

Course Outline

COURSE:	LAWS 4107 - B – Law in Modern Society
TERM:	Winter 2023
PREREQUISITES:	LAWS 2908
CLASS:	Day & Time: Please check Carleton Central. Room: This class runs in person. Please check Carleton Central for further particulars.
INSTRUCTOR:	Dr. Ksenia Polonskaya
CONTACT:	Office: C572 LA Office Hrs: My office hours are on Wednesdays. I will be in the office from 12 pm until 3 pm. Please do not hesitate to drop by. 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 goal of this course is to help you to develop critical analytical skills, including the ability to build, advance, and rationalize socio-legal arguments. In addition, you will learn more about legal theories and consider their application to the reality on the ground. In other words, socio-legal theories will become your tools 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 relevant case law and jurisprudence.
- Further develop an ability and flexibility in making arguments both in oral and written formats.
- Develop a practical outlook on legal theories and apply various theories to solve practical problems.

- Develop an understanding of a concept “theoretical framework”. It will be beneficial if you are looking to continue your studies at the graduate level.
- Further develop an ability to answer questions on the spot and uphold a structured debate in a professional manner.
- Further develop writing, research, and presentation skills.

Delivery

Our course will run in person. Please note that I will not record our sessions. Please verify the schedule via Carleton Central.

For your reference, I will use BrightSpace to post the PowerPoint slides for each session, to share updates with the class, and to evaluate your submissions. Therefore, you will need to monitor our course page to stay up to date.

Our Model

This course will guide your exploration of socio-legal theories. To fulfill the objectives of the course, 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 **before** each class and participate in the discussions.

I will ask open-ended questions based on the assigned texts during each session. Your task is to reflect on the questions individually, in pairs, and/or in mini-groups. You are expected to share your thoughts with the class in an argumentative manner during our session. In this process, you can (1) provide an answer, (2) intervene on a particularly 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.

This course is a seminar, not a lecture, so each participant should actively participate in our sessions.

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 participate actively in the discussions. Specifically, as a participant in this course, you can engage in structured debate with your peers and the instructor. This model helps to further cooperation and knowledge sharing among the participants.

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

Our Schedule

In the section “Schedule” below, you will see two major blocs of sessions (“General Topics” and “Special Topics”). The section “Schedule” also includes the key questions and readings for each seminar. 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. Together we will learn how these broader themes overlap.

As you will see below, we will explore the jurisprudential debates in their relation to different social phenomena such as totalitarianism, citizenship and mass migration, digital surveillance and privacy, corporate responsibility, and war, 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 the 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 participation marks, it is crucial that you review the mandatory readings before each session. All mandatory readings will be available via Ares and accessible through Bright Space. If the reading is not uploaded on Ares, you can find it online via the Carleton library. Please note that some weeks will be more reading intensive than others. The total amount of reading for this seminar follows the Guidelines set by the Department of Law and Legal Studies.

REQUIRED TEXTS

You will find all assigned texts in the section “Schedule”. You can access them via Ares or (if not available), you can find the materials online via the website of Carleton library.

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.

- **Introduction** (individually) – 3%. You can introduce yourself during our first session. Alternatively, you are welcome to submit a forum post or an audio recording on Bright Space. **Please note that all course participants must complete their introductions during the first two weeks of the class, i.e., by 17 January 2023, 5 pm. No extensions for this assignment are possible.**
- **10 minutes presentation** (individually, during the class) – 12%. Please pick one of the cases posted on Bright Space. You will need to **sign up** on the Bright Space Excel Spreadsheet **during the first two weeks of classes i.e., by 17 January 2023, 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. You can get up to 3% per class if you are a frequent intervener. Your participation will be evaluated throughout the term.
- **2500 words mid-term essay** (individually) – 30%. Your essay must 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 20 February 2022, 5 pm. Please note that I will accept submissions only via Bright Space.**
- **Final Book Review**– 25%. Please review the book by Oona A. Hathaway & Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon and Schuster, 2017). You can complete this assignment in pairs if you wish to do so. **The deadline is 28 March 2023, 5 pm. Please note that I will accept your submissions only via Bright Space.** Further particulars (including the rubric) will be provided via Bright Space.
- **Quizzes (individually)** – 15%*3 (5% each) - 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 2023 until 28 March 2023, 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

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%.

SCHEDULE**GENERAL TOPICS****ON LAW, JUSTICE, AND AUTHORITY****Seminar 1****11 January 2023. On Law**

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

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](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 2023. On Law and Morality**

- Is it morally wrong to eat people?
- Is eating people legal?
- How do we understand the relationship between “morally wrong” and “legally wrong”?

Readings:

- Michael Sandel, *Justice: A Reader* (Oxford University Press, 2007), 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.
- Lon Fuller, *The Morality of Law* (Yale University Press, 1964), only Chapter 2 “The Morality That Makes Law Possible”.

Seminar 3**25 January 2023. On Justice and Evil Legal Regimes**

- What are the evil regimes, and do they produce evil laws?
- How do we understand the role of morality in legal regimes?

Readings:

- Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford University Press, 1993) only Chapter 10 “Authority, Law, and Morality”.
- N.E. Simmonds, *Law as a Moral Idea* (Oxford University Press, 2007) only Chapter 3 “Evil Regimes and the Rule of Law”.

Seminar 4**1 February 2023. On Authority**

- Do we need a state to make the law?
- What is the law-making capacity beyond a state?

Readings:

- Gilles Guniberti, “Three Theories of Lex Mercatoria” (2013) 2 Colum J Transnat'l L 369.
- Antoine Duval, “Seamstress of Transnational Law. How the Court of Arbitration for Sport Weaves the Lex Sportiva” in Nico Kirsch (ed), *Entangled Realities Beyond State* (Cambridge University Press, 2021)

Seminar 5**8 February 2023. Judicial Discretion**

- Do judges randomly decide cases?
- How do we identify the scope of judicial discretion?
- Should Artificial Intelligence (AI) be a judge of the future?

Readings:

- Ronald Dworkin, “Judicial Discretion” 60:21 *The Journal of Philosophy* 624-638.
- Ronald Dworkin, “Hard cases” (1974) 88 *Harv L Rev* 1057.

SPECIAL TOPICS**ON CITIZENSHIP****Seminar 6****15 February 2023. On Citizenship and Membership in the Community**

- How do we define relationships between citizens and their states?
- Is there a “good” and “bad” citizenship?
- Can a government revoke citizenship? If so, for what reasons?

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.
- Michael J. Sandel, *Justice: A Reader* (Oxford University Press, 2007), see Chapter XII.

Reading Week 20-24 February 2023 (no classes)

ON RIGHTS AND THEIR BOUNDARIES

Seminar 7

1 March 2023. On Foundations and Boundaries of Rights

- What is the basis of individual rights?
- How do we understand the limits of individual rights?

Readings:

- Jean Thomas, “Our Rights, but Whose Duties? Re-Conceptualizing Rights in the Era of Globalization” in Tsvi Kahana & Anat Scolnicov (eds), *Boundaries of State, Boundaries of Rights* (Cambridge University Press, 2016) 6-25.
- 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.

Seminar 8

8 March 2023. On the Right to Privacy

- Should Google know where you get your coffee?
- What are the scope and limits of the right to privacy in the context of the digital economy?

Readings:

- “Privacy” in Stanford Encyclopedia of Philosophy, available [here](#).
- Barrie Sander, “Democratic Disruption in the Age of Social Media: Between Marketized and Structural Conceptions of Human Rights Law” (2021) 32:1 EJIL 159.
- ECJ, Request for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 25 March 2020, (5 April 2022), C-140/20, available [here](#).

ON PROPERTY, DISTRIBUTION, AND CORPORATE FORM

Seminar 9

15 March 2023. On Property and Its Limits

- What do we count as property?
- Is private property theft?
- How do we understand the limits of property rights?

Readings:

- Michael Sandel, *Justice: A Reader* (Oxford University Press, 2007), see Chapter 4
- Prudon, “What is Property?” In *Property Is Theft* (AK Press, 2011) at 83-137.
- *Piljak Estate v Abraham* [2014] ONSC 2893.

- *Harrison v Carswell* [1976] 2 SCR 200 (both majority and dissent).

Seminar 10

22 March 2023. On Corporations and Corporate Accountability

- Do corporations commit wrongs? Are they accountable for them?
- What are the limitations of such accountability, if it exists?
- Do corporations perform sovereign functions?

Readings:

- Doreen Lustig, *Veiled Power: International Law and the Private Corporation 1886-1981* (Oxford University Press, 2020), see Chapter 4 “The Nature of the Nazi State and the Responsibility of Corporate Officials at Nuremberg”.
- *Nevsun Resources Ltd. v. Araya* [2020] SCC 5.
- Jay Butler, “The Corporate Keepers of International Law” (2020) 114:2 *American Journal of International Law* 189-220.

Seminar 11

29 March 2023. On Non-Human Forms and Markets

- Do markets have moral limits?
- Are robots legal persons?

Readings:

- Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Farrar, Straus & Giroux: New York, 2013), see “Introduction” & “How Markets Crowd Out Morals”.
- Thomas Buocz & Iris Eisenberger, “Demystifying Legal Personhood for Non-Human Entities: A Kelsenian Approach” (2022) *Oxford Journal of Legal Studies* 24.

Seminar 12

ON WAR

5 April 2023. On Illegality of War

- Is war legal?
- Why does legality matter in the context of war?

Readings:

- Oona A. Hathaway & Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon and Schuster, 2017).

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/>.

Winter 2023 Semester Dates and University Closures	
<i>Please find a full list of important academic dates on the calendar website: https://calendar.carleton.ca/academicyear/</i>	
January 9, 2023	Winter term begins.
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 Reading Week. 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. Last to hand in term work.
April 15-27, 2023	Examination Period
April 27, 2023	All final take-home examinations are due on this day.