

Course Outline

Course: LAWS 3907J Legal Research Methods

Prerequisites: LAWS 1000 and Honours Standing

Term: Winter 2008

Class: **Class Time:** Monday 6:05 - 8:55PM

Room: 447 Tory Building

Instructor: Craig McFarlane

Contact: **Office:** C476 Loeb

Office Hours: Monday 5:30-6:00, Tuesday 11:00 - 11:30AM or by appointment

Email: teaching@theoria.ca

Accommodations

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or CUTV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is November 9, 2007 for December examinations and March 14, 2008 for April examinations.

With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

Calendar Description

Basic methods in the design and execution of research projects in law in a social sciences context. Research principles; theoretical approaches; law-related materials and research procedures. Computer-assisted legal research; problem solving, bibliographic and citation skills.

Students may take this course in their second year.

Course Overview

'Method' is all too often thought of as a set of technical procedures that are mechanically 'applied' to data in order to automatically produce 'results,' 'research,' or 'knowledge.' This course resists such a simple understanding of the *process* of research. Here research is not understood as a 'thing' or 'technology' to be applied, but, rather, as a process; that is, as an *activity*. The specific activity that constitutes research is *enquiry*. Research *qua* enquiry is thus a process of questioning and reflection. The aim of this course, therefore, is to provide the skills, knowledge and tools that will enable students to seek answers to the questions that interest them.

To this end, the course is divided into two 'Parts.' The first part involves theoretical, philosophical and disciplinary considerations. Accordingly, six weeks are spent discussing the relation between legal studies and the law, the various philosophies of law that have attempted to constitute law as a domain of analysis, the relation between research and power, and the relation between research and social change (i.e., politics). Ultimately, the goal of this part is to convince the student that any possible 'legal studies' must be a 'critical legal studies.' The second part introduces aspects of the research process itself understood as 'tools' rather than as 'methods.' In the same way that the application of a hammer to a nail in wood will not produce a piece of furniture, the application of method to data will not produce research. Thus, in the second part of the course students are introduced the process of formulating a research question, the problem of ethics in legal research, the tools and resources available in both libraries and in databases, and, finally, the course concludes with a workshop in which your final projects will be discussed.

As research is an ongoing process - indeed, for the researcher, research never ends - the course is structured around a set of short weekly written assignments ranging in length from one sentence to a couple of pages. It is the view of the instructor that research skills must be 'embodied' in the researcher *via* practice and repetition. Research, understood as the ongoing process of enquiry, can only be motivated by interest. Hence, the final assignment in the course is structured around topics of interest to each individual student.

Required Texts

- Iosipescu, Michael J., and Philip Whitehead. *Legal Writing and Research Manual*. 6th ed. Markham, ON: LexisNexis Butterworths, 2004.
- All other readings are available on WebCT in PDF.

Recommended Texts

The following texts are not required for the class and have not been ordered. However, they are recommended for those who intend to follow a career in research, including graduate or law school.

- Booth, Wayne C. *The Craft of Research*. 2nd ed. Chicago: University of Chicago Press, 2003.
- Hughes, William, and Jonathan Lavery. *Critical Thinking: An Introduction to the Basic Skills*. 4th ed. Peterborough, ON: Broadview, 2004.
- Madsen, David. *Successful Dissertations and Theses: A Guide to Graduate Student Research From Proposal to Completion*. 2nd ed. San Francisco: Jossey-Bass, 1992.
- Pearsall, Judy, (ed.) *The Concise Oxford Dictionary*. 10th ed. Oxford: Oxford UP, 1999.
- Lipson, Charles. *Cite Right: A Quick Guide to Citation Styles--MLA, APA, Chicago, the Sciences, Professions, and More*. Chicago: University of Chicago Press, 2006.

Evaluation

Participation	10%
Commentaries	25% (5 × 5%)
Theory Paper	25%
Research Process	15%
Research Proposal	25%

- You **must** complete each component of the course in order to receive a passing grade.

Course Components

Participation (10%) - This course is organized as a seminar. Hence, in order to guarantee the proper functioning of the class, it is incumbent upon students that they come to class prepared to engage in discussion. Thus, it is expected that students will attend *all* classes and complete *all* the readings. It is not necessary that every student speak in every class as it is simply just not the case that you will have something to say every week. Questions are as integral to participation as are insightful comments and answers.

Commentaries (25%) - Students are required to submit five short commentaries drawn from the readings in Part 1. There are six different sets of readings in Part 1, hence, students have a degree of choice in which of the readings they will comment on. The commentaries *must* be submitted at the start of class the week following when

they were read (i.e., a commentary on the readings from Week 2 must be submitted at the start of class on Week 3). *Late commentaries will not be read or marked and will receive a grade of zero.*

Generally,

- assignments should be short - no more than three pages long (these are, after all, *commentaries* and not *papers*);
- assignments should provide a brief overview of the readings;
- however, mere summary is not sufficient: commentaries are a place to raise unanswered/unasked questions, to reflect upon the topic, and to become familiar and comfortable with reading theoretical and philosophical texts.

Theoretical Paper (25%) - This assignment is intended to provide an avenue in which the student can engage in an extended, directed critique and criticism of the theoretical and philosophical issues raised in the first part of the course. Papers should be about eight to ten pages (2500 words) long. Topics and guidelines will be discussed in class. However, the following should be kept in mind:

- Failure to do the reading and attend the lectures will make receiving a satisfactory mark quite difficult, if not impossible. The material is difficult and should be treated accordingly.
- No additional or secondary reading is required or expected. The point of the assignments is to engage with the assigned texts.
- Direct quotation is acceptable, but given the length of the papers, it should be kept to a minimum.
- Marking will take the following into account:
 - Have you successfully demonstrated a basic knowledge of the readings and key concepts?
 - Have you successfully identified the important points and arguments?
 - Have you demonstrated a serious attempt to engage with the readings?
 - Is the paper well structured and logically organized?

Research Process (15%) - This course understands research as a process of questioning and reflection. In order to draw attention to the length of time involved in properly preparing and conducting research, a series of short assignments must be completed throughout the semester. These assignments will tie in with short discussions of elements of the research process at the end of each class. The short assignments include: selecting an *area* of interest (due Week 3), developing a question

about that area of interest (due Week 4), determining the *sort* of sources relevant to the research (due Week 5), finding those sources (due Week 11), and creating a brief outline of the project (due Week 12). In order to properly complete the assignment, *all* components must be completed *on time*. However, it is not the individual components that will be marked, but, rather, the research process as a whole.

Research Proposal (25%) - The research proposal includes everything covered during the course of the research process, but falls short of actually completing the research itself. In the research proposal, students are expected to present a paper that discusses their topic, research question, justification for selecting that topic, as well as filling out the details of the outline. The final class will be dedicated towards 'workshopping' a draft of the research proposal. Students are invited to consult my dissertation proposal as an exemplar, which can be found online at <http://www.theoria.ca/research/files/SBC-S.pdf>.

Course Rules

- Students are expected to have completed the readings prior to attending the lectures as the lectures presume students have arrived prepared.
- Students should be able to answer questions in class, not limited to identifying the important concepts, the arguments underlying the concepts, general questions about the historical circumstances discussed in the readings, and connections between the various concepts and readings.
- All assignments *must be* typed using 12pt Times New Roman or Helvetica fonts. Assignments should be double-spaced and there should be no extra spaces between paragraphs. Margins should be set at 1.25" all around the page.
- While you will not be marked on spelling, grammar or style, impressions do matter. This is especially important in borderline cases. Good writing can mean the difference between a B+ and an A-!
- Assignments will *not* be accepted via email - so don't bother asking!
- Unless otherwise stated, late assignments will be deducted one *grade point* per day (i.e., from B+ to B-).
- Do not enclose your assignment in a duo-tang or any other sort of cover.
- Plagiarism and other academic offenses will not be tolerated and *will* result in a failing grade, as well as referring the matter to the relevant authorities.
- All email should be sent from an account that clearly identifies your first and last name (e.g., your Connect account). Inappropriate email addresses should *not* be used (e.g., "sexxybunny69@hotmail.com" or "mack-daddy@gmail.com") under any circumstances! The course code (LAWS 3907) should be indicated in the subject line. Please use standard spelling and grammar in your correspondence with me.

Schedule

07/01/08 Week 1 - Introduction: What is - or Why - Method?

Feyerabend, Paul. *Against Method*, 9-19. Rev. ed. London: Verso, 1993.

Part 1 - Theoretical and Philosophical Considerations

14/01/08 Week 2 - Legal Studies and Legal Research

Dawson, T. Brettel. "Legal Research in a Social Science Setting: The Problem of Method." *Dalhousie Law Journal* 14 (1992): 445-72.

Urbina, Sebastian. *Legal Method and the Rule of Law*. Boston: Kluwer Law International, 2002, 1-6.

21/01/08 Week 3 - Traditional Legal Theory: Positivism and Naturalism

Hart, H.L.A. "The Concept of Law." In *The Nature and Process of Law: An Introduction to Legal Philosophy*, edited by Patricia Smith, 222-38. Oxford, UK: Oxford UP, 1993.

Dworkin, Ronald A. "'Natural' Law Revisited." In *The Nature and Process of Law: An Introduction to Legal Philosophy*, edited by Patricia Smith, 239-56. Oxford, UK: Oxford UP, 1993.

28/01/08 Week 4 - Disciplinary Considerations

Posner, Richard. "The Decline of Law as an Autonomous Discipline: 1962-1987." *Harvard Law Review* 100, no. 4 (1987): 761-80.

Macaulay, Stewart. "Law and the Behavioural Sciences: Is There Any 'There' There?" *Law and Policy* 6, no. 2 (1984): 149-87.

Valverde, Mariana. *Law's Dream of a Common Knowledge*, 1-27. Princeton, NJ: Princeton UP, 2003.

04/02/08 Week 5 - Critical Legal Studies

Hunt, Alan. "The Critique of Law: What's 'Critical' About Critical Legal Theory?" In *Critical Legal Studies*, edited by Peter Fitzpatrick and Alan Hunt, 5-19. Oxford: Basil Blackwell, 1987.

West, Robin. "Disciplines, Subjectivity, and Law." In *The Fate of Law*, edited by Austin Sarat and Thomas Kearns, 119-58. Ann Arbor: University of Michigan Press, 1991.

Cramton, Roger. "Demystifying Legal Scholarship." *Georgetown Law*

Journal 75, no. 1 (1986): 1-17.

11/02/08 Week 6 - Intellectuals and Power

Bauman, Zygmunt. *Legislators and Interpreters: On Modernity, Post-Modernity and Intellectuals*, 110-48. Cambridge, UK: Polity Press, 1987.

Foucault, Michel. "Truth and Power." In *The Foucault Reader*, edited by Paul Rabinow, 51-75. New York: Pantheon Books, 1984.

Deleuze, Gilles, and Michel Foucault. "Intellectuals and Power." In *Desert Islands and Other Texts, 1953-1974*, edited by David Lapoujade, 206-13. New York and Los Angeles: Semiotext(e), 2004.

18/02/08 Reading Week - No Class

25/02/08 Week 7 - Research and Social Change

Weber, Max. "Value-judgments in Social Science." In *Max Weber: Selections in Translation*, edited by W.G. Runciman, 69-98. Cambridge: Cambridge UP, 1978.

Smith, George W. "Political Activist as Ethnographer." In *Sociology for Changing the World: Social Movements/Social Research*, edited by Caelie Frampton, Gary Kinsman, A.K. Thompson, and Kate Tilleczek, 44-70. Black Point, NS: Fernwood, 2006.

Frampton, Caelie, Gary Kinsman, A.K. Thompson, and Kate Tilleczek. "New Directions for Activist Research." In *Sociology for Changing the World: Social Movements/Social Research*, edited by Caelie Frampton, Gary Kinsman, A.K. Thompson, and Kate Tilleczek, 246-71. Black Point, NS: Fernwood, 2006.

Part 2 - Methodological, Technical and Practical Considerations

03/03/08 Week 8 - The Research Process

Workshop with Writing Tutorial Services.

No assigned readings.

10/03/08 Week 9 - Conducting Research in the Library

Workshop with Law Subject Specialist - Room 102, Library.

No assigned readings.

» *Theory paper due.*

14/03/08

» *Last day to drop winter semester classes.*

» *Last day to submit PMC accommodation forms.*

17/03/08 **Week 10 - Conducting Research Online**

Workshop with Law Subject Specialist - Room 102, Library.

No assigned readings.

24/03/08 **Week 11 - Ethical Considerations**

Workshop with Carleton University Research Office.

No assigned readings.

31/03/08 **Week 12 - Research Proposal Workshop**

No assigned readings.

09/04/08

» *Research proposal due.*