

Course Outline

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COURSE:	LAWS 3206A – Banking Law
TERM:	FALL 2014
PREREQUISITES:	LAWS 2202 or BUSI 2601
CLASS:	Day & Time: Wednesdays 7:05 PM to 9:55 PM Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Sam Schwisberg
CONTACT:	Office: B442 Loeb Building Office Hrs: By appointment and after class Telephone: 613 740 1965 Email: samuel.schwisberg@redcross.ca

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**Academic Accommodations**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

**Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of

calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:  
<http://www.carleton.ca/studentaffairs/academic-integrity/>

### ***Department Policy***

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

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## **COURSE DESCRIPTION**

The laws of Canada relating to banking will be explored within the context of the international and domestic financial systems. Students will be exposed to the constitutional and regulatory framework, and will then consider the U.S. subprime mortgage/credit crisis. We will discuss whether the Canadian regulatory framework insulated Canada from a similar event. We will consider how the regulation and economics of banking interact with international trade, sovereign debt (looking at current EU and American government debt issues) and the economic health of a country. This will be followed by a more detailed examination of the key relationships among banks, account holders and borrowers. The rights and obligations of customers will be examined. Elements of creditor/debtor law will also be considered. The legal implications of e-commerce and e-banking will be discussed.

**Lecture format:** The lectures will generally entail explanation of or elaboration upon the course materials by the Instructor. Each lecture will cover previously assigned readings, and assist students to focus upon the key issues to consider in the readings assigned for the following week. The Instructor will encourage interchange with students and active discussion among students of the concepts covered during the lecture. Attendance at lectures will facilitate examination preparation and study because examinations will be based primarily on course content covered in class.

**Objective:** The student will gain a good understanding of the key legal and regulatory issues in banking law particularly as they relate to customers as well as some grounding of the interplay between bank regulation and economics.

## **REQUIRED TEXTS**

M.H. Ogilvie, Banking Law: Cases and Materials, 4th edition, (Toronto: Captus Press, 2008) ("The **Casebook**").

M.H. Ogilvie, Bank and Customer Law in Canada, (Toronto, Irwin Law Inc., 2007) ("The **Text**").

Occasional Handout

Allan M. Taylor, "The Financial Rebalancing Act", Foreign Affairs, pages 91 to 99, July/August 2011 (handout)

Marc Levinson. "Faulty Basel", Foreign Affairs, pages 76 to 88, May/June, 2010 (handout)

## **SUPPLEMENTARY TEXTS**

The following texts are not examinable except the extent to which they are covered in class. Class notes will suffice for examination purposes. These readings are for those interested in learning beyond the parameters of the course.

Martin Wolfe, **Fixing Global Finance**, (The John Hopkins University Press, 2010)

Andrew Ross Sorkin, **Too Big to Fail**, (Penguin books), 2010

## **EVALUATION**

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

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Mid -Term Examination (2.5 hours)	<b>45%</b>	<b>October 22, 2014 (in class)</b>
Final Examination (3.0 hours):	<b>55%</b>	<b>Formal Examination Period</b>

## **SCHEDULE**

<b><u>Lecture</u></b>	<b><u>Topic and/or Reading</u></b>
September 10	<p><u>Introduction</u></p> <p>Review of key business concepts relevant to banking: Sources of liability; forms of business organizations; Contract law and banking; guarantees and mortgages; floating charges, secured and unsecured creditors; the litigation process</p> <p><b><u>Readings:</u></b> No assigned reading</p>
17	<p><u>The Constitutional context and international framework</u></p> <p><b><u>Readings</u></b> Text, chapter 1 Casebook, pages 2-3 (Constitution Act) Casebook, pages 28-36 (Bank of Montreal v Hall) Casebook, pages 37-64 (Western Bank v Alberta)</p>
24	<p><u>The Regulation of Banks and Banking in Canada</u></p> <p><b><u>Readings:</u></b> Text, chapters 2, and 3</p>

October	01	<p><u>The 2008 Global Financial Crisis and Banking: Did Regulation spare Canada?</u></p> <p><b>Readings:</b> Taylor and Levinson articles; other hand outs</p>
October	08	<p>1) <u>Complete Financial Crisis</u> 2) <u>Banks as Business Corporations</u> 3) <u>Banking Business</u></p> <p><b>Readings:</b> Text, chapter 4 Casebook, pages 82 to 88 (Cappucitti and Verdun cases)</p> <p><u>Banking Business</u></p> <p><b>Readings:</b> Text, chapter 5 Casebook, pages 119 to 123 (Central Computer v TD Bank) Casebook, pages 128 to 129 (Garnett v. McKewan) Casebook, pages 133 to 140 (RBC v Wildman, BNS v. Gould and RBC v Hein)</p>
	15	<p><u>Bank &amp; Customer Relations</u></p> <p><b>Readings:</b> Text, chapter 6 Casebook, pages 151 to 155 (Financial Services Agreement) Casebook, pages 156 to 178 Burnett and Armstrong cases) Casebook, pages 181 to 186 (Holoboff) Casebook, Pages 187 to 228, 269 to 278, and 284 to 293 (Woods, Lloyds, Standard, Vita Health, CIBC v Ohlson, Hedley Byrne, Sugar cases)</p>
	22	<p><b><u>MID TERM EXAMINATION IN CLASS (2.5 HOURS)</u></b></p>
	29	<p>FALL BREAK – NO LECTURE</p>
November	05	<p><u>Bank Accounts and Operation</u></p> <p><b>Readings:</b> Text, chapters 7, 8</p> <p>Casebook, pages 299 to 310, 319-320, 328 to 359, 364 to 389 (Marzetti, Carew, ThermoKing, Chambers, Villiers, Shapera, Remfor, Capital Associates, TD v PellaHunt, A.E. Lepage v. Rattray, RCL Operators, Stanley Works, National Slag, C.P Hotels, Le Cercle, Kelly Funeral Homes, Don Bodkin cases)</p>
November	12	<p><u>Bank Accounts and Operation – continued</u></p>

on line considerations

**Readings:** Text, chapters 9 and 10  
Handouts

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Confidentiality Obligations & Money Laundering

**Readings:** Text, chapter 8, pages 303 to 314  
Casebook, pages 396 to 432 (Tournier, CIBC v Sayani, R v. Lilloo, skim PIPEDA (pgs 406-420, Guertin v. RBC)

Also read Citi Cards Canada v. Charles Pleasance on line at 2011 ONCA (CanLII) It may help to also read the Superior Court decision.

Also read Toronto Dominion Bank v. Sawchuk, 2011 ABQB 757 (Can LII)

Handouts on money laundering

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Credit Cards, Safekeeping and Dispute Resolution

**Readings:** Text, chapters 11, 12 and 13

December 2

**REVIEW**