Criminal Law in Canada
Criminal law is a category of public law that punishes behaviour that results in injury to people and/or property. In Canada, most criminal law is made by the federal government. Some laws made by the provincial and municipal governments are called "quasi-criminal." For example: offences under the Motor Vehicle Act. "Quasi" is Latin for "as if". Most of the criminal laws are found in the Criminal Code of Canada which applies to all provinces and territories in Canada. It contains a description of crimes and criminal law procedures.

Principles of Criminal Law
Presumption of innocence is a principle of the Canadian criminal justice system. The accused is presumed to be innocent until proven guilty.

Burden of proof means that it is Crown counsel's responsibility to prove that the accused is guilty. The defence lawyer does not have to prove that the accused is innocent.

Beyond a reasonable doubt is the expression used when determining the likelihood that the accused committed a crime. The Crown must prove that the accused is guilty and there cannot be any reasonable doubt about it in the minds of the judge or jury. If there is a reasonable doubt then the accused must be found not guilty.

Types of Crime
In the Criminal Code of Canada, three broad categories of criminal offences are used. The least serious are summary conviction offences, the more serious are called indictable offences. An offence that can be a summary offence or an indictable offence is known as a dual or hybrid offence.

Summary conviction offences are punishable by no more than six months in prison or a fine. Indictable offences allow for life sentences and larger fines. The punishment for a dual or hybrid offence is determined by the Crown’s election of whether to proceed summarily or by indictment, with the Code prescribing available sentences. For some hybrid offences, summary proceedings can result in penalties higher than those allowable for straight summary offences (for example, assault causing bodily harm, upon summary conviction, is punishable by a maximum of 18 months in jail.)

The Criminal Code of Canada has distinguished between different types of offences for three reasons. First, some offences cause greater harm to individuals or society. Second, some offences are considered more morally repugnant than others and third because some offences are conducted against property while others are against people.

The Elements of a Crime
A crime occurs when an individual breaks one of our criminal laws. Every crime has two essential parts: the physical action or actus reus and the intent or mens rea (guilty mind). For example, the crime of arson has two parts: actually setting fire to a building and doing it wilfully and deliberately. Setting a fire by accident may not be a crime. For most criminal cases both the
actus reus and the mens rea must be proven. If either element is missing, then no crime has been committed.

**Actus reus**
The physical act of committing an offence (actus reus) is more than an act, it can be an omission to act or a ‘state of being’. For example if one is in possession of an illegal narcotic, one is not acting or failing to act but merely in possession. This is a state of being. Omissions to act can also be crimes (a failure to act when required to do so by law).

If a parent fails to provide the basic necessities for children’s survival the failure to provide is an omission and a crime. The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C’s—conduct, consequences, circumstances and causation. The conduct must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it be voluntary. The law will not hold someone criminally responsible for an involuntary act. Consequences refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The circumstances aspect of the actus reus refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant circumstances would be that the act occurred at night, on someone’s property other than your own and that you entered the property without consent or lawful excuse.

The final element is causation, meaning that the conduct of the accused person must be shown to have caused the consequence (the criminal act) to occur. If Sally is charged with murdering Bill then it must be proven that Sally’s conduct caused the death of Bill.

**Mens rea**
The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. The guilty mind refers to the intention, knowledge or recklessness of the accused. Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the *Criminal Code* to establish a type of guilty mind. Words like ‘willfully,’ ‘means to’ or ‘intentionally’ are used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase ‘with intent’ or ‘for the purpose of’ to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases ‘knowingly’ or ‘knowing’ are commonly used here to indicate a specific type of knowledge. For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a criminal offence.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. If one drives 100km/h through a school zone in the
daytime, with no intention of killing or harming a child, and hits a child crossing the street and that child dies, the law would use recklessness to establish the guilty mind. Contrary to TV law, it is not necessary for the Crown to establish why an accused has committed an offence (the motive). Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

Other Elements of Crime
In addition to the physical act and guilty mind the criminal law also ascribes guilt in specific circumstances to incomplete offences and to those who are less than full participants in the offence. A crime is considered attempted if it can be established that there was intention, that some act toward committing the offence occurred and that the offence did not reach full completion.

Anyone that helps, aids, or assists before, during or after the commission of an offence is a party to that crime and can be charged under the Criminal Code as though they had actually committed the offence. Aiding or assisting someone that you know to have committed a crime is also a separate offence in Canada. Where people form an intention and common purpose to carry out an unlawful act and any one of them commits a crime in carrying out the common purpose, each person who knew that the criminal act was a likely consequence of the common purpose is also a party to that crime. Agreeing with one or more people to commit an offence is a conspiracy and is a crime in Canada. Therefore if you plan to commit a crime, even if you do not complete the act, it is a crime. Counselling others to commit an offence is also unlawful.

Criminal Case Studies
Look at the case studies below and answer the questions posed with respect to the key criminal elements covered above (e.g. mens rea, actus reus, party to an offence).

Criminal Case Studies

Case 1
Marion asked Sarah to take care of her infant boy for a few days. Marion also asked Sarah to give the infant a teaspoonful of "medicine" every night. In fact, the medicine was poison. Sarah did not think that the infant needed medicine so she did not give it to him. She put the medicine on a shelf in her living room. Later, Sarah’s five-year-old son gave the infant a large dose of the ‘medicine’ and the infant died. Marion was charged with murder.

Is Sarah or Marion guilty of murder? Explain.

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Case 2
Eva, Donna, and Claudia are walking through the park when they see their enemy Jim walking with a friend. They decide to “have some fun.” So Donna and Claudia hold back Jim’s friend while Eva punches and kicks him. Donna and Claudia laugh and yell their support to Eva. Meanwhile Mike, who is walking his dog, stops for a moment to see what is going on. Mike decides not to get involved and walks on. Eva is convicted of assault causing bodily harm.

Should Donna or Claudia be charged with an offence? Explain.

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What about Mike? Explain.

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Case 3
Murray, Josie (Murray’s wife) and Rosa agree to steal some money from Pete’s clothing store. They also agree that Pete will not be harmed and that no weapons will be used. Murray enters the store and gets Pete’s attention by asking him questions about an article of clothing. Then Josie enters the store and walks toward the cash register while Rosa acts as a look-out near the store entrance. Pete notices Josie reaching into the drawer of the cash register and yells loudly. Rosa panics, pulls a gun, and shoots Pete, severely wounding him. Murray, Josie, and Rosa run from the store and go to Russ’s apartment around the corner. Russ agrees to let them use his car and Murray, Josie, and Rosa drive to a hiding place. Pete later dies from the wound he received.

Explain the criminal acts of Murray, Josie, Rosa, and Russ.

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HANDOUT 2: Criminal Court Procedure

Criminal Court Process
There are several ways in which an accused can be brought to court: on an arrest with warrant, an arrest without warrant, a promise to appear, an appearance notice or a summons to appear.

Appearance Notice
An appearance notice is generally given by police to an accused who has not been arrested on a minor criminal offence. It compels the accused to appear before a court on a specific date. If the accused does not appear, the court can issue a warrant for his/her arrest.

Promise to Appear
A promise to appear is sometimes given to an accused that has been arrested and released by the police. It is a personal guarantee to come to court on the date specified. If an arrested person is not released by the police, there must be a bail hearing before the court within 24 hours to determine whether the person will remain in custody pending his or her trial. A recognizance is one form of interim release and is completed by either promising to pay money or depositing money or other valuable security with the court. Then the defendant will be released pending a trial or appeal but has an order to appear. If the defendant does not appear, the money promised is due or the money or security deposited are subject to forfeiture, and an arrest warrant will be issued. When an accused is charged with a serious crime, or is considered a flight risk or is likely to re-offend, an order for secure custody will detain the accused in a correctional centre until trial.

Police Report to Crown
The police prepare a report detailing all the evidence they have collected and based on that report, Crown counsel decides whether criminal charges are appropriate.

Information or Indictment
An information or an indictment is used to charge the accused with the crime. An information is sworn and signed by a peace officer who knows the case and swears that there are reasonable grounds to believe an offence has been committed. An Indictment is the charging document used in Supreme Court and is signed by Crown counsel.

In Canada there are three types of criminal offences: summary conviction, indictable and dual (hybrid) offences. An example of a summary conviction offence is trespassing by night. An example of an indictable offence is armed robbery. An example of a dual (hybrid) offence is assault. For hybrid offences, the Crown chooses whether to proceed summarily or by indictment and for the application of all further procedural rules, the offence is deemed to be the type of offence the Crown has chosen.

Form of Trial
When an accused is charged with an indictable offence, in most cases they have a right to choose between three forms of trial: to be tried by a Provincial Court judge, or by a Supreme Court judge alone or by a Supreme Court judge with a jury. This is called an election. In some serious cases like murder, the trial must be by judge and jury, unless both the Crown and the accused consent to a trial by a Supreme Court judge alone.
First Appearance
The first appearance is where an accused or his or her lawyer (counsel), makes their election (if required), enters a plea to the charge(s) and/or asks for time to retain counsel. The issue of whether or not an accused can be released on bail pending trial is often decided at the first appearance. It may take time for the accused and counsel to decide what to do about the charge so there may be a number of appearances. If the accused decides to plead guilty, sentencing may be done on a different date because a pre-sentence report may have to be prepared by a probation officer. If the accused pleads not guilty then a date for the trial or preliminary hearing is set depending on the type of offence.

Preliminary Hearing or Inquiry
If an accused is charged with an indictable offence and has elected a trial by other than the Provincial Court, a preliminary hearing is held where the Crown must present sufficient evidence to commit the accused for trial. This allows the court an opportunity to determine whether the charges against the accused are valid. The preliminary inquiry is held in Provincial Court. The accused does not have to present evidence at this time because the burden is on the Crown to establish they can convict on the evidence.

The Trial
The judge is the sole arbitrator of the law as it applies to each case and its facts but also provides a judgment in non-jury trials. The court clerk is in charge of all exhibits, physical evidence, court files and the recording of the proceedings during any type of court hearing. The sheriff manages courtroom security and escorts the accused to and from court if he or she is being held in jail during the trial. Not all persons accused of serious crimes are held in custody prior to trial.

Prosecutors in Canada represent the people through the “Crown” - a term we use because our Head of State is the Queen. The state charges the accused and is referred to as Crown Counsel/Prosecutor. Defence counsel is the lawyer for the accused in a criminal trial.

In a criminal matter, the onus is on the Crown to prove the case beyond a reasonable doubt. The judge or jurors must consider all the evidence to decide if it convinces them beyond a reasonable doubt of the guilt of the accused.

When a criminal case is brought to court and if the accused might go to jail for a term of five years or more then the accused has the opportunity to choose to have either a trial by judge alone or a trial by a judge and jury. The jury will consist of 12 members.

At the end of the trial, when both sides have stated their cases, a verdict will be reached. The verdict is the decision made about whether or not the accused person is guilty in a criminal trial. In a criminal trial with a jury this verdict must be unanimous. If the jury cannot reach a unanimous verdict it is called a “hung jury” and a new trial must be held.

Appeal
In the BC Court of Appeal there are usually only three judges sitting on an appeal unless the court is being asked to overturn one of its own decisions. In that case five judges would hear the appeal.
HANDOUT 3: What Do You Know?

After reading Handout 2: Criminal Court Procedure answer the following questions

1. Provide examples of criminal matters.

2. Which court hears the majority of criminal cases in BC?

3. Which court hears the most serious criminal cases?

4. Describe the role and responsibilities of each of the following court personnel: court clerk, sheriff and judge.

5. Why is the prosecuting lawyer called “Crown Counsel”?

6. How many jurors sit on criminal matters? How many must agree in a criminal case?

7. Describe the four ways in which an accused can be brought to court.

8. What is an “information” and how is it obtained? What is its purpose?
9. What is a Promise to Appear (PTA)?

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10. What are the options for the court when deciding what to do with a person arrested without a warrant?

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11. What is a “first appearance”? What happens if an accused fails to meet his/her first appearance?

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12. What is a preliminary hearing and why is it an important step in the criminal court process?

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13. List and describe the three different categories of criminal offences. Provide an example of each type of offence.

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14. In the criminal process what is an “election”? What types of offences have elections? Why?

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HANDOUT 4: Criminal Offences and Defences

Criminal Offences

Robbery
Physical force or threats of violence to steal property from someone.
The penalty is up to life imprisonment.

Assault
Physical force directly or indirectly without permission on another person or attempting
or threatening by act or gesture to apply force to another person. The penalty is up to
five years imprisonment.

Possession of Drugs
Having illegal or prohibited drugs in your possession. The penalty is up to six months
imprisonment and/or a $1000 fine if prosecuted by summary conviction; penalty
depends on what substance it is and how much is in possession; if prosecuted as an
indictable offence it could be up to seven years.

Trespassing by Night
Being on someone else’s property at night without permission or lawful excuse. The
penalty up to six months imprisonment and/or a $2000 fine.

Breaking and Entering
Definition gaining entry into someone’s house or commercial premises and committing
or intending to commit another offence. The penalty is up to life imprisonment if the
property is a house; up to seven years if the property is a commercial property.

Failing to Stop
Not stopping at a "Stop" sign. The penalty is fines and driver's licence suspension.

Causing a Disturbance
Disturbing the peace and quiet of the occupants of a dwelling house (Note: it could also
be making noise at night contrary to a city bylaw.). The penalty is up to six months
imprisonment and/or a $2000 fine.

Parking in a "No-Parking" Zone
Leaving your car in a place where parking is not allowed. The penalty is having your car
towed away and fines.

Dog off Leash
Walking your dog without a leash. The penalty is having your dog impounded and fines.

Mischief
Causing willful damage to someone else’s property. The penalty is up to two years on
summary conviction but if over $500.00 in value then up to ten years by indictment.
Theft
Taking something that doesn’t belong to you without the owner’s permission. The penalty is up to ten years if property stolen over $5000.00 in value; up to two years where property value is less than $5000.00

Criminal Defences

Automatism
Involuntary conduct may allow an accused to raise the defence of automatism, meaning that a person has no conscious control over his or her body movements. If the defence of automatism is successful, the accused will be lacking the necessary mens rea for a conviction. There are two kinds of automatism, mental disorder and non-mental disorder. Automatism that derives from a state of temporary insanity is classified as mental disorder automatism. If a physical blow to the body or existing medical condition triggers a state of automatism it is classified as a non-mental disorder.

Consent
In very limited situations an accused may claim that the victim consented to the accused’s act (for example, if two parties agree to fist fight). Even in a consensual fight, consent is vitiated (i.e. is no longer a defence) if the accused intended to and actually caused serious bodily harm to the victim. Consent is never a defence to murder. Consent to borrow property is a defence to theft because if the Crown wants to successfully prosecute an accused, it would need to show that there was an absence of consent from the property owner.

Duress/Compulsion
This defence is also quite limited because the duress must occur at the moment the crime occurs. To establish duress, the evidence must show that an accused has been compelled to act by threats of immediate bodily harm and that he or she believes at the time of committing the offence that the threats will be carried out. It does not apply to persons that form a conspiracy or are parties to an offence. The defence is limited in that it cannot be used in cases of treason, murder, piracy, attempted murder, sexual assault, forcible abduction, arson or robbery. The person delivering the threat must be present at the time the offence was committed.

Entrapment
This defence applies if an accused has been ‘set up’ or trapped into committing a crime by the police. Common areas for this defence are in narcotics crimes and prostitution offences. In essence, the defence is one that recognizes the abuse of process by the police. Two basic guidelines that the police must follow to avoid an entrapment defence are that the investigation must target someone already engaged in crime and they must be carrying on a bona fide (genuine) investigation.
Intoxication
As a general rule, intoxication is not a defence to a criminal charge though it can alter the appropriate charge in a given set of circumstances. However, it can be used as a partial defence to what are known as specific intent crimes. If an accused was too intoxicated to form the necessary intent to knowingly carry out a specific crime then intoxication may successfully be used as a defence. Robbery would be an example of a specific intent crime that might be mitigated by an extreme state of intoxication. The Supreme Court of Canada stated in R. v. Perrault that the degree of drunkenness must render a person "so stupid by drink that he does not know what he is doing" (Barnhorst, 1992, p.69). It is also possible to use the defence of intoxication if it leads to a state of automatism or temporary insanity (R. v. Bernard, SCC 1988).

Insanity
The test of insanity allows for three elements: natural imbecility, a disease of the mind or an inability to appreciate the nature and quality of an act. One of these conditions must exist at the time of an offence to secure the defence of insanity.

Natural imbecility means that the person’s mental development is not complete and that the condition has been caused at birth or by natural decay. A disease of the mind is a more complicated element to determine and is left to a judge to decide based upon evidence provided in court. Some recognized disorders are schizophrenia, dementia, paranoia and some types of epilepsy. The accused must suffer from the impairment at the time of the crime, though they need not have a permanent condition. The burden of proving one’s state of insanity rests with the accused and not with the Crown. Although this is a clear violation of the right to be presumed innocent, under the Charter, the Supreme Court of Canada has ruled that it would be unreasonable for the Crown to disprove insanity in every case.

Mistake of Fact/Mistake of Law
Mistake of fact occurs when an accused believes that his or her actions are not criminal by virtue of the circumstances. The mistake must be a) an honest one and b) such that no offence would have been committed if the circumstances had been as the accused believed them. If Harold takes Emma’s lighter, believing it to be his, a mistake of fact has occurred and no crime has been committed. The mistake relates to the mens rea because the accused, if the facts are as they believe them to be, is not acting with a guilty mind. A mistake of law is not mere ignorance of the law as this is not an excuse to commit crimes. Mistake of law is a limited defence but it can be used with many regulatory offences made to protect public safety or health. If an official provides consent or permission to act, but the act is found in violation of the law, then one may use the defence of mistake of law. In some cases mistake of law and mistake of fact coexist. For example if a tow truck driver is asked to remove a vehicle from private property, by colour of right he is not committing a theft. Colour of right refers to an honest mistake of fact or law that causes a person to believe they have a legal right to possess property.
Necessity
Duress is one type of the general defence of necessity. The broader defence of necessity is rarely used in our system. The defence essentially comes to play when an ordinary person is compelled to break the law in an emergency situation. If one has to illegally enter a building to save a child from fire, the defence would be applicable.

Self-Defence/Provocation
Self defence is another specific type of the defence of necessity. Provocation is not a defence in itself but a condition relevant to the use of self-defence of one’s property or personal safety. Self defence occurs under two strict conditions a) the accused must be under reasonable fear of death or serious bodily harm and b) the accused must believe there was no other way to save himself or herself. It is possible to use self-defence even if the victim initiated the assault by verbal threats or a physical act. One may also act in defence of others but one cannot use more force than is necessary to prevent the assault or its repetition. We also have the right to defend personal property either fixed or moveable, but very specific rules apply to each type and to the various circumstances that create the trespass. Provocation can also, if established by the evidence, reduce murder to manslaughter.

This information has been adapted from the following websites:

www.justice.gc.ca
HANDOUT 5: Working with Criminal Offences and Defences

Can you name the crime?

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2. ______________________________
3. ______________________________
4. ______________________________
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6. ______________________________
7. ______________________________
8. ______________________________
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10. ______________________________
11. ______________________________
Match the Crime to Its Definition

<table>
<thead>
<tr>
<th>Crime</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Trafficking of a narcotic</td>
<td>Having something in your possession or control that you knew was stolen.</td>
</tr>
<tr>
<td>First degree murder</td>
<td>Lying to or deceiving someone to gain a personal benefit.</td>
</tr>
<tr>
<td>Contempt of court</td>
<td>Causing and intending to cause another person’s death.</td>
</tr>
<tr>
<td>Possession of stolen property</td>
<td>Intending to and killing someone according to a plan.</td>
</tr>
<tr>
<td>Fraud</td>
<td>Using physical force and a weapon to take property away from someone.</td>
</tr>
<tr>
<td>Arson</td>
<td>Disregarding and disobeying an order made by a judge.</td>
</tr>
<tr>
<td>Armed robbery</td>
<td>Selling illegal or prohibited substances such as cocaine or heroin.</td>
</tr>
<tr>
<td>Second degree murder</td>
<td>Causing another person’s death without intent.</td>
</tr>
<tr>
<td>Impaired driving</td>
<td>Operating a vehicle while physically and mentally unable to do so.</td>
</tr>
<tr>
<td>Possession of a weapon</td>
<td>Failing to come to court when you have been required to do so.</td>
</tr>
<tr>
<td>Failure to appear</td>
<td>Carrying a weapon that might be dangerous to the safety of others.</td>
</tr>
<tr>
<td>Manslaughter</td>
<td>Willfully and deliberately setting a fire to damage property.</td>
</tr>
</tbody>
</table>

Answer: _________________________________________________________