

COURSE OUTLINE

COURSE NUMBER - TITLE	LAWS 4801 – RISK AND THE LEGAL PROCESS
SECTION:	B
TERM:	Winter 2025
PREREQUISITES:	LAWS 2908 or PAPM 3000 and fourth-year Honours standing
DAY & TIME:	Thursdays 2:30 – 5:30 pm
DELIVERY METHOD/ROOM:	IN-PERSON / check with Carleton Central for latest information
INSTRUCTOR (CONTRACT):	Tara Ashtakala
CONTACT INFORMATION:	OFFICE HOURS: By appointment EMAIL: Tara.Ashtakala@carleton.ca
BRIGHTSPACE PAGE	https://brightspace.carleton.ca/d2l/home/285201

UNDERGRADUATE CALENDAR COURSE DESCRIPTION (GENERAL)

Application of risk assessment and management in various legal arenas including insurance, liability and tort, litigation management, environmental protection, and sentencing and parole.

INSTRUCTOR COURSE DESCRIPTION (SPECIFIC)

Risk management is **not just for business majors** anymore; it is an increasingly important aspect of both public and private activities. Nowadays, the ability to anticipate the consequences in law of a proposed or uncontrollable event is essential for legal counsel, whether your client is an individual involved in an everyday consumer transaction or a construction company carrying out a megaproject or a government institution concerned with protecting the safety of the public. Policies, contracts and even lifestyle choices can benefit from the scrutiny of the legal professional in order to avoid lawsuits or other adverse legal consequences. This course is intended to introduce students of law and legal studies to the situations, actors, methodology and societal impact of risk management. You will be surprised and intrigued by the diversity of issues that you will be exposed to in this course and you will use the skills you learn herein in your future law-related career.

LEARNING OUTCOMES

- to identify situations of risk with legal implications
- to determine which actors (individuals, governments, courts) are affected by the risk issue
- to evaluate the strategies employed by those actors for preventing or mitigating (ie managing) risk
- to explore the impact of the risk and its management on law and society as a whole

REQUIRED TEXTS

There is no textbook for this course. **Required Readings will be posted in PDF form on Brightspace;** The specific pages to be read will be indicated in the pre-lecture notes which will also be posted on Brightspace. **YOU WILL NEED TO PRINT OUT THE ASSIGNED PAGES OR PARAGRAPHS FROM THE READINGS FOR USE DURING THE EXAM, SO IT IS HIGHLY ADVISED THAT YOU PRINT THESE OUT ON A WEEKLY BASIS, RATHER THAN LEAVING ALL THE PRINTING TO THE END OF THE TERM.**

COURSE DELIVERY:

- This course will be delivered in person, on the day and at the time noted above
- Pre-lecture notes will be posted on Brightspace prior to each class, indicating readings to be done ahead of lecture and containing questions that help the student understand the readings.
- It is during lecture that the answers to the questions in the pre-lecture notes will be discussed.
- Case study exercises, involving group discussions, will also be conducted during the class period
- The presentation and research paper components of evaluation in the course will be submitted by students as per the deadlines indicated in the “Evaluation” section below.

NOTE-TAKING:

The pre-lecture Power Point slides are designed to allow you to enter notes directly on the slides during lecture. Alternatively, you can inscribe notes in a single Word document which will have to be printed out before the exam. **PLEASE DO NOT SAVE NOTES IN GOOGLE DOCS OR ANY OTHER APP BECAUSE YOU WILL NOT BE PERMITTED TO ACCESS SUCH SITES DURING THE EXAM.**

EVALUATION

Generative Artificial Intelligence (AI) tools:

It is prohibited in this course to use generative AI tools (eg ChatGPT) to produce assessed content. Any work submitted for evaluation that has been produced using AI will be considered a violation of academic integrity standards.

Standing:

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 have been approved by the Department and Dean.

All components must be completed in order to obtain a passing grade in course

1. Audio-visual Presentation - 35% of final grade

- Each student will be required to complete a 10 minute presentation on a risk issue of your choosing.
- Your task in the presentation assignment is to **take a position** on the risk topic you have chosen **and** to impart – to your colleagues and to me – your **understanding** of:
 - why the current social and legal impacts of the risk are a problem;
 - how the law has dealt with the risk so far;
 - the defects in the law (this is why the risk is causing social and legal problems); and

- how the defects in the law should be rectified, using law.

By the end of the presentation, you should have persuaded your audience that your position on the issue is in fact the best way to minimize the risk of the adverse legal consequences recurring in the future.

- Since, as we will learn in the course, legal risk cannot be entirely prevented, the assignment is generally about finding the best **legal** course of action – whose benefits outweigh the risks - to deal with the ongoing legal problem you have identified.
- Format: the presentation of **two** (2) sections:
 - **Creative segment:** the first 5 minutes is VIDEO should consist of a FICTIONAL STORYLINE illustrating:
 - why the current social and legal impacts of the risk are a problem
 - You must therefore create ORIGINAL content and film it.
 - Do NOT submit a video of you simply reading off notes.
 - Do NOT use illustration apps to create your video content. You need actual human characters in your video.
 - You can ask fellow students, friends or family members to play the characters in your storyline. Note that you do not need special equipment to create videos: filming can be done with mobile phones and video editing apps are usually included with computer operating systems like Windows, or are otherwise available to download for free online.
 - Law and risk tends to address serious topics, so have fun with this part and try to make your audience laugh about your chosen risk!
 - **Analysis segment:** the remaining 5 minutes of your presentation must consist of a live formal presentation to the class about:
 - how the law has dealt with the risk so far;
 - the defects in the law; and
 - how the defects in the law should be rectified
- You can use presentation software (Powerpoint, Prezi) for this portion..
- THE CONTENT OF THE PRESENTATION MUST BE PRESENTED IN FRONT OF THE WHOLE CLASS AND FROM MEMORY; YOU ARE NOT PERMITTED TO READ OFF A PHONE, LAPTOP OR NOTES. IF YOU ARE NOT COMFORTABLE WITH THIS FORMAT, THEN YOU SHOULD RE-CONSIDER WHETHER YOU STILL WANT TO TAKE THIS CLASS, AS NO ADJUSTMENTS TO THE FORMAT WILL BE MADE FOR ANY REASON.
- Bullet points on your slides must not contain full sentences; instead, they should consist of key words to help you remember the point. Graphics or illustrations are allowed.

PRESENTATION SUBMISSION DEADLINES :

- **THE DATES FOR SUBMITTING PRESENTATIONS WILL BE DETERMINED AS OF THE 1ST LECTURE, WHEN FINAL ENROLMENT IN THE COURSE CAN BE CONFIRMED.**
- **YOUR SUBMISSION DATE WILL BE ASSIGNED RANDOMLY.**

- **ONCE ASSIGNED, YOU MAY REQUEST A CHANGE OF DATE, ONLY IF A VACANT SPOT IS AVAILABLE ON THE SCHEDULE, AND REQUESTS CAN BE MADE ONLY UP UNTIL 23RD JANUARY.**
- **ALTERNATIVELY, YOU CAN ARRANGE WITH ONE OF YOUR COLLEAGUES TO SWAP SUBMISSION DATES. IF YOU DO SO, YOU NEED TO INFORM ME OF THE CHANGE RIGHT AWAY. OTHERWISE, I WILL BE EXPECTING YOUR SUBMISSION ON THE ORIGINAL DATE.**
- **NO CHANGES TO YOUR VIDEO SUBMISSION DATE WILL BE ACCEPTED AFTER 23RD JANUARY 2025.**

2. Term Essay - 25% of final grade

The essay builds upon the basic arguments made in the presentation on the chosen risk topic: it is meant to be a scholarly research piece. By the end of the paper, your research and arguments should persuade the reader that your proposed legal solutions are the best way to minimize the risk of the adverse legal consequences recurring in the future.

- **Due on 3 April 2025** : upload to Brightspace
- **Length:** 10-12 pages, plus bibliography.
- **Use Canadian Guide to Uniform Legal Citation (McGill Guide) at <https://libguides.ucalgary.ca/guides/mcgillguide>**
- **Use Canadian spelling only.** This is a requirement and not to be ignored. If you are going to use spell-checking applications to review your text, you should first ensure that the language settings on your computer are set to Canadian English.

3. Formally-scheduled, open book final examination - 40% of final grade

- The goal of the timed final exam is to apply the course content to 1) solve a fictitious client's legal problem and to 2) thoroughly discuss a thematic issue.
- To be scheduled during final exam period: 11-26 April 2025.
- **The final exam will be written in person, Any student who does not write the final exam on the day it is scheduled, for whatever reason, must apply for a deferral.** Note that there is no guarantee that your application will be granted. See the conditions for deferring an exam: <https://carleton.ca/registrar/deferral/>
- The final exam will be in-person, paper-based and written digitally; this means that: the notes you access to write the exam must be in paper form but the exam itself will be written on campus computers.

LATE PENALTIES:

- Penalties for late submission of assignments will be 1 point/mark per day. This is based on fairness to the class members who turned in the assignment on time.

LECTURE TOPIC SCHEDULE * assigned readings may change, depending upon their relevance to current events happening at the time of each lecture. Therefore, the most accurate and updated list of readings to be done in this course will always be found on the 1st page of the pre-lecture slides, that will be posted ahead of every class, on Brightspace.

THE NATURE OF RISK AND UNCERTAINTY

9 Jan INTRODUCTION AND OVERVIEW

16 Jan SITUATIONS OF RISK

- Vern Krishna, “Crime Pays More If You’ve Got Class”
- Anna Sharratt, “Risk Renewal”
- Nicole Baer, “Thinking Outside The Courtroom”
- Jennifer Couzia-Frankel, “As gene-testing surges, lawsuits aren’t far behind” :
- WFP Press Release, “World’s first humanitarian insurance policy issued”
- Dostmohammed and Long, ‘Regulating the Sharing Economy’
- BBC News online, 'Laser scam' gamblers to keep £1m , 5 December
- Dan M. Kahan, ‘A Risky Science Communication Environment for Vaccines’

23 Jan ONGOING DEBATES IN RISK MANAGEMENT

- M. Megalli & A. Friedman, “Fronting for Business”
- A. Wildavsky, “No Risk Is the Highest Risk of All”
- Alexandria S. Palazzo, ”No-fault insurance...”
- C. Hubbard, “Culpability and Compensation in Canadian Health Care: Much Ado About No-Fault?”
- F. van Waarden, “Institutions and Innovation - the legal environment of innovating firms”
- D. Macdonald, “Coerciveness and the selection of environmental Policy instruments,”
- Allan J. Kam, “NHTSA Safety Defect Investigations”
- Dunsmuir v. New Brunswick
- Ernst v Alberta (Energy Resources Conservation Board)

30 Jan TOOLS FOR THE PREVENTION AND/OR MITIGATION OF RISK

- Flyvbjerg et al, “Dealing with Risk”
- J. Morris, “Defining the Precautionary Principle”
- Comite d’environnement de la Baie Inc. v. Societe d’electrolyse et de chimie Alcan
- Triantis, “Contractual Allocations of Unknown Risks: A Critique of the Doctrine of Commercial Impracticability”
- Selina-Lee Anderson, “Impacts of climate change – foreseeable or unforeseeable? Drafting force majeure clauses in the era of climate uncertainty”

6 Feb RISK IN THE LEGAL PROCESS (RISK MANAGEMENT STRATEGIES IN THE COURTOOM)

- Kelliher (Village of) v. Smith,
- R. v. Mohan,
- R. v. Bingley
- Moravian Church v Newfoundland and Labrador
- R v Chapple
- R. v. N.S.
- R v BK
- Frederic L. Lederer, “The Road to the Virtual Courtroom?”
- Tamara A. Small & Kate Puddister, “Tweeting Criminal Trials in the Digital Age”
- “Canadian courts turning an eye to how artificial intelligence is used in the legal system”

DEALING WITH RISK IN VARIOUS TYPES OF LAW**13 Feb DISASTERS AND RISK MANAGEMENT**

- Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (18 June 1998) International Telecommunications Union
- Convention on Assistance in case of a Nuclear Accident or Radiological Emergency
- Sendai Framework for Disaster Risk Reduction 2015-2030, (18 March 2015) UN Office for Disaster Risk Reduction.
- “Victoria Bannon & David Fisher: Legal Lessons in Disaster Relief from the Tsunami, the Pakistan Earthquake and Hurricane Katrina”
- Gerry R. Thornton, “Hurricane Katrina - The Legal Saga Begins”
- Emergency Management Act, RSC 2007 c. 15
- Emergencies Act. RSC 1985 c. 22 (4th Supp.)

20 Feb Reading week, no class**27 Feb RISK AND PUBLIC HEALTH**

- Reference re Genetic Non-Discrimination Act
- Reference re Anti-Inflation Act
- Schneider v. The Queen
- The Attorney-General of Ontario and others (Appeal No. 2) v The Canada Temperance Federation (Ontario)
- Emergencies Act RSC 1985 c. 22 (4th Supp.)
- Canada (Health) v The Winning Combination, Inc.
- “Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System” Ministry of the Attorney General, Ontario.

6 Mar RISK ISSUES IN CRIMINAL LAW

- Criminal Code of Canada RSC 1985 cC-46 s. 718
- R v Lloyd
- Criminal Code of Canada RSC 1985 cC-46 s. 735
- R. v. Boutilier
- “Offender Risk Assessment”, (2000) John Howard Society of Alberta
- Ewert v Canada
- R v Ndhlovu
- Ilvy Goossens et al, “Examining the High-Risk Accused Designation for Individuals Found Not Criminally Responsible on Account of Mental Disorder”

13 Mar VOLUNTARY ASSUMPTION OF RISK : THE CASE OF SPORT

- Criminal Code of Canada RSC 1985 cC-46 , s. 265
- A. Husa & S. Thiele, “In the Name of the Game: Hockey Violence and the Criminal Justice System.”
- R v Jobidon
- R. v. Cey
- R. v. Leclerc
- R v Ciccarelli
- Citron, Jeffrey A. & Ableman, Mark, “Civil liability in the arena of professional sports”.
- Dunn v University of Ottawa
- Bruce v Cohon
- Dent et al v NFL (2018)

20 Mar VOLUNTARY ASSUMPTION OF RISK: THE CASE OF TORT

- Occupational Health and Safety Act of Ontario, R.S.O. 1990, CHAPTER O.1, s. 43(2)
- R v Port Colborne (City)
- Douglas v Canadian Corps of Commissionaires
- Dube v. Labar
- Crocker v. Sundance Northwestern Resorts Ltd.
- Childs v. Desormeaux
- Horsley v. MacLaren
- Coopersmith v. Air Canada
- Taylor v BC (Privacy Commissioner)
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27 Mar RISK, EXPRESSION AND THE MEDIA

- Irwin Toy Ltd. v. Quebec (Attorney General)
- Rocket v Royal College of Dentists and Surgeons of Ontario
- CCLA v Attorney General of Ontario
- Harper v Canada (Attorney General)
- R. v. Butler
- Ward c Quebec
- Guistra v Twitter, Inc.
- R v Skelly 2021

- A.B. v Bragg Communications Inc.
- Dagenais v. Canadian Broadcasting Corp.
- R. v. Mentuck
- Sierra Club of Canada v Canada (Minister of Finance)
- R v Vice Media

3 Apr CORPORATE LEGAL RISKS

- R v SNC-Lavalin
- Criminal Code of Canada RSC 1985 cC-46
- TD Waterhouse Private Investment Counsel et al
- Buckerfield's Limited et al. v. M.N.R.
- Orphan Well Association v Grant Thornton
- Trinity Church v Wal-Mart Stores, Inc.

Resubmissions and Group Collaboration:

The same work cannot be submitted more than once for multiple academic credits.

There are no group assignments in the course.

Generative AI:

The use of generative artificial intelligence tools to create course evaluation work is **prohibited**.

DEPARTMENT POLICIES AND REGULATIONS:

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements:

<https://carleton.ca/law/student-experience-resources/>.

Plagiarism:

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared, in whole or in part, by someone else, including the unauthorised use of generative AI tools (eg ChatGPT)
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or

failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

STATEMENT ON STUDENT MENTAL HEALTH:

As a University student, you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, <https://students.carleton.ca/services/empower-me-counselling-services>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

ACADEMIC ACCOMMODATIONS:

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 accommodation regarding a formally-scheduled final exam, you must complete the Pregnancy Accommodation Form that can be found at:

<https://carleton.ca/equity/contact/form-pregnancy-accommodation/>

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, please go to:

<https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

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 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 for a formal evaluation. You can find the Paul Menton Centre online.

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).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>

End of Course Outline.