

Course Outline

COURSE: LAWS 4106

TERM: Fall 2012

CLASS: Day & Time: Mondays 1805hrs
Room: Please check with Carleton Central for current room location.

INSTRUCTOR: Leo S. Russomanno
(CONTRACT)

CONTACT: Office: B442LA – Contract Instructors’ Office
Office Hrs: TBA
Telephone: (613) 296-2551
Email: russomanno@wsgalaw.com

Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities could include but are not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that I receive your Letter of Accommodation, no later than two weeks before the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by the deadlines published on the PMC website. <http://www1.carleton.ca/pmc/students/dates-and-deadlines/>. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This class introduces key theoretical and historical readings on the relationship between law and violence. The question that will be repeated throughout this course is: how do systems of law understand, confront, and enable violence? We will be looking at both international and domestic law, with several examples from each. We will begin with a rudimentary discussion of the sources of law, focusing on the debate between positivism and natural law. After moving away from theory, there will be a discussion of several issues in Canadian law, for example self defence, citizen’s arrest, limits on state actors, women in the legal system, aboriginals in the legal system, and the surveillance state in the post 9/11 era. Moving into international law, students will be asked to look at the pre-Nuremberg era concerning the law of conquest, the development of individual criminal responsibility at Nuremberg, humanitarian intervention, and the laws of war. This course will cover a broad array of topics which are aimed at deepening our understanding of the sometimes uneasy relationship between systems of law and violence. Critical analysis and debate are encouraged.

The class will be based on lectures, discussions and in-class activities. Each student is expected to do the background readings for each class and to be prepared to engage in discussion and analysis of the relevant issues.

REQUIRED TEXTS

Students require Michael Byers, *War Law: Understanding International Law and Armed Conflict* (Douglas & McIntyre Ltd.) and the course pack for Laws 4106A, both will be available at: Octopus Books, 116 Third Avenue, off Bank Street. (613) 233-2589, <http://www.octopusbooks.org>. A copy of the same course pack is on reserve at the library. You may take it out to read and photocopy, but please make sure to put all items back in the same order.

SUPPLEMENTARY TEXTS

EVALUATION

(All components must be completed in order to get a passing grade)

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40% - Mid-term exam (take home)

60% - Final exam (take home)

Each exam will include a number of questions of which students are asked to choose from to provide long answers.

Note: Late assignments will be marked down one half-letter grade for each day submitted after the due date.

SCHEDULE (subject to modification)

WEEK 1 - September 10th:

Introduction

- Personal introductions
- Review of course outline
- Expectations of students
- Structure of class
- What is law?
- The State's monopoly on the use of force
- Domestic/international law

Readings:

Gall, *The Canadian Legal System*, pp. 1-19

WEEK 2 - September 17th:

Topics in Domestic Law

- **Legal Prohibitions on Violence:** criminal law, tort law, immigration law, family law
- **Exceptions:** police powers, self defence, provocation, consent, citizen's arrest

Readings:

Roach, Healy, Berger, Stribopoulos, *Criminal Law and Procedure*, pp. 45-70.

Jonathan Kay, "Enough With the Charter Worship",

<http://fullcomment.nationalpost.com/2012/04/16/jonathan-kay-enough-with-the-charter-worship/>

Adam Dodek, "Don't Hate us Because Our Constitution is Beautiful",

<http://fullcomment.nationalpost.com/2012/04/17/adam-dodek-dont-hate-us-because-our-constitutions-beautiful/>

WEEK 3 - September 24th:**Women in the Legal System – PART 1**

- Historical overview
- Sexual violence
- Domestic violence

Readings:

Kathryn Felty, "Gender Violence: Rape and Sexual Assault", in *The Criminal Justice System and Women*, pp. 323-333

Cote, Majury, and Sheehy, "Stop Excusing Violence Against Women" -

http://www.nawl.ca/ns/en/documents/Pub_Report_Provoc00_en.pdf pp. 1-27.

Constance Backhouse, *Petticoats and Prejudice*, pp. 81-111

WEEK 4 – October 1st:**Women in the Legal System – PART 2**

- domestic violence cont.
- Prostitution and the law

Readings:

Roach, Healy, Berger, Stribopoulos, *Criminal Law and Procedure*, pp. 955-974

Rosemary Cairns-Way, "Culture, Religion and the Ordinary Person: An Essay on R. v. Humaid", 41 R.D. Ottawa 1 - 22

R. v. Bedford, 2000 CanLII 2487 (ON CA), <http://canlii.ca/t/1fb3f>

WEEK 5 - October 15th:**Aboriginals and the Law**

- Historical overview
- Socio-economic factors
- The criminal justice system

Readings:

Movie: “Finding Dawn” – view free online at http://www.nfb.ca/film/finding_dawn
Justice Harry S. Laforme, *The Justice System in Canada: Does it Work for Aboriginal People?* *Indigenous Law Journal* (2005) 4 *Indigenous L.J.* 1 - 17
R. v. Ipeelee, 2012 SCC 13 (CanLII), <http://canlii.ca/t/fqg00>

WEEK 6 - October 22nd:**Beyond a narrow definition of violence**

- Hate speech
- Civil disobedience
- Criminal harassment

Readings:

Roach, Healy, Berger, and Stribopoulos, *Criminal Law and Procedure*, pp. 96-109
Andrew Coyne, “Why Does Canada Have a Hate Speech Law?” -
<http://fullcomment.nationalpost.com/2012/07/09/andrew-coyne-why-does-canada-still-have-a-hate-speech-law/>
“Why the ACLU is Right to Defend the KKK” -
<http://www.guardian.co.uk/commentisfree/2012/jun/29/aclu-right-represent-ku-klux-klan>

WEEK 7 - October 29th:**National Security and the Law – PART 1**

- The ‘war on terror’
- State vs. retail terrorism

Readings:

Noam Chomsky, Edward Herman, *The Washington Connection and Third World Fascism*, pp. 85-95.
Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9 (CanLII), [2007] 1 SCR 350, <http://canlii.ca/t/1qljj>
Dan Gardner, “It’s Not Just About Khadr”,
<http://www.ottawacitizen.com/opinion/just+about+Khadr/6948842/story.html>

WEEK 8 November 5th:**National Security and the Law – PART 2**

- Incorporating national security into the law

Readings:

Charkaoui v. Canada (Citizenship and Immigration), 2008 SCC 38 (CanLII), [2008] 2 SCR 326, <http://canlii.ca/t/1z1c0>

Jimmy Carter, “A Cruel and Unusual Record”,
http://www.nytimes.com/2012/06/25/opinion/americas-shameful-human-rights-record.html?_r=1

Ibrahim Mothana, “How Drones Help Al Qaeda”,
<http://www.nytimes.com/2012/06/14/opinion/how-drones-help-al-qaeda.html>

Washington Post Editorial Board, “The U.S. is Right to Strike Hard at Terrorists in Yemen”, http://www.washingtonpost.com/opinions/keeping-the-pressure-on-al-qaeda/2012/05/08/gIQAgfDUBU_story.html#

WEEK 9 – November 12th:**International Law – PART 1**

- Origins and development of international law
- The Law of Conquest
- International right of self defence

Readings:

John Currie, *Public International Law, Chapters 1 & 3*; pp. 1-17; 79-101
 Michael Byers, *War Law, Part 2*; pp. 51-83.

WEEK 10 - November 19th:**International Law – PART 2**

- Nuremberg
- The United Nations
- Ad-Hoc Tribunals and the International Criminal Court

Readings:

The U.N. Charter – found in Michael Byers, *War Law*, p. 156.

John Currie, *Public International Law*, Chapter 10; pp. 353-383.

Kriangsak Kittichaisaree, *International Criminal Law*, pp. 17-42.

OPTIONAL: Gary Jonathan Bass, *Stay the Hand of Vengeance*, pp. 147-205.

WEEK 11 - November 26th:**International Law – PART 3**

- Humanitarian Intervention
- The Responsibility to Protect

Readings:

Michael Byers, *War Law*, Part 1; pp. 13-40.

Michael Byers, *War Law*, Part 3; pp. 83-113.

OPTIONAL: Kriangsak Kittichaisaree, *International Criminal Law*, pp. 67-128.

WEEK 12 – December 3rd:

International Law – PART 4

- **International Humanitarian Law**

Readings:

Michael Byers, *War Law*, Part 4; pp. 113-147