling errors.

(ii) *December Mid-Term (25%) (Date: TBD)*

Length – 2 hrs

Format – open book (you will be able to access your computer but not the internet). Annotated *Criminal Codes* are not permitted. Short answer questions will be based on fact patterns. No true/false or multiple choice questions will be used. A fail-safe option will not be available for this mid-term.

Practice – a practice bank of questions will be provided in early November. Additional exam-like questions will be provided during your tutorials.

Winter Term (60%)

(i) Class Participation (10%)

Each class, 10-12 students will be on call to answer questions about the assigned material. More details about the expectations will be provided at the beginning of the Winter term.

(ii) SCC Case-Watch (10%) (Due March 6, 2023, at 12:01 pm)

Students will be expected to watch a Supreme Court case on substantive criminal law currently on reserve.

Length & Format – no more than 3 typed double-spaced pages (12-point font). Do not use a cover page. Use your Winter term essay number and submit on Blackboard. There should be a title that captures the name of the case and that identifies the issue before the Court. There is no need for footnotes or endnotes or a bibliography as you are only using the hearing as the source for your report.

Purpose – to further your understanding of how Supreme Court of Canada cases are argued and to assist your development as an oral advocate.

Eligibility – you can report on any case that is on reserve (that is, the Court has not issued a ruling) and involves substantive criminal law (defined for the purposes of the report as cases dealing with 91(27), section 7 and principles of fundamental justice that we covered in the Fall term, actus reus or mens rea issues and defences). Here is a link to the SCC webcasts and scheduled hearings page: <https://www.scc-csc.ca/case-dossier/info/heard-eng.aspx?ya=2022&mo=9&submit=Search>. If the case you choose releases its decision before you finish your report, please do not read it or, if you learn about the result even without having read it (eg reported in the media, discussed in another class), then do not answer or edit (if already written) question #6 below and let me know in your report that this is the reason. If the Court at the end of the hearing announces the result of the appeal with reasons to follow, you can still report on it with a modified question #6 (focusing on, assuming it is possible based on the questioning, who will be in the majority/dissent).

Questions – please ensure that your Report addresses the following questions:

1. What case did you choose to watch? Why did you choose this case? What is the primary (if more than one issue – defined as - what you see as the most important issue or the issue that interests you) issue before the Court?
2. Review the headnote of the Court of Appeal decision (you can find headnotes for criminal cases in the Canadian Criminal Cases (CCC) on Westlaw) or read the judgment. Based on that review and **before watching the SCC hearing**, what preliminary view do you have about how the Supreme Court *should* decide the issue? Please explain your answer.
3. Were you able to follow the submissions of counsel? Did you find them effective in advancing their position and/or in answering the questions from the bench? Try to provide three or four reasons why or why not.

4. Were you surprised by any of the questions/tone of the justices? Why or why not? Which justices asked the most questions?
5. Were there any intervenors in the case? If yes, who were they? Did you find their submissions to be of assistance in your understanding of the issue? Why or why not?¹
6. Based on everything that you observed, how do you think that the Court will decide the issue? Based on the justices' questions, try to predict who will be in the majority and dissent.

Marking – Your grade will be based on an assessment of the accuracy of the observations (eg identified issue, justices, intervenors); clarity of writing; quality, persuasiveness and insightfulness of reflections.

8-9/10 – excellent

6-7/10 – good

4-5/10 – unsatisfactory

(iii) *April Final Exam (40%) (TBD)*

Length – 3 hrs

Coverage – only Winter term material

Format – open book (you will be able to access your computer but not the internet). Annotated *Criminal Codes* are not permitted. Short answer questions will be based on hypothetical fact patterns. No true/false or multiple choice questions will be used.

Practice – a practice bank of questions will be provided in early March. Additional exam-like questions will be provided during your tutorials.

¹ Here is a good article setting out the role of intervenors at the Supreme Court of Canada: <https://www.mccarthy.ca/en/insights/blogs/canadian-appeals-monitor/supreme-court-canada-clarifies-role-interveners>.

12. READINGS

Part I – Introduction	Date	Pages	Key Cases	Questions
Overview 91(27): Criminal Law Harms	Sept 12 Class #1	Preface (v-vi) 3-17 2-18 (Supp)	<i>Genetic Non-Discrimination Act</i>	What is this course about? What do you hope to get out of it? What is the purpose of criminal law? What is the relationship between the Constitution, the courts and Parliament in creating criminal law offences? What is a criminal law purpose?

	Date	Pages	Key Cases	Questions
Nullum Principle Statutory Interpretation (SI)	Sept 19 Class #2	23-42	<i>R v Jobidon</i> <i>R v Clark</i>	What tools does the Supreme Court have to limit/expand the scope of criminal law? Have they fairly exercised them? Do judges play too large a role in determining the scope of criminal liability in Canada? What is statutory interpretation? How does it apply in criminal cases?
	Sept 26 Class #3	BB	<i>R v Sundman</i> <i>Canadian Foundation</i>	

	Date	Pages	Key Cases	Questions
Assessing Sufficiency of Harm Under Section 7 and SI	Oct 3 Class #4	61-86 194-198 207-213	<i>R v Malmo-Levine</i>	What is the harm principle and what role does it play in criminal law? What critical social context evidence was missing in <i>R v Malmo-Levine</i> ? Why did this happen? Should harm be the organizing principle? Is it now a principle of fundamental justice after <i>R v Labaye</i> ? How might <i>Labaye</i> be relevant in thinking about criminal law policy moving forward?
		86-98	<i>R v Labaye</i>	

	Date	Pages	Key Cases	Questions
Challenging the Means Chosen to Criminalize	Oct 17 Class #5	98-122	<i>Can (AG) v Bedford</i>	How does <i>Bedford</i> define arbitrariness, overbreadth and gross disproportionality? How should Parliament have responded to the Supreme Court's decision in <i>R v Bedford</i> ?

	Date	Pages	Key Cases	Questions
Oakes & Reasonable Doubt	Oct 24 Class #6	325-334 336-341	<i>R v Oakes</i> <i>R v Lifchus</i> <i>R v Starr</i>	Why do we have a constitutional presumption of innocence? Should we use that concept outside of criminal courtrooms? How do we define reasonable doubt?

Part II – Race & Criminal Justice	Date	Pages	Key Cases	Questions
Indigenous Issues	Oct 31 Class #7	17-23 259-267 BB	<i>R v Ippak</i> Lawrence and Parkes, “ <i>R v Turtle: Substantive Equality Touches Down in Treaty 5 Territory</i> ” (BB)	Is our criminal justice system ready to incorporate Indigenous legal traditions? Is reconciliation possible? What can reconciliation look like?
	Nov 14 Class #8	232-238 244-255 273-275	<i>R v Marshall</i> (1972) (1983) <i>Royal Commission on the Donald Marshall Jr Prosecution</i> (1989)	What are some of the lessons for criminal justice actors from Donald Marshall’s wrongful conviction? What are the different ways systemic racism & stereotyping can cause wrongful convictions? What are some of the ways to mitigate implicit racial bias in criminal trials?
	Nov 21 Class #9		<i>R v Sharma</i> (BB) ² <i>R v Munson</i> (BB)	How is Indigeneity and anti-Indigenous bias relevant to sentencing? How might a more Indigenous-centered approach to sentencing impact the sentencing process?
Lawyering and Legal Ethics	Nov 28 Class #10	238-243 275-298	<i>Boucher v The Queen</i> <i>R v Stinchcombe</i> <i>R v Anderson</i>	What ethical rules did the lawyers in <i>Marshall</i> breach? Are there additional rules of ethics that should be implemented to protect against wrongful convictions? What specific ethical obligations are owed to Indigenous accused/victims?

² See Benjamin Ralston, “*R v Sharma: Addressing Systemic Discrimination in the Criminal Justice System*” (2021) 66 Criminal Reports (7th) 367.

PART III – Principles of Criminal Liability	Date	Pages	Key Cases	Questions
Distinguishing True Crimes & Regulatory Offences	Jan 9 Class #11	471-507 467-469	<i>R v Beaver</i> <i>R v Sault Ste Marie</i> <i>BC Motor Vehicle</i> <i>R v Wholesale Travel</i>	How do we identify regulatory offences and their fault requirement, if any? What is the minimum fault requirement under section 7 for true crimes? Should strict liability be the minimum fault requirement for all offences?
Actus Reus (Regulatory & True Crimes)				
Identification -Act or Omission	Jan 16 Class #12	345-365	<i>R v Browne</i> <i>R v Thornton</i>	Using statutory interpretation, what is the <i>actus reus</i> for an identified crime? If it is a crime involving a failure to act (omission), where does the legal duty come from? Are you satisfied with the current regime for omissions? How would you have decided <i>R v Thornton</i> ?
Causation & Contemporaneity	Jan 23 Class #13	366-411	<i>R v Smithers</i> <i>R v Harbottle</i> <i>R v Nette</i> <i>R v Maybin</i> <i>R v Cooper</i>	If the crime requires proof of consequences, did the accused's conduct cause the consequences? What is the contemporaneity principle?
Fault for True Crimes				
Subjective Fault	Jan 30 Class #14	413-435 Supp 30-38 707-716 461-466	<i>R v ADH</i> <i>R v Zora</i> <i>R v Hibbert</i> <i>R v Buzzanga</i> <i>R v Theroux</i> <i>R v Briscoe</i> <i>R v Martineau</i>	Is the fault requirement for the identified criminal offence subjective or objective? If subjective, what is the fault requirement? When will recklessness or deliberate ignorance suffice for proof of subjective fault?
Objective Fault	Feb 6/13 Classes#15-16	435-460 688-692 BB	<i>R v Beatty</i> <i>R v Roy</i> <i>R v Javanmardi</i>	If objective, is the fault requirement a marked or marked and substantial departure from the norm? What considerations can be taken into account in determining whether there has been that departure? If the accused is charged with murder or manslaughter – can the Crown prove the elements of the unlawful act (predicate offence)?

PART IV – Extensions of Criminal Liability				
Participation – Party Liability	Feb 27 Class #17	525-567	<i>R v Thatcher</i> <i>R v Greyeyes</i> <i>R v Briscoe</i> <i>R v Dunlop & Sylvester</i> <i>R v Kirkness</i> <i>R v Gauthier</i> <i>R v Duong</i>	Who is a party to a criminal offence? What conduct amounts to aiding or abetting? What is the fault requirement? What constitutes counselling a crime? Is abandonment ever a defence?
Inchoate Offences	Mar 6 Class #18	569-584 (Attempts) 584-589 (Incitement) 589-597 (Conspiracy)	<i>R v Deutsch</i> <i>R v Ancio</i> <i>R v Logan</i> <i>USA v Dynar</i> <i>R v Hamilton</i> <i>USA v Dynar</i> <i>R v Dery</i>	What is an attempt? What is the fault requirement for attempts? Is factual impossibility a defence to attempts? What is incitement? What is a conspiracy? Is attempted conspiracy an offence in Canada?
PART V – Sexual Assault	Date	Pages	Key Cases	Questions
1. The Elements This part of the course may be understandably difficult for any student for any variety of reasons. If you or someone you know find the readings or class discussions to be disruptive to your well-being, please consider making use of the available supports on and off campus. This information can be found above on pages 7-8.	Mar 13 Class #19	639-685 BB	<i>R v Chase</i> <i>R v Barton</i> <i>R v Mabior</i> <i>R v Kirkpatrick</i>	Why do sexual assault prosecutions continue to pose challenges for our justice system? When is an assault a sexual assault? What is the meaning of consent? When will intoxication render a complainant incapacitated? When is consent vitiated under the <i>Criminal Code</i> ? When will non-disclosure of HIV amount to fraud? What other circumstances will vitiate consent because of fraud? When will mistaken belief in communicated consent be left with the trier of fact?

