

Employment and Labour

Winter 2019

INSTRUCTOR: Judy Fudge

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LECTURE: Thursday, 19:00 to 22:00
KTH 104

OFFICE: KTH 722

OFFICE HOURS: Wednesdays 3 - 4:30

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Course Description

The law plays a major role in shaping almost every aspect of work, from what counts as employment to establishing workers’ basic duties on the job and their rights at work, through their right to organize, to how and when unions are allowed to bargain and go on strike. Moreover, the law regulating employment takes three forms – the common law, direct statutory intervention and legislation designed to promote self-regulation -- and each form has a different justification. This course explores how these different legal regimes frame workplace issues. What interests - the workers, the employers, and the public - does the law try to balance, and which side does it favour?

Course Learning

The course aims to develop knowledge of key concepts and regulatory mechanisms related to employment law and labour law. Students will develop an understanding of the common law’s distinctive methodology and how common law interacts with direct statutory intervention and collective bargaining. The course will assist students in comparing and contrasting these different regulatory regimes – common law, direct statutory regulation and collective bargaining legislation. Students will develop critical thinking and effective communication skills by facilitating critical discussions of the central claims raised in the readings and lectures. Collaborative work skills will be cultivated through group assignments.

Required Materials and Texts

Required text: David J. Doorey, THE LAW OF WORK: COMPLETE EDITION (Toronto; Emond 2017). You should purchase this text. It is available from the McMaster bookstore or on line (in less expensive formats) from Emond at <http://www.emond.ca/the-law-of-work-complete-edition.html>. For each class you will be responsible for reading about 75 pages of the textbook. It is expected that you will have read the materials so that you will be prepared to discuss them and participate in the in-class assignments.

Students are also expected to consult the course Avenue to Learn site at least on a weekly basis.

Course Evaluation Breakdown

Four in-class assignments worth 10 marks each

1. Thursday January 24 - Week 3

2. Thursday January 31 - Week 4
3. Thursday February 28 - Week 7
4. Thursday March 21 - Week 10

Two group assignments worth 15 marks each

1. Thursday February 14 - Week 6 - In-Class Group Exercise.
2. Group assignment on charter and collective bargaining 15 per cent due electronically on Avenue to Learn on March 28 at 23:00. Keep a hard copy of the assignment and bring it to call on 4 April.

Take home – 30 per cent due Noon Friday April 12 on Avenue to Learn.

Weekly Course Schedule and Required Readings

Week 1 January 10

Doorey, The Law of Work pp. 3-61

Part I: The Law of Work: Themes, Frameworks and Perspective

- 1: Canadian Work Law in a Nutshell
- 2: The Law of What? Employment, Self-Employment, and Everything in Between
- 3: A Framework for Analysing the Law of Work
- 4: Key Perspectives That Shape the Law of Work

Week 2 January 17

Doorey, The Law of Work pp. 67-95; 245-267; 485-521

Part II: The Common Law Regime 67-93

Formation and Requirements of an Employment Contract

- 5: A Brief History of the Common Law Model of Employment
- 6: The Job Recruitment and Hiring Process
- 7: The Requirements of an Employment Contract

Part III: The Regulatory Regime 245-267

- 19: Mapping Labour Market Regulation
- 20: The Charter of Rights and Freedoms and Regulatory Standards

Part IV: Industrial Relations and the Collective Bargaining Regime 485-521

- Mapping the Collective Bargaining Regime: Introductory Concepts
- 37: A Brief History of the Canadian Labour Movement and the Law
 - 38: Why do Workers Join Union

Week 3 January 24

Doorey, *The Law of Work*, pp. 329-394

25: Mapping Human Rights at Work

26: Putting Human Rights Law to Work

27: What Are the Prohibited Grounds of Discrimination?

28: Bona Fide Occupational Requirements and Other Discrimination Defences

29: The Duty to Accommodate

In-Class Assignment – 10 per cent

Week 4 January 31

Doorey, *The Law of Work*, pp. 97-132; 269-302

The Employment Contract, 97-132

8: Expressed and Ancillary Employment Contract Terms

9: Implied Employment Contract Terms

10: Modifying Employment Contracts

The Regulatory Regime, 269-302

21: Regulating Wages and Pay Equity

22: Regulating Working Time

In-Class Assignment – 10 per cent

Week 5 February 7

Doorey, *The Law of Work*, pp. 155-223

The End of an Employment Contract

13: Termination by an Employer with "Reasonable Notice"

14: Summary Dismissal: Termination for Cause Without Notice

15: "You Forced Me to Quit!": The Special Case of Constructive Dismissal

16: Damages in Wrongful Dismissal Lawsuits

17: "I Quit!": Termination of the Employment Contract by the Employee

Week 6 February 14

Doorey, *The Law of Work*, pp 303-16

23: Regulating the End of Employment Contracts

Review – Relationship between the contract of employment and employment regulation

In-Class Group Exercise - Termination - 15 per cent

Week 7 Reading week February 21 Class cancelled

Week 8 February 28

Doorey, The Law of Work, pp 523-574

Canadian collective bargaining in context

39: The Unionization Process

40: Unfair Labour Practices

41: Collective Bargaining

In-Class Assignment – 10 per cent

Week 9 March 7

Doorey, The Law of Work, pp.575-603; 687-716

42: Industrial Conflict: Strikes, Lockouts, and other Bargaining Tactics

47: Public Sector Labour Relations

48: The Charter of Rights and Freedoms and the Collective Bargaining Regime

Week 10 March 14

Doorey, The Law of Work pp. 605-686

43: The Collective Agreement

44: Grievances and Labour Arbitration

45: What is “Just Cause” for Discipline or Discharge of Unionized Employees?

46: The Regulation of Unions

In-Class Assignment 10 per cent

Week 11 March 21

Policy questions -- case studies. This class discussion will be relevant to the group assignment that is due next week.

Week 12 March 28 Class Cancelled.

Second group assignment: 15 per cent due March 28 at 23:00 via Avenue to Learn. Keep a hard copy of the assignment.

Week 13 April 4

Discussion of second group assignment.

Review

Take Home – Dues noon April 12 through Avenue to Learn

Course Policies

Submission of Assignments

In class assignments must be submitted in class.

Take home assignments must be submitted on line at the Avenue to Learn Website. Submission instructions for specific assignments are detailed above in the assignment section.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments

The due dates for assignments are firm. All in-class assignments are to be handed in during the class in which they are assigned. All other assignments must be submitted via Avenue to Learn by the due date and for instructions regarding the hard copy see the specific assignment above. Late take home assignments will receive a deduction of 10% per a day (or part thereof) and assignments that are more than three days late will not be accepted.

Absences, Missed Work, Illness

On-line self-reporting tool – illness lasting less than 3 days. Can only be used once per term. Instructors are not allowed to accept medical notes! These must be submitted to your Faculty office. In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”. Please also communicate with the course instructor. The value of in-class assignments that are missed for medical or other accepted reason **may** be added to the take home.

Avenue to Learn

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Turnitin.com

In this course we will be using a web-based service (Turnitin.com) to reveal plagiarism. Students will be expected to submit their work electronically to Turnitin.com and in hard copy so that it can be checked for academic dishonesty. Students who do not wish to submit their work to Turnitin.com must still submit a copy to the instructor. No penalty will be assigned to a student who does not submit work to Turnitin.com. All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, etc.). To see the Turnitin.com Policy, please to go www.mcmaster.ca/academicintegrity.

Academic Dishonesty:

<http://www.mcmaster.ca/academicintegrity/students/index.html>

Academic dishonesty consists of misrepresentation by deception or by other fraudulent means and can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various kinds of academic dishonesty please refer to the Academic Integrity Policy, specifically Appendix 3, located at

<http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicIntegrity.pdf>

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
2. Improper collaboration in-group work.
3. Copying or using unauthorized aids in tests and examinations.

In this course, we will be using a software package designed to reveal plagiarism. Students will be required to submit their work electronically and in hard copy for this purpose.

Department/University Policies:

Labour Studies staff does not date-stamp assignments, nor do they monitor the submission or return of student papers. All papers should be submitted/returned in-class, in tutorials or during Professor/TA office hours. Instructors who utilize Avenue to Learn will provide instructions on that preference.

Absence Reporting:

<http://www.mcmaster.ca/msaf/> On-line self-reporting tool – illness lasting less than 3 days. Can only be used once per term. Instructors are not allowed to accept medical notes! These must be submitted to your Faculty office. In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”. Please also communicate with the course instructor.

Code of Conduct:

<http://studentaffairs.mcmaster.ca>

“McMaster University is a community dedicated to furthering learning, intellectual inquiry, the dissemination of knowledge and personal and professional development. Membership in this community implies acceptance of the principle of mutual respect for the rights, responsibilities, dignity and well-being of others and a readiness to support an environment conducive to the intellectual and personal growth of all who study work and live within it.”

Computer Use:

Computer use in the classroom is intended to facilitate learning in that particular lecture or tutorial. At the discretion of the instructor, students using a computer for any other purpose may be required to turn the computer off for the remainder of the lecture or tutorial.

Course Modifications:

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check their McMaster email and Avenue to Learn (if used by instructor) *regularly during the term* to note any changes.

Email Communication Policy of the Faculty of Social Sciences:

All e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student's own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student's responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor/TA receives a communication from an alternate address, the instructor may not reply at his or her discretion. **Please always include student name, ID, course # and TA name in messages.**

Evaluations (Online):

<http://evals.mcmaster.ca>, and log in via MACID.

These help faculty and the School of Labour Studies to meet our goal of continually improving teaching effectiveness. All students in the course are invited and encouraged to complete the evaluation.

Student Accessibility Services:

<http://sas.mcmaster.ca/>

Location: MUSC – B107

Contact: 905-525-9140 x 28652

NOTE: Disclosure of disability-related information is personal and confidential.

Student Accessibility Services offers various supports for students with disabilities. We work with full time and part time students. SAS provides or assists students with their academic and disability-related needs, including: Learning Strategies, Assistive Technologies, Test & Exam Administration, Note-Taking Programs, and Classroom Accommodations. *Please inform the instructor if there are disability needs that are not being met.

McMaster University Policy on Academic Accommodation

Please find the McMaster University policy on academic accommodation of Students with Disabilities & McMaster University Anti-Discrimination Policy at the following link:

- <http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicAccommodation-StudentsWithDisabilities.pdf>

Student Success Centre:

Email Address: <http://studentsuccess.mcmaster.ca/>

Location: GH-110

Contact: 905-525-9140 x 24254

Some services include: student orientation, academic skills, volunteerism, educational planning, employment and career transition. Writing Support:

<http://studentsuccess.mcmaster.ca/students/academic-skills/writing-support-services.html>

Student Wellness Centre:

Email Address: <http://wellness.mcmaster.ca/>

Location: MUSC-B10

Contact: 905-525-9140 x 27700

Provides services in: Personal and Psychological Counselling, Mental Health Support, Medical and Health Services