

## COURSE OUTLINE

Course:	LAWS 2202 A - Obligations
Term:	Winter 2015
Prerequisites:	LAWS 1000
Instructor	Dr. Jennifer Barrigar
Lecture	6:05m – 8:55pm Mondays Please check with Carleton Central for current room location
	Please read the assigned readings before the lecture. Completion of Lecture Material Exercises and online forum discussions counts towards Class Participation Marks
Contact:	jennifer_barrigar@carleton.ca
Office Hours:	virtually or by appointment

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*Academic Accommodations*

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website:  
<http://www2.carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website:  
<http://www2.carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments

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in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your ***Letter of Accommodation*** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

### ***Plagiarism***

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at: <http://www.carleton.ca/studentaffairs/academic-integrity/>

### ***Department Policy***

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

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## **COURSE DESCRIPTION**

This course examines the concepts employed by the law for creating and enforcing legal obligations between persons within society, including contract, tort, unjust enrichment and

fiduciary obligation. Consideration is given to the role of persons and the role of the state in ordering private legal obligations.

These subjects can (and do) form the basis for entire courses, suggesting that our treatment of them this course is selective and driven by a particular and limited focus. As we discuss the law of torts, we focus on negligence causing personal injury rather than the many other dimensions of tort liability. Our focus is on how tort law protects bodily integrity and navigates policy questions between individual autonomy and social responsibility. Is tort law a sentinel of safety? Within the consideration of contract law, material is focused on doctrines of formation, terms, and consideration and how they have changed in response to changes in how markets function, the changing regulatory involvement of the state, and shifts in the role of the judiciary. The broadest contours of unjust enrichment (restitution) are addressed comparing the approach of the courts to defective transactions in the market on the one hand to resolving property disputes in the family in the absence of a formal legislative framework (such as that provided by marriage). A similar broad brush approach is taken to the law of fiduciary obligation, locating it within the thesis that the private law of obligations is concerned not only with markets but also with ensuring that we can rely on one another.

### **REQUIRED TEXTBOOK:**

The following casebook has been prepared for this section of the course and is required reading:

T. Brettel Dawson ed., *Obligations in Private Law (North York, Captus Press, 2012)*.

Available for purchase in the University Bookstore.

- Note: Do NOT purchase Sargent and Atkinson, *Just Between the Law and Us* in any iteration (this text was recently divided into two volumes). This course uses quite different material.

### **SUPPLEMENTARY TEXTS:**

Where there are cases or articles assigned that are not included in the casebook, they will be made available via cuLearn.

### **EVALUATION**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

## Components

There are 3 assignments in the course. Each assignment consists of short answers and short essays. In addition, 10% of course marks are allocated to class participation (see below).

All components must be completed to receive a passing grade in the course. For a note about the Take Home Format, see Appendix.

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Component	Value	Posted Information	Due
<b>Class Participation</b>	10%	Student create/post on e-Group discussion boards on substantive topics over the semester.	e-Group postings may be made at any time until the last day of the semester,, 8 April.
<b>Assignment 1: Torts</b>	25%	Covers: Classes 2,3,4 Will be available on cuLearn	Due: Feb 9
<b>Assignment 2: Contracts</b>	30%	Covers: Classes 5.6.7 Will be available on cuLearn	Due: Mar 9
<b>Take Home Exam: Contracts, Unjust Enrichment, Conscience</b>	35%	Covers: Classes, 8 – 12 and themes from Class 1 Will be available on cuLearn	Due: April 23

## Online Submission and Return

Assignments are handled electronically rather than in hard copy through cuLearn Assignments. You receive the assignment via cuLearn (download and read it on the date posted please). You attach your assignment as a file which you upload and submit for marking through cuLearn. They are marked online and feedback/your paper is returned to you online.

You should keep a copy of all assignments and examinations until your final grade is confirmed. We may contact you for an additional copy if something goes wrong in submission.

### On Time Expectation

The due dates for all work are identified in this Outline. You have at least 10 days to complete all work assigned.

I expect you to make a note of these dates NOW and plan your semester around timely completion. Look at your schedule as a whole for the semester – if one week looks like it's particularly heavy – BOOK IT OFF NOW (BOOK OFF WORK, DON'T ACCEPT INVITATIONS THAT WEEK ETC).

I expect you to submit your work ON TIME. Subject to a very modest grace period for unforeseen, very short term situations at my discretion, I impose heavy penalties for work which is submitted late without an extension as set out below:

### Late Penalties

- You will lose 5% off if you hand any work in on the due date after the deadline but before midnight.
- You will lose a further 5% if you hand it in the 'next day' any time before midnight
- You will lose additional marks at the rate of 10% per extra day (counted from stroke of midnight and including weekend days) if you hand the paper in then.
- You will receive ZERO if you hand in your work more than seven days late although I will accept it towards course completion.

### Extensions:

ONLY the Professor can grant extensions and ONLY for Assignments 1 and 2. If you are unable to submit a Take Home Assignment during the Examination Period you MUST seek a formal deferral through the Office of the Registrar.

In term extensions should be requested in advance of the due date. They will only be approved after supporting documentation has been reviewed and accepted. Circumstances warranting a request for an extension include: serious illness requiring medical attention that requires you to be 'off school or emergency circumstances in your immediate family (such as a death of a close relative or medical care required for children or elderly dependents).

Extensions will not be granted for computer problems, work schedule conflicts or academic overloads (except in exceptional circumstances). Extensions will not

granted for mild illnesses (eg., a cold, a tummy bug). If you are too sick to complete your work, you need to see a doctor – and get a medical note!

### **Back Up Your Work!**

It is your responsibility to create back-up copies of your work to prevent losing the work at the last minute due to computer problems on your own or university equipment.

I recommend the following back up strategies: upload drafts to the cloud, email a draft to yourself whenever you finish a segment of work on it or your work session, copy it to a USB thumb-drive or an external hard drive.

### **Doing Well**

You are expected to prepare answers in which you analyze materials covered in class and readings answering specific questions about cases (principles and reasoning) or literature (arguments and propositions).

To do well you will have to read the material in the casebook, attended the lectures and participated in discussions in relation to concepts and themes. The class slides provide an extensive backbone and guide to the lectures to assist you in note-taking – the slides are NOT a substitute for the textbook or for attendance.

### **Individual Work Only and Academic Integrity**

You must follow the University's policies on academic integrity available at <http://www2.carleton.ca/studentaffairs/academic-integrity/>. You must complete all work individually and it must be fully original. You must not rely excessively or exclusively on quotations as this will not count as being your own work. Do not plagiarize (copy and paste without attribution) from published, unpublished or internet sources. Attribute all sources you have used directly or indirectly (paraphrased) and indicate this by using appropriate citation format. Do not share draft (or final) work with others in the class. Do not share your electronic files with other students as they may copy your work and you will be equally subject to academic investigation.

I reserve the right to compare all files with other submissions in this course and other offerings of the course. I rigorously pursue suspicion of plagiarism and, without exception, refer to the Office of the Dean. Further if 'off topic' work is submitted, I reserve the right to consult with your other instructors to confirm that you are not 're-using and re-cycling' which is strictly prohibited.

**CLASS SCHEDULE****LEARNING OBJECTIVES**

- Locate cases in their historical (economic, philosophical and social) contexts
- Apply theoretical positions and arguments to move from descriptive understanding towards critical engagement with and assessment of legal principles in the area of Obligations.

**Learning Points**

By the end of this course you should be able to:

- Summarize and analyze case law in the area of obligations and in particular,
  - Distil relevant facts and issues in cases discussed,
  - Provide a correct account of the judicial reasoning (both majority and dissenting opinions) and results in cases
  - Identify and assess the role of policy in the judicial decision.

To do so, you will need to be able to:

- differentiate between the different kinds (or branches) of obligations in private law;
- identify the essential principles of obligation in each branch as derived from leading cases;
- explain how private law principles reflect social and economic objectives;
- link policy considerations and normative vision of judges to legal outcomes;
- contrast the approaches of the common law and equity particularly in relation to defective transactions and broken relationships; and
- trace the operation of residual, cross-cutting principles in private law (such as reliance, confidentiality and conscience) to the dominant principles of individualism, exchange and autonomy in the market

**Weekly Schedule**  
(Subject to revision)

<b>Class</b>	<b>Date</b>	<b>Topic</b>	<b>Readings</b>
1	Jan 5	<b>Introduction</b> <ul style="list-style-type: none"> <li>• Scope of Obligations in Private Law</li> </ul>	Chapter 1

		<ul style="list-style-type: none"> <li>Opening Case Study: <i>Norberg</i></li> </ul>	
2	Jan 12	<b>Torts 1: Protecting Person and Property: Then and Now</b> <ul style="list-style-type: none"> <li>Review of scope of tort law; interests protected; strengths and limitations of private law as response to harms; emerging torts</li> </ul>	Chapter 3 (b) (e) (f) and (g) Others may be assigned  Hot Coffee Movie Ted Talk (Botsford)
3	Jan 19	<b>Torts 2: The Glorious Principle and Contours of Negligence Obligation</b> <ul style="list-style-type: none"> <li>Donoghue v Stephenson and more recent cases; basis of negligence liability in Canada (duty of care, standard of care, causation and compensation).</li> </ul>	Chapter 2 Chapter 3 (a) (c) (g)  Paisley Snail Movie
4	Jan 26	<b>Torts 3: Case Studies</b> <ul style="list-style-type: none"> <li>Social Host Liability (allowing guests to drive away from home parties when drunk)</li> <li>Police Liability (negligent investigation)</li> </ul>	Chapter 4A and 4B  We may include some consideration of the recent Oppal Report, <i>Forsaken</i> (Pickton murders (2012)).
		<b>ASSIGNMENT #1 AVAILABLE</b>	
5	Feb 2	<b>Contracts 1: Exchange and the Market</b> <ul style="list-style-type: none"> <li>Philosophy and values in classical model of contract law; dissonance and changes between law and contractual behavior</li> </ul>	Chapter 5  Movie: Peevyhouse
6	Feb 9	<b>Contracts 2: Formation and Terms</b> <ul style="list-style-type: none"> <li>When is a contract formed? Does the context matter?</li> <li>consideration</li> </ul>	Chapter 6A and 6B Chapter 7
		<b>ASSIGNMENT #1 DUE</b>	
	Feb 16	NO CLASS	
7	Feb 23	<b>Contracts 3: Going Forward</b> <ul style="list-style-type: none"> <li>how is contract law shaped, challenged and applied in online spaces?</li> </ul>	Movie: Terms & Conditions  Exploitation by Clickwrap (online)  Alternate visions of contract law in 2025

			(online) <a href="http://boingboing.net/2010/04/16/video-game-shoppers.html">http://boingboing.net/2010/04/16/video-game-shoppers.html</a>
		<b>ASSIGNMENT #2 AVAILABLE</b>	
8	March 2	<b>Unjust Enrichment 1: Defective Transactions</b> <ul style="list-style-type: none"> <li>• What happens if something 'goes wrong' and an intended agreement is reneged upon or not completed?</li> </ul>	Chapter 8
9	March 9	<b>Unjust Enrichment 2: Broken Relationships</b> <ul style="list-style-type: none"> <li>• What happens when a common law couple breaks up – who has rights to property accumulated during the relationship and on what basis?</li> </ul>	Chapter 9  A Feminist Critique of Enrichment (online)
		<b>ASSIGNMENT #2 DUE</b>	
10	March 16	<b>Private Law Obligations: TRUST</b> Fiduciary Obligations: (Social) Trust <ul style="list-style-type: none"> <li>• Contract law seems to encourage self-interested behavior and making a profit. It assumes people can take care of themselves in bargains. Why (and when) does the law draw a line and prohibit someone taking advantage of another person?</li> </ul> Reliance: (Individual) Trust <ul style="list-style-type: none"> <li>• When will judges set aside 'strict legal rights' which a person may have under contract law or property law and require them to act 'in good conscience'?</li> </ul>	Chapter 11 Chapter 10
11	March 23	<b>Inequality of Bargaining Power</b> <ul style="list-style-type: none"> <li>• In our final case study (of bank guarantees) we will pull together a number of themes about contractual obligation and equity to analyze and assess the overall goals of the</li> </ul>	Chapter 12

		law of Obligations.	
12	March 30	<b>Case Study: Protecting Reputation</b> <ul style="list-style-type: none"> <li>• Statutory torts v common law torts</li> <li>• State v individual action</li> <li>• Economic value: Appropriation of Name or Likeness</li> <li>• defamation</li> <li>• Threshold issues: establishing harm</li> </ul>	Les Editions Aubry  Krouse v Chrysler Gould v Stoddart Publishing Joseph v Daniels  Jones v Tsigie Somwar v McDonalds
<b>DUE</b>	<b>April 23</b>	<b>TAKE HOME EXAM</b>	

### MORE INFORMATION ON HOW THE COURSE WILL RUN

**cuLearn**                    **cuLearn**, the new Carleton Learning Management System is essential for this course. Lecture slides, course information, lecture slides, discussion boards are available only through this modality.

Please post an introduction to yourself in the first two weeks of class and post on topics you find interesting (or where current examples relate to course material). There will also be an FAQ for Assignments.

**e-engagement**                    I want you to stay in the course and succeed in this course. I welcome you to office hours and I will be ‘online’ on chat during my scheduled Office Hours if you want to ‘pop-in’ virtually to ask a question.

Please post an introduction on the cuLearn page: say where they are studying from and maybe plan to link up for a coffee once or twice a term through social media.

Expect to hear from us during the term if you have been keeping a low profile!

**Email and Etiquette**                    Email is a great way to be in touch with me, don’t expect me to reply instantly. My goal is to respond within 48 hours. I’ll definitely hover during assignment crunch times and try to problem solve quickly – but I can’t promise to be up in the middle of the night =)

When you get a mark back, wait 48 hours (and read over the feedback a couple of times) before emailing about it. Always think through your inquiry before emailing.

For all activities, individual work is required so while study groups are a good idea, sharing ideas on assignments is not. Vigorous debate and inquiry is encouraged but not personal criticism.

### **Take Home Format    What are They? Why do I Use Them?**

A Take Home Assignment requires you to think about the material we have covered and prepare short essays which analyze and discuss course material. It is open book and you have quite a long period of time to prepare your answers.

I prefer to use this format because I consider it a better barometer than a 3-hour examination that you cram for and regurgitate! I am not looking for yes/no/descriptive answers but analysis and assessment.

Managing take homes: You should download the assignments as soon as they are posted and review them. Then create a plan so that you can do a good job on the Assignment: read the questions and figure out which ones interest you the most where you have a choice. Set aside blocks of time to review your notes, the slides and readings related to the questions (think of this as focused study time when you know what's 'on the exam'); then draft your answers. Be sure to read them over (and revise) before submitting to make sure you have said what you think you've said and that you've answered the questions asked and referred to course material specifically.