

COURSE OUTLINE

COURSE NUMBER - TITLE	LAWS 4801 – RISK AND THE LEGAL PROCESS
SECTION:	A
TERM:	Winter 2022
PREREQUISITES:	4 th -year Honours standing
DAY & TIME:	Monday 11:30-14:30
DELIVERY METHOD/ROOM:	*Online via Zoom for the month of January 2022 In-person / Nicol 3030
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

LAWS 4801 – SECTION C - ASHTAKALA

REQUIRED TEXTS

There is no textbook for this course. **Required Readings will be posted in PDF form on Brightspace**; only those in the “Risk and the Media” lecture topic will have online links. **PLEASE NOTE THAT YOU ARE REQUIRED TO READ ONLY THOSE PARAGRAPHS OR PAGES INDICATED IN THE PRE-LECTURE NOTES, NOT THE ENTIRE DOCUMENT.**

COURSE DELIVERY:

- Pre-lecture notes will be posted on Brightspace prior to each class, indicating readings to be done ahead of lecture and containing questions that help the student understand the reading.
- It is during lecture that the answers to the questions in the pre-lecture notes will be discussed.
- Case study exercises, involving group discussions, will also be conducted during lecture
- The presentation and research paper components of evaluation in the course will be submitted by students as per the deadlines indicated in the “Evaluation” section below.

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 have been approved by the Department and Dean.

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

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

- Each student will be required to complete a 10 minute presentation on the subject of the Research paper.
- Your task in the presentation assignment is to create a lecture on the risk topic you have chosen and to impart – to your colleagues and to me – your understanding of: 1) why the social and legal impacts of the risk are a problem; 2) how the law has dealt with the risk; 3) the defects in how the law has dealt with the risk (and therefore this is why the risk is causing social and legal problems); 4) how the defects in the law should best be rectified in order to minimize the risk of the adverse legal consequences recurring in the future.
- Since, as we will learn in the course, legal risk cannot be entirely prevented, the assignment is generally about finding the best legal course of action – whose benefits outweigh the risks - to deal with the ongoing legal problem you have identified.

PRESENTATION SUBMISSION DATES:

- **IF YOUR SURNAME STARTS WITH A: 7 FEB**
- **IF YOUR SURNAME STARTS WITH Ba: 14 FEB**
- **IF YOUR SURNAME STARTS WITH Be - C (incl): 28 FEB**
- **IF YOUR SURNAME STARTS WITH D-G (incl): 7 MAR**
- **IF YOUR SURNAME STARTS WITH H-K (incl): 14 MAR**
- **IF YOUR SURNAME STARTS WITH L: 21 MAR**
- **IF YOUR SURNAME STARTS WITH M - N (incl): 28 MAR**
- **IF YOUR SURNAME STARTS WITH P-Z (incl): 4 APR**

LAWS 4801 – SECTION C - ASHTAKALA

2. Term Essay - 35% of final grade

3. 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 11 April** : upload to Brightspace
- **Length:** 13-15 pages, plus bibliography.
- **Use Canadian Guide to Uniform Legal Citation (McGill Guide) at <https://library.ucalgary.ca/c.php?g=255284&p=1703091>**
- **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.

4. 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: 14-28 April 2022**
- **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.** *e-Proctoring: Please note that examinations in this course will use a remote proctoring service provided by Scheduling and Examination Services. You can find more information at <https://carleton.ca/ses/e-proctoring/>.*

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).
-

LAWS 4801 – SECTION C - ASHTAKALA

LECTURE TOPIC SCHEDULE**10 Jan INTRODUCTION AND OVERVIEW****THE NATURE OF RISK AND UNCERTAINTY****17 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’ (2013)

24 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),

31 Jan 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

LAWS 4801 – SECTION C - ASHTAKALA

- Triantis, “Contractual Allocations of Unknown Risks: A Critique of the Doctrine of Commercial Impracticability”
- Climate Change and Force Majeure,

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

A. Practical risk issues encountered in the trial process

- *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
- ‘Representing yourself in court is popular but costly and risky’, CBC News, 31 December 2015 at <http://www.cbc.ca/news/canada/representing-self-court-lawyers-1.3375609>

DEALING WITH RISK IN VARIOUS TYPES OF LAW

14 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

21 Feb Winter break, no class

28 Feb 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” .

7 Mar RISK ISSUES IN CRIMINAL LAW

LAWS 4801 – SECTION C - ASHTAKALA

- “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.

14 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

21 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, [1972] S.C.R. 441
Coopersmith v. Air Canada, 2009 QCCQ 5521

Reality TV:

Taylor v BC (Privacy Commissioner)

28 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

LAWS 4801 – SECTION C - ASHTAKALA

- 170 Ontario v Pointes Protection Association

4 Apr CORPORATE LEGAL RISKS

- 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*, United States Court of Appeals,

11 Apr REVIEW OF COURSE

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

LAWS 4801 – SECTION C - ASHTAKALA

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

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. 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/>.

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.

Systemic inequalities in access to the courts is a fundamental legal risk to the justice system. Even if judges and lawyers themselves come from under-represented communities, their fellow citizens who are not legal scholars more often do not get to voice their concerns by arguing in courts of law, nor do they get to publish scholarly articles about them.

You will notice from this Outline that a large number of readings in this course are cases. I ask students to read case law so that we can together glean from it the basic thematic issues of legal risk management. It is whilst reading a case that students also have the opportunity to think critically about what the ruling does not say about how the outcome of a case impacts the most suppressed voices in society; 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.

LOCATION: 1. Ottawa 2. beach – Bahamas : sand, sharks, drowning, flooding due to weather

HOW MANY GUESTS: 100 COVID restrictions, overcrowding, property damage,

FOOD: buffet / global / vegan options – tofu, salads and steak/ chicken, etc., vanilla and strawberry – contamination, allergies

MUSIC; 80s Duran Duran, Culture Club, Tears for Fears, etc

ATTIRE: white, flowy dress; traditional suit and tie; matching outfits for groomsmen; matching colours for bridesmaids, different colour for guests – suggested colours indicated on invites

DRINKS: open bar: red wine, champagne, / non-alcoholic options like grape juice, mocktails