

# PO210 Final Exam Review

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## Chapter 8: Constitutional Law

- most fundamental
- govern how the state can act at the most basic level
- constitution= a body law that establishes the framework for govt. is supreme law of the country
- written/unwritten principles that state what power is given to the govt
- formed from: conventions, statutes, proclamations, court decisions

### **3 Branches of govt:**

- executive (the queen and cabinet)
- legislative (house of commons, senate, governor general)
- judicial (judges)
  
- rule of law is maintained (law is supreme, no one is above it)
- constitution overrides all other law in Canada
- the BNA act 1867: created the dominion of Canada and the first 4 provinces (ontario, quebec, nova Scotia, new brunswick)

### **Rule of Law:**

1. no person is above the law
2. no state is above the law
3. protects citizens and groups
4. provides predictably ad ordered society
5. prevents arbitrary use of power by individual

6. prevents arbitrary use of power by state.

- Rights are found in the charter of rights and freedoms
- they prevent the abuse of power

**Charter Categories:**

1. Fundamental freedoms (freedom of thought, peaceful assembly, association, conscience and religion)
2. democratic rights (qualified people have the right to vote)
3. language rights (not covered in course)
4. mobility rights (free to move around)
5. minority language education rights (not covered)
6. legal rights (section 3.14, unreasonable search and seizure etc.)
7. equality rights (s. 15. all equal under the law. no discrimination)

Parliamentary supremacy= parliament is the only lawmaker. no can overrule. supreme law.

**Section 52:**

- makes any law that is unarguable with the constitution unenforceable.

**section 91:**

- powers of the federal government: military law, immigration etc.

**section 92:**

- powers of the provincial govt: marriage license, education, healthcare etc.

**Conventions+Prerogative Powers:**

- conventions lie outside legal documents, may be recorded elsewhere
- important to constitutional law
- the role of judges and courts in the govt and their independence from the executive and legislative branches of govt.
- “clothe the legal framework of the constitution and provide a measure of flexibility”

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- prerogative powers= privileges accorded to the crown, only few surviving powers now. mostly defined by statute
- e.g. power to dissolve parliament, make treaties, issue passports, grant honours/ awards, appoint ambassadors.

### **Division of Powers**

- constitution lists the powers of federal, provincial and territorial governments
- s.91= federal
- s.92= provincial
- s.93= territorial
- there are often disputes between the levels of govt and whether one level has exceeded its jurisdiction

### **Peace, order and good govt (POGG):**

- the gives the “left over” legislative power to the federal govt.
- purposely done at confederation to avoid leaving left over (residual) powers to local/ state govt.
- POGG used in situations where this is a “Gap” not covered by a division of powers
- any laws not under 91 or 92: go to federal

### **Territorial Powers:**

- Yukon, North west Territories, Nunavut= different status than other provinces
- these territories were created by federal statutes
- the legislation dictates that the powers can be controlled by the territorial govts.
- may be taken away by the federal govt.

### **Constitutional issues and the courts:**

- courts interpret which jurisdiction an area is in
- difficult to do
- overlap within jurisdictions: sometimes works quite well
- if theres a dispute, it comes before the court:

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- 1) factual dispute with the govt/individual who alleges the statute is unconstitutional bc it is outside the powers of the legislating body
- 2) come before the court by way of a reference . federal govt may ask for courts opinion regarding a federal/provincial legislation.

**Intra/Ultra Vires:**

- Intra vires= within jurisdiction
- ultra vires= outside jurisdiction

**Double Aspect:**

- something may be a federal matter from one perspective and a provincial matter from another perspective.
- can be upheld as a double aspect if each aspect are of equal importance and operate without conflict
- parliament may define the rights that will be operated federally, and the legislature will have regs. to structure the matter from provincial POV.
- if the laws conflict: federal paramountcy is used
- the federal legislation will trump the provincial

**Inter-jurisdictional Immune doctrine:**

- governs what happens if there's an overlap between federal+provincial jurisdiction in the essential core of a constitutional power.
- only works to invalidate provincial law, not federal.

**municipalities+delegation:**

- municipalities are given responsibility by the provinces
- the ability of bodies to use "delegation" to request that one level of govt assume responsibility for an area of public policy.

**criminal law:**

- constitutional law is the link between civil and criminal law
- section 91 + 92 enacts criminal law and procedure
- federal govt defines what is illegal under the criminal code

- provinces are responsible for the policy, laying charges, and prosecuting offences in provincially run courts.

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## Chapter 9: criminal law

### **source of criminal law:**

- the division of powers= provision of the constitution act, dictate which levels of govt have jurisdictions over matter (e.g. criminal=federal)
- s.91 and s.92

### **legislation:**

- process of making written law by branch of the govt
- criminal code consists of many rules and is called substantive criminal code because it talks about specific crimes and defences

### **common law:**

- also important in criminal law
- common law defence: defence that only exists in common law, not legislation

### **civil law+criminal law:**

- in civil law, the victim has control over the matter.
- tort= a private wrong, crime=public matter
- purpose of criminal law= protect society from dangerous conduct
- different terms used (e.g. plaintiff+defendant vs. state+the accused)

**Summary conviction** = considered less serious crimes. tried "summarily"

**indictable offences**= more serious and more serious consequences.

- punished by sentences of 2, 5, 10, 14 or life in prison (25 years without parole)

**Hybrid offences**= may be tried as either summary or indictable, choice of the crown.

- depends on the factors (e.g. future plea negotiations)
- proceeds as an indictable offence in accordance to "interpretation act"

\*The election between summary or indictable offence is on the part of the crown. very important because it may determine what institution the individual is sentenced to given the seriousness of the crown.

**The adversarial system:**

- criminal law follows the adversarial system
- disputes are resolved by impartial decision-maker after hearing evidence
- opposing side represented by: the state (crown) and the accused (defence lawyer)

**Beyond reasonable doubt:**

- the standard of proof required
- excludes the possibility of innocence
- burden/onus is on the crown to prove the accused's guilt

judges: control what happens in court room

**jury:**

- *trier of fact*= someone/group of people who hear testimony, review evidence and decide factual issue.
- anyone trying to influence the jury can be found to have "obstructed justice"
- the crown and defence lawyer have challenges for cause: they can object to a particular juror. reasons:
  1. persons name not on panel
  2. person has some sort of bias
  3. person has been convicted of offence and sentenced to more than a year
  4. they're not a Canadian citizen
  5. they're physically unable to perform the duties
- the defence lawyer gets the first opportunity to challenge, then they're called on alternatively
- they either challenge or say they are 'content'

**Canadian court system:**

**provincial inferior courts**

- staffed by justice of the peace.
- minor criminal offences
- under control of higher courts

**provincial superior courts: trial division**

- some offences must be tried by the provincial superior court of justice
- serious crimes
- either superior court with or without a jury

**provincial superior court of appeals**

- review decisions of the lower courts
- appeal judges use deference (respect to other judges) when doing this
- make sure the law is applied evenly from case to case

**supreme court of Canada**

**Elements of a criminal offence:**

- actus reus (act/omission in violation of law)
- mens rea (criminal intent. guilty mind)
- union of actus reus and mens rea
- punishment provided by law

**Actus reus:**

- the physical act
- 2 categories:
  1. *mala in se* = evil in itself (an act is naturally evil)
  2. *mala prohibita* = prohibited evil (law says its wrong)

**Causation:**

- element of actus reus
- show the event was caused by the accused's conduct
- 'but for test' = causation in negligence is proven where plaintiff shows that the defendant contributes to injuries. it wouldn't have happened otherwise
- omission/failure to act= person is under legal duty to act (e.g. duty to provide necessities of life, duty to rescue-quebec)
- motive= reason why the person may have committed the act
- good motives (stealing food to feed children) do not excuse crimes, but could help sentencing

**mens rea:**

- 2 kinds: objective or subjective
- *objective*= what's expected from society; standard of care expected from the 'reasonable person'
- *subjective*= what's actually going on in the mind of the accused. personal circumstances
- *recklessness as subjective mens rea*: the individual understands the risk as a consequence even though they don't foresee the consequences for certain. considered lower form of culpability,
- actus reus and mens rea must occur simultaneously

**Forms of intent:**

**1. intention/knowledge**

- accused intended a consequence/ had actual knowledge
- "wilfully" "means to" planned and deliberate

**2. indirect intention**

- might not want something directly illegal to happen

**3. transferred intent:**

- may intend to hit one person but killed/injured another by mistake

**Parties to an offence:**

- principal = someone who committed the offence, has the actus reus and mens rea
- aider= enabled someone else to commit a criminal act
- abettor= encouraged another person to commit a crime
- counsellor= did something to incite another person to commit a crime
- section 21 of the criminal code defines parties to an offence

**aiding and abetting:**

- almost always used together
- aiding= helping without encouragement/instigation
- abetting= promoting crime to be committed
- most common: driving getaway car, acts as lookout, supplies weapons

**counselling:**

- s.22 of criminal code
- one must intentionally solicit another person to commit a crime
- less participation than aiding/abetting

**accessories after the fact:**

- up to 14 years prison
- assisting a person who has committed a crime- hiding or helping them
- must have knowledge/ wilful blindness that the party they're helping has committed a crime

**inchoate offences:** crime is incomplete. preparation and attempt (beyond just preparation)

**attempts: actus reus**

- difficult to prove
- judge must determine whether element is fulfilled

- no universal test

**Attempts: mens rea**

- primary importance
- need for 'intent to commit a crime'

attempting the impossible: not important whether you could actually successfully complete the crime.

**true crimes+ regulatory offences:**

- s.91 of constitution act -> parliament decides what acts are crimes
- quasi criminal offences: created by provincial law. non-criminal offences (non criminal code) but carry similar penalty to criminal.

**regulatory offences:**

- non criminal charge that regulates conduct in public interest; areas such as securities regulations and trade
- dealt with at administrative tribunals
- executive branch
- meant to control activities considered lawful (business, trade)

**true crime:**

- behaviour that's inherently wrong and harmful
- victimless crimes (drug use/sales)

**Absolute liability offences:** only actus reus needs to be proven, mens rea is considered irrelevant in this case

**strict liability:** no necessity for crown to prove mens rea . defence is available though. due diligence defence; prove that they took reasonable care before proceeding.

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Chapter 10: The charter, criminal procedure, evidence

- the charter of rights and freedoms= the first 34 chapters of the constitution
- intro of the charter in 1982: empowered judges to declare legislation invalid and not enforce if it infringes on persons rights

- courts can 'sever' one part of the legislation by 'reading down/reading in' words that are inconsistent with the charter rights

**criminal procedure:**

- search warrant
- power to search and seize (must be compliant with the charter)
- police get search warrant from justice of the peace. must have reasonable and probable grounds
- search warrant can also be obtained by electronic/telecommunications means

exclusion of evidence:

- must be disregarded if it would bring the administration of justice in disrepute

right to be informed of an offence:

- historically, common law duty to inform the accused of the reason behind their arrest; or they could resist

**arrest**

- first step in the prosecution
- accused has a responsibility to appear in court.
- arrest is not defined in the criminal code, but supreme court has defined it as 'touching a person's body with the goal of detaining them/verbally directing them that they're under arrest'
- arrest is not complete until the person is informed of the reason behind the arrest

**peace officer:**

- include different people (police, sheriff, mayor, constable etc.)
- they can arrest for an indictable offence without a warrant under some circumstances
- they must have witnessed the offence, or reasonably believe it has/will happened

**citizen's arrest:**

- permits a citizen to arrest without a warrant if they find that
  - a) they witness someone commit an indictable offence or,

b) it is believed, on reasonable grounds, that a person has committed an indictable offence or they are escaping from/are in pursuit of persons who have lawful authority to arrest them.

- also permits landowners to arrest based on a criminal offence to their land

**arrest+charter rights:**

you must:

a) be informed promptly of reasons therefore;

b) be informed you have the right to retain and instruct counsel without delay

c) have validity of the detention determined by way of habeas corpus and be released if this detention is not lawful.

**Right to remain silent:**

- limits the ability of the police to question you. under common law and the charter

- fundamental as our right to be presumed innocent until proven guilty

- anything you say can be used against you in court

- highway traffic act is an exception: people are asked to reply to questions

**right to be tried within reasonable time:**

- time= between arrest and the end of trial

- court must examine the length of delay and reason for delay etc.

- if there is an infringement with the delay, burden is on the accused to prove it

**limitation of rights**

- charter= only interactions with govt and individuals

- the charter is not absolute, reasonable limits are imposed on rights

**confessions:**

- acknowledgement of guilt

- inadmissible unless it is voluntary

- interrogations are inherently stressful

- pressure is on police to obtain confessions so sometimes they turn to coercive measures
- isolation , minimization, confrontation, maximization

**Pleas:**

- must plead guilty/not guilty
- not guilty- crown must prove beyond reasonable doubt that you are guilty

**plea bargaining:**

- 'pre trial negotiations, resolution discussions'
- agreement by the accused to plead guilty so that the crown does or does not take a particular course of action
- e.g. reduce number of charges, peace bond etc.

**pros of plea bargaining:**

1. avoiding the trial process
2. trying to get a reduced sentence
3. plea bargaining to protect a third party
4. some people plead guilty cause of a cost issue
5. plead guilty cause some of the judges they pull- some don't put up with any domestic spouse violence

**cons:**

1. you get a criminal record
2. cost
3. uncertainty- not knowing what's going to happen

**election:**

- the accused may decide what kind of court/trial they want
- summary offence= provincial court judge
- indictable= can select provincial court judge alone, or judge/jury of superior court of justice

- some cases there is no choice
- e.g. murder= you must be tried by judge and jury unless special exceptions are complied with

**preliminary inquiry:**

- indictable offence you have the right to a preliminary hearing
- determine if the evidence is sufficient enough to continue to trial

**presumption of innocence**

- innocent until proven guilty (common law and charter principle)
- beyond reasonable doubt

**criminal evidence:**

- burden of proof (on the crown)
- evidentiary burden: this goes back and forth from crown and defence. this is presenting evidence that certain facts exist.

**compellability:**

- accused is not forced to testify
- s.11. you cannot be compelled
- witnesses may be compelled by a subpoena
- when testifying you have to answer questions that are properly posed

**husband+wife:**

- spouse= an incompetent witness (not required to testify)
- doesn't include documentary evidence/visual observances. only things that they have shared with
- they can voluntarily testify, but don't have to
- common law: currently not considered husband and wife.

**testimony**

- you can only testify what is within your knowledge
- saying something that someone else told you = heresay

- may be admitted as proof that the statement was said, but not that it's necessarily true.

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## Chapter 11: Criminal Law defences

- a defendant is never required to testify to anything
- the responsibility is on the crown to prove it
- when people want to prove they didn't, they have a defence
- most defences fall under excuses: where people admit they did something but explain why (under duress for example) the person acted, but they should be excused
- also justification defences. for example: breaking into a car, but it was to drive a victim to a hospital. in this case they completed the actions, but the actions should be justifiable. rightful rather than wrongful
- defence must meet the air of reality test: asks if a properly instructed jury could acquit the accused using a defence.
- crown must then prove that the defence is inapplicable

### **ignorance/mistake of law:**

- "ignorance of the law is no excuse" s. 19 of the charter
- this mistake of law can include ignorance of the existence of the law/ its meaning, the scope of the law or the application of the law.
- Canadians have the responsibility to know the law and act accordingly
- if people should know the law, then it should be clearly stated

### **mistake of fact:**

- defence that prevents the accused from forming the proper mens rea for the crime
- usually someone who acts innocently under a flawed understanding of facts
- difficult to tell if its a mistake of law/fact/both
- there must be an *innocent* mistake of fact for the defence to be proven

- Ex. R v Kundeus: he thought he was selling mescaline but turned out to be LSD. Claimed it was a mistake of fact, however, the supreme court says the mens rea to sell any drug is enough to convict him.

**Necessity:**

- crimes are done involuntarily
- forced to do something they wouldn't have otherwise
- common law defence; not provided for specifically in the criminal code but exists because of s.8(3) which allows for common law defences to exist
- evil trying to be avoided is greater than breaking the law. urgent situations and the accused has no legal way out
- dudley and Stephens case: sailors starving to death and ate fellow sailor.
- R v Perka: marijuana brought into Vancouver. claimed it was necessity because they were trying to go to Alaska but mechanical problems forced them to stop in Canada.
- R v Latimer. father responsible for daughter's death who had cerebral palsy. he claimed it necessity to kill her and put her out of her suffering.

**defence of duress:**

- duress and necessity are intertwined
- duress= a threat from another human being, necessity is seen as a threat from the situation.
- both ask whether the person acted in a voluntary manner.
- humans cant make decisions properly when their lives are in danger "concession to human frailty"
- duress is common law and has statutory basis, confusing
- **6 elements to be fulfilled in common law defence:**
  1. threats must be death or serious bodily harm
  2. threats must be sufficiently serious that its believed they are going to be carried out
  3. reasonable person might have acted in same manner
  4. no safe way of escape

5. must be proportionality between the threat and the reaction
6. defence is not available if the accused is part of a criminal organization

**Mental disorder: not criminally responsible by means of mental disorder (NCRMD):**

- s.16 of the criminal code
- accused cannot appreciate the nature and quality of the act/omission or of knowing it was wrong
- frequently causes public concern, 'insanity defence'
- review boards: people who are acquitted don't walk free; review boards will determine if they should be detained in/or treated at a psychiatric institution
- must consider the safety of the public and the needs of the accused
- review occurs at least every 12 months
- many people think is defenders getting off easy. controversial

**automatism:**

- commons law defence not found in the criminal code
- a state of impaired consciousness in which an individual though capable of action has no voluntary control over that action
- available for all offence and the accused receives a full acquittal therefore strict limits on how its used
- automatism concerns voluntariness, which part of actus reus. keep component of criminal liability- courts will absolve when it is missing, when someone doesn't voluntarily act
- automatism is broad and may include when an accused experiences from a concussion, hyperglycaemia, sleepwalking, cerebral tumours, physical blows, dissociative states
- **4 main types of automatism:**
  1. normal condition or 'non insane' automatism:
    - sleepwalking and hypnosis
    - nothing that would be considered a mental disorder though

2. insane or mental disorder automatism

- because of a psychological event the accused was unable to act voluntarily
- psychological blow automatism
- something shocking happened to the accused to put them into a state of automatism

3. external trauma

- some say that a blow to the head can cause a state of automatism through a type of altered consciousness
- case: man engaged in fight fell and got a blow to the head. when he got up he looked dazed and was staggering, stabbed the other man in the neck fatally

4. involuntary intoxication induced by drugs or alcohol

- if your drink was laced with drugs you may not be responsible for your actions
- R. Chaulk: was found naked yelling a female neighbour, then broke into someone's apartment and threw belongings around the room. said he was given a "wake up pill" by a friend at a party and started to feel weird. was found that he was voluntarily intoxicated thought.

**defence of intoxication:**

- self induced intoxication is almost never a defence
- sometimes a partial defence. rare and limited circumstances
- may be incapacity to form intent

**defence of provocation:**

- affirmative defence, all the elements of the offence are present. you won't get acquitted but might get lesser sentence/reduced charge

**- 3 elements of provocation:**

1. provocation must be a wrongful act or insult such as to take away control of a reasonable person
2. accused must act "upon the sudden"
3. must murder the person who provoked them (not a bystander)

**self defence:**

- s.34 provides several requirements for this:
- 1. the person acting in self defence was first unlawfully assaulted
- 2. the actor did not provoke the assault
- 3. actor did not intend to cause death or grievous bodily harm
- 4. actor used no more force than necessary

**battered woman syndrome:**

- its not a defence, but is used in conjunction with defences i.e. self defence
- violence against wives was originally not a criminal matter but a family matter
- spousal abuse: the battered woman
- 3 phases: (1) tension building (2) acute battering incident (3) loving contrition.
- accepted by legal and psychological disciplines, but there are criticisms
- also termed “intimate partner violence” and includes, physical, psychological or sexual violence. or “intimate terrorism” which is like brainwashing
- women prefer “battered woman survivor”

**brainwashing: described as:**

- a forcible or violent element
- an abandonment of previous beliefs and adoption/implantation of new beliefs
- new beliefs are foreign to the brainwashed
- they keep these beliefs until removed from the presence of the indoctrinator for a significant period of time
- not recognized as a full viable defence in north america
- ex. karla homolka and Paul Bernardo: sexual assault and murder of 3 young women. homolka got 12 years for the testimony against her husband. videotapes were found of her participating, victim of domestic violence and brainwashing.

**entrapment:**

- the police trapped the individual into the commission

- mainly undercover police operations
- tension in entrapment is the balance of police using methods to investigate crimes and the need to protect individuals and rule of law so citizens aren't encouraged to commit crimes they otherwise wouldn't
- not well established.

### **prank**

- the plank defence is another evolving one, foundation is not clear
- pake: asked undercover about prostitution price. drove away because he was "just joking" no intention of completing the transaction.

### **double jeopardy and Res Judicata:**

- double jeopardy (autrefois acquit): person must not be put on trial twice for the same offence, and includes a claim by the defendant that they have lawfully been acquitted/convicted of the crime.
- this final decision = res judicata, allows the individual to feel they have a final conclusion on the matter and it cant be reopened.

**Chinese wall:** is a business term describing an information barrier within an organization that was erected to prevent exchanges or communication that could lead to conflicts of interest

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## Unit 12: Sentencing and Alternative dispute resolution

- history: capital punishment, banishment, time in local jails (gaols), fines, corporal punishment
- each had disadvantages
- returning before banishment was over, crowded gaols (bad goods with not so bad guys), fines seen as unjust, corporal punishment seen as degrading.
- pillory or branding also used as embarrassment in public
- new ideas about crime in 1830s. no more public executions
- penitentiary created. new face of punishment. more civilized
- "place of doing penance"

- Kingston penitentiary in Canada 1835
- desire to reform sinners. institutions of possible salvation
- focus on retribution (payment in form of punishment. you need to pay for your crime)- then reconsidered in modern times.

sentencing principles:

- balance needs of offender, victim and society
- historically based on retribution: lex talionis (eye for an eye, tooth for a tooth)
- punishment should fit the crime. this became known through retribution. justice
- s.12: no cruel and unusual punishment (this is defined as grossly inappropriate to the crime)
- pre sentence report= prepared by probation officer. interviews with offender/family. decide if they're deserving of this sentence. might look at background and upbringing
- may also hear victim impact statements: from victim impacted by the crime

6 principles court has to consider:

**1. denunciation:**

- express disapproval of the crime and emphasize society's condemnation of behaviour
- 2 functions: informs citizens about what's not tolerated and it supports societal values
- judge will often give defendant a lecture and sentence that's light
- i.e. suspended sentence= no prison time but in the community w/ societal rules
- second chance. if you don't abide you go back and get possible sentence

**2. deterrence: specific and general**

- fear of punishment
- general = harsh sentences aimed to deter other potential offenders from committing same crime
- specific= deterring that specific offender from re-offending
- based on 4 assumptions:
  - offenders are rational

- must understand they will get in trouble. calculate risks
- understand the consequences
- they know the common sentences if they commit the crime

### **3. Imprisonment**

- serious offence. danger to society
- have become a recidivist: repeatedly caught committing crimes
- less than 2 years= provincial correctional facility (jail)
- more than 2 years= federal penitentiary
- or intermittent sentence (on weekends)

### **4. Rehabilitation:**

- focuses on needs of the offender

### **5. Restitution and victim surcharge:**

- english common law
- private wrongs against individual- compensate the victim
- repay for losses/some equivalent amount
- if not paid with money, services in kind: usually damaged or stolen property (goods or services)
- a fine=punitive measure paid to the state. highest summary offence = \$5000
- victim surcharge= goes to victim to help

### **sentencing options:**

- a discharge= finding of guilt without conviction registered on individuals record. a record of the discharge is kept for future possible convictions. (used for no mandatory sentence or less than 14 years)
- absolute discharge= person can say they have no criminal record and thus don't deal with employment, travel immigration problems.
- conditional discharge= conditions attached (community service) that they must complete within period of time before discharge becomes permanent. less serious offences usually.

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- probation: alone, with suspended sentence or other sentencing options
- keeping peace, good behaviour, coming to court as required, 240 community service hours over 18 months, substance abuse programs etc. max period=3 years
- suspended sentences: given and term of imprisonment and its then suspended, usually probation after. denunciation purposes that this wont be tolerated.
- sentencing disparity: major issue of criminal justice system. different sentences among different offenders influences how people see justice being done. lack of certainty.
- remand: incarcerated temporarily while waiting for trial/sentencing
- mandatory minimums: used historically sparingly. mandatory sentences usually creates a rigid system and doesn't let judges look at individual circumstances.
- 30 codes that carry a minimum sentence mandatory: 16 related to fire arms. child prostitution or impaired driving.
- sentencing myths: "getting away with murder" because Canada is lax. proved that people convicted of first degree murder spend more time in jail in Canada than other countries.
- alternative measures: things that are consistent with protection of society. warning by a police officer, diverting person to mental health institution, community programs
- restorative justice: positive environment for change, healing for offenders, victims and community. repair of social injury.
- sentencing circles: used in aboriginal communities and more. everyone involved comes together to decide how to deal with a particular case to maintain restorative justice.
- alternative dispute resolution: (ADR) less adversarial/costly way to deal with disputes. giving power back to the parties in a positive way.
- negotiation: dispute resolution. formal or informal, no third party to lead discussion. cost effective, conflict kept to minimum if they continue business relationship. disadvantages: different levels of power in the parties, more skilled at negotiating vs. not skilled. not binding in court, its a private matter

**mediation:**

- neutral third party placed between those in conflict- they need more guidance than in negotiation.
- may be legal professionals or trained in mediation
- cooperation. mediator is a facilitator rather than judge
- confidential : nothing made public like in court
- can withdraw at anytime. cost effective, friendly, more power to the parties to say what they want/what they think they're entitled too.
- no guarantee it will be successful and may still have big lawyer fees

**arbitration:**

- more formal
- arbitrator is 3rd party but can impose a solution - hired by the parties to make final decision
- binding arbitration- mandatory or not

**adjudication:**

- traditional court system. courts intervene in a dispute and impose a decision, power to enforce the decision.