

Course Outline

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| COURSE: | LAWS 4107 A– Law in Modern Society |
| TERM: | Winter 2022 |
| PREREQUISITES: | LAWS 2908 and fourth year standing |
| CLASS: | Day & Time: Tuesdays 8:35- 11:25am. Please check Carleton Central for current Class Schedule. |
| | Room: Once a week via Zoom. The link will be posted on Bright Space |
| INSTRUCTOR: | Dr. Ksenia Polonskaya |
| CONTACT: | Office: N/A |
| | Office Hrs: My office hours are on Wednesdays, 10-11 am. The link will be posted on Bright Space. |
| | Telephone: N/A |
| | Email: Ksenia.polonskaya@carleton.ca |

CALENDAR COURSE DESCRIPTION

Sociological and legal theory accounts of the changing role and function of law in modern society with particular reference to advanced capitalist societies. Topics include: the welfare state and the use of regulatory law; juridification and legalization; countertrends, deregulation, informalism, legal pluralism. Prerequisite(s): LAWS 2908 and fourth-year Honours standing. Seminars three hours a week.

COURSE DESCRIPTION

Objectives

The key objective of this course is for you to further develop critical analytical skills, including the ability to advance and rationalize a socio- legal argument. I would like you to understand legal theory but in its application to the reality on the ground. In other words, socio-legal theory will be a tool for understanding the world rather than a “dead letter”.

By the end of this course, you should:

- Learn how to rationalize arguments and counterarguments by relying on the doctrinal texts and the relevant case law.
- Further develop an ability and flexibility in making arguments both in oral and written formats.

- Develop a practical outlook upon legal theory and learn to apply various theories to the resolution of practical problems.
- Further develop an ability to answer questions on the spot and uphold a structured debate in the professional manner.
- Further develop writing, research, and presentation skills.

Delivery

Our course will adopt a model of synchronous delivery. It means that we will meet via Zoom each Tuesday. Please note that I will not record the sessions. Please verify the schedule via Carleton Central.

Our Model

This course will guide your exploration of the sociological and legal theory in the context of existing social phenomena. To fulfill this goal, we will adopt a model known as a Socratic Seminar. What does it mean in plain English? It means that you must complete the mandatory readings prior to each class and participate in the discussions with me (your instructor) and your peers.

During each session, I will ask a series of open-ended questions based on the assigned texts. Your task is to reflect on the questions individually and in pairs, share your thoughts with the class in an argumentative manner during our “live” session. In this process, you can (1) provide an answer, (2) intervene on a particular narrow point of the discussion (3) propose new questions that the initial question sparked in your mind. I will moderate the debate and facilitate the discussion.

Please note that you will need to put on the camera to participate in the seminar. To safeguard your privacy, please feel free to put on the background images. They should be professional. If camera is not at all an option, please be prepared to make oral interventions. This course is a seminar not a lecture so, as a participant of this course, you should actively participate in the session.

Why a Socratic Seminar?

In my view, this model is the most effective in providing an opportunity to learn the theoretical texts in relation to actual past and present social phenomena. The advantage of this model is that it will give you an opportunity to actively participate in this course. Specifically, as a participant of this course, you can engage in the structured debate with their peers and the instructor.

No worries if it is your first time participating in a Socratic Seminar. I will explain the rules during our first session in a greater detail and will support you throughout the term. Even if you feel confused during the session, please do not worry! I will be happy to guide you through the session and step in if any difficulties arise.

Our Schedule

The schedule below includes the key questions we will tackle this term when exploring the functions of law in modern society. Please note that these questions are simply “discussion triggers” that indicate a broader topic for each session. Our discussions this term will broadly focus

on the issues of law in relation to **state and individual, morality, authority, and property**. Throughout the term, we will examine how these categories manifest themselves in different socio-legal settings.

As you will see below, we will explore the jurisprudential debates in their relation to different social phenomena such as citizenship and mass migration, digital surveillance and privacy, corporate responsibility, and global taxation as well as other topics. Our task here is to identify the limits of the legal norms and their future potential (if any) in addressing challenges that societies face. The key texts in socio-legal theory will guide us through this process. In addition to the scholarly works, we will look at some judicial decisions.

Textbook and Mandatory Readings

To gain the participation marks, it is crucial that you review the mandatory readings prior to each session. **The mandatory readings will include certain chapters from our textbook Michael Sandel, *Justice: A Reader* (OUP, 2007).** The textbook will be available via the Carleton Bookstore. Most other mandatory readings will be available via Ares, accessible through Bright Space. If the reading is not uploaded on Ares, your task would be to find it online via the Carleton library. Please note that for some weeks, you might need to read more than for others.

REQUIRED TEXTS

Michael Sandel, *Justice: A Reader* (OUP, 2007). The textbook will be available via the Carleton Bookstore.

SUPPLEMENTARY TEXTS

Please review the section “Schedule”

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.

Evaluation

- **Introduction** (individually) – 3%. Please post a short introductory video or an audio introduction on Bright Space. In your introduction, consider telling the class about your educational background, why you took the class, and what are your academic interests. **Please note that the introduction must be completed during the first two weeks of the class i.e., by 14 January 2022, 5 pm.**
- **20 minutes presentation** (individually) – 25% (please select one of the mandatory readings (cases or papers) and sign up on the Bright Space Excel Spreadsheet). **Please note**

that you should sign up during the first two weeks of classes i.e., by 21 January 2022, 5 pm. I will post the evaluation criteria and the list of readings on Bright Space by the first week of classes.

- **Participation** - 15%. Each contribution counts. If you participate in the discussion by answering or asking questions, you automatically get 1% per class. If you are a frequent intervener, you can get up to 3% per one class. Your participation will be evaluated throughout the term.
- **Office hours check-in** – 5%. Your task here is simple, you will need to attend my office hours once a term so we can talk about your progress, your expectations, and challenges you face. **The check-in must be completed by the reading week i.e., by 21 February 2022.**
- **1000 words mid-term essay** (individually) – 30% (please answer **one** of three questions provided to you on Bright Space. Please note that you must refer to the reading materials and the cases we discuss in this course. The citations are excluded from the total word count and must be formatted as per the McGill Guide). I will post the evaluation criteria by the second week of classes. The paper must be submitted via Bright Space **by 17 February 2022, 5 pm. Please note that I will accept the submissions only via Bright Space.**
- **500 words final forum post.** In pairs (max 2 students per one post) or individually) – 10% (please reflect on the meaning of the text provided to you. Please note that you must engage in the “close” reading exercise. This assignment is pass/fail. To pass, you must make an argument and justify your argument by relying on the materials of the course. You must complete the post by **6 April 2022, 5 pm.**
- **Quizzes (individually)** – 6%*2 (12%) - the quizzes will be based on your mandatory readings and will be true/false or multiple-choice questions. You can complete them any time from 18 January 2022 until **27 March 2022, 11:59 pm. No extension policy is available for the quizzes. Please note that the quizzes are based on the mandatory readings.**

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Recommended text for 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).

Penalties: if you submit any assignment late, you will lose 5% of the mark PER DAY. It does not matter if you are late by 1 second, 30 minutes or 12 hours. The standard is objective i.e., if you are late, you will lose 5%. I will accept the late submissions only within five days after the original deadlines.

SCHEDULE

| Winter 2022 Sessional Dates and University Closures | |
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| <i>Please find a full list of important academic dates on the calendar website: https://calendar.carleton.ca/academicyear/</i> | |
| January 5, 2022 | University Reopens. |
| January 10, 2022 | Winter term classes begin. |
| January 31, 2022 | Last day for withdrawal from winter term and winter portion of fall/winter courses with full fee adjustment. Withdrawals after this date will result in a permanent notation of WDN on the official transcript. |
| February 18, 2022 | April examination schedule available online. |
| February 21, 2022 | Statutory holiday. University closed. |
| February 22-25, 2022 | Winter break, no classes. |
| March 29, 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). |
| April 12, 2022 | Winter Term Ends. Last day of fall/winter and winter term classes. |
| April 13, 2022 | No classes or examinations take place. |
| April 14- 28, 2022 | Final examinations in winter term and fall/winter courses may be held. Examinations are normally held all seven days of the week. |
| April 15, 2022 | Statutory holiday. University closed. |

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| April 28, 2022 | All 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. |
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ON LAW, JUSTICE, AND AUTHORITY

Seminar 1

11 January 2022. On Law

During our first session we will discuss the syllabus, the evaluation approach as well as your assignments. I will introduce some reading and writing strategies that might be useful to complete this and other courses.

Readings:

- “What is Law (and Why Should We Care?)” in Scott J. Shapiro, *Legality* (Harvard University Press, 2011) 1-35.
- Val Napoleon, “Thinking About Indigenous Legal Orders”, online:<
https://www.law.utoronto.ca/sites/default/files/documents/hewitt- napoleon_on_thinking_about_indigenous_legal_orders.pdf>
- “The Legal Order” in Hans Kelsen, *Pure Theory of Law* (The Lawbook Exchange, 2002) 30-54.

Seminar 2

18 January 2022. On Law and Morality

Readings:

- Sandel, Chapter 1 (on the lifeboat case)
- *Riggs et al v Palmer et al* (1889) Court of Appeals of New York as published in David Dyzenhaus & Arthur Ripstein, *Law and Morality: Readings in Legal Philosophy* (University of Toronto Press, 1998) 134.
- H. L. A. Hart, “Legal Positivism and the Separation of Law and Morals” (1958) 71:4 Harv L Rev 593-629.

Seminar 3

25 January 2022. On Justice**Readings:**

- Sandel, Chapters 7, 8, 10

Seminar 4**1 February 2022. On Authority and Judicial Discretion****Readings:**

- “Framing Entangled Legalities beyond the State” in Nico Krisch, *Entangled Legalities Beyond the State* (Cambridge University Press, 2021) 1 - 32.
- Ronald Dworkin, “Judicial Discretion” 60:21 *The Journal of Philosophy* 624-638.
- Ronald Dworkin, "Hard cases" (1974) 88 *Harv L Rev* 1057.

Seminar 5**8 February 2022. On Pluralism and Membership in the Community****Readings:**

- Nico Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford: Oxford University Press, 2012) 69-103.
- Sandel, Chapter XII

Seminar 6**15 February 2022. On Citizenship and Borders****Readings:**

- Dimitry Kochenov, *Citizenship* (MIT Press, 2019), Chapters 1 and 5.
- Megan Gaucher, *A Family Matter: Citizenship, Conjugal Relationships, and Canadian Immigration Policy* (UBC Press, 2018), Introduction & Chapter 1.
- Branko Milanovic, *Capitalism, Alone: The Future of the System That Rules the World* (Harvard University Press, 2019), Chapter 4 (the interaction of capitalism and globalization)

Reading Week 21-25 February 2022 (no classes)

ON PROPERTY, DISTRIBUTION, AND CORPORATE FORM**Seminar 7****1 March 2022. On Property**

- What do we count as property?

- Is private property theft?

Readings:

- Sandel, Chapter 4
- Prudon, “What is Property?” In *Property Is Theft* (AK Press, 2011) at 83-137.
- *Piljak Estate v Abraham* [2014] ONSC 2893.

Seminar 8**8 March 2022. On Limits of Property Rights and Commons****Readings:**

- Richard R. W. Brooks, *Saving the Neighborhood Racially Restrictive Covenants, Law, and Social Norms* (Harvard University Press, 2013), Chapter 1,3.
- *Harrison v Carswell* [1976] 2 SCR 200 (both majority and dissent)
- Elinor Ostrom, *Governing the Commons The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 2015), Chapter 1 (reflection on the commons).

Seminar 9**15 March 2022. On Corporations and Global Corporate Tax****Readings:**

- Elizabeth Pollman, “The Supreme Court and the Pro-Business Paradox” (2021) 135 Harv L Rev 220.
- “G20 leaders endorse global minimum corporate tax deal for 2023 start”, online:<
<https://www.reuters.com/business/g20-leaders-endorse-global-minimum-corporate-tax-deal-2023-start-2021-10-30/>>
- For enthusiasts (non-mandatory): Ruth Mason, “The Transformation of International Tax” (2020) 114:3 AJIL Unbound 353-402.

ON RIGHTS AND THEIR BOUNDARIES**Seminar 10****22 March 2022. On Foundations of Individual Rights**

- What is the basis of individual rights?

Readings:

- Sandel, Chapters 2 & 3

Seminar 11**29 March 2022. On Purpose and Boundaries of Rights**

- What human rights are for?
- Is a living wage a human right?

Readings:

- Edmund Fawcett, “New Foundations Rights, a Democratic Rule of Law, and Welfare” in *Liberalism: The Life of an Idea* (Princeton University Press, 2015) 290-312.
- Jens T. Theilen, “The Inflation of Human Rights: A Deconstruction” (2021) 34 *Leiden Journal of International Law* 831–854.

Seminar 12**5 April 2022. On Privacy**

- Should Google Know Where You Get Your Coffee?
- What is the scope and limits of the right to privacy in the context of digital economy?

Readings:

- Privacy” in Stanford Encyclopedia of Philosophy, available [here](#)
- Marko Milanovic, “Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age” (2015) 56 *Harv Int'l LJ* 81
- Samuel D Warren & Louis D. Brandeis, “Right to Privacy” 4 *Harv. L. Rev.* 193 (1890-1891).

Seminar 13**12 April 2021. On Reading of the Legal Texts****Readings:**

- Bennett Capers, “Reading Back, Reading Black” (2006) 35:1 *Hofstra L Rev* 9-14.

University and Departmental Policies**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/>.

DEPARTMENT POLICY

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <https://carleton.ca/law/student-experience-resources/>.

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements (e.g. wearing a mask, physical distancing, hand hygiene, respiratory and cough etiquette) and [mandatory self-screening](#) prior to coming to campus daily.

If you feel ill or exhibit COVID-19 symptoms while on campus or in class, please leave campus immediately, self-isolate, and complete the mandatory [symptom reporting tool](#). For purposes of contact tracing, attendance will be taken in all classes and labs. Participants can check in using posted QR codes through the cuScreen platform where provided. Students who do not have a smartphone will be required to complete a paper process as indicated on the [COVID-19 website](#).

All members of the Carleton community are required to follow guidelines regarding safe movement and seating on campus (e.g. directional arrows, designated entrances and exits, designated seats that maintain physical distancing). In order to avoid congestion, allow all previous occupants to fully vacate a classroom before entering. No food or drinks are permitted in any classrooms or labs.

For the most recent information about Carleton's COVID-19 response and required measures, please see the [University's COVID-19 webpage](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca

Please note that failure to comply with University policies and mandatory public health requirements, and endangering the safety of others are considered misconduct under the [Student Rights and Responsibilities Policy](#). Failure to comply with Carleton's COVID-19 procedures may lead to supplementary action involving Campus Safety and/or Student Affairs.

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 will be provided to students who compete or perform at the national or international level. 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: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

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