

York University
School of Human Resource Management
AP/HRM 3420 Section N
EMPLOYMENT LAW (Distance Section)
Winter 2016

INSTRUCTOR: PROFESSOR DAVID DOOREY, Ph.D

PLATFORM: Distance Internet Course

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[Email Rule: Please reserve emails for issues/questions that cannot be asked in class. It is difficult to quickly respond to emails from potentially hundreds of students.]

Course Blog: **The course will be hosted on a dedicated course blog/website, and not Moodle.** That website has not been made live yet by the York technology people yet, but I expect it to be up and running the first week of classes. I will send registered students an email informing them of the website address and password needed to access some of the material.

My Related General Website Covering Course Subject Matter:

<http://thelawofwork.ca> (both links lead to the same place). You will see on this page a tab called **Current Courses**. That Tab will have a link to the HRM3420 website.

Twitter Hashtag: **#LawofWork** For those of you on Twitter, I will post stories, comments, and news stories occasionally throughout the term using this hash tag. If you see Tweets or relevant news stories, please forward them onto the class by using this hash tag.

Also consider following my main Twitter account **@theLawofWork** for the duration of the term.

Office Hours: By appointment. Since no one attends my regular office hours anymore, I am phasing them out. If you'd like a meeting with me, we can arrange a time. Send me an email.

PREREQUISITE:

Prerequisite: HRM 2600 3.00 This is a Hard Prerequisite. If you haven't taken it, you cannot take the class.

COURSE DESCRIPTION/OBJECTIVES:

This course explores how law governs the employment relationship. It focuses on two of work law's three regimes: (1) the common law; and (2) regulatory standards law. The third regime of work law, Collective Bargaining Law, is explored in HRM3422 Industrial Relations.

The course begins with an exploration of the Common Law model of the employment contract and the judge-made rules that have developed over time. We will learn about how judges have created a special type of contract to regulate work and that as judicial attitudes evolved, so too judges' interpretations of employment contracts. In the second half of the course, we will explore how Canadian governments have intervened in the common law model in pursuit of various public policy goals (i.e. better wages and working conditions, less discrimination in employment) through employment legislation. We will focus in this course on two examples: Employment Standards and Human Rights legislation.

The objective of this course is to introduce students to the fundamental concepts that guide the law of work. A key theme is that the law is shaped by developments and forces in broader society, and by the imbalance of power that permeates the employment relationship. This course will provide a strong foundation in work law for students interested in a career in HRM, labour relations, law, or public policy.

PREPERATION FOR CLASS

You are responsible for material covered in the lecture as well as the readings. There are a lot of "cases"—decisions written by judges and tribunals—considered in the readings and the lectures, as is to be expected in a law course. You should begin early in the term preparing a case summary log, which is a quick summary of the main point from each case. You will use this to study from for the test and exam. In the lectures, I will review key themes and issues from the readings and discuss questions and case studies relating to those readings.

READINGS

Text: **D. Doorey, *The Law of Work* (Emond Publishing, 2015).** Hard copies are available in the book store, or you can purchase or rent an electronic version for a reduced price from this website:

<http://www.emond.ca/the-law-of-work-common-law-and-the-regulation-of-work.html>

Other Useful Resources available at York libraries:

R. Echlin & C. Thomlinson, *For Better of For Worse: A Practical Guide to Canadian Employment Law*, 2nd Ed., (Aurora Professional Press, 2003)

G. England, *Individual Employment Law* (Irwin Law, 2000)

K. Filsiger, *Employment Law for Business and Human Resource Management Professionals* (3rd Ed., Emond Publishing)

BLOGS AND TECHNOLOGY

There are Two BLOGS used in this course:

1. ***The Law of Work BLOG:*** (<http://lawofwork.ca/>)

This blog is updated regularly with posting relating to labour and employment issues. I recommend you read the blog regularly as the material will often relate directly to the course content. Feel free to raise any issue or ask any question relating to a posting. On the Tab **Blog Entries** on the course website, I have posted a variety of blog entries by course subject matter.

2. ***Dedicated Course BLOG*** [URL to be given during the first week of the term]

This blog is specifically dedicated to your course, HRM 3420. On it you will find information such as lecture notes, handouts, and other course specific information. You can access this blog by the address above, or by following the link to it under Current Course Blogs on the *Law of Work.ca*

METHOD OF EVALUATION:

A 2-hour, closed book mid-term test will be held on campus, probably the week of February 21st, but the date will be confirmed during the term. If you are out of town, you will need to make arrangements with the distance office to write remotely at a recognized institution. The distance office website, including contact information, is here:

<http://laps-elearning.info.yorku.ca>

The final exam will be held during the regular York exam period and will be a 'take home' exam, meaning you will type the exam on a computer with Internet connection and upload your answers by the designated time. This will be explained in class. There will be an on-campus hand-writing option if you would prefer that option.

PLEASE READ THE NOTE ON MISSED TESTS AND EXAMS BELOW.

There is an **OPTIONAL** written assignment that will be due in hard copy the last week of the course. This will be explained later in the term.

METHOD OF EVALUATION:

Option One: With Optional Essay Assignment

Mid Term Test	30%
Optional Essay Assignment	15%
Final Exam	<u>55%</u>
TOTAL	100%

Option Two: Without Optional Essay Assignment

Mid Term Test	45%
Final Exam	<u>55%</u>
TOTAL	100%

Missed Tests and Late Assignments

There will be no make-up test for the mid-term. Students who present a proper medical authorization form as per the University's policy explaining that they could not write the mid-term due to medical reasons **must write the assignment, and will be graded as follows:**

Assignment: 30%
Final Exam: 70%

READ THIS: If you miss the midterm and you do not want to be assessed under this revised scheme, you should drop the course before the drop date. If you miss the final exam, you will need to deal with the administration and the rules that apply for missed final exams and deferrals. Usually this means that, if you have a valid reason (as approved by administration, not me), you will be required to write a makeup final exam at some later point set by the university. That exam will be different than the one written by the class. The makeup exam will be on campus, not a take home exam, and it may be closed book.

All final grades will be reviewed by the School of Human Resource Management, and the School reserves the right to modify them in order to maintain high standards.

Detailed Reading List

We will follow the readings in their assigned order. The outline is arranged by topic. I have included a rough guide of what I expect to cover in each class, but we may sometimes be put off schedule do to more or less class discussion of issues. I will keep you apprised on the class website of where we are at in the readings as we go. I expect we will get through all of the material during the term, so keep reading. All supplemental readings are on the website.

PART ONE: INTRODUCTION TO THE LAW OF WORK

Class 1 (January 4): *Introduction to Employment Law & the Meaning of 'Employment'*

We open with a discussion of the Three Regimes of Work Law in Canada. This course deals with two of the three regimes: (1) *The Common Law of Employment Regime*, and (2) *The Regulatory Regime*. The third regime of work law, Collective Bargaining Law, is dealt with in HRM3422 (Industrial Relations). We will then

Readings:

Chapter 1: Canadian Work Law in a Nutshell [p. 3-11, skip Collective Bargaining Regime]

Chapter 3: A Framework for Analyzing the Law of Work [p. 31-42]

In Class Exercise found on page 43: Identifying external factors that influence the Law of Work.

PART TWO: THE COMMON LAW OF EMPLOYMENT

Class 2 (January 11): *Employee Status and the Common Law Rules of Recruitment*

We begin by considering how the law defines the employment relationship. We then consider how the common law regime regulates (or does not regulate) the hiring and recruitment process.

Readings:

Chapter 2: The Law of What? [p. 17-24]

Chapter 6: The Job Recruitment and Hiring Process in the Common Law

Week 3 (January 18): *The Employment Contract*

We explore the requirements of employment contracts and how the law regulates modifications to contracts, before moving onto sources of employment contract terms.

Readings:

Chapter 7: Requirements of an Employment Contract [p. 87-94]

Chapter 10: Modifying Employment Contracts [Read the case in Box 10.1 on pages 127-128 (*Francis v. CIBC*)]

Chapter 8: Expressed and Ancillary Contract Terms

Week 4 (January 25): *Implied Contract Terms and Termination of an Employment Contract by Agreement of the Parties*

The final source of employment contracts—implied contract terms—are explored. We then turn our extended consideration of the ways in which employment contracts are terminated. We will look first at terms that bring contracts to an end by agreement of the parties.

Chapter 9: Implied Employment Contract Terms

Chapter 11: Termination by Agreement of the Parties

Week 5 (February 1): *Termination by an Employer with “Reasonable Notice” and Constructive Dismissal*

Employers can terminate indefinite term contracts at any time by giving the employee ‘notice’. This week we look at how courts determine the amount of notice that is “reasonable”, before turning to the special case of ‘constructive dismissal’.

Readings:

Chapter 13: Termination by an Employer with “Reasonable Notice”

Chapter 15: ‘You forced Me to Quit!’: The Special Case of Constructive Dismissal

Week 6 (February 7): *Quits and Summary Dismissal for Cause*

We examine the situation in which an employer terminates an employee for cause, and without notice. This is known as **summary dismissal for cause**. Finally, we look at

how the law regulates employees who terminate the employment contract by giving the employer notice.

Readings:

Chapter 14: Summary Dismissal: Termination for Cause Without Notice

Chapter 17: “I Quit!”: Termination of the Employment Contract by the Employee

Week 7: (February 14) Reading Week

Week 8: (February 21): Midterm Test (on material covered up to Week 6)

Part 3: The Regulatory Regime: Government Intervention in the Employment Relationship

The common law model, based on the concept of freedom of contract, gives considerable power to the stronger party, usually the employer. Out of concern that employers will exploit this power to insist on working conditions that are unacceptably poor for workers, governments have intervened and passed legislation to restrict freedom of contract. The purpose is to protect workers with the aim of producing working conditions that meet a basic standard the state deems acceptable. In this part, we consider two forms of government intervention—employment standards and human rights laws—and question why the state has intervened.

Week 9 (February 28): Employment Standards Laws: Wages and Hours

We introduce the Regulatory Regime, and then consider employment standards legislation and the regulation of wages and working time.

Readings:

Chapter 19: Mapping Labour Market Regulation [p. 245-252]

Chapter 21: Regulating Wages and Pay Equity [p. 269- 276

Handout Summarizing Ontario’s minimum wage laws

Chapter 22: Regulating Working Time [p. 289- 297]

Week 10 (March 7): Employment Standards Laws: Regulating the End of Employment

We examine how governments regulate the end of employment contracts and these statutory laws interact with the common law rules we discussed earlier in the course.

Readings:

Chapter 23: Regulating the End of Employment Contracts

Week 11 (March 14): Human Rights Statutes: Introduction and Discrimination

We examine how human rights laws operate and then consider the meaning of 'discrimination'.

Readings:

Chapter 25: Mapping Human Rights at Work

Chapter 26: Putting Human Rights Law to Work

Week 12 (March 21): Human Rights Statutes: The Prohibited Grounds of Discrimination

We explore the scope of prohibited grounds of discrimination in Canadian human rights statutes.

Readings:

Chapter 27: What are the Prohibited Grounds of Discrimination?

Week 13 (March 28): Human Rights Statutes: Permissible Discrimination

The right to be free from discrimination at work is not absolute. That right is balanced against other interests resulting in a set of standard exceptions, or defences, to discrimination complaints. We examine those defences.

Readings:

Chapter 28: The *Bona Fide* Occupational Requirement and Other Discrimination Defences

Chapter 29: The Duty to Accommodate [p. 386-391]