

Course Outline

COURSE:	LAWS 4801 A– Risk and the Legal Process
TERM:	Fall 2024
PREREQUISITES:	LAWS 2908 or PAPM 3000 and Fourth-Year Honours standing
CLASS:	Day & Time: Tuesdays from 6:05 PM until 8:55 PM Room: Please check Carleton Central for current Class Schedule In Person Class
INSTRUCTOR:	Collin Fletcher
CONTACT:	Office Hrs: By Appointment (in person or on Zoom) Telephone: 613-806-3293 Email: collinfletcher@cunet.carleton.ca
BRIGHTSPACE:	https://brightspace.carleton.ca/d2l/home/290288

CALENDAR COURSE DESCRIPTION

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

COURSE DESCRIPTION

Every party to a legal dispute is constantly analyzing and assessing the risk of their case. Whether they proceed to court, try to negotiate a settlement or opt not to move forward with their legal claim, the concept of risk informs each and every decision the parties make.

The course shall be an in-depth analysis into the risks associated with a variety of legal processes, including our traditional litigation system, alternative dispute resolution processes, and administrative tribunals. We will analyze the concept of risk from a number of legal actors - the parties themselves, the lawyers who represent them and those who exist to facilitate an outcome (judges, mediators, and arbitrators). Lastly, we will view risk through the lens of multiple areas of law. What is at risk when we are sentencing criminals? How do we assess the risks in taking a complex and catastrophic motor vehicle

accident to a trial? What should the parties to a mediation and arbitration understand about the risk in the process before they sign their mediation or arbitration agreements?

The legal system can be about principles of equity and justice. However, our legal system can also be a statement about the nature of the society we live in. Why do we punish certain types of behavior more harshly and why are we less lenient with other types of behavior?

We will look at these risks through the perspective of various cases. These cases are not meant to provide a definitive understanding of the law. Instead, the cases will demonstrate how the law operates in a variety of areas of law.

REQUIRED TEXTS

All course readings will be accessible on CanLii or from other journal articles that will be linked 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.

1. **Attendance & Participation (10%) - Ongoing**
2. **Case Presentation (20%) - Due October 15th, 2024**
3. **Course Paper (40%) - Due November 26th, 2024**
4. **Final Examination (30%) - Take Home Exam**

All components must be successfully completed in order to get a passing grade.

PARTICIPATION

Students will be expected to attend every class. In addition to the student's attendance, the students are expected to read the required readings and discussion pieces in advance of the class. The expectation of students will be that when you attend class, you are prepared to identify and discuss the issues from these pieces. 5% of the grade will be for attendance and 5% of the grade will be for active participation in and out of the class.

As participation is encouraged in this class, a flawless understanding of the text and materials is not required. A student's uncertainty on the subjects being discussed can itself be used to develop discussion in the class. Open-ended or probing questions are just as valid a form of participation as analysis.

Attendance will be taken in every class. Perfect attendance is not required. It is fine if a student

misses one class during the semester due to personal issues.

Participation is about a constructive dialogue **inside and outside** of the classroom. Students' participation in the classroom will include answering and asking questions, sharing their own thoughts and critiques on subject matters, and relating the course material to their own experiences and lives. This is the primary way students will engage with the course. Students who do not feel comfortable engaging in participation in the classroom may engage outside of the classroom as well. Students may send me their own questions and critiques that they may not feel comfortable presenting to the class themselves by email. Students may also send additional readings and articles to me so I can distribute them amongst the class. Students may also make use of the professor's office hours to discuss subjects with the professor that can be brought up for future discussion. These instances of engaging outside of the confines of the classroom are just as valid forms of participation as those taking part in the classroom.

A necessary skill that students must obtain during their undergraduate degree is their oral advocacy skills. Students are encouraged to take risks and push themselves academically to speak in class.

The participation grade will be used to assess the quality of the student's engagement with the class. Quantity of discussion does not necessarily mean the quality of discussion. A student who responds often to questions but fails to participate in a manner that creates discussion will not be graded as high as a student who participates less frequently but who consistently constructs a productive dialogue in the classroom.

Some of the topics that will be discussed are considered controversial and members of the class may have strongly held differences of opinion. This is the basis for a very robust discussion in the classroom. All discussions, however, should be respectful of others, of differently held views, and of the classroom space. The use of offensive terminology or personal attacks will not be tolerated in the classroom and will result in a reduced participation grade.

Case Presentation (20%) - Due October 15th, 2024

Students will be expected to provide an oral presentation on a case of their choice that deals with the subject of risk. The presentation will be limited to 5 minutes or less. Students will be expected to pre-record their video and submit it on Brightspace. If students are unable to pre-record their video and submit it on Brightspace, they may schedule a time to give their presentation on a Zoom call. In the event that a student is unable to record their case presentation or present it on Zoom, alternative arrangements can be sought with the professor. Students will be assessed on their presentation skills, the content of their summary and their ability to succinctly condense their case in 5 minutes. Students will be required to explain a) the facts of their case, b) the legal issues, c) the rules, d) the application of the rules, and e) the legal significance of the legal decision presented.

Course Paper (40%) - Due November 26th, 2024

Students will be required to submit a Course Paper.

The Course Paper will be on the subject of the student's choosing as it relates to Risk and the Legal Process. Students may write on any of the subjects covered in the readings and lectures OR may research a topic not covered during the lectures.. Students are encouraged to think creatively and outside the box. In past years, the students who have a refined and interesting thesis statement often succeed.

During class, the students will discuss their essay topics and what they are proposing to write about. Students are encouraged to work collaboratively to assist each other in refining their written work. There will be no formal essay proposal, but students are encouraged to speak with the professor and other students in the course about what their essay is about.

The Course Paper cannot exceed twenty pages, double spaced with a 12-sized Time News Roman font. There is no minimum page requirement for the Course Paper. The Course Paper will be assessed for the student's: 1) understanding of subject matter, 2) the strength of their argument, 3) the organization and coherence of the essay and it's arguments, 4) the writing style (spelling, grammar, sentence structure) used in the paper, and 5) the quantity and quality of the bibliography.

Final Exam (30%) – Take Home Exam

This final examination will be an open book examination with three long form essay questions. Students will be permitted to use their notes and the readings in their essays. No research outside of the readings, lectures and our class discussion is required for the final examination. The final examination will solely be based on the required texts, in-class lectures and discussion and any further materials distributed throughout the semester. The questions on the final examination will be taken from the in-class discussions held. There will be a final exam review class scheduled for the final lecture. Students will have the entirety of the exam period (Dec 9 – Dec 21) to finish this exam. Students will be required to email their professor their final exam when completed.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

A deferred examination or essay assignment, following the same format, may be written upon application to/approval from the Registrar's Office.

Exams are not returned but may be reviewed with me upon request.

Essays will be returned during the exam schedule.

The Assignments (course paper proposal and the course paper) will be marked down one-half letter grade (eg. B to B-) for each day submitted after the due date without an authorized extension from me, subject to the discretion of the professor. Essays must be typed or word-processed and submitted by email. Handwritten papers, computer files, or email attachments will not be accepted. Please retain a photocopy or a secure file copy of the submitted essay. Essays will be submitted by way of an email. All assignments must be original. Prior approval of the instructor must be obtained if it is intended to submit work that has previously or concurrently been submitted for credit in this or another course. Please make careful note of regulations concerning academic integrity referred to above and related instructional offenses as described in the Undergraduate Calendar.

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 short-term extensions, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/academic-consideration-coursework-form/>.

For more information regarding academic consideration for short-term incapacitation (illness, injury, or extraordinary circumstances beyond a student's control), please visit the following link: <https://students.carleton.ca/course-outline/#academic-consideration-for-short-term-incapacitation>

SCHEDULE

- September 10th - Introduction to the Course
- September 17th - The Concept of Risk in the Legal Process
 - *Tremear v. Park Town Motor Hotels Ltd.*, 1982 CanLII 2683 (SK QB)
 - *Childs v. Desormeaux*, 2006 SCC 18.
 - *Law Society of Upper Canada v. Schulz*, 2016 ONLSTH 153
 - *Clark v. Moxley*, 2017 ONSC 5892
- September 24th - Risks in Litigation
 - *Beals v. Saldanha*, 2003 SCC 72.
 - *Hryniak v. Mauldin*, 2014 SCC 7
 - *Hamdy v. Hamdy*, 2015 ONSC 5605
- October 1st - Risks in Mediation and the Negotiation of a Settlement
 - *Rick v. Brandsema*, 2009 SCC 10.
 - *Virv v. Blair*, 2014 ONCA 392
 - *Raichura v Jones*, 2020 ABQB 139
- October 8th- Risks in Arbitration & Administrative Tribunal Processes
 - *Amalgamated Transit Union, Local 279 v. Ottawa (OC Transpo)*, 2007 CanLII 41425 (ON SCDC)
 - *MDG Computers Canada Inc. et al. v. MDG Kingston Inc. et al.*, 2013 ONSC 5436
 - *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145 (CanLII), [2019] 2 FCR 597

- October 15th - Sentencing and Risk of Reoffending
 - *R. v. Gerbrandt*, 2020 ABPC 261
 - *R. v. Nikirk*, 2020 BCPC 244
 - *R. v. Laforge*, 2020 BCSC 1269
- October 22nd - No Class Reading Break
- October 29th - The Risk Associated with Terminating an Employee
 - *Honda Canada Inc. v. Keays*, 2008 SCC 39.
 - *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419
 - *Decision No. 94/20*, 2020 ONWSIAT 981 (CanLII)
- November 5th - Tort Liability and the Voluntary Assumption of Risk
 - *Hagerman v. City of Niagara Falls et al.*, 29 O.R. (2d) 609 114 D.L.R. (3d) 184
 - *Crocker v. Sundance Northwest Resorts Ltd.*, 1988 CanLII 45 (SCC), [1988] 1 SCR 1186
 - *Hutchison v. Daredevil Park Inc.*, 2003 CanLII 25623 (ON SC)
 - *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122
- November 12th - Child Protection and Risks to a Child
 - *Durham Children's Aid Society v. B.P.*, 2007 CanLII 45905 (ON SC)
 - *CAS v. M.S.*, 2011 ONSC 4718
 - *CAS v. JB and GM*, 2020 ONSC 7457
- November 19th - Professional Liability and Risk
 - *Dabous v. Zuliani et al.*, (1975), 6 O.R. (2d) 344
 - *Cardy v. Trapp*, 2008 CanLII 59096 (ON SC)
 - *Sirota v. Sirota*, 2019 ONSC 3188
- November 26th - Informed Consent and Advising on Risk
 - *Husain v. Daly*, 2012 ONSC 919
 - *Bollman v. Soenen*, 2012 ONSC 7090
 - *Tomeh v. Cheah*, 2013 ONSC 6074
- December 3rd - Wrap Up Class

DEPARTMENT POLICIES AND REGULATIONS

Students are not permitted to submit assignments that are substantially similar to works submitted in another course for academic credit. In the event a student submits work that is similar to work submitted in another course for academic credit, they shall receive a grade of 0 on the assignment and shall be referred to for review by Carleton University as a violation of Carleton's academic integrity standards.

Students are not permitted to collaborate or work in groups on any of the assignments submitted in class. This does not bar a student from having others review or proofread their assignment for mistakes, but students would be encouraged to have students not in the course proofread or review their assignment. In the event students submit work that was generated by collaboration working with others in a group environment, they shall receive a grade of 0 on the assignment and shall be referred to for review by Carleton University as a violation of Carleton's academic integrity standards.

Students are not permitted to use generative artificial intelligence (AI) tools to generate assignments. If a student uses generative AI tools to generate assignments, they shall receive a grade of 0 on the assignment and shall be referred to for review by Carleton University as a violation of Carleton's academic integrity standards.

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 unauthorized use of generative AI tools (e.g., 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.

For more information, please consult <https://wellness.carleton.ca/>

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://studentcare.ca/rte/en/IHaveAPlan_CarletonUniversityUndergraduateStudentsCUSA_EmpowerMe_EmpowerMe
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

ACADEMIC ACCOMMODATIONS

Carleton is committed to providing academic accessibility for all individuals. You may need special arrangements to meet your academic obligations during the term. The accommodation request processes, including information about the Academic Consideration Policy for Students in Medical and Other Extenuating Circumstances, are outlined on the Academic Accommodations website (students.carleton.ca/course-outline).

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

Pregnancy Obligation and Family-Status Related Accommodations

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 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/>.

Academic Consideration for Medical and Other Extenuating Circumstances

Due to medical and other extenuating circumstances, students may occasionally be unable to fulfill the academic requirements of their course(s) in a timely manner. The University supports the academic development of students and aims to provide a fair environment for students to succeed academically. Medical and/or other extenuating circumstances are circumstances that are beyond a student's control, have a significant impact on the student's capacity to meet their academic obligations, and could not have reasonably been prevented.

Students must contact the instructor(s) as soon as possible, and normally no later than 24 hours after the submission deadline for course deliverables. If not satisfied with the instructor's decision, students can conduct an "informal appeal" to the Chair of the department within three

(3) working days of an instructor's decision. We have created a webform specifically for appeals to the Chair, which can be found here: <https://carleton.ca/law/application-for-review-of-refusal-to-provide-academic-consideration/>. *Note: This form only applies to LAWS courses and is not the same as a formal appeal of grade.* More information about the academic consideration can be found [here](#).