

COURSE OUTLINE

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<b>COURSE NUMBER - TITLE</b>	LAWS 4801 – RISK AND THE LEGAL PROCESS
<b>SECTION:</b>	B
<b>TERM:</b>	Winter 2024
<b>PREREQUISITES:</b>	LAWS 2908 or PAPM 3000 and fourth-year Honours standing
<b>DAY &amp; TIME:</b>	Thursdays 2:35 – 5:25 PM
<b>DELIVERY METHOD/ROOM:</b>	IN-PERSON / Please check Carleton Central for class schedule.
<b>INSTRUCTOR (CONTRACT):</b>	Tara Ashtakala
<b>CONTACT INFORMATION:</b>	<b>OFFICE HOURS:</b> By appointment <b>EMAIL:</b> <a href="mailto:Tara.Ashtakala@carleton.ca">Tara.Ashtakala@carleton.ca</a>

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**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.

**COURSE OBJECTIVES**

- 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.

## 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.

## 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 - 20% 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 (which is why the risk is causing social and legal problems); and
  - how the defects in the law should best be rectified.By the end of the presentation, you should have persuaded your audience that your proposed solutions are 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.
- Partner: Each presenter must select one fellow student in the class to be his or her “partner” for the presentation. The role of the partner is limited to asking the presenter **three** questions at the end of the latter’s presentation. **The object of the questions asked is to challenge the claims made by the presenter,**

either by focusing on particular points or by addressing the whole argument. The only action that is required of the partner is to show up and listen to the other student's presentation, and then to ask the counter-questions. **The partner must not let the presenter know what the questions are before the presentation.**

- The presenter's ability to defend – **unrehearsed** - his or her position against the questions of the partner will figure in the assessment of the presentation.

## 2. Partner question – 5% of final grade

Each partner will receive 5 marks in the course for completing the role above.

- **PRESENTATION SUBMISSION DATES: The dates for submitting presentations will be determined as of the 1<sup>st</sup> lecture, when final enrolment in the course can be confirmed.**

## 3. Term Essay - 30% of final grade

The task for the Term Essay is to perform a risk analysis on a legal topic of interest to the student, using the four Course Objectives above as the framework.

- **Due on 10 April 2024** : upload to Brightspace
- **Length:** 13-15 pages, plus bibliography.
- **Use Canadian Guide to Uniform Legal Citation (McGill Guide) at <https://libguides.ucalgary.ca/guides/mcgillguide> [https://library.carleton.ca/sites/default/files/help/writing-citing/Using\\_uniform\\_legal\\_citation\\_2018.pdf](https://library.carleton.ca/sites/default/files/help/writing-citing/Using_uniform_legal_citation_2018.pdf)**
- **Use Canadian spelling only;** 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 or Multilingual Standard.

## 4. Open book final examination - 45% of final grade

The goal of the formally-scheduled 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: 13-25 April**
- **Any student who does not write the final exam on the day it is scheduled 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 proctored.**

## LATE PENALTIES AND REQUESTS FOR EXTENSIONS:

- 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.
- The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension.
- **Extensions for longer than 7 days will normally not be granted.** If the student decides to make a request for such an extension, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days). Again, the instructor has the final say on whether the extension

**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 1<sup>st</sup> page of the pre-lecture slides, that will be posted ahead of every class, on Brightspace.

## **THE NATURE OF RISK AND UNCERTAINTY**

### **11 Jan INTRODUCTION AND OVERVIEW**

### **18 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” (7 May 2019):
- WFP Press Release, “World’s first humanitarian insurance policy issued” (2006)
- Dostmohammed and Long, ‘Regulating the Sharing Economy’ (2015)
- BBC News online, 'Laser scam' gamblers to keep £1m , 5 December 2004
- Dan M. Kahan, ‘A Risky Science Communication Environment for Vaccines’ (2013)

### **25 Jan ONGOING DEBATES IN RISK MANAGEMENT**

- M. Megalli & A. Friedman, “Fronting for Business” (1992).
- A. Wildavsky, “No Risk Is the Highest Risk of All” (Jan-Feb 1979).
- Alexandria S. Palazzo, ”No-fault insurance...” (2015):.
- C. Hubbard, “Culpability and Compensation in Canadian Health Care: Much Ado About No-Fault?” (2000)
- F. van Waarden, “Institutions and Innovation - the legal environment of innovating firms” (Sep-Oct 2001).
- D. Macdonald, “Coerciveness and the selection of environmental Policy instruments,”
- Allan J. Kam, “NHTSA Safety Defect Investigations” (17 July 2001):
- Dunsmuir v. New Brunswick, 2008 SCC:
- Ernst v Alberta (Energy Resources Conservation Board), 2014 ABCA 285

### **1 Feb TOOLS FOR THE PREVENTION AND/OR MITIGATION OF RISK**

- Flyvbjerg et al, “Dealing with Risk” (2003) ;
- J. Morris, “Defining the Precautionary Principle” (2000)
- Comite d’environnement de la Baie Inc. v. Societe d’electrolyse et de chimie Alcan, 1992 CanLII 2925 (QC CA),.
- Triantis, “Contractual Allocations of Unknown Risks: A Critique of the Doctrine of Commercial Impracticability” (1992)
- Selina-Lee Anderson, “Impacts of climate change – foreseeable or unforeseeable? Drafting force majeure clauses in the era of climate uncertainty” (8 August 2018),

**8 Feb RISK IN THE LEGAL PROCESS (RISK MANAGEMENT STRATEGIES IN THE COURTOOM)**

- Kelliher (Village of) v. Smith, [1931] S.C.R. 672 .
- R. v. Mohan, [1994] 2 S.C.R. 9 .
- R. v. Bingley, 2017 SCC 12
- Moravian Church v Newfoundland and Labrador 2005 NLTD 123,
- R v Chapple 2005 BCSC 383
- R. v. N.S. 2012 SCC 72
- R v BK
- Frederic L. Lederer, “The Road to the Virtual Courtroom?” (Spring 1999)
- Tamara A. Small & Kate Puddister, “Tweeting Criminal Trials in the Digital Age” (18 May 2020),:
- “Canadian courts turning an eye to how artificial intelligence is used in the legal system” (11 July 2023);

**DEALING WITH RISK IN VARIOUS TYPES OF LAW****15 Feb DISASTERS AND RISK MANAGEMENT**

- Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (18 June 1998) International Telecommunications Union, UNTS 2296 p.5.
- Convention on Assistance in case of a Nuclear Accident or Radiological Emergency (18 Nov 1986), International Atomic Energy Agency, UNTS 24643
- 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” (March 15 2006)
- Gerry R. Thornton, “Hurricane Katrina - The Legal Saga Begins” (2005-09-19)
- Emergency Management Act, RSC 2007 c. 15
- Emergencies Act. RSC 1985 c. 22 (4th Supp.)

**22 Feb Reading week, no class****29 Feb RISK AND PUBLIC HEALTH**

- Reference re Genetic Non-Discrimination Act 2020 SCC 17
- Reference re Anti-Inflation Act 1976 2 SCR
- Schneider v. The Queen 1982 2 SCR
- The Attorney-General of Ontario and others (Appeal No. 2) v The Canada Temperance Federation (Ontario) , JCPC, 1940.
- Emergencies Act RSC 1985 c. 22 (4th Supp.)
- Canada (Health) v The Winning Combination, Inc. 2017 FCA 101
- “Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System” (31 July 2019) Ministry of the Attorney General, Ontario.

**7 Mar RISK ISSUES IN CRIMINAL LAW**

- Criminal Code of Canada RSC 1985 cC-46 s. 718
- R v Lloyd [2016] 1 SCR
- Criminal Code of Canada RSC 1985 cC-46 s. 735
- R. v. Boutilier [2017] 2 SCR
- “Offender Risk Assessment”, (2000) John Howard Society of Alberta
- Ewert v Canada [2018] 2 RCS
- R v Ndhlovu 2022 SCC 38
- Ilvy Goossens et al, “Examining the High-Risk Accused Designation for Individuals Found Not Criminally Responsible on Account of Mental Disorder” (2019)

**14 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.” (2002).
- R v Jobidon [1991] 2 SCR
- R. v. Cey [1989] SJ no. 264
- R. v. Leclerc 4 OR (3d) 788
- R v Ciccarelli 54 CCC 3d Ont Dist Ct 1989
- Citron, Jeffrey A. & Ableman, Mark, “Civil liability in the arena of professional sports” (2003).
- Dunn v University of Ottawa [1995] O.J. No. 2856 (Ont. Gen. Div.),
- Bruce v Cohon 2016 BCSC 419
- Dent et al v NFL (2018) US Court of Appeals for the 9<sup>th</sup> Circuit, District of Columbia

**21 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) [1992] O.J. No. 2555
- Douglas v Canadian Corps of Commissionaires [1995] OLRB Rep. May 601
- Dube v. Labar [1986] 1 SCR
- Crocker v. Sundance Northwestern Resorts Ltd., [1988] 1 SCR
- Childs v. Desormeaux 2006 SCC 18.
- Horsley v. MacLaren [1972] SCR 441
- Coopersmith v. Air Canada 2009 QCCQ 5521
- Taylor v BC (Privacy Commissioner) 2017 BCSC 1420

**28 Mar RISK, EXPRESSION AND THE MEDIA**

- Irwin Toy Ltd. v. Quebec (Attorney General) [1989] 1 RCS
- Rocket v Royal College of Dentists and Surgeons of Ontario [1990] 2 SCR
- CCLA v Attorney General of Ontario 2020 ONSC 4838
- Harper v Canada (Attorney General) [2004] 1 RCS
- R. v. Butler [1992] 1 SCR
- Ward c Quebec 2021 SCC 43
- Guistra v Twitter, Inc. 2021 BCSC 54

- R v Skelly 2021 ONSC 555
- A.B. v Bragg Communications Inc. [2012] 2 RCS
- Dagenais v. Canadian Broadcasting Corp., 1994 3 RCS
- R. v. Mentuck, 2001 3 SCR
- Sierra Club of Canada v Canada (Minister of Finance) 2002 2 SCR
- R v Vice Media 2018 3 SCR

#### **4 Apr CORPORATE LEGAL RISKS**

- R v SNC-Lavalin 2019 QCCQ 18961
  - Criminal Code of Canada RSC 1985 cC-46
  - TD Waterhouse Private Investment Counsel et al 2014 ONSEC 34
  - Buckerfield's Limited et al. v. M.N.R. 1964] C.T.C. 504, [1965] 1 Ex. C.R. 299, 64 D.T.C. 5301
  - Orphan Well Association v Grant Thornton [2019] 1 S.C.R
  - Trinity Church v Wal-Mart Stores, Inc. 2015 US Court of Appeals for the 3<sup>rd</sup> Circuit,
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<b>Winter 2024 Sessional Dates and University Closures</b>	
<i>Please find a full list of important academic dates on the calendar website: <a href="https://calendar.carleton.ca/academicyear/">https://calendar.carleton.ca/academicyear/</a></i>	
<b>January 8, 2024</b>	Winter term begins.
<b>January 19, 2024</b>	Last day for registration and course changes (including auditing) in full winter and late winter courses.
<b>January 31, 2024</b>	Last day to withdraw from full winter and the winter portion of fall/winter courses with a full fee adjustment.
<b>February 19, 2024</b>	Statutory holiday. University closed.
<b>February 19-23, 2024</b>	Winter break. No classes.
<b>March 15, 2024</b>	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
<b>March 27, 2024</b>	Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, in full winter term or fall/winter undergraduate courses, before the official April final examination period (see examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).
<b>March 29, 2024</b>	Statutory holiday. University closed.
<b>April 10, 2024</b>	Winter term ends.
	Last day of full winter, late winter and fall/winter term classes.
	Classes follow a Friday schedule (full winter and later winter courses).
	Last day for handing in term work and the last day that can be specified by a course instructor as a due date for term work for full winter term and late winter courses.
	Last day for take home examinations to be assigned.
<b>April 13-25, 2024</b>	Final examinations in full winter, late winter and fall/winter term courses will be held. Examinations are normally held all seven days of the week.
<b>April 25, 2024</b>	All final take-home examinations are due on this day, with the exception of those conforming to the examination regulations in the Academic Regulations of the University section of the Undergraduate Calendar/General Regulations of the Graduate Calendar.



## **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 ACCOMMODATION**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request, you can follow: (<https://students.carleton.ca/course-outline/>)

#### **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 about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

#### **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](mailto:pmc@carleton.ca) for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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/>.

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End of Course Outline.