
COURSE:	LAWS 4801D – RISK AND THE LEGAL PROCESS
TERM:	Winter 2021
PREREQUISITES:	LAWS 2908 or PAPM 3000 and Fourth-Year Honours standing
CLASS:	Day & Time: All Courses in the Winter 2021 term are offered online. There will be a pre-recorded lecture and a Zoom discussion group from 12:00PM to 1:30PM on Wednesday.
INSTRUCTOR: (CONTRACT)	Collin Fletcher
CONTACT:	Office Hrs: Monday from 12PM to 1PM and Wednesday from 4:00PM to 5:00PM on Zoom Telephone: 613-806-3293 Email: collin.fletcher@carleton.ca

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 risk and reward.

The course format has been adjusted for the COVID-19 crisis. Previous iterations of the class involved a lecture with frequent questions posed to the class during this lecture. This traditional approach to teaching the class is not possible during COVID-19. Instead, the course will be taught by a pre-recorded lecture that will be uploaded prior to the class and an organized class discussion during the scheduled class time. The lecture will last approximately one to one and a half hours.

The class discussion will occur on Zoom during the regularly scheduled class time between 12:00 and 1:30PM. The questions and topic discussions will be distributed ahead of the class discussion.

REQUIRED TEXTS

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

EVALUATION

(All components must be completed in order to get a passing grade)

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 February 24th, 2021**
- 3. Course Paper (40%) - Due March 31st, 2021**
- 4. Final Examination (30%) - Take Home Exam**

All assignments must be typed or word-processed and submitted in hard copy on the date specified in the syllabus. Assignments will not be accepted by email. Always retain a copy of the submitted work. In the event of loss, theft, destruction, dispute over authorship, or any other eventuality, it will be your responsibility to provide a copy of your work. Keeping earlier drafts of your work and other materials is strongly encouraged.

Attendance & Participation (10%)

Students will be expected to watch the pre-recorded lecture and to attend the scheduled class discussion by Zoom. 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 and to respond to the questions that are uploaded on CULearn. 10% of the grade will be for attendance and active participation in and out of the class. Additionally, a message board will be added on CULearn and each week the questions discussed in class will be added to the Message Board. Students will be permitted to discuss on the CULearn

Message Board if they are not comfortable participating in the class discussion portion of the 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. Additionally, given the COVID-19 crisis, participation in this format will be new for the professor and the student.

Given the nature of COVID-19, attendance will be taken every class but not registered. Attendance will only be taken for me to obtain familiarity with the students. It is fine if a student misses one class during the semester due to personal issues. Students are not required to turn their video on during class if they are not comfortable. Students are encouraged to turn their video on if they feel comfortable, as it allows me to be familiar with the class.

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 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.

However, a necessary skill that students should obtain during their undergraduate degree is their oral advocacy skills. Students are encouraged to take risks and push themselves academically to speak in class. This class should be used as an opportunity to work on your oral advocacy skills. University is an opportunity to work on both oral and written advocacy skills.

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 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 highly as a student who participates less frequently but who consistently constructs a productive dialogue in the classroom. It is acceptable to prepare notes and to read off your notes during class discussion.

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 discussion, 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. I

expect everyone to be respectful of differing abilities, backgrounds, racial identity, ways of knowing and being, and sexual orientation and gender expression

Case Presentation (20%) - Due February 24th, 2021

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 CULearn. If students are unable to pre-record their video and submit it on CULearn, 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 on March 31st, 2020

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 will consist of 30% of your final grade and will be **due on March 31st, 2020**. 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 its 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 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 to finish this exam. Students will be required to email their professor their final exam when completed.

All components must be completed in order to get a passing grade--Failure to complete any portion of the required course assessment will result in a final grade of F.

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).

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 automatically but I will provide them to students who request them. Essays will be returned ahead of the due date for your final exam at the end of term.

Late essays will be marked down one-half letter grade (eg. B to B-) for each day submitted after the due date without authorized extension from me, subject to the discretion of the professor. Essays must be typed or word processed and submitted by 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 offences as described in the Undergraduate Calendar

SCHEDULE

- **JANUARY 13TH** - Introduction to the Course
- **JANUARY 20TH** - The Concept of Risk in the Legal Process
- **JANUARY 27TH** - Risks in Litigation
- **FEBRUARY 3RD** - Risks in Mediation and the Negotiation of a Settlement
- **FEBRUARY 10TH** - Risks in Arbitration & Administrative Tribunal Processes
- **READING BREAK** - No Classes
- **FEBRUARY 24TH** - Sentencing and Risk of Reoffending (**Case Presentation is Due**)
- **MARCH 3RD** - The Risk Associated with Terminating an Employee
- **MARCH 10TH** - Tort Liability and the Voluntary Assumption of Risk

- **MARCH 17TH** - Child Protection and Risks to a Child
- **MARCH 24th** - Environmental Regulation - Mitigating Risks to the Environment and Corporate Responsibility
- **MARCH 31st** - Professional Liability and Risk (**Essay is Due**)
- **APRIL 7th** – Wrap Up and Review

Readings will be made available on the CULearn website. Each week there will be a variety of cases that are assigned for you to review.

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://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

Pregnancy obligation

Please contact 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, visit the Department of Equity and Inclusive Communities (EIC):

<https://carleton.ca/equity/>

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, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

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) <https://carleton.ca/pmc>

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. <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/>

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/current-students/>