

COURSE OUTLINE

COURSE NUMBER - TITLE	LAWS 4801 – RISK AND THE LEGAL PROCESS
SECTION:	D
TERM:	Winter 2023
PREREQUISITES:	LAWS 2908 or PAPM 3000 and fourth-year Honours standing.
DAY & TIME:	Friday 11:35-14:35
DELIVERY METHOD/ROOM:	In-person / Southam Hall 505
INSTRUCTOR (CONTRACT):	Tara Ashtakala
CONTACT INFORMATION:	OFFICE: Loeb B-442 OFFICE HOURS: By appointment EMAIL: Tara.Ashtakala@carleton.ca

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

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2. Term Essay - 35% of final grade

The task for the Term Essay is to perform a risk analysis on a legal topic of interest to the student; the goal of the exercise is to demonstrate that the four point methodology above can be used to assess the best course of legal action for any situation.

- **Due on 12 April** : 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>**
- **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.

3. 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: 15-27 April 2023**
- **The final exam will be written in-person, in accordance with public health restrictions in effect at that time. There is no option to write remotely. Any student who is not present to write the final exam in-person must apply for a deferral: <https://carleton.ca/registrar/deferral/>**
- **The final exam will be proctored, for any format of writing.**

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.** 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).
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LECTURE TOPIC SCHEDULE * While the number of readings listed below will remain the same, the specific titles of 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 1st page of the pre-lecture slides, that will be posted ahead of every class, on Brightspace.

13 Jan INTRODUCTION AND OVERVIEW

THE NATURE OF RISK AND UNCERTAINTY

20 Jan SITUATIONS OF RISK

- Sharratt, “Risk Renewal”
- Baer, “Thinking Outside The Courtroom,”
- “As gene-testing surges, lawsuits aren’t far behind”
- Krishna, “Crime Pays More If You’ve Got Class,”
- “World’s first humanitarian insurance policy issued”,
- Dostmohammed and Long, ‘Regulating the Sharing Economy’,
- 'Laser scam' gamblers to keep £1m ,
- Kahan, ‘A Risky Science Communication Environment for Vaccines’

27 Jan ONGOING DEBATES IN RISK MANAGEMENT

A. Risky behaviours: how are they managed by society?

- “Fronting for Business”,
- Wildavsky, “No Risk Is the Highest Risk of All”
- Palazzo, No-fault insurance
- Culpability and Compensation in Canadian Health Care: Much Ado About No-Fault?.

B. Regulation v Innovation: managing risk through regulation (or not)

- Van Waarden, “Institutions and Innovation - the legal environment of innovating firms” ,
- Macdonald, “Coerciveness and the selection of environmental Policy instruments,”
- Macrory, “Regulating In a Risky Environment,”
- .Kam, NHTSA Safety Defect Investigations
- Vorster, High Court of South Africa
- Ernst v Alberta (Energy Resources Conservation Board),

3 Feb TOOLS FOR THE PREVENTION AND/OR MITIGATION OF RISK

- A. Concept of Insurance
 - Flyvbjerg et al, “Megaprojects and Risk”
- B. Precautionary Principle
 - Morris, “Defining the Precautionary Principle”,
- C. . Motion to strike
 - Mathur v Ontario
- D. Tort Action
 - *Comite d’environnement de la Baie Inc. v. Societe d’electrolyse et de chimie Alcan* ,
- E. Planning for Risk in Contracts
 - Triantis, “Contractual Allocations of Unknown Risks: A Critique of the Doctrine of Commercial Impracticability”
 - Climate Change and Force Majeure,

10 Feb RISK IN THE LEGAL PROCESS (RISK MANAGEMENT STRATEGIES IN THE COURTOOM)

- *Kelliher (Village of) v. Smith.*
- *R. v. Mohan*
- *R. v. Bingley*
- Galligan, Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka
- *R v NS*
- Lederer, “The Road to the Virtual Courtroom?”
- Tweeting criminal trials in the Digital Age

DEALING WITH RISK IN VARIOUS TYPES OF LAW**17 Feb DISASTERS AND RISK MANAGEMENT**

- Thornton, “Hurricane Katrina - The Legal Saga Begins”
- Bannon and Fisher, “Legal Lessons in Disaster Relief from the Tsunami, the Pakistan Earthquake and Hurricane Katrina”.
- Text of Bill C-78, An Act to provide for emergency management and to amend and repeal certain acts,.
- United Nations Development Program, “Is Sustainable Human Development Achievable under Natural Disaster Risk?”,
- Tampere Convention
- Nuclear Accident Convention

24 Feb Winter break, no class

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3 Mar RISK AND PUBLIC HEALTH

- Schneider v. The Queen.
- The Attorney-General of Ontario and others (Appeal No. 2 of 1940) v The Canada Temperance Federation (Ontario)
- Reference re Genetic Non-Discrimination Act, SCC 2020,
- World Trade Organization, “*EC Measures Concerning Meat and Meat Products (Hormones)*”
- ‘Legal Access and Preparedness’, extract from The SARS Commission.
- “Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System” .

10 Mar RISK ISSUES IN CRIMINAL LAW

- “Offender Risk Assessment”, John Howard Society of Alberta
- Shute, “ The place of Public Opinion in Sentencing Law,”
- MacAllister, “Use of Risk Assessments by Canadian Judges in the Determination of Dangerous and Long-term Offender Status from 1997-2002,”
- R. v. Boutilier,.
- Ewert v Canada
- Examining the High-Risk Accused Designation for Individuals Found Not Criminally Responsible on Account of Mental Disorder.

17 Mar VOLUNTARY ASSUMPTION OF RISK : THE CASE OF SPORT

- Husa & Thiele, “In the Name of the Game: Hockey Violence and the Criminal Justice System.”
- Citron, Jeffrey A. & Ableman, Mark, “Civil liability in the arena of professional sports”.
- R. v. Cey,
- R. v. Leclerc
- R v Ciccarelli
- Bruce v Cohon,.
- Dent et al v NFL
- Dunn v University of Ottawa

24 Mar VOLUNTARY ASSUMPTION OF RISK: THE CASE OF TORT

- **Occupations considered to be essential**
Occupational Health and Safety Act of Ontario, R.S.O. 1990, CHAPTER O.1, s. 43(2)
R v Port Colborne
- **Impaired ability to assume risk**
Dube v. Labar,
Crocker v. Sundance Northwestern Resorts Ltd.,
Childs v. Desormeaux
- **Rescuers and Good Samaritans**
Horsley v. MacLaren,
Coopersmith v. Air Canada

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- **Reality TV:**

Taylor v BC (Privacy Commissioner)

31 Mar RISK AND THE MEDIA

- Irwin Toy Ltd. v. Quebec (Attorney General)
- Harper v Canada (Attorney General)
- R. v. Butler,
- R. v. Keegstra,
- Dagenais v. Canadian Broadcasting Corp.,
- R. v. Mentuck,
- Sierra Club of Canada v Canada (Minister of Finance)
- A.B. v Bragg Communications Inc.
- R v Elliott
- Vice Media v The Queen
- 170 Ontario v Pointes Protection Association

12 Apr CORPORATE LEGAL RISKS and REVIEW OF COURSE * Please note that even though the 12th of April is a Wednesday, classes on this day follow a Friday schedule.

- Corporate Governance : Control
 - Buckerfield's Limited et al. v. M.N.R.
- Compliance
 - Royal British Bank v Turquand
 - Tele-Mobile Co. v. Ontario
- Shareholder Activism
 - Trinity Wall Street v Wal-Mart Stores Inc.

Winter 2023 Sessional Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website:</i> https://calendar.carleton.ca/academicyear/	
January 9, 2023	Winter term begins.
January 13, 2023	Last day for registration and course changes (including auditing) in early winter courses.
January 20, 2023	Last day for registration and course changes (including auditing) in full winter and late winter courses.
February 20, 2023	Statutory holiday. University closed.
February 20-24, 2023	Winter break. No classes.
March 15, 2023	Last day for academic withdrawal from full winter, late winter, and fall/winter courses.
April 7, 2023	Statutory holiday. University closed.
April 12, 2023	Winter term ends. Last day of full winter, late winter, and fall/winter classes.
April 15-27, 2023	Final examinations in full winter, late winter, and fall/winter courses will be held. Examinations are normally held all seven days of the week.
April 27, 2023	All final take-home examinations are due on this day.

COVID-19 PREVENTION MEASURES

All members of the Carleton community are required to follow COVID-19 prevention measures and all mandatory public health requirements in effect at the current time.

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

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. Please see <https://students.carleton.ca/course-outline/>

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,

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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/>.

End of Course Outline.