

Professional Development
LLM

OSGOODE

OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY

Part-time LLM Course Book

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ADMINISTRATIVE LAW

Some Theoretical Perspectives on Public Law and Administration [GSLaw 6761] [3 credits]

This course provides a theoretical framework by considering the application of some contemporary theories of, and perspectives on, public administration and administrative law. Theoretical perspectives considered will include: liberalism and the rule of law; the functionalist critique; legal pluralism; critical theory; feminism; public choice theory; organizational theory. A focus of the course is the need to articulate theoretical bases for identifying appropriate roles for legislatures, agencies and courts in promoting through law democratic values and the protection of human rights in the administrative state.

Current Issues in Judicial Review of Administrative Action [GSLaw 6762] [3 credits]

This course examines some of the most important issues that have recently arisen in the course of the courts' supervision of administrative action, such as procedural fairness and institutional decision-making; the giving of reasons; independence and impartiality; deliberative secrecy; specialization and expertise; and standards of court review of administrative decisions including court review of agency interpretation of their enabling legislation. It will also address, where applicable, the impact on administrative action of the Canadian Charter of Rights and Freedoms.

Policy-Making in Administrative Tribunals [GSLaw 6763] [3 credits]

An important issue for many administrative agencies is whether, and when, they should engage in general rule or policy making outside the adjudication of individual disputes. Decisions of the Supreme Court of Canada related to a tribunal's ability to issue binding guidelines provide a rich case study of a number of the issues raised by rule making by independent agencies. The course also considers the respects in which the law has facilitated, required or hampered agencies in the greater use of open rule making.

Administrative Law Remedies [GSLaw 6765] [3 credits]

This course explores the range of remedies available to those who are aggrieved by some administrative action, inaction, or decision, and attempts to identify their respective strengths and limitations, including:

- Administrative remedies — the ability of agencies to reconsider their decisions; the power of agencies to determine the constitutional validity of their enabling legislation, and their remedial powers; the use of Ombuds.
- Judicial remedies — the relationship between administrative remedies and the exercise by the courts of their supervisory jurisdiction.

Judicial Administration in Canada [GSLaw 6719] [3 credits]

This course investigates trial courts and tribunals as state actors and court systems as social and political institutions. The course considers major concepts and issues in the field of court and tribunal administration, including the purposes of courts and tribunals and the nature of adjudication, judicial independence and accountability, case flow management, the problem of unnecessary delay, and alternative dispute resolution. The course will place management issues in a distinctive and complex environment; and for students of law, the course will provide a unique context for examining the divergence between law on the books and law in action. Classes will focus primarily on Canada, but will draw on research and experience in other court systems, for example the United States, Australia, India, Pakistan, Ethiopia and the Philippines.

Selected Issues in Judicial Administration [GSLaw 6720] [3 credits]

This course builds on the Judicial Administration course to investigate more deeply current issues in courts and tribunal administration. Topics covered include the Canadian Judicial Council's attempt to develop models of court administration that would promote greater judicial involvement in administration, diversity and access to justice, management issues arising out of legal pluralism, administrative issues surrounding administrative tribunals, performance issues and evaluation, and international development issues related to court and tribunal administration.

The “New” Administrative Law: The Rise of Judicial Review by Civil Action [GSLaw 6764] [3 credits]

The boundary between civil actions against the Crown and judicial review of government decision-making is becoming more increasingly blurred. This course explores recent developments in the jurisprudence on Crown liability, and highlights the extent to which such civil actions are attracting litigants who might have once pursued conventional administrative law remedies. Notable examples of this trend from the Supreme Court’s recent docket include *Authorson v. Canada*, in which a class action was launched against the federal Crown for breach of its fiduciary obligations to disabled veterans, and *Cooper v. Hobart* which involved a class action alleging regulatory negligence against a regulator of mortgage brokers. The scope of the Crown’s fiduciary obligations to statutory benefits recipients and the scope of regulatory negligence are but two of the many examples of novel or expanding private law doctrines which overlap with and sometimes impinge on the administrative law principles by which the courts supervise government decision-making.

Economic Regulation [GSLaw 6770 and 6716] [6 credits]

Areas of regulation may include: financial institutions, securities and capital markets, competition, international trade, consumer protection, professional discipline, land use and environmental protection.

ALTERNATIVE DISPUTE RESOLUTION

Introductory Workshop [GSLaw 6300] [6 credits]

This workshop features national and international scholars who introduce candidates to theories of disputing and dispute resolution processes from a variety of perspectives, and showcases some of the issues that will be explored in greater depth in subsequent units. These include: how conflict develops and evolves; personality and conflict; gender and conflict; an introduction to negotiation theory and practice; the role of lawyers in negotiation and mediation processes; and an introduction to a

broad spectrum of dispute resolution processes. The workshop uses a variety of teaching methods, with an emphasis on experiential exercises, simulations and games.

The Theory and Practice of ADR [GSLaw 6301] [6 credits]

This core course provides intensive exposure to a broad range of topics in the field. Topics include: adjudication and problem-solving; how the legal system understands conflict; a range of alternate theoretical models for analyzing and responding to conflict; conflict escalation and de-escalation; the impact of race, gender and other cultural norms on conflict analysis; and evaluation of a range of negotiation theories, strategies and negotiator styles; philosophies, theories and styles of mediation; mediator neutrality; ethical issues in negotiation and mediation; power in negotiation and mediation; the role of the lawyer as negotiator and mediation advocate; hybrid processes for dispute resolution; designing dispute resolution processes; and the future of ADR. While the orientation of the course is on theoretical issues, it includes a number of practice exercises, simulations and debriefings.

Culture, Diversity and Power in Dispute Resolution [GSLaw 6302] [6 credits]

Building on themes introduced in the Introductory Workshop and Theory course, this course explores the dynamics of culture in dispute resolution. Drawing on current literature and case examples, participants will have the opportunity to:

- Explore intrapersonal, interpersonal and intergroup dynamics of intercultural conflict;
- Examine cultural dimensions of specific conflict resolution processes;
- Analyze implicit meanings and cultural values of conflict resolution processes as they are practiced in a variety of sectors and settings, including private and public sector organizations and communities;
- Experience imaginative and creative tools for transforming cultural conflict;
- Learn about processes to address deep-rooted cultural conflict, including dialogue and appreciative inquiry.

Advanced Mediation [GSLaw 6309] [6 credits]

This course is designed to provide candidates with an in-depth understanding of the theory and practice of mediation, building on the work of the Introductory Workshop and Theory courses. This course integrates the theory of mediation into practice. A focus will be a critical analysis of the development of mediation and the execution of mediation programs throughout Canada and elsewhere. Participants will be encouraged to begin the development of a practical theory of mediation for application in their work as counsel and mediators. Instruction is through a combination of small and large group exercises, classroom discussion, and video review and analysis.

Dispute Analysis and Process Design [GSLaw 6306] [6 credits]

This course examines the design of dispute resolution interventions, systems and principles. Theoretical models and case studies are used to develop a more detailed theory of the relationship between particular disputes and characteristics of disputes and dispute processes, and the relationship (and possible complementarity) between different processes. A range of simulations is used for design exercises, including both bi-party and multi-party disputes as they occur in litigation, community (for example as “public dialogue”) and institutional contexts. An emphasis is placed on the micro-dimensions of process and systems design, including dealing with issues such as participation, representation, confidentiality, accountability and compliance. The workshop also considers a range of roles for the design consultant, including facilitating client “self-design”, conflict resolution training and program evaluation.

Using ADR to Resolve Complex Public Policy Disputes [GSLaw 6305] [6 credits]

This workshop explores the use of ADR, especially third party assisted negotiation, to resolve public policy disputes ranging from legislative and regulatory initiatives to enforcement matters. It explores the issues of representation and accountability, and develops a working definition of the public interest. This course examines the role of ADR by focussing on case studies and current public policy disputes.

Teaching, Training and Coaching in Conflict Analysis and Dispute Resolution [GSLaw 6299] [6 credits]

This course is designed for students who intend to contribute to the field as teacher or mentor, either as a consultant, at an academic institution or within their own organization. It begins with an examination of the theory and moves to integrate theory with practice. The elective critically assesses teaching and training pedagogy, particularly for adult learners, and then explores the growing field of conflict resolution coaching. Students will undertake curriculum design and teaching, training and coaching simulations. They will also be asked to reflect upon and analyze various teaching and coaching practices. The elective includes a number of practical exercises.

International Commercial Dispute Resolution [GSLaw 6298] [6 credits]

This course examines the use of alternative dispute resolution mechanisms in the international commercial context. It will include topics such as:

- International Commercial Arbitration – including role of the courts and major arbitral institutions, arbitration clauses in commercial activities, etc.
- Investment Arbitration – understanding the ICSID dispute resolution, NAFTA, chapter 11 and other processes for resolving international trade disputes. The elective will also address the emerging concerns of State Parties to investment and trade disputes. The course concludes with a mock arbitration in which students will engage in a complete simulation of an arbitral hearing, from commencement of the proceedings through the presentation of expert evidence to challenging or enforcing the award.

Project [GSLaw 6308] [6 credits]

The practicum project is designed and organized by the candidate and is encapsulated in a practicum plan. The objective of the practicum is to enable candidates to gain a better practical understanding of disputes and the dispute resolution process by working with people and organizations to help them understand and resolve their disputes. Candidates with similar interests are encouraged to work together in groups

of two or three. Because work conducted as part of the practicum provides the host organization with a source of free expertise, candidates are encouraged to do their practicum with a volunteer or not-for-profit organization if possible.

The practicum includes an introductory workshop taught by experts from many of the fields in which candidates will be doing their practical work. A concluding two-day workshop, where candidates present and reflect upon their practicum experience, will be held at the end of the course.

BANKING AND FINANCIAL SERVICES

Banking, Negotiable Instruments, Payment Mechanisms and Securities Transfers [GSLaw 6903] [6 credits]

This course is concerned with the private law aspects governing banking, negotiable instruments, payment mechanisms, and securities transfers. It covers major selected aspects of (1) negotiable instruments (notes, bills and cheques under the Bills of Exchange Act), (2) the bank and customer relationship (bank accounts and deposits, bank secrecy, bank's liability, etc.), (3) the payment system (including under Canadian Payments Association Act), (4) payment cards, (5) domestic and international electronic and paper based funds transfers (including under UCC Article 4A and UNCITRAL Model Law), (6) letters of credits (under the ICC Uniform Customs and Practices), and (7) transfer of securities in paper and paperless as well as in direct and indirect holding systems.

Lending, Security and Insolvency Law [GSLaw 6901] [6 credits]

This course deals at an advanced level with the legal principles and practical aspects of the granting of credit and the taking of security by Canadian financial institutions, having regard to the security provisions in the Canadian Bank Act and the personal property security legislation now in force in various provinces. The first half of the course deals with the creation, perfection, priorities and enforcement of security interests outside bankruptcy. The second half focuses on the treatment of security interests in bankruptcy

under the Canadian Bankruptcy and Insolvency Act, and in particular in light of the 1992 amendments to the Bankruptcy and Insolvency Act and the provisions of the Companies' Creditors Arrangement Act. Particular attention will be paid to the secured creditor's position in the reorganizations of insolvent businesses, and the role of privately appointed receivers in the enforcement of security interests.

Regulation of International Financial Markets [GSLaw 6980] [3 credits]

This course begins by examining the regulatory requirements imposed on Canadian issuers placing financial instruments outside the jurisdiction, by means of, for example, international private placements or the multi-jurisdictional disclosure system. It canvasses the regulatory requirements imposed on the operation of the Eurobond and Euroequity markets, and compares the efforts made by a variety of jurisdictions to regulate derivatives' markets. The course considers the progress of harmonization efforts in the European Union with respect to financial markets, and the developing regulation of Asian securities markets. A general theme of the course is the extent to which global regulatory requirements in the financial area are converging, as well as a consideration of the enforcement difficulties for national regulators operating in an international environment.

Regulation of Financial Institutions [GSLaw 6900] [6 credits]

This course examines Canadian financial institutions comprising the "four pillars": banks, trust and loan corporations, insurance companies and investment dealers. In particular, it examines the institution's business and investment powers, ownership structure (including financial conglomerates), foreign investment restrictions, and corporate governance issues (including self dealing rules). Attention will also be given to the capitalization of such institutions and an analysis of their financial statements.

International Finance [GSLaw 6910] [3 credits]

This course considers the international aspects of banking and finance. The globalization phenomenon is nowhere more evident than in the financial markets where the absence of international law poses a variety

of new challenges for business lawyers. Emphasis is given to advising clients in relation to cross border transactions including public and private issues of debt and equity, loan syndications and sub participations, securitizations, treasury products including foreign exchange transactions and interest rate and currency swaps. Consideration is also given to basic tax issues including withholding tax and treaty arbitrage. Finally cross border restructurings are analyzed with case studies involving how to advise domestic and international clients in relation to large scale commercial failures.

Regulation of Money and Payment, Clearing and Settlement Systems [GSLaw 6910] [3 credits]

The financial system rests on three pillars: (1) financial institutions, (2) markets in which financial institutions trade, and (3) the mechanisms to settle the trades in those markets.

This course focuses on regulatory aspects underlying the third pillar (as the two others have been dealt with in other program courses). It covers three principal areas: (1) Currency issues, central banking and monetary policy: legal framework; (2) The domestic payment system: concepts, structures, access, public policy objectives, and governance; and (3) Clearing and settlement of payments and securities: machineries, risks, and public as well as private law rules. The subject is dealt with from a predominantly Canadian perspective but has a strong comparative/globalized dimension, primarily taking into account developments in the US, the European Monetary Union, and the United Kingdom.

Technological Innovations and Competition in the Financial Services Industry: Selected Legal Aspects [GSLaw 6911] [3 credits]

This course will deal with the growing impact of electronic banking and other technological innovations on Canadian financial institutions and the Canadian payments' system, including electronic funds transfers and large value transfer systems at both the national and international level. It examines the extent to which technology is resulting in the redundancy of traditional methods of regulating financial institutions and the failure of legislation to keep pace with the changing electronic world. The

impact on competition within the financial services industry resulting from these changes and the extent to which regulation and competition are incompatible will also be examined.

Banking Documentation [GSLaw 6921] [3 credits]

The course looks at a number of standardized bank documents with a view to developing a critical understanding of legal documentation in areas such as the following:

- **Basic Objectives:** including the definition of rights and duties; abrogation of customer's rights; protection against customer's bankruptcy or winding up; attempts to exclude risk of fraud; problems of jurisdiction and of governing law; and elegance and need to avoid verbosity.
- **Danger of cloaked transactions:** classification of basic credit transactions; loans disguised as sales disguised as leases; and objects of "sham" transactions.
- **General Terms and Conditions:** ways and means of improving the draftsmanship of individual terms; requirement of terms and need or desirability of adding some specific conditions; and additional clauses; and other aspects including Overdrafts and Term Loans, Margin Trading Agreements, Charges over Bank Deposits and Currency Trading Agreements.

BUSINESS LAW

Advanced Corporate Law [GSLaw 6870] [6 credits]

This course explores some basic theories behind corporate law. It provides an historical introduction and a consideration of the principal purposes of corporate law, and then covers the following topics: corporate governance and regulation, mergers and acquisitions, corporate criminal and civil liability, corporate law and economics, corporate ethics, and corporations as political and cultural entities.

Contemporary Commercial Law
[GSLaw 6871] [6 credits]

This course covers the relationship between commercial law and business practice, the evolution and reform of commercial law, US and Canadian influences on the making of commercial law abroad, bankruptcy and insolvency and issues and developments in international commercial law. Students will have an opportunity to reflect on commercial law and closely examine the operation of that law in the context of business practice. A large component of this course will be to study and analyze the reform of commercial law in Canada and compare it to developments in a number of other jurisdictions, and examine influences on that reform as well as current issues and developments in international commercial law.

Advanced Corporate Finance
[GSLaw 6872] [6 credits]

This course begins with a review of corporate finance concepts and then examines the recent high profile business finance debacles, the resulting United States legislation and legislative developments in Canada. The aim of the course is to analyze the integral relationship between finance practice, law and policy, incorporating current developments and legal and financial theories. The corporate finance concepts covered include valuation of a business, financial statements, financial analysis, financial innovation, equity financing, debt financing, initial public offering, private placements and cross border offerings, securitizations, asset-based financing/leasing and leasebacks and other off-balance sheet transactions, derivatives, and takeover bids. It also examines the Enron and World.com cases, and the resulting United States legislation – the Sarbanes-Oxley Act – as starting points to discuss the themes of accountability of public companies, auditor independence, corporate responsibility, corporate fraud, financial disclosure, conflicts of interest, and penalties for white collar crime. The focus on the United States cases and resulting legislation is significant because corporate finance and the law governing corporate finance in Canada and the world is repeatedly influenced by developments in the United States.

Contemporary Issues in Civil Litigation
[GSLaw 6702] [6 credits]

The course examines, from a theoretical perspective, a range of issues of current interest dealing with the litigation process, including reforms to the rules of civil procedure. Particular topics will be drawn from areas of the law undergoing considerable change and which are featured prominently in recent cases. These topics and areas may include, among others:

- Jurisdiction of courts
- Courts and Administrative Tribunals
- Civil Justice Reform
- Class proceedings
- *Res judicata* and abuse of process
- Arbitration and Courts
- Procedure and Factual Issues in Litigation
- Issues in Discovery
- Privilege and Confidentiality in Litigation
- Disqualification of Counsel
- Costs and Remedies

Advanced Trial Advocacy and Evidence Issues
[GSLaw 6705] [6 credits]

This course focuses on refining the trial advocacy skills of experienced civil litigators. The teaching of trial advocacy skills has traditionally been an area where there is a high degree of anecdotal method premised upon the individual experiences of trial lawyers. This course departs from this tradition by drawing upon empirical work in trial simulations, and psychological literature concerning courtroom dynamics.

Recent issues in evidence, such as the rules concerning expert opinion versus junk science and developments in the area of hearsay, are explored. Knowledge of evidence is viewed as a core trial advocacy skill.

Part of the course utilizes a unique practical methodology, which combines performance with critique. Participants perform a particular advocacy skill and are provided with direct feedback by senior and experienced faculty members.

The Role of Alternative Dispute Resolution in the Litigation Process [GSLaw 6704] [6 credits]

Adjudication no longer has a monopoly on dispute resolution. For a variety of reasons disputants are increasingly turning to other means, principally mediation and arbitration. Moreover, ADR methods are still in common usage, despite recent changes to mandatory mediation rules. This course will be taught from the perspective of the modern litigator and civil justice policy maker seeking to understand more about the theory of ADR, what types of ADR techniques have emerged or are evolving, how lawyers should represent clients in this new milieu, and what the implications are for the civil justice system.

The course traces the rise of the ADR movement, its content, strategies and variants, then considers how ADR can be integrated into the litigation process and how to determine which process should be used to resolve a particular dispute. It then focuses on the two major forms of ADR, primarily mediation, and to a lesser extent, arbitration:

- **Mediation:** Examination of the dynamics and techniques of mediation, emphasizing the lawyer's role in representing clients in mediations. Workshops involve role-playing in simulated mediations with feedback and critique.
- **Arbitration:** Analysis of the role historically played by arbitration in Canada, the United States and Europe, tracing the genesis of the recent wave of arbitration legislation across the Commonwealth; review of the Ontario Arbitration Act and the conduct of arbitration.

Recent Developments in Substantive Law Relevant to Litigation [GSLaw 6701] [6 credits]

This course will pursue a critical examination of recent developments in areas of substantive law of particular relevance to litigators. Subjects to be covered may include the following:

- **Tort:** Recent tort judgments and their impact on pleadings, evidentiary requirements, proof of causation and damages, economic loss, defamation, and concurrent liability in contract and tort.
- **Fiduciary duties:** The basis for fiduciary

relationships and the obligations (including those relating to confidentiality of information); the available remedies for breach, including recent use of equitable compensation and damages awards.

- **Restitution:** Evolving areas of restitutionary doctrine including the liability of public authorities, the role of the unjust enrichment principle, recovery of benefits conferred by mistake or under illegal transactions, etc. Consideration will be given to the interaction of personal and proprietary remedies.
- **The Charter:** Analysis of topics of recent practical and theoretical importance, such as damages for Charter violations, the appropriate level of deference to be accorded to legislatures under section 1, the meaning and scope of the right to liberty under section 7.
- **Causes of Action Arising Under the OBCA and CBCA:** Shareholder rights, the oppression remedy, creditors' rights, directors' responsibilities and liabilities, fair value proceedings.
- **Insurance:** Subrogation, duty to defend, conflict of interest, waiver and estoppel, bad faith.

Transnational Litigation [GSLaw 6701] [6 credits]

Like the economic activity giving rise to it, litigation and dispute resolution are becoming increasingly globalized and transnational in nature. This is most apparent in commercial litigation (although it arises also in other areas, e.g. products liability). As a result, disputants often have a choice as to where to litigate, or become embroiled in fights over where the litigation should be conducted, over choice of law, etc. The result is a subject which is an amalgam of civil procedure and conflict of laws.

Supreme Court of Canada jurisprudence in this area will form the basis for analyzing the "revolution" in Canadian law relating to jurisdiction, service out of the jurisdiction, forum non conveniens, stay of proceedings, anti-suit injunctions, enforcement of foreign judgments and choice of law. The course will also focus on the processing of commercial disputes in the Ontario and English Commercial Courts and on litigating cases with interprovincial and transnational elements, and the role of domestic and international commercial arbitration. Attention will also be given

to the impact on commercial dispute resolution of key developments abroad, such as the formation of regional arrangements like the European Union, and harmonization projects underway to develop a worldwide judgments convention and transnational rules of civil procedure.

CONSTITUTIONAL LAW

Constitutional Theory [GSLaw 6726] [3 credits]

This course examines the role and legitimacy of judicial review in a liberal democracy; formalism and realism; critical legal studies; the ideological structure and sources of law; and law and politics.

Legal Rights in the Canadian Charter [GSLaw 6640] [6 credits]

This course provides an overview of the legal rights sections (ss.7-14) of the Charter of Rights and Freedoms. The course begins with a general examination of the provisions, including a review of the origins of the legal rights sections and the idea of legal rights as a democratic notion, and their place in the international community. More specific topics will then be covered, including: euthanasia, assisted suicides and abortion; the application of s.7 to situations outside Canada (including capital punishment and torture of extradited persons); conflicting parameters of legal rights including the right to privacy and the right to full answer and defence. Legal rights will be examined in a criminal context which will include search and seizure, right to counsel, right to be tried within a reasonable time, the presumption of innocence (and theories about self-incrimination), and the nature of cruel and unusual punishment. In addition, the course will examine the interaction of the legal rights provisions of the Charter with administrative law and procedures, including judicial independence and the role of governments. Throughout the course, underlying theories and themes related to legal rights will be discussed.

Federalism & Institutions of Government [GSLaw 6721] [6 credits]

This course examines the impact of unwritten constitutional principles, including federalism and the division of powers, on the text and underlying structure of the Constitution; the operation of the conventions of responsible government and the principles of democracy, the rule of law and the protection of minorities in representative institutions; the separation of powers and the respective roles of the Crown, Parliament and the legislatures, and the courts in ensuring respect for constitutionalism; the process of and prospects for constitutional amendment; and selected topics in federalism (as examples, peace, order and good government; trade and commerce; criminal law; property and civil rights; interjurisdictional immunity; and paramountcy).

Evidence and Procedure in Constitutional Litigation [GSLaw 6725A] [3 credits]

This course examines the process of constitutional litigation; the dynamics of judicial review; jurisdiction and choice of forum; standing; proper defendants; class actions; intervention; ripeness, mootness and justiciability; burdens of proof; evidence issues and the challenge of proving legislative and constitutional facts; strategy in public interest litigation; and effective written and oral advocacy.

Constitutional Remedies [GSLaw 6725B] [3 credits]

This course examines the remedies that are available for breaches of the Charter and Aboriginal rights and related procedural issues. The related procedural issues may include standing, mootness and jurisdiction to award Charter remedies and apply the Charter. The discussion may include remedies in criminal cases, exclusion of evidence, damages, costs, declarations, injunctions (final and interlocutory), equitable and other remedies for violations of Aboriginal rights and the range of remedies available for unconstitutional legislation including reading down and reading in; severance, extension or invalidation of underinclusive laws; constitutional exemptions; delayed declarations of invalidity and prospective rulings.

Freedom of Expression and the Press [GSLaw 6722B] [3 credits]

This course provides an overview of the jurisprudence under s.2(b) of the Charter of Rights; theories of expressive and press freedom; relationship between s.2(b) and s.1; comparisons with First Amendment jurisprudence; expression and harm; and the regulation of various kinds of expression, including the electoral process, the judicial process and advertising.

Equality Rights [GSLaw 6724] [6 credits]

This course provides an overview of equality rights under s.15 of the Charter. Topics to be examined include the origins of the language in the text of s.15; theories of equality; definitions of intentional and adverse effects discrimination; the interpretation of the listed grounds of discrimination; the recognition and the relationship between the guarantee of equality in s.15(l) and the protection of ameliorative programmes in s.15(2); the relationship between s.15 and s.1; remedies available for the violation of equality rights; the extent to which particular listed or analogous grounds of discrimination have generated a body of case law; and an evaluation of the utility of litigation and rights discourse to further progressive goals.

Aboriginal Peoples and the Canadian Constitution [GSLaw 6724] [6 credits]

This course begins by examining the bases for Aboriginal rights in Canadian law, with particular emphasis on the source and content of Aboriginal title to land. The nature of treaties and land claims agreements, and their impact on Aboriginal rights, will also be studied. Constitutional protection of Aboriginal and treaty rights are considered. Included in this discussion will be an examination of the extent of government authority to infringe or extinguish Aboriginal and treaty rights. The second part of the course will focus on the many dimensions of Aboriginal self-government through the study of modern treaties like the Nisga'a Agreement in British Columbia, as well as a review of Aboriginal justice initiatives. Negotiations, implementation, division of powers and constitutional status will be addressed for Indians, Inuit and Metis.

CRIMINAL LAW

Persuasion and Proof: Issues in Fact Finding and Evidence [GSLaw 6784] [3 credits]

Evidence is the means by which legal claims are actuated. In recent years the ability of the rules of evidence to achieve justice has been called into question. The challenges have come on a number of fronts. Increasingly, the “common sense” behind many of the rules is being called into question by learning in other fields, including the sciences, social sciences and psychology. Experience has proven equally important in exposing limitations in our existing system of rules. Revelations of miscarriages of justice resulting in wrongful convictions have become more common in Canada and in other common law jurisdictions. Inquiries into their causes are calling long established rules and procedures into question. Similar challenges are coming from historically disadvantaged groups, making the case that they are misunderstood in, and misrepresented by, the criminal prosecution process. These issues pose challenges for criminal law practitioners. The course examines these issues within the following topics: the misuse and abuse of scientific evidence, the continued use of jailhouse informants and other unreliable forms of evidence, the resistance toward admitting empirical studies that establish the frailty of certain types of evidence (i.e. eyewitnesses identification testimony), the limitations and mythology of fact-finding in our adversarial process (i.e. ability of judges/jurors to accurately assess credibility), and the challenges posed by our existing rules and procedures for proving certain social facts (i.e. racial profiling).

Whose Case Is It? Issues of Disclosure, Privilege and Standing in Criminal, Disciplinary, Inquisitorial and Civil Contexts [GSLaw 6785] [3 credits]

The rise of the victims' rights movement has coincided with the rise of individual rights under the Charter. Today, the conflict between victims' rights and due process is ever present. This course explores the increasingly complex questions posed by the prosecution and defence of cases concerning professional misconduct, regulatory offences, sexual

and racial harassment, and sexual abuse. Victim witnesses, survivors, their supporters and the media now have standing in criminal cases on a range of issues, in part in response to increasingly aggressive defence claims for disclosure. At the same time, a single case may also generate disciplinary proceedings, public inquiries or inquests and civil actions resulting in complex and challenging problems concerning disclosure and privilege. The course will explore the new managerial side of the Crown as it responds to these pressures.

The Theory and Practice of Punishment [GSLaw 6786] [3 credits]

This course examines the theoretical and empirical underpinnings of criminal law through an examination of the classic and modern debates about punishment. Key concepts such as deterrence, rehabilitation, incapacitation, retribution and denunciation are critically examined. Topics include strict discipline, privatization of prisons, conditional sentences, aboriginal sentencing circles and the New Zealand Family Group Conference.

Issues in Criminal Law: History, Evolution and Theoretical Approaches [GSLaw 6781] [6 credits]

Although our criminal law begins with the blood feud, the ordeal, and the origins of state power hundreds of years ago, many of the most significant changes in criminal procedure and administration are little more than a century old. They include the creation of public prosecution, committal proceedings judicial in nature, rights to counsel, the judge as umpire, evidentiary rules, appellate structures, heavy policing, and long-term imprisonment. Others are even more recent but still with older analogues: private policing, seizure of criminal proceeds, alternative dispute resolution. The course describes and explains the origins of these elements of current law.

But no explanation is uncontested: everything depends on what we assume to be important. The course emphasizes that studies of both the past and present criminal law must take account of theoretical perspectives. Using both historical and sociological materials on specific offences, including corporate crime, white collar crime, public order offences, victimless crimes, and the evolution of the law of

larceny and sexual offences, the course introduces students to contemporary debates in criminology, while demonstrating a range of research methods and approaches.

Crimes and Regulatory Offences: Distinctions With or Without Difference [GSLaw 6783] [6 credits]

It has been estimated that there are 97,000 regulatory offences created by federal statutes alone. As penalties for these matters increase, they begin to resemble criminal offences to an increasing degree. Conversely, in areas such as the control of firearms and the operation of motor vehicles, for example, the trend in criminal law is to establish regulatory schemes. The lines blur in other contexts as well, as the failed prosecution of the managers in the Westray mine disaster demonstrates.

This categorization makes it appropriate to divide the course in two parts. Part One examines risk management and regulatory offences and includes such topics as the Walkerton disaster and risk management; the development of regulatory offences through common law and statute; and the nature and scope of due diligence. Part Two explores the convergence of regulatory law and criminal law. Topics will include: how the criminal law has been diluted since the Wholesale Travel case; corporate liability and the new federal proposals related to a corporation's directing mind; the Charter of Rights and Freedoms and the lower standard of privacy for regulatory offences; and sentencing, restorative justice and how criminal lawyers can learn from regulatory lawyers.

International Criminal Law and Regulation: Parts I and II [GSLaw 6787] [6 credits]

The first part of this course analyzes how states obtain jurisdiction over transnational and international crimes and jurisdiction over the alleged offenders through the process of extradition. Emphasis will be placed on extradition to and from Canada since the Charter of Rights. The course then explores how the "globalization" of markets and economies has brought with it increasingly difficult challenges of international regulation and enforcement. The environment, financial markets, and the burgeoning scope of transnational organized crime are all generating legal responses, ranging from intergovernmental

agreements on the enforcement of standards and norms, regulatory cooperation schemes, to the enforcement of national standards on international activities. From Bre X and Airbus to turbot and salmon, from narcotics to securities, criminal and regulatory doctrines are being engaged in new and problematic ways. These new and emerging questions will be examined through case studies, discussion and directed readings. The final part of the course concentrates on international terrorism and how this fits within traditional models of crime. It will also look at war crimes and crimes against humanity and the establishment of the new International Criminal Court.

Criminal Law and the Charter: Implications and Expectations [GSLaw 6782] [3 credits]

This course examines the impact of the Canadian Charter of Rights and Freedoms on criminal law and procedure. It studies the historical evolution of the constitutionalization of criminal law and procedure in Canada, including the theoretical and empirical debate about the relation between due process and crime control. It involves an examination of the major decisions of the courts and their legal repercussions in fields such as detention and arrest, search and seizure, the exclusionary rule, the presumption of innocence, the right to counsel, trial within a reasonable time, jury selection, discovery, *mens rea*, cruel and unusual punishment, intoxication, the insanity defence, regulatory offences, hate crimes and sexual assault.

FAMILY LAW

Family Law: Themes, Theories, Controversies and Context [GSLaw 6121] [6 credits]

Family law can be defined as the laws governing the formation, regulation and dissolution of familial relationships. Family Law in Canada has a number of constitutional instruments, statutes and common law doctrines that represent conflicting and complex approaches to social policy, gender and identity issues, and economics. This course provides an overview of the theories of family, examining the theories behind which laws regulate families and their dissolution. It begins with an historical overview and a consideration

of provincial and federal regulation of families, then discusses the following topics: Historical evolution of family law, including changes in the legal definition of marriage to include same-sex marriage and issues related to polygamous marriage; Constitutional issues, including impact of the Charter and division of powers; Gender theories and perspectives, including sexual orientation and transgendered issues; Impact of reproductive technology on families and family law; Impact of religion, culture and multiculturalism on family law, including whether the Canadian justice system should allow faith-based arbitration; Sociological and Psychological perspectives on family law; Introduction to economic analysis of family law; and Introduction to ethical issues in the practice of family law.

Economic Issues: Property, Pensions and Possession of the Home [GSLaw 6123] [3 Credits]

Some of the most important issues that arise in the context of the end of a spousal relationship relate to the division of property. This course is designed to provide students with a solid grasp of the laws that apply to property issues in family cases. Knowledge, understanding and critical analysis of the law and policy behind economic issues are crucial in developing a deep understanding of family law. The course begins with historical and theoretical perspectives, including economic and feminist perspectives. It will consider both the common law regime that governs unmarried partners and the statutory regime that governs married partners found in the Family Law Act and related legislation. There will be special consideration of the issues that arise in regard to ownership and possession of matrimonial home, pensions, and valuation of property. There will also be some consideration of issues that arise at death and bankruptcy in regard to property, and of the value of marriage contracts for dealing with these issues. The course will include comparison of the Ontario statutory and common law regimes with the legal regimes in other jurisdictions, and consideration of law reform issues, as well as tax implications of property division.

Economic Issues: Child and Spousal Support [GSLaw 6122] [6 Credits]

Some of the most important issues that arise in the context of the end of a spousal relationship relate to child and spousal support. This course is designed to provide students with a solid grasp of laws related to child and spousal support in order to be able to apply this knowledge, understand the analysis of problems in the broad subject area, critically analyze support issues in different contexts, and develop an understanding of possible law reform issues. While property issues involve a retrospective analysis, a consideration of support issues is prospective, with decisions that will result in on-going economic ties between separated spouses or parents. This course will begin with historical and theoretical perspectives, including economic and feminist perspectives. The course will consider obligations that arise from marital and common law relationships, and will focus on the Child Support Guidelines and the Spousal Support Advisory Guidelines. The study will include issues of variation, review and termination of support obligations. It will also include consideration of issues related to establishing a parent-child tie for purposes of support law, including issues related to proving paternity, and establishing the relationship of a person “standing in the place of a parent.” It will also include comparative study, law reform issues and tax treatment of support.

Care of Children [GSLaw 6125][6 Credits]

This course deals with private disputes over custody and access between separated parents, and sometimes other parties such as grandparents and step parents. The course also deals with the laws governing the relationship between parents, children and the state in child protection cases that involve allegations of parental abuse, neglect or incapacity, and in adoption law. It begins by considering the historical development of the laws governing the care of children, with different perspectives, including feminist and fathers’ rights perspectives. It will include a comparative study and law reform issues, and a consideration of the psychological literature in this area and dealing with mental health professionals as expert witnesses. It will also examine issues such as: custody and access; shared parenting and joint

custody; parenting plans and resolutions outside the court system; parental relocation; use of reproductive technology and surrogate motherhood; rights of step parents, grand parents and others who have significant ties to a child; determining the wishes of children; role of culture and race, including Aboriginal status on “best interests” determinations; legal representation of children; child abuse and child protection; constitutional issues related to child welfare proceedings; adoption, including open adoption and disclosure issues; and assessments and expert evidence.

International Family Law Issues [GSLaw 6126] [3 Credits]

Canada’s population is increasingly mobile, and there are a growing number of family law cases involving international elements. With increasing mobility there has been a tremendous resurgence in recent years in the cross-border issues arising in the area of family law, particularly in a country such as Canada that has embraced multiculturalism. The purpose of this course is to provide a detailed examination of the main areas of family law in a cross-border context. This course begins with the study of the traditional common law conflict of law principles that govern jurisdiction, recognition of foreign family law orders, and international enforcement of family law orders. Consideration will then be given to the modification of the common law regime by treaty and legislation, including the various Hague Conventions that apply to family law issues. A major topic of study will be the United Nations Convention on the Rights of the Child and other human rights treaties, and their impact on domestic legal issues, especially in Canada. The interprovincial and international dimensions of the six main areas of family law are also covered in this course – marriage, divorce, matrimonial property, adoption, custody, and support.

Non-Adversarial Resolution to Family Disputes [GSLaw 6127] [3 Credits]

There is a growing awareness of the very high financial and human costs of resolving family disputes by means of litigation, and a growing interest in various means of non-adversarial resolution of these disputes. This course allows students to gain a greater understanding of the various alternatives to litigation, and practice the skills that are necessary to effectively use these

methods of dispute resolution. The course begins with a review of the limitations of the adversarial process for resolving family law disputes, and a consideration of the theoretical and legal framework for non-adversarial dispute resolution. It examines traditional methods of non-adversarial dispute resolution such as negotiation, and then explores more recently developed methods, including mediation, collaborative family law and participation in judicial dispute resolution, such as settlement conferences. The course will consider and compare the advantages and disadvantages of each of these methods of dispute resolution, including critical and feminist perspectives. There will also be consideration of legal issues that relate to the negotiation of separation agreements, including unconscionability and the judicial power to override negotiated agreements.

Family Law Practice Skills [GSLaw 6124] [3 Credits]

To be an effective family lawyer requires an advanced knowledge of a number of different skills. It demands a skill set that differs from other areas of practice. The emotional impact of family law cases on clients requires lawyers to “manage” their clients in a unique way. Family law skills are a significant component of what makes a family lawyer. Many family law practitioners, however, have developed their skills without formal training – much development occurs through trial and error on the job. This course will provide an environment in which students will learn practical skills from a number of experts in a number of areas in order to increase a student’s understanding of practical skills. It will focus on skills development and training using feedback and videotaping techniques wherever possible. The treatment of advocacy will include consideration of both court-based litigation and arbitration. The course begins by examining some of the theories behind developing various skills and a consideration of some of the ethical issues that arise in the practice of family law and then proceeds with skills demonstrations, developing a more sophisticated approach as the course progresses. The course will also consider procedural issues related to family litigation, including issues of discovery and costs.

The Canadian Health Care System: Legal Frameworks [GSLaw 6860] [3 credits]

Health care in Canada is governed by multiple legal regimes that continue to increase rapidly in both number and complexity. The purpose of this course is to provide an overview of the legal frameworks within which health care systems, providers and funding regimes operate and patients receive care. It begins with an historical introduction to the Canadian medicare system and a consideration of provincial and federal jurisdiction over health. It then covers such topics as the scope and application of the Canada Health Act; the import of the Social Union Framework Agreement; ramifications of the Canadian Charter of Rights and Freedoms; provincial health insurance plans; concepts of “medical necessity” in law and policy; allocating scarce resources through provider limits and patient/treatment limits; an introduction to governance of health care institutions such as hospitals and free-standing health facilities; and health system restructuring.

Bioethics and the Law [GSLaw 6861] [3 credits]

This course is concerned with ethical problems or issues that are associated with the practice of the health-care professions. Both normative bioethical theories and law must respond to these health care ethical problems. The emphasis is on the analysis and critique of some of the major bioethical theories, and their application to some of the major health care problems and issues found at the intersection of law and bioethics. The course begins with a history of bioethics as a multidisciplinary discipline, and a consideration of the competing normative and descriptive analyses of core concepts such as “health” and “disease”. It then considers the following within various ethical models: the problem of suffering; the health care provider-patient relationship; the doctrine of informed consent; surrogate decision making; competence and its assessment; euthanasia and physician-assisted suicide; refusal, withholding of life-saving treatment, and withdrawing of life-saving treatment; conflict of interest in research ethics; and health care policy as it relates to resource allocation and rationing at the bedside.

Mental Health Law [GSLaw 6862] [3 credits]

This course introduces a legal framework for the delivery of mental health services in Canada. The course provides an historical introduction to mental health law, its policy underpinnings and a review of the major mental disorders. It also considers the differences and interplay between the civil and forensic mental health systems. It then covers the following issues at a more advanced level: the mental health system under the Mental Health Act and Criminal Code of Canada; legal responsibilities of institutions and health professionals; involuntary detention; capacity to consent to the treatment of a mental disorder; substitute decision-making; community treatment orders; appeal mechanisms and procedural fairness; Charter implications (e.g., section 7 right to liberty vs. right to security of the person in context of treatment); risk assessment in forensic mental health; confidentiality and disclosure of mental health information; advocacy and rights advice; use of restraints; patient sexuality in long-term mental health settings (capacity vs. self-expression, institutional responsibilities and liabilities); and special issues in children's, women's and geriatric mental health.

Human Rights, Globalization and Health Law [GSLaw 6867] [3 credits]

The intersection between human rights and disability is an area of health law that is expanding exponentially as globalization progresses. The purpose of this course is to introduce a human rights framework to the concept of disability from both domestic and international perspectives. The course looks at the basic concepts of human rights in the global setting. It then covers the following topics: institutional mechanisms for connecting health and law; globalization and health; health and disability from an international perspective; and health and disability from a domestic perspective. The course concludes by reviewing international agreements related to health.

Malpractice in Health Care [GSLaw 6864] [3 credits]

This course examines the potential civil liability of health care providers and institutions when patients have been injured as a result of health care. It will explore the manner in which legal principles, and

in particular, those in tort, are applied to claims of medical malpractice. It addresses the liability of individual practitioners as well as institutional and government liability. Topics covered will include: developments in physician liability for negligence, breach of fiduciary duty and battery; developments in direct and vicarious liability of hospitals and institutions; provider, institutional and government liability in an era of health care restructuring and scarce resources; research, innovative therapy and liability; class actions; health systems safety: the incidence of medical error and malpractice liability; and critical perspectives on tort theory, tort reform, and no-fault alternatives to tort.

Information Technology and Privacy in Health Law [GSLaw 6856] [3 credits]

This course examines the use of information technology in health law and how regulation affects the use of technology in health care. Today's health care systems, in Canada and around the world, depend increasingly on information technology as an essential part of the efficient delivery of health care. This delivery is undergoing changes that have not been experienced in decades. The challenge continues to be in how to apply existing legal concepts and norms to meet the issues associated with the widespread use of information and communication technologies in health care. This course examines these issues, focusing on such particulars as: use of information and communication technologies to deliver health care; Telemedicine and other E-health technologies; privacy and confidentiality of electronic medical record-keeping; protection of health information and privacy legislation; professional regulation; contracting principles for online delivery of health care; and other liability issues surrounding internet pharmacy.

Professional Governance [GSLaw 6863] [3 credits]

In all provinces and territories, governments have delegated a large measure of power over, and responsibility for governance to, accepted health professions. Many thousands of health care providers are members of self-regulating professions, making them subject to a legal regime with broad powers over their professional lives. These self-regulatory regimes represent a significant interpenetration of public and private institutions, an approach that characterizes

a growing number of areas of administration in the modern state. This course explores how these legal regimes operate, and critically analyzes the implications of the policy choice to delegate professional governance to members of the profession themselves. Topics to be covered include models of professional regulation; evaluation of self-regulation; interrelationship between state power and the power of the professions; the complaints and discipline processes; impact of the Canadian Charter of Rights and Freedoms on regulation; regulatory responses to the challenge of complementary and alternative health care; assessing whether self-regulation is effective in enhancing quality, safety and efficacy of care; and evaluating other forms of control over practitioners, such as hospital privileges.

Health Facilities Law [GSLaw 6858] [3 credits]

This course studies the organization of public and private health facilities in Canada and the specific legal issues that challenge them. There are a number of statutes that regulate the governance and management of health facilities such as public hospitals, long-term care facilities, nursing homes, chronic care facilities, community care organizations and independent clinics. In some provinces, the governance and management of public hospitals takes place on a regional basis; in others the focus is still on individual hospitals for which a board of trustees exercises control and authority. The rising cost of health care has resulted in greater regulation of financial autonomy and, in some cases, the imposition of specific statutory requirements for financial accountability. In addition, certain regulated health professionals may have “privileges” that are subject to statutory protections and administrative principles that are quite different from those associated with ordinary employment contracts. The course examines the initiatives being undertaken to improve patient safety and the issues of privacy and legal liability to which these initiatives give rise.

New Technologies and Issues in Health Law [GSLaw 6868] [3 Credits]

This course enables students to consider some of the recent scientific and technological innovations in the area of health and the implications of these new technologies for legal regulatory frameworks.

It is divided into five broad areas: (1) reproductive and other technologies, looking at the way that new technologies are shaping our identity and how law and science have played a part in that new construction (including reproductive technologies, cloning and other bioscientific advances); (2) body rights and integrity, examining how health and technology have contributed to different conceptions of the body; (3) death and dying, looking at definitions of death, human tissue legislation, organ donation and euthanasia; (4) research, where issues of health law that arise as a result of human research are analyzed; and (5) regulation – how science and regulation of health interact. The course explores many of the themes in a comparative way, looking at approaches adopted in other countries around the world.

Occupational Health and Safety Law [GSLaw 6795] [3 credits]

This course examines the problem of occupational health and safety regulation within a socio-economic context, considering the scientific and medical issues involved in assessing the relation between work and adverse health effects. It examines the history of efforts to regulate hazardous conditions, beginning with the regime of market regulation established by the judiciary in response to legal actions by injured workers and the first legislation imposing minimum safety standards. Current approaches to regulation are reviewed including: (1) an overview of modern Canadian OHLS legislation; (2) setting exposure limits to hazardous substances; (3) inspection and enforcement; (4) the role of criminal sanctions; (5) the internal responsibility system, including worker rights to know, participate and refuse unsafe work; (6) preventive role of the workers’ compensation system; (7) the role of tort liability; and (8) comparisons with other jurisdictions such as the USA and Sweden.

Intellectual Property in Health Law [GSLaw 6857] [3 credits]

This course explores the nature of and interrelationship between intellectual property rights and the remedies available to give effect to these rights. The course examines these matters from the perspectives of the holder of the rights, the persons alleged to be infringing those rights and the public. The remedies examined will include traditional

litigation remedies, including injunctive and monetary relief; administrative law remedies, including judicial review of decisions that affect the grant of monopoly power; and non-litigious approaches to resolution of intellectual property disputes. The course also examines the competing interests inherent in the vindication of intellectual property rights, and specifically, the right to carry on free market competitive activities in the face of the competitive restrictions inherent in intellectual property rights.

The Law of Drugs and Devices [GSLaw 6859] [3 credits]

Drugs and devices is a term used to include not only pharmaceuticals and material devices, such as breast implants, but also organic “devices” used in a wide array of treatment settings, such as blood products. This course investigates the law as it relates to these drugs and devices. It includes the exploration of pharmaceutical regulation, and legal and policy responses to issues raised in the context of global diseases such as HIV/AIDS. Devices are viewed from a broad perspective, taking into consideration issues raised by such things as contraception, blood products, breast implants, DES and hormone replacement therapy. The role and regulation of alternative medicines and therapies is also explored. The course gives students a foundation for understanding these issues in the current context from a legal regulation and jurisprudential perspective, also taking into account political, social and economic issues.

INTELLECTUAL PROPERTY LAW

Introduction - Theoretical Frameworks - Trade-Mark Law [GSLaw 6751] [6 credits]

To many a corporation, its trade-marks are more valuable than any patentable invention or piece of land that it will ever own. That value must be translated into protectable rights. However, there is great difficulty in obtaining international protection within the modern global economy. “Piracy” and “grey marketing” are of great concern. The recent trade disputes surrounding these issues have caused the public to take note of the importance of trade-marks.

How should these valuable trade-marks and trade names rights be protected? To what extent should trade-marks define monopolies? Should trade-mark law be used to give protection for functional aspects of products, such as colour, shape, smell? This course considers the current protections for trade-marks and trade names under statute and at common law and compares those rights with rights in other common law and civil law jurisdictions.

Copyright Law [GSLaw 6753] [6 credits]

When it comes to protecting intellectual creations, copyright law has played a varied, yet important, role throughout the last century. Copyright law was intended to protect traditional artistic, literary, musical and dramatic works and their use; now, however, copyright law has expanded to protect computer programs, telecommunication rights, rental rights, etc. This course examines the protection that is afforded to these various works by copyright law and explores current topics such as the Internet and its ramifications for copyright. It looks not only at the basic building blocks of copyright theory but also at the law from a comparative perspective. It examines specifically ownership, moral rights, originality and infringement. It also studies industrial design rights and compares these to copyright rights.

Protection of Intangible Business Interests [GSLaw 6752] [3 credits]

Not all intangible business interests can be protected using traditional, statutory trade-mark law, copyright law and patent law. Due to the inherent limitations of these laws, both courts and legislatures have developed alternative approaches to protecting certain kinds of intangible business interests that otherwise would not be protected. For example, information is valuable on its own. How can it be protected? The law of trade secrets and breach of confidence has been developed largely by the courts, as have such actions as unlawful interference with economic relations, inducing breach of contract, conspiracy to injure, trade libel and other torts that seek to redress unfair competition and the misappropriation of intangible assets. This course examines the various ways in which intangible business interests are protected in Canada and elsewhere outside the scope of the traditional areas of intellectual property protection and considers the theoretical underpinnings of such protection.

Patent Law [GSLaw 6754] [6 credits]

Technology is the key to modern business. Patent law protects such technology but patents are no longer sought only for inventive mechanical, electrical and chemical products and processes. Patents are now being sought for biological and genetically engineered products and processes and for computer programs. As a result, interesting policy questions have arisen about the proper scope of patent protection. This course examines these policy questions and takes an in-depth look at the various concepts of patent law. The course examines ownership of inventions, scope and construction of patents, patentability, validity, enforcement and infringement. Comparisons with other patent systems are made and alternatives to the patent system and are also considered. The course also reviews Plant Breeders' Rights and Integrated Circuit Topography Rights.

Intellectual Property Rights and Competition Law [GSLaw 6755] [3 credits]

The exclusive nature of intellectual property rights and the way they are exercised may have anti-competitive effects. This course examines the tension between the policies underlying the encouragement of innovation through intellectual property rights and the preservation of a competitive marketplace, as it is played out in a number of different areas. It includes analysis of the economic effects of the exercise of intellectual property rights and compares the North American approach to that of the European Union. Particular attention is paid to the following types of intellectual property activity: licensing, research and development, and exclusive arrangements. Such competition law issues as tied selling, exclusive dealing, abuse of dominant position, mergers and strategic alliances are considered.

Remedies for Infringement of Intellectual Property Rights [GSLaw 6756] [3 credits]

Intellectual property rights have no real commercial value unless they can be asserted against others. To what extent should the owner of these rights be entitled to interfere with normal commercial practices in a modern global economy? The remedies available directly influence the value of the intellectual property right. Courts have granted intellectual property rights holders broad search and seizure powers and

restraining rights through Anton Piller Orders and John Doe Injunctions. This course examines the full extent of the remedies available to intellectual property holders, including injunctions, damages, accounting of profits, punitive damages, and delivery up, and how these remedies can be enforced internationally, particularly with respect to "piracy" and "grey marketing". It also examines the impact of insurance on remedies. This course also makes comparisons with laws in other common law and civil law jurisdictions.

International Aspects of Intellectual Property [GSLaw 6757] [3 credits]

Much of domestic intellectual property law flows from obligations undertaken under international treaties. These treaties have come increasingly to influence the structure and enforcement of domestic law. This course examines the impact on domestic law of the main intellectual property treaties, including: the Berne, Universal and Rome conventions on copyright and neighbouring rights; the Paris convention on patents, trade-marks and designs; the intellectual property and enforcement chapters of NAFTA and the World Trade Organization Agreement of 1994. The movement to amend and expand some of these treaties, and generally to harmonize intellectual property internationally is also examined. The course studies the perceived advantages and disadvantages of these treaties' initiatives to develop and developing states.

Intellectual Property Transactions [GSLaw 6758] [3 credits]

The value of intellectual property is not only in its use by the owner itself but also in the ability to market that property to others. Today, intellectual property is at the core of many commercial transactions. International licensing and technology transfers have become a highly important means of commercialization for intellectual property owners. This course considers licensing and other contractual arrangements for conveying and sharing intellectual property. It examines business acquisition transactions, including asset and share purchases and joint ventures. The legal considerations and key contractual issues are viewed in an international context and domestic remedies are compared with international regimes.

Perspectives on Labour and Employment Law: From Theory to Practice [GSLaw 6799] [6 credits]

This course examines theoretical approaches that have played a significant role in the development of Canadian labour and employment law, and also looks at the contribution that empirical and comparative research methodologies have made to the study of this area of law. Selected writings by labour law scholars, in Canada and elsewhere, will be reviewed from both a theoretical and a methodological perspective. With this background students will develop and present their own research proposals, with a view to getting an early start on the planning of their research papers.

The Charter and Human Rights in Labour Law [GSLaw 6791] [4.5 credits]

The workplace has been a significant source of legal developments in respect of both statutory human rights legislation and the constitutionally entrenched Canadian Charter of Rights and Freedoms. This course will examine, in the employment context, the nature of prohibited discrimination and statutory defences and remedies under human rights statutes, as well as the processes for dealing with such issues. In particular, the respective roles of the human rights administrative process and collective agreement arbitration will be assessed. In respect of the Charter, the role of administrative tribunals as well as courts in dealing with Charter claims will be considered. The substantive focus will be the impact of s. 15 (equality), s. 2(d) freedom of association, and s. 2(b) (freedom of expression) on labour law. (Since there is a separate course on work and disability, disability issues will not be a focus of this course.)

Labour and Employment Law in the New Economy [GSLaw 6021] [4.5 credits]

The ‘new economy’ is defined by globalization, by technological change and by neoliberal policies which envisage a more limited role for the state in the labour market and elsewhere. These forces - individually and in combination - challenge many of the assumptions on which collective bargaining and protective labour legislation have traditionally been grounded. This

course explores both the resulting stresses in existing regimes of labour law and attempts to create new regimes, especially those with international and transnational dimensions.

Industrial Conflict: Common Law and Labour Board Remedies [GSLaw] [4.5 credits]

In the regulation of strikes, lockouts and picketing, the common law often comes to the surface and fits uneasily with the statutory labour relations regime, both substantively and in terms of remedies. The following are among the topics that may be dealt with in this course: the common law industrial torts and their new life after Pepsi-Cola; the right to strike at common law and its continued relevance to workers not covered by labour relations legislation; issues arising from the growing use of partial strike tactics; the impact (if any) of the Charter rights of freedom of association and expression on strikes and picketing, including political strikes; the interface between court and labour board jurisdiction, substantively and in terms of available remedies, and the appropriate extent of court deference to legislative and board regulation in the Charter era; recent jurisprudence on the legal capacity of unions and its implications for the regulation of industrial conflict; the extent of the employer right to use replacement workers; and the extent of the job rights of returning strikers. High union density in the public and parapublic sectors, and growing governmental concern for fiscal restraint, make it necessary to consider the treatment of strikes and lockouts in essential services and the justification for imposing dispute resolution procedures that do not involve work stoppages.

The Individual Employment Relationship [GSLaw 6797] [4.5 credits]

New patterns for the utilization and control of productive labour have prompted debate over the effectiveness of existing mechanisms for the regulation of workplace relationships. The course focuses on common law and statutory regulation of the terms and conditions in employment relationships not covered by collective bargaining, with emphasis on the impact of recent economic, judicial and statutory developments for the continued relevance of these standards in the modern context. It includes an historical survey of their development and an

overview of the basic protections offered to workers in Ontario and other Canadian jurisdictions in areas such as hours of work, vacation, maternity and parental leave, and notice of termination. The interaction of individual employment law with collective agreements and employment standards legislation will also be considered. Finally, the course addresses the continuing development of employment standards legislation in the face of the global economy and new working arrangements, such as telecommuting and contract work. Students will consider whether these changes call for the raising of existing standards or for more flexibility for employers. This includes a reconsideration of the effectiveness and appropriateness of focusing on employment as the foundational concept for the operation of existing schemes of regulation.

Work and Disability [GSLaw 6804] [6 credits]

The interrelated issues of health and safety, injury and disease, and accommodation have been significant issues in the Canadian workplace for the past century, and particularly the past decade. Issues of human rights, cost containment, productivity rates, and the adaptation of humans to new work technologies have all spurred on a new interest in these topics. The course examines the rise of workers' compensation laws from the early twentieth century to the present roles of the Workers' Safety and Insurance Board and the Workers' Compensation Appeal Tribunal in regulating compensation for industrial injuries and diseases. It then deals with the emergence of modern occupational health and safety laws in the 1970s, and their current application through administrative inspection and judicial oversight. Finally, the rapid emergence of accommodation obligations for workers with disabilities over the past 15 years will be studied in the context of human rights and collective agreement requirements.

MUNICIPAL LAW

Municipalities in a Legal and Policy Context [GSLaw 6111] [6 credits]

This course provides a framework for understanding the nature of municipalities and their changing

relationship with senior levels of government and with other entities. It examines six main areas of Municipal law: (1) Municipal Corporations: the historical development of municipal corporations; the similarities and differences between municipal corporations and private corporations; and more. (2) Municipal Governance: models of municipal governance adopted across Canada and their strengths and weaknesses; the structure of municipal decision-making; the roles of and the relationships between councils and their officers and employees; the role of party politics in municipal decision-making; and others. (3) Municipal Structure: the impact of municipal structure on municipal effectiveness; the role of council, committees; and municipal restructuring and boundary changes. (4) The Nature of Municipal Powers and Responsibilities: the nature of municipal authority, including the evolution from specific to more general grants of authority, and from service delivery agencies to regulatory and political decision-making authorities; the implications of "downloading"; the evolution of municipal authority; the evolving opportunities for the inter-municipal exercise of authority and other municipal powers and responsibilities. (5) The Constitutional Status of Municipalities: an examination of the traditional status of municipalities under the Constitution; the granting of Charter City status to municipalities; a comparison of municipalities with emerging exercise of powers by First Nation bands etc. (6) Municipalities and Other Agencies: relationships between municipalities and provincial ministries exercising functions affecting municipal jurisdiction; the role of provincial tribunals in overseeing municipal decision-making; the relationships between municipalities and local agencies, boards and commissions; and the use of boards as delivery agencies for municipal services.

The Widening Scope of Municipal Jurisdiction [GSLaw 6113] [6 credits]

This course investigates and reviews the role of municipal governments in decision-making and implementation of programs involving the exercise of legislative and other powers. Municipalities are statutory corporate bodies deriving what powers they have from laws enacted almost entirely at the Provincial legislative level. At the same time, municipal corporations are not just like other

corporate bodies created by legislation. Municipalities are corporate bodies whose collective decision-making councils are clothed with not only executive and administrative powers, but also extensive legislative and quasi-judicial decision-making authority capable of affecting almost every aspect of the daily lives of their constituents.

The course will cover a number of areas highlighting the scope of municipal jurisdiction in the 21st century, including: examining the source of municipal powers and the manner through which such powers, as well as rights, administrative faculties, and other decision-making functions are conferred upon them and their various local agencies, boards and commissions; reviewing principles of statutory interpretation that have evolved through judicial interpretation of municipal powers, analyzing actions taken by municipalities under the wide range of municipal enabling legislation; assessing the ways by which the exercise of municipal powers and authority have been attacked through a range of court proceedings, some of them peculiar to municipal law; exploring principles regarding the effectiveness of the exercise of municipal powers which may enhance the status of municipal government across the country; and focussing on current trends in judicial interpretation of municipal legislation, and a consideration of the potential for elected local governments to achieve some degree of legislative independence, possibly even some form of “constitutional” status.

Ethics and Municipalities [GSLaw 6112] [3 credits]

This course discusses and analyzes ethical issues affecting the work of Canadian municipalities. The study of ethics, the science of morals in human conduct, addresses the most profound and fundamental human values and shared acceptances of what is or is not proper conduct in facing difficult decision-making. Municipalities are not immune. Public inquiries into the relationships between municipalities and commercial suppliers have focussed on some of the most important ethical issues facing municipalities. The course examines issues including the role of lobbyists, the conduct of municipal staff in protecting the interests of their municipalities and informing elected councillors, and the potential for serious financial loss to the municipality and its residents when a system of ethical values breaks down or is not enforced. It will also look

at the role of municipal functionaries, codes of conduct for municipal staff, conflict of interest legislation, etc.

Planning and Development Law [GSLaw 6114] [6 credits]

Land development contributes dramatically to the provincial economy and the welfare of its inhabitants. The exploration of this system is fundamental to understanding a complex, expensive and time consuming legislative scheme of processes and required permissions.

This course examines the implementation, strengths, weaknesses and dispute resolution processes of delegated powers. The powers are examined in the context of the legislative scheme of related statutes that influence their effectiveness. The distinction between legislative and discretionary decision making is examined; as well, controls are reviewed through appeal and referral rights to a provincially constituted planning tribunal, such as the Ontario Municipal Board. The course is broken down into three main areas: Principles of Law Applicable to the Conduct of Land Use Planning and Development; Current Issues in Land Development and Shaping Planning and Development Law for the 21st Century.

Municipal Effectiveness [GSLaw 6115] [6 credits]

This course examines how municipalities function most effectively to meet their responsibilities and manage their finances. Municipalities perform a number of functions, most of which require financing and involve policy choices regarding expenditures. This course examines these aspects of municipal law within the following four areas:

- **Municipal Operations:** human resources management; the roles and responsibilities of officers and employees; remuneration and benefits policies; hiring and firing; labour relations and collective agreements; performance management; program evaluation; risk management; insurance; legal tools; municipal contracts and tendering; freedom of information and privacy; and records retention.
- **Revenue Sources:** property tax base; the mechanics of property taxation; the implications of tax limitations; the impact of assessment practices; municipal tax sales; new sources of revenue; the use of revenue generation to

achieve municipal goals; congestion charges; development charges; provincial funding programs and the possibility of federal funding.

- Financial Management and Investment: budgeting process; new approaches to investment; financial controls; collecting taxes; adjusting taxes; assistance for brownfields properties.
- Public-Private Partnerships: municipal authority to establish corporations; the extent of statutory authorization for public – private partnerships (P3s); the nature and structure of P3s; the advantages and disadvantages of using P3s in delivering services; and the implications of differing standards of conduct, expectations and techniques between the public and private sectors.

Environmental Protection [GSLaw 6116] [3 credits]

Environmental regulation and control has become a major concern of municipalities and environmentalists as the debate between development and protection is played out in a number of legal arenas. The course examines the interplay between municipalities and the environment, and the increasing importance of legal regulation in this area. The course is divided into three parts. The first two examine current environmental issues relating to the role of municipalities as regulators of the environment and as owners and operators of infrastructure and facilities. The third part of the course considers the issues of concurrency and paramountcy as they affect municipalities and examines the ways of initially defining municipal jurisdiction and the various principles of conflict resolution.

Municipal Liability [GSLaw 6115] 3 credits]

This course is designed to explore the unique legal principles applicable to liability claims against municipalities framed in negligence, nuisance and breach of contract, as well as those based upon statutory causes of action. It focuses on the evolution of the legal position of municipalities. The course will also review competing policy considerations that have influenced the development of the law, as well as the applicable legal principles. A comparative approach will be employed.

Foundations in Securities Law [GSLaw 6916] [3 credits]

This course focuses, at an advanced level, on the principal legal, business and economic issues necessary to the advanced study of securities law. Among the subjects considered are: (1) the framework of securities regulation in Canada and the U.S.; (2) Canadian private placements offerings, including subscription agreements, rules for accredited investors, and other exemptions; (3) engagement letters, agency agreements, and opinions; (4) regulation by stock markets; (5) U.S. private placement offerings using Regulation S and Rule 144A; (6) the role of tax in structuring corporate transactions and the use of flow-through shares; (7) registration of dealers, salespeople, portfolio managers and other market players; (8) review and analysis of financial statements by lawyers; and (9) economic analysis of capital market efficiency and the role of transactional lawyers.

Products, Transactions and Legal Structures [GSLaw 6741] [6 credits]

Lawyers increasingly need to be familiar with the diversity and complexity of financial products available in today's capital markets. This course introduces a variety of specialized instruments, which may attract securities regulatory requirements. It considers the advantages and disadvantages of using certain of these products to raise capital and how these transactions are typically structured from a corporate finance point of view. It also examines the specialized offering documents required for these products to be marketed. Specific topics include: varieties of derivatives contracts; the new prospectus rules; targeted shares; PREP Offerings Non-Fixed Price; asset-backed Securitizations Offerings; strip bonds; takeover bids and issuer bids; subordinated debentures; arrangements and other voting; transactions; SARs; preferred shares; use of "plain language" offering documents; hybrid securities documents; restricted shares; Internet offerings; and POP/Shelf System.

Keeping the Market Informed

[GSLaw 6742] [6 credits]

Recognizing the growing importance of secondary market trading, securities regulators have imposed significant ongoing disclosure requirements on issuers. These new requirements often are linked to corporate governance concerns. This course considers the underlying policy rationale for these disclosure obligations. It examines the empirical evidence available about their efficacy. Close consideration is given to the details of these disclosure requirements, and comparisons will be made with other significant jurisdictions. A further theme of the course is the relationship between securities disclosure regulation and effective corporate governance regimes. Specific topics include: integrating primary and secondary market; disclosure and selective and continuous disclosure; regimes; theories of efficient markets; theories of investor decision-making; financial statements and developments in accounting practices; complying with AIF/MDA requirements; definitions of materiality in connection with timely disclosure; related party transactions; disclosure of executive compensation as a corporate governance tool; proxy material; and experience to date with new Rule 61-501 (formerly Policy 9.1).

Corporate Governance, Markets and Institutions

[GSLaw 6744] [6 credits]

This course focuses on the structure and regulation of securities markets and the activities of certain market participants, including institutional investors. The course begins with a discussion of the efficient capital market hypothesis and its application to Canadian capital markets. Next, the changing role of institutional investors (including mutual funds and pension funds) is explored. An important issue is whether securities regulatory requirements continue to be appropriate for their needs. Consideration is also given to the regulation of key market participants, including market intermediaries, stock exchanges and alternative trading systems, and to the advantages and disadvantages of regulation by self-regulatory organizations. Specific topics include: role of “catalyst” investors; insider reporting and early warning reporting by portfolio managers; markets: stock exchanges, bond markets and alternative trading systems; issues in market transparency; and role of self-regulatory organizations.

International Securities Regulation

[GSLaw 6743] [6 credits]

Financial transactions no longer recognize national borders. Those involved in securities markets need to pay attention to opportunities outside Canada and also to the regulatory requirements imposed by other jurisdictions, especially the United States. This course canvasses the major developments in international securities transactions. Specific topics include: public offerings of foreign securities in Canada; current status of the Multi-Jurisdictional Disclosure System international private placements; Euro-equity and Eurobond offerings; cross-border M & A transactions; impact of U.S. global offering procedures; U.S. and international disclosure requirements; application of provincial securities laws outside Canada; and international dealer registration

Courts and Regulators [GSLaw 6745] [6 credits]

Securities litigation is becoming a major part of the landscape of Canadian securities markets. This course considers the various opportunities for investors to seek redress from issuers and other market participants, the role of the regulators in enforcing securities laws, and the possibilities for interested parties to influence the regulatory process generally. In particular, offences and administrative sanctions imposed under the OSA and other provincial securities acts will be explored, as will new developments in securities litigation. Specific topics include: compliance and deterrence models of regulation; progress towards rule-making; regulatory control over market risks; the public interest jurisdiction; oversight of regulators by courts; offences and civil liability under provincial securities legislation; civil liability for continuous disclosure documents; civil litigation and class actions; and administrative sanctions under provincial securities laws.

Tax Policy, Statutory Interpretation and the Foundations of the Taxation of Individuals [GSLaw 6100] [6 credits]

This course deals with the various theories of tax interpretation and styles of tax analysis and then covers, at an advanced level, the following matters: (1) The basic principles, theories, and tools of analysis needed for serious discussion of tax policy and planning issues and the philosophical, accounting, financial and economic concepts from which the various logics of tax are derived. The seminars will be conducted by applying these tax theories and policies to current tax policy and planning issues; (2) Recent theories of statutory interpretation along with trends in the judicial interpretation of tax laws. The need for, and problems with, implementing anti-avoidance rules are also examined; and (3) An examination of changing conceptions of the deep structure that underlies the income tax system. Detailed aspects of computing personal and business income are examined through a review of recent tax cases and legislative amendments.

Tax Administration and Litigation [GSLaw 6738] [3 credits]

This course examines the structure of the Canadian tax system and the theoretical and practical issues that arise in the administration of the Canadian tax system: the role of the Department of Finance, administration of the Income Tax Act by the Canadian Customs and Revenue Agency, civil and criminal sanctions, methods of proof, Revenue Canada prosecution policies, investigative techniques, processing procedures, search warrants, Charter rights and lawyer-client privilege, defending criminal prosecutions, tax court practice, and issues in international tax enforcement. Emerging forms of tax practice, including multi-disciplinary practice and the ethical problems and professional obligations of the lawyer who practices tax law are also examined.

The Taxation of Trusts and Estates [GSLaw 6731] [3 credits]

This course examines the general concepts and types of trusts for tax purposes, the taxation of trusts and their distributions, transactions in capital and income interests of trust, Canadian trusts with non-resident beneficiaries and non-resident trusts with Canadian resident beneficiaries, and using trusts in estate and tax planning. The deemed disposition of capital property on death and the various methods of estate freezes will also be examined, as well as the application of the income attribution rules.

Advanced Taxation of Corporations and Shareholders [GSLaw 6736] [6 credits]

This course examines advanced income tax problems relating to the tax treatment of corporations and their shareholders, including: the decision to incorporate; considerations when capitalizing a corporation; the use of professional, personal services, and executive management corporations; the small business deduction and problems of associated companies; remuneration of owner manager; transferring assets to a private corporation; tax considerations in buying or selling a business; utilization of corporate losses; acquisition strategies; statutory amalgamations, arrangements, and continuations; liquidations; and de-mergers and reorganizations of capital.

International Taxation [GSLaw 6739] [3 credits]

This course deals with the following issues: jurisdiction to tax; the foreign affiliate system; foreign tax credit; corporate immigration; emigration and continuance, aspects of transfer pricing; ownership and financing of overseas operations of Canadian companies; structuring foreign joint ventures, financing US affiliates, cross-border mergers and de-mergers and other forms of corporate reorganizations; alternative inbound investments structures; international finance companies, computer software; cross-border issues; and issues relating to tax treaties.

Overview of US Taxation and Recent Developments [GSLaw 6731] [3 credits]

This course presents an analysis of the income tax provisions of the United States Internal Revenue Code of 1954, as amended, with emphasis on business and investment transactions, including those of Canadians

doing business and investing in the United States. It also includes a review of recent developments in the United States of interest to Canadian tax practitioners.

Managerial Tax Planning [GSLaw 6730] [3 credits]

The objective of this course is to introduce participants to an integrative approach to tax planning. A framework is developed that fully integrates tax planning with business planning through the use of six key concepts: the government as business partner, implicit taxes, the pareto principle, the Coase theorem, agency costs and a multi-period perspective. The importance of these concepts is explored by applying them to a diverse range of tax planning issues.

Retirement Income Plans and Deferred Compensation Arrangements [GSLaw 6732] [3 credits]

This course examines the economic significance and the planning relating to public pension plans, registered pensions plans, deferred profit sharing plans, registered retirement savings plans, and retirement compensation arrangements as well as salary deferral arrangements, employee benefit plans and trusts, unfunded non-statutory, deferred compensation plans, US retirement plans, stock options and other aspects of executive compensation.

The Taxation of Charitable Gifts, Charities and Foundations [Proposed course]

The main focus of this course is on the taxation of charitable organizations and foundations including a consideration of the rationale for charitable exemptions, the definition of a charity for the purposes of the personal income tax system, the taxation of gifts to charities, and the regulation of the business and other activities of charitable organizations through the tax system.

Partnerships and Alternative Business Vehicles [GSLaw 6802] [3 credits]

This course examines the range of business vehicles other than corporations that are used in order to achieve business and tax objectives such as partnerships, limited partnerships, income and other commercial trusts, limited liability corporations and other forms of incorporated partnerships, and tax exempt investment structures.

Taxation of Financial Instruments [GSLaw 6801] [3 credits]

This course examines the current Canadian law and the basic policies relating to the taxation of financial instruments including all forms of derivative instruments. It compares the Canadian law in this developing area to the experience in other jurisdictions, in particular, the United States, Australia and New Zealand.

TRUSTS LAW

Overview of the Law of Trusts [GSLaw 6951] [6 credits]

The purpose of this course is to introduce the trust concept. This course first deals with basic theories behind the trust concept. The course provides an historical introduction and a consideration of the principal purposes for which trusts are currently used, and then covers, at an advanced level, the following matters: attempts at defining the trust concept; the nature of the beneficiary's interest; formation of express private trusts; basic principles governing the administration of express private trusts; revocation, termination and variation of trusts; personal and proprietary remedies for breach of trust; resulting and constructive trusts; and charitable and non-charitable purpose trusts; comparative analysis with civil law trust-like devices.

Trust Law in Context: Trusts in Commercial Settings [GSLaw 6952] [4.5 credits]

It has been estimated that over ninety percent of assets held in express trusts are in business trusts as opposed to personal or family trusts. This course surveys the bewildering range of uses to which trusts are put in commercial settings and seeks to address two fundamental questions: (1) is the business trust a sui generis concept? and (2) do (and should) traditional family trust concepts apply in all cases to business trusts? Topics include beneficiary liability under business trusts, third-party claims against the assets of business trusts and a consideration of certain statutory regimes for the creation and regulation of business trusts.

Selected Issues in the Administration of Trusts and Estates [GSLaw 6954] [6 credits]

This course focuses on certain of the more difficult issues that arise in the administration of trusts and estates. Specific topics will include: trustee investment powers and modern portfolio theory; the scope of permissible delegation by trustees; allocation of receipts and outgoings between income and capital beneficiaries; conflict of interest concerns for trustees; special problems raised by the trust-controlled corporation; the compensation and reimbursement of trustees; trustee liability and contribution and indemnity among trustees; the administration of insolvent estates; and variation and termination of trusts.

Trust Law in Context: Uses of Trusts in Pension and Employee Benefit Arrangements [GSLaw 6955] [4.5 credits]

The use of trusts in the context of pension and employee benefit arrangements has grown rapidly. This course focuses upon the law of trusts in the context of the governance of private, employer-sponsored pension plans, and it also surveys the importance of trust law in the public pension system. Topics covered include: the statutory framework of public and private pension systems in Canada; the use of trusts as funding vehicles in pension arrangements; the interaction between trust law principles (the fund) and contract law principles (the plan) in pension arrangements; the relationship between the pension trustee and the plan administrator; trustee investment principles in the context of pension governance; and the use of trusts in other employee benefit arrangements.

Taxation of Trusts [GSLaw 6956] [6 credits]

The minimization of taxes of different kinds is a key motivation for the creation of trusts, both in the traditional context of family estate planning and in the realm of business trusts. This course explores the taxation of testamentary and of inter vivos trusts of various kinds. Topics covered include computation of income, transfers of property to and from trusts, tax-free rollovers, the twenty-one year deemed realization rule and the taxation of non-resident trusts.

Law of Fiduciaries [GSLaw 6957] [4.5 credits]

This course explores the nature of fiduciary relationships. Topics covered include: the historical development of the law of fiduciaries; the relationship between trust law and the law of fiduciaries; the nature of fiduciary obligations; recognized categories of fiduciaries and the extension of these categories in recent times; the consequences of a breach of fiduciary obligations; and a comparative look at fiduciary or equivalent relationships in other jurisdictions.