

LAWS 4605 – SECTION B - ASHTAKALA

CARLETON UNIVERSITY

DEPT OF LAW AND LEGAL STUDIES

COURSE OUTLINE

COURSE NUMBER - TITLE	LAWS 4605 – Topics in International Law: Climate Change and the Law
SECTION:	B
TERM:	Fall 2021
PREREQUISITES:	LAWS 2601 ; LAWS 2908 or PAPM 3000 ; AND fourth-year Honours standing
DAY & TIME:	Wednesdays 11:30 AM – 2:30 PM
DELIVERY METHOD:	In-person, NI 4020.
INSTRUCTOR (CONTRACT):	Tara Ashtakala
CONTACT INFORMATION:	OFFICE: Loeb B-442 OFFICE HOURS: By appointment EMAIL: Tara.Ashtakala@carleton.ca

CALENDAR COURSE DESCRIPTION (GENERAL)

Topics vary from year to year and are announced in advance. May include transnational environmental issues; the international law of armed conflict, peacekeeping and neutrality; the law of international treaties and transnational agreements; state responsibility under international law.

INSTRUCTOR COURSE DESCRIPTION (SPECIFIC)

It has been called the fight of a generation against an existential threat to humanity. Most people, scientists and leaders now recognize the link between the Earth's dramatically changing climate and human production of greenhouse gases. Activists, businesses, cities, economists, health professionals, industries and national governments are beginning to respond in different ways.

Those responses are framed within law. They include: updating legally binding commitments in international treaties to reduce emissions; enacting domestic regulatory requirements for adapting infrastructure to extreme weather; and instituting class-action lawsuits, either by property owners who have suffered damage as a result of climate change or by young and marginalized people trying to force their governments to take more action to stop it.

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These responses are also evolving the law. Initially, international agreements and litigation about climate change arose predominantly from environmental advocacy efforts to restrain the industrial activities that produce it. As many other facets of life are being impacted by climactic transformations, they, too, are contributing to a steadily increasing case load referencing climate change in the corresponding areas of law.

Yet the arguments in all these cases do not demonstrate a cross-sectoral understanding of this issue. Within the University, there is also not one text or course offering that examines the complete range of legal challenges -nor opportunities – presented by this global problem. **This course attempts to highlight the different concepts and areas of law engaged by the phenomenon of climate change, as well as the science behind it, in order to afford students a holistic view of how this pressing issue is changing the law itself.**

REQUIRED TEXTS

There is no textbook for this course. All readings are from online sources. The required readings for each week's lecture will be indicated in the pre-lecture notes for that class, which will be posted in advance on Brightspace. The pre-lecture notes help the student focus on what is important in each reading. You will be asked to read only certain paragraphs or pages of the readings, not the entire document.

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 three (3) components must be completed in order to obtain a passing grade

1. Audio-visual Presentation - 20% of final grade

- The task for the 10-15 minute (max) presentation is to explain the non-legal knowledge behind the climate change issue (10%) and lay out the proposed legal case to address it, supported by applicable law and relevant case law.

- PRESENTATION DATES:

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|---|--------------------|
| • IF YOUR SURNAME STARTS WITH A-B (incl): | OCTOBER 6 |
| • IF YOUR SURNAME STARTS WITH C-H (incl): | OCTOBER 13 |
| • IF YOUR SURNAME STARTS WITH I -L (incl): | OCTOBER 20 |
| • IF YOUR SURNAME STARTS WITH M-P (incl): | NOVEMBER 3 |
| • IF YOUR SURNAME STARTS WITH Q-R (incl): | NOVEMBER 10 |
| • IF YOUR SURNAME STARTS WITH S -T (incl): | NOVEMBER 17 |
| • IF YOUR SURNAME STARTS WITH U-Z (incl): | NOVEMBER 24 |

2. Term Essay - 35% of final grade

- essay due on 10 December ; to be uploaded to Brightspace
- Length: 12-15 pages double-spaced, proper legal citation and bibliography required
- **Canadian spelling only; this is not a joke.** 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).
- The task for the Term Essay is to write a persuasive factum for the proposed legal case relating to the climate change legal issue selected,

3. Open book final examination - 45 % of final grade

- **To be scheduled during formal exam period:**
- the goal of the final exam is to apply the course content to 1) solve a legal problem for a fictitious client and to 2) thoroughly discuss a thematic issue arising from the application of the law to climate change and its impacts.
- the final exam will be proctored, for both in-person and online writing**

LATE PENALTIES AND REQUESTS 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).

LECTURE TOPIC SCHEDULE**I INTRODUCTION****8 Sep INTRODUCTION: THE SCIENCE OF THE CARBON CYCLE AND CULTURAL PERCEPTIONS OF CLIMATE CHANGE**

- “Indigenous Peoples and Global Climate Change: Intercultural Models of Climate Equity”. Keynote Address by Rebecca Tsosie.
- Whyte, Kyle. Indigenous Climate Change Studies: Indigenizing Futures, Decolonising the Future.
- Xue, Wen. Cultural worldviews and Climate Change: A View from China.
- Sanganyado, Edmond et al. Impact of African Traditional Worldviews on Climate Change
- McNeely, Shannon M. and Lazrus, Heather. The Cultural Theory of Risk for Climate Change Adaptation.

II THE EXISTING LEGAL REGIMES

15 Sep THE FRAMEWORK CONVENTION ON CLIMATE CHANGE, ITS ANCESTORS AND ITS DESCENDANTS

- The Intergovernmental Panel on Climate Change
- United Nations Framework Convention on Climate Change
- The Kyoto Protocol
- Momentum for Change
- The Paris Agreement
- Katowice Climate Package

22 Sep THE FOSSIL FUEL INDUSTRY AND NATURAL RESOURCES LAW

Canada:

- Constitution Acts, 1867 to 1982, ss. 29-33, 47, 52, 58, 59
- Committee for Justice and Liberty et al. v National Energy Board et al
- Friends of the Oldman River Society v. Canada (Minister of Transport)
- Impact Assessment Act
- Canadian Energy Regulator Act:

International:

- Bilder, Richard B. International Law and Natural Resources Policies.
- People of the State of New York v Exxon Mobil Corporation

29 Sep INDIGENOUS RIGHTS

- Constitution Act; the Duty to Consult
- UN Declaration on the Rights of Indigenous Peoples
- Chippewas of the Thames First Nation v. Enbridge Pipelines Inc
- Mikisew Cree First Nation v. Canada (Governor General in Council)
- Tsleil-Waututh Nation v. Canada (Attorney General)
- Coldwater First Nation v Canada (Attorney General)

III THE IMPACTS OF CLIMATE CHANGE ON NATURAL ENVIRONMENTS AND THE LAWS THAT APPLY TO THEM

6 Oct THE MELTING OF THE POLES, GLACIERS AND PERMAFROST

- Turner, J and Overland, J. “Contrasting Climate Change in the two Polar Regions”.
- The Antarctic Treaty
- Petition to the Inter-American Commission on Human Rights
- Kivalina v Exxon Mobil et al
- Saul v RWE,

13 Oct THE CHANGING OCEANS

- The United Nations Convention on the Law of the Sea
- Ballona Wetlands Land Trust v City of Los Angeles
- Interview with former President of the Maldives Mohamed Nasheed. International Bar Association.

20 Oct DROUGHT AND FIRE

- Rylands v Fletcher
- Black Saturday class action lawsuits, Australia
- Portuguese youth v various States of the European Union
- Maathai, Wangari. The Challenge for Africa.

3 Nov THE LOSS OR CHANGE OF SPECIES

- Daishowa-Marubeni International Ltd v Canada
- Petition to List the Polar Bear as an Endangered Species under the Endangered Species Act
- Alaska Oil and Gas Association v Wilbur Ross
- Attenborough, Sir David. “A Life on Our Planet”.

IV THE IMPACTS OF CLIMATE CHANGE ON HUMAN DAILY LIFE AND LIVELIHOOD - AND THE LAWS THAT APPLY TO THEM

10 Nov LAND USE, AGRICULTURAL AND FISHING LAW

- EU Regulation 74/2009
- Pacific Coast Federation of Fishermen’s Associations v Chevron
- Vedanta v Lungowe
- Babineau v City of Ottawa
- Rabinowicz, Jane. “Farmers fighting climate change, at home and abroad”.

17 Nov MANDATING RESILIENCE IN CONSTRUCTION LAW AND HOW THE CLIMATE IS CHANGING INSURANCE

- National Building Code
- Arctic Foundations of Canada Inc et al v Mueller Canada Ltd
- Gilmor et al v Nottawasaga Valley Conservation Authority,
- Intact Insurance Co v Parsons
- Wight v Peel Insurance
- Insurance Bureau of Canada Policy Paper
- Tiny Houses in Canada’s Regulatory Context: Issues and Recommendations

VI LEGAL ACTIONS:

24 Nov ECONOMICS AND CONSTITUTIONAL LAW: THE TAXATION OF CARBON

- Air Transport Association of America v Secretary of State for Energy and Climate Change
- Reference re Greenhouse Gas Pollution Pricing Act
- United States of America v The State of California
- Nordhaus, William. “Climate Change: the Ultimate Challenge for Economics”. Nobel Prize Acceptance Lecture

1 Dec LAWSUITS AGAINST CLIMATE CHANGERS

- La Rose v Canada
- Urgenda v The Netherlands
- Trans Mountain Pipeline ULC v Mivasair
- Mathur et al v Her Majesty the Queen in Right of Ontario

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- State of Rhode Island v Chevron
- Greta Thunberg full speech at UN Climate Change COP 24

VII REVIEW OF COURSE

8 Dec REVIEW

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: <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 accommodation regarding a formally-scheduled final exam, you must complete the

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[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

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable):.

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/>.

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 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/studentssupport/svpolicy/>.

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 contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>.

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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/>.

DIVERSITY AND INCLUSION IN COURSE CONTENT AND EXECUTION:

Lawyers need to be able to read statutes, in order to apply them in the courtroom. It is equally important to the success of a lawyer's case to know what the statute does not say.

As we will see in this course, the rules that apply to the activities that both cause and fight climate change are found in both international law and in domestic law. While international organizations like the IPCC are obligatorily representative of the nations most affected by climate change impacts, the negotiation of the foundational rules of public international law that underpin international organizations were driven mostly by powerful developed States. Rules of domestic law that relate to climate-impacting activities in many developing countries that are resource-rich have been heavily influenced by industry or are sparse in number or enforcement. The majority of climate-change lawsuits against industry and governments are being launched by youth groups or by non-governmental organizations (on behalf of marginalized peoples in the developing world) in the richer, developed nations. Even if international legal disputes that consider climate change are decided by some judges and lawyers who come from historically colonized, enslaved and otherwise suppressed communities, their fellow citizens - who are not trained in law and who are most impacted by climate turbulence- do not get to voice their concerns by arguing in international courts, nor do they get to publish scholarly articles about them. Thus, there is an inherent deficit in cultural diversity of voices shaping climate change debate and response.

Every lecture topic in this course draws upon a sampling of readings from academic literature, from legislation or from case law. It is whilst reading these materials that students have the opportunity to think critically about whose concerns are not addressed and about what impact that omission of voices has on the development of the basic concepts of the law relating to climate change; indeed, the questions in the pre-lecture notes for this course will require you to do so. It is also expected that students will include those insights in their presentation and research paper assignments, as well as express them in the honest, yet respectful, debates that comprise the live case study discussions following each lecture.

End of Course Outline.