

Carleton University
Department of Law and Legal Studies

Course Outline

Course: LAWS 4801A Risk and the Legal Process

Term: Late Summer (July 5th to August 16th, 2022)

Prerequisites: 4th Year Honours Standing and LAWS 2908 or PAPM 3000

Class Schedule: Tuesdays and Thursdays 11:35am-2:25pm

Location: On campus in Loeb (LA) A720

Instructor: Meg D. Lonergan [she/they]

Email: Megan.Lonergan@Carleton.ca

Office Hours: Drop-in on Thursdays at 10am in Loeb C560 or by appointment

Calendar Course Description: This course will examine the application of risk assessment and management in various legal areas including insurance, liability and tort, litigation management, environmental protection, sentencing and parole.

Course Description: In this fourth-year course, we will focus on critical discussion regarding risk and the legal system. Such questions of discussion will include: How does risk factor into issues relating to the criminal justice system? Is risk socially constructed or is it objective and quantifiable? Can laws be used to minimize risk? Who is legally responsible for risky situations and how are they held responsible? Does everyone experience or perceive risk in the same ways? Each week of the class is focused on an overarching theme with two topics, each will be the focus of each of the two classes scheduled per week this summer session.

This is a summer course, meaning it is condensed and intensive.

Course Objectives/Learning Outcomes:

- To identify and critically reflect on issues related to risk in the legal system
- To critically engage with the concept and construction of “risk” in diverse situations related to governance, law, and policy
- To demonstrate knowledge and engagement with course themes, concepts, and materials in a variety of evaluations

Required Texts: All readings will be available on Brightspace.

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.

All components must be successfully completed to earn a passing grade.

Attendance and Participation: 30%

- 10% is showing up + posting responses to forum and poll questions on Brightspace
- 20% is active and engaged participation (answering questions, asking questions, debating positions, etc.)

Weekly Discussion Questions & Reading Responses: 20%

- Due every class at the beginning of class (paper copies)
- 1 page (1-inch margins, double-spaced, size 12 Times New Roman font) summary of the readings assigned for the week
- May substitute one reading for one of the option readings in weeks where those are listed (will be available in marked folder on Brightspace under that week of the course)
- Must include 1 discussion question to encourage discussion in class per reading (not a question with an easily answerable, reading comprehension style question, but one to help generate discussion or debate); however, you may include a question about a term, theory, or concept for further unpacking in class.

Course Assignment: 20%

Due: Via Brightspace by midnight on Friday, July 29th

Option 1	Option 2	Option 3	Option 4
<i>Film Analysis</i>	<i>Podcast & Research Script</i>	<i>Mock Lecture & Script</i>	<i>Wild Card</i>
10 to 12 page critical analysis of a film using course readings and theories to evaluate representations of risk and the legal process/system. Must pitch film choice to me at least 1 week ahead of deadline.	10 to 12 minute podcast recording (creativity encouraged) informing your audience about two weeks of content from the course. A 5-page well-referenced script must be included.	12-15 minute recorded lecture, as though you were teaching on a week from the course. Must make comparison/reference to either the week before or week after per the course schedule and include a 3-4 page well-referenced script must be included.	Don't like the other three options? Feeling creative? Pitch me an alternative assignment. Pitches must be approved at minimum 2 weeks before the assignment is due.
Must include minimum 5 course readings from 2 or more weeks and 5 additional scholarly sources.	Must include minimum 6 course readings from 2 or more weeks and 5 additional scholarly sources.	Must include minimum 6 course readings from 2 or more weeks and 5 additional scholarly	Will still require written component and proper referencing as other assignment options. Specifics to be negotiated based on the pitch.

Final Exam: 30%

During Official Exam Period (TBD)

- Cumulative
- In-person
- Mix of multiple choice, true/false, and written responses

Late Penalties, Requests for Extensions, and Grading Policy

Late Penalties

Late discussion questions and summaries will not be accepted—they *must be handed in when you enter the classroom*.

This course has one assignment in addition to the summaries/discussion questions and the final exam. A late penalty of 10% per day will be applied to late assignments. Please as for extensions as far in advance as possible. Life can be unpredictable so please do contact me if you are worried you may not be able to meet the deadline.

Extensions

The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

Grading Policy

Short assignments and quizzes will be marked and returned the following week. Longer assignments will be marked and returned within a two-week turnaround. *Emails requesting grades on assignments inside of this timeframe may not be answered.* After receiving a marked assignment, please reflect on the feedback and mark breakdown provided. **After a mandatory period of 48 hours**, you may email me to discuss further the explanation of the grade received and ways to improve on future assignments or come to the following weeks drop-in office hour.

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: <https://carleton.ca/registrar/academic-integrity/>

Schedule

Week 1: Constructing Risk

Tuesday, July 5th

What is “risk”?

Rizzo Mario J. (2021). “Irrationality is not unreasonable: Behavioural economics, rationality, and implications for public policy,” in Rosemarie Fike’s *Nudging public policy: Examining the benefits and limitations of paternalistic public policies*. Lanham, Maryland: Rowman & Littlefield Publishers, pp. 11-22.

Hudson, Barbara. (2003). “Doing justice in the risk society,” in *Justice in the risk society: Challenging and re-affirming ‘justice’ in late modernity*. London: SAGE Publications, pp. 203-226.

Rigakos, George., and Law, Alexandra. (2009). Risk, realism and the politics of resistance. *Critical Sociology*, 35(1), 79-103.

Optional:

Rigakos, George. (1999). Risk society and actuarial criminology: Prospects for a critical discourse. *Canadian Journal of Criminology and Criminal Justice*, 41(2), 137-150.

Viscusi, & Aldy, J. E. (2003). The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World. *Journal of Risk and Uncertainty*, 27(1), 5–76.

Thursday, July 7th

Media, Representation, and Riskiness

Allen, Terrence T. and Whitt, Ahmed. (2020). An examination of the relationship between media exposure and fear of victimization: Implications of the superpredator narrative on juvenile justice policies. *Juvenile and Family Court Journal*, 71(4), 24-34.

Houston, Ella. (2019). ‘Risky’ representation: The portrayal of women with mobility impairment in twenty-first-century advertising. *Disability & Society*, 34(5), 704-725.

Johnstone, Genevieve. (2020). The kids are all white: Examining race and representation in news media coverage of opioid overdose deaths in Canada. *Sociological Inquiry*, 90(1), 123-146.

Week 2: Autonomy, Freedom, and Society

Tuesday, July 12th

Risk and Vulnerability

Garcia-Del Moral, Paulina. (2018). The murders of Indigenous women in Canada as femicides: Toward a decolonial intersectional reconceptualization of femicide. *Signs: Journal of Women in Culture and Society*, 43(4), 929-954.

Sibley, Marcus. (2018). Owning risk: Sex worker subjectivities and the reimagining of vulnerability and victimhood. *British Journal of Criminology*, 58(6), 1462-1479.

Storey, & Strand, S. (2016). The Influence of Victim Vulnerability and Gender on Police Officers' Assessment of Intimate Partner Violence Risk. *Journal of Family Violence*, 32(1), 125–134.

Thursday, July 14th

Governmental Rights & Regulation

Leckey, & Mendelsohn, E. (2022). The notwithstanding clause: Legislatures, courts, and the electorate. *The University of Toronto Law Journal*, 72(2), 189–215.

Flood, Thomas, B., & Wilson, K. (2021). Mandatory vaccination for health care workers: An analysis of law and policy. *Canadian Medical Association Journal (CMAJ)*, 193(6), E217–E220.

Rose, Joseph B. (2018). Regulating Essential Service Disputes in Canada: The Designation Model. *Labor Law Journal (Chicago)*, 69(4), 194–203.

Optional:

Krüsi, Pacey, K., Bird, L., Taylor, C., Chettiar, J., Allan, S., Bennett, D., Montaner, J. S., Kerr, T., & Shannon, K. (2014). Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study. *BMJ Open*, 4(6), e005191–e005191.

Week 3: Everyday Risk

Tuesday, July 19th

Normalized Risks

Gilchrist, & Osborn, G. (2017). Risk and benefits in lifestyle sports: parkour, law and social value. *International Journal of Sport Policy and Politics*, 9(1), 55–69.

Lay, Saunders, R., Lifshen, M., Breslin, C., LaMontagne, A., Tompa, E., & Smith, P. (2016). Individual, occupational, and workplace correlates of occupational health and safety vulnerability in a sample of Canadian workers. *American Journal of Industrial Medicine*, 59(2), 119–128.

McDonald, Hamilton, H. A., Wickens, C. M., Watson, T. M., Elton-Marshall, T., Wardell, J. D., Rueda, S., Roerecke, M., Stoduto, G., & Mann, R. E. (2021). Driving under the influence of cannabis risk perceptions and behaviour: A population-based study in Ontario, Canada. *Preventive Medicine*, 153, 106793.

Thursday, July 21st

Risk and Deviance

Jochelson, Richard., Gacek, James., & Menzie, Lauren. (2017). “Sex, sexuality, and the law: ‘Society’s proper functioning’ and precautionary governance of sex work,” in *Criminal Law and Precrime: Legal Studies in Canadian Punishment and Surveillance in Anticipation of Criminal Guilt* (1st ed.). NY: Routledge, pp. 42-69.

Hebert, William. (2020). Trans Rights as Risks: On the Ambivalent Implementation of Canada’s Groundbreaking Trans Prison Reform. *Canadian Journal of Law and Society*, 35(2), 221–244.

Lacombe, D. (2007). Consumed With Sex: The Treatment of Sex Offenders in Risk Society. *British Journal of Criminology*, 48(1), 55–74.

Optional:

Khan, Ummni. (2015). Sadomasochism in sickness and in health: Competing claims from science, social science, and culture. *Current Sexual Health Reports*, 7(1), 49-58.

Week 4: Civil Considerations

Tuesday, July 26th

Liability and Tort

Arvind, TT., and Steele, Jenny. (2012). "Introduction: Legislation and the shape of tort law," in *Tort law and the legislature: Common law, statute and the dynamics of legal change*. NY: Bloomsbury, pp. 1-14.

Katsivela, Marel. (2014). The Assumption of Risk Defence in Torts (Common Law) and Extra-contractual Liability (Québec Civil Law) in Canada. *Comparative Law Review* (Toruń, Poland), 17(1), 13–38.

Scott, Craig. (2001). "Translating torture into transnational tort: Conceptual divides in the debate on corporate accountability for human rights harms," in Craig Scott's (ed.) *Torture as tort: Comparative perspectives on the development of transnational human rights*. Portland: Hart Publishing, pp. 45-75.

Optional: Evans, D. Malcolm, and Morgan, Rod. (2001). "Torture: Prevention versus punishment?" in Craig Scott's (ed.) *Torture as tort: Comparative perspectives on the development of transnational human rights*. Portland: Hart Publishing, pp. 135-155.

Thursday, July 28th

Public and Private Insurance

O'Malley, Pat. (2003). "Moral uncertainties: Contract law and distinctions between speculation, gambling and insurance," in Aaron Doyle & Richard V. Ericson (eds.) *Risk and Morality*. Toronto: University of Toronto Press, pp. 231-257.

Ho, Lok-Sang. (2012). "Insurance, moral hazard and adverse selection," in *Health policy and public interest*. London: Taylor & Francis Group, pp. 37-48.

Optional: Tarr, Anothony A., and Tarr, Julie-Anne. (2022). "Personal injury, property damage, trespass and nuisance," in *Drone law and policy: Global development, risks, regulation and insurance*. London: Taylor & Francis Group, pp.168-182.

Bellet, Thierry., Cunneen, Martin., Mullins, Martin., Murphy, Finbarr., Pütz, Fabian., Spickermann, Florian., Braendle, Claudia., and Baumann, Martina Felicitas. (2019). From semi to fully autonomous vehicles: New emerging risks and ethico-legal challenges for human-machine interactions. *Transportation research*, 63, 153-164.

Week 5: Life, Law, and Risk

Tuesday, August 2nd

Risk and Health

Mykhalovskiy, Eruc. (2011). The problem of ‘significant risk’: Exploring the public health impact of criminalizing HIV non-disclosure. *Social Science & Medicine*, 73, 668-675.

Namaste, Viviane K. (2012). “The epistemology of epidemiology: Understanding the knowledge and limits of public health research and education,” in *HIV Prevention and bisexual realities*. Toronto: University of Toronto Press, pp. 21-54.

Smith, André., Fiddler, Jay., Walby, Kevin., and Hier, Sean. (2011). Blood donation and institutional trust: Risk, policy rhetoric, and the men who have sex with me lifetime deferral policy in Canada. *Canadian Review of Sociology*, 48(4), 369-389.

Optional:

Crath, Rory., and Rangel, Cristian. (2017). Paradoxes of an assimilation politics: Media production of gay male belonging in the Canadian ‘vital public’ from the tainted blood scandal to present. *Culture, Health & Sexuality*, 19(7), 796-810.

Thursday, August 4th

Risk and the Environment

Arsenault, Rachel., Boursassa, Carrie., Diver, Sibyl., McGregor, Deborah., and Witham, Aaron. (2019). *Global Environmental Politics*, 19(3), 120-132.

Nastev, Nollet, M.-J., Abo El Ezz, A., Smirnoff, A., Ploeger, S. K., McGrath, H., Sawada, M., Stefanakis, E., & Parent, M. (2017). Methods and Tools for Natural Hazard Risk Analysis in Eastern Canada: Using Knowledge to Understand Vulnerability and Implement Mitigation Measures. *Natural Hazards Review*, 18(1), 1-13.

Willis, Henry H., DeKay, Michael L., Fischhoff, Baruch., and Morgan, M. Granger. (2005). Aggregate, disaggregate, and hybrid analyses of ecological risk perceptions. *Risk Analysis*, 25(2), 405-428.

Week 6: Risk and Punishment

Tuesday, August 9th

Risk and Sentencing

Maurutto, Paula., and Hannah-Moffat, Kelly. (2007). Understanding risk in the context of the Youth Criminal Justice Act. *Canadian Journal of Criminology and Criminal Justice*, 49(4), 465-491.

Singh, Anne-Marie., and Sprott, Jane B. (2017). Race matters: public views on sentencing. *Canadian Journal of Criminology and Criminal Justice*, 59(3), 285-312.

van Eijk, Gwen. (2017). Socioeconomic marginality in sentencing: the built-in bias in risk assessment tools and the reproduction of social inequality. *Punishment and Society*, 19(4), 463-481.

Thursday, August 11th

Risk, Parole, and Dangers Offenders

Lecoq, Garrett., Ballucci, Dale, and Spencer, Dale. (2021). 'Keep them on the straight and narrow': Understanding, selecting and governing subjects through intensive supervision units. *British Journal of Criminology*, 61, 538-557.

Mussell, Linda., and Orsini, Michael. (2021). Governing through remorse: The discursive framing of dangerous offenders in Canada. *Canadian Journal of Law and Society*, 26(3), 505-529.

Turnbull, Sarah. (2014). Aboriginalising the parole process: 'culturally appropriate' adaptations and the Canadian federal parole system. *Punishment and Society*, 16(4), 385-405.

Optional: Hannah-Moffat, Kelly. (2004). Losing ground: Gendered knowledges, parole risk, and responsibility. *Social Politics*, 11(3), 363-385.

Week 7: Connections & Continued Conversations

Tuesday, August 16th (Last Class)

Greitens, Sheena. (2020). Surveillance, Security, and Liberal Democracy in the Post-COVID World. *International Organization*, 74(S1), E169-E190.

Hamill, Sarah. E. (2017). Of malls and campuses: The regulation of university campuses and section 2(b) of the Charter. *The Dalhousie Law Journal*, 40(1), 158-187.

Jochelson, Richard., Gacek, James., & Menzie, Lauren. (2017). "The future of precrime: Where do we go now?" in *Criminal Law and Precrime: Legal Studies in Canadian Punishment and Surveillance in Anticipation of Criminal Guilt* (1st ed.). Routledge. pp. 106-115.

Optional: Yang, Kaifeng. (2020). Unprecedented challenges, familiar paradoxes: COVID-19 and governance in a new normal state of risks. *Public Administration Review*, 80(4), 657-664.

Final Exam Date: TBD

Important Dates and Policies

July 4, 2022

Late summer classes begin. Full summer classes resume.

July 11, 2022

Last day for registration and course changes (including auditing) for late summer courses.

July 22, 2022

Last day to withdraw from late summer courses with a full fee adjustment.

July 22-24, 2022

Early summer term deferred final examinations to be held.

July 25, 2022

Last day for graduate students to submit their supervisor-approved thesis, in examinable form to the department.

July 29, 2022

Last day to request Formal Examination Accommodation Forms for August examinations to the Paul Menton Centre for Students with Disabilities. Note that it may not be possible to fulfil accommodation requests received after the specified deadlines.

August 1, 2022

Statutory holiday. University closed.

August 9, 2022

Last day for summative tests or examinations, or formative tests or examinations totaling more than 15% of the final grade, before the official examination period (see Examination Regulations in the Academic Regulations of the University Section of the Undergraduate Calendar/General Regulations of the Graduate Calendar).

University and Departmental Policies

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

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: <https://carleton.ca/registrar/academic-integrity/>.

COVID-19 PREVENTION MEASURES

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you must follow Carleton's [symptom reporting protocols](#).

Masks: In light of the [recent announcement from Ontario's Chief Medical Officer of Health](#) and the [evolving recommendations from Ottawa Public Health](#), Carleton will be pausing its mandatory mask mandate starting June 25, 2022. We continue to strongly recommend masking when indoors, particularly if physical distancing cannot be maintained. We are aware that personal preferences regarding optional mask use will vary greatly, and we ask that we all show consideration and care for each other during this transition. Please also note that if pandemic circumstances were to change, the university may need to quickly reinstate the mask requirement and the vaccination policy.

Vaccines: Further, while proof of vaccination is no longer required as of May 1 to attend campus or in-person activity, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible, and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#)

and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

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 [click here](#).

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. 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/>