

INDIGENOUS LANDS, RIGHTS & GOVERNMENTS

LAW 340

PROFESSOR JOHN BORROWS

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A) COURSE DESCRIPTION

This course examines the major legal issues concerning Indigenous peoples (Indian, Inuit and Metis) in Canada. It will explore the development of Canadian case law relative to these groups and its simultaneous preservation and dispossession of Indigenous people's rights. It will provide an overview of aboriginal title, treaties, the distribution of legislative authority with respect to Aboriginal peoples, fiduciary law, the treatment of Aboriginal women in Canadian law, taxation, Aboriginal child welfare and criminal justice issues. Comparisons will be drawn from other countries dealing with Indigenous Rights. In exploring these issues the course will also examine aspects of legal pluralism, and assess a variety of normative and political justifications for aboriginal rights.

B) COURSE METHODOLOGY

INSTRUCTION

The course will be taught using a variety of techniques, including lectures, class discussion, DVD's and visiting speakers.

TIMING

Tuesday and Thursday 11:00-12:20

CLASS PARTICIPATION

In order to encourage different perspectives on the issues, you are expected to attend classes, having prepared for them by reading the assigned materials beforehand. You are also expected to take the initiative by offering answers and comments as appropriate. When preparing for class, instead of simply summarizing the material, students should attempt a critical assessment and should raise important issues arising from the readings for discussion with other members of the class.

C) COURSE REQUIREMENTS

EVALUATION

Choose either Option One **OR** Option Two:

OPTION ONE

Three-Hour Exam: Open Book (worth 100%)

OPTION TWO

A) **Two-Hour Exam:** Open Book (worth 60%)

The final examination will be a Two-Hour, open book test on Tuesday April 17th.

PLUS

B) **Short Research Essay** (worth 40%)

The length should be 10 pages, double spaced, 12 point font, 1.25 inch margins. 5% of your paper grade will be deducted for length beyond this amount. Please indicate your final word count on a separate title page.

The research paper is due at the same time you write your exam. The paper should be 10 pages (typed 12 point font, 1.25 inch margins, and double-spaced, including footnotes). A late penalty of 5% of your paper grade per day will be imposed for papers received past that date.

If you choose to submit a short reflective, analytical research paper, you should exercise that option in writing by Tuesday October 12th, to my email at jborrows@uvic.ca. Your email should include an attachment that provides a one page proposed topic, outline and simple bibliography identifying your major research sources.

In evaluating your essay I am interested in the comprehensiveness of your research and your opinion about some aspect of Indigenous peoples and the law developed in the course (cases, legislation, policy, etc.). Thus, your arguments should be supported by a thoughtful, sophisticated scholarly examination of the issue you address. Marks will be assigned for theoretically innovative and practically creative arguments, insights and observations. Marks will also be assigned for organizational structure, style and clarity of communication (see next page).

I encourage you to talk to me if you need direction.

(1) "New" Work Requirement:

The work that you do for the course must be "new work". "Multiple submissions" of your own work (i.e. the submission of the same paper in more than one academic course) is a serious academic offence unless you have obtained the prior permission of the instructors

concerned. Similarly, it would also be academically dishonest to submit as your comment and/or paper all or part of a memo, report, or other work product that you undertook or completed outside the academic context such as for employment purposes. Accordingly, if you wish to make use in your comments and/or paper of research or writing that you have already completed, whether within an academic context or not, you *must* discuss this with me before doing so. We can then jointly determine the extent to which it would be appropriate for you to rely on, and build upon, such work.

(2) Knowledge and Thought: The comments and/or paper should demonstrate that you have thought about your topic in depth and that you have acquired a thorough grasp of the subject area that you have chosen to write about. It should also demonstrate your ability to think critically about your topic, for example, by identifying problems or uncertainties in the law, analyzing their impact, and making suggestions for change, or by relating your topic to larger theoretical principles. (In other words, you should strive to do more than merely describe the state of the law or policy in a particular area.)

(3) Style, Format and Presentation: The comments and/or paper should be well-organized, well-written and well-presented.

Organization: The comments and/or paper should be logically organized around a central thesis or theme. It should have an introduction and a conclusion and the sections in between should unfold in a logical fashion. In the introduction you should tell the reader what the comment and/or paper is about, what your thesis is, and how the comment and/or paper will unfold. (Try to capture the reader's interest and make him/her want to keep reading.) The "middle" sections should "tell the story you want to tell" and provide the reader with the background he/she will need to understand that story. In a paper, headings, sub-headings, and "bridging text" between sections should be used to improve the clarity of your message and the "readability" of the paper. The conclusion section should draw the themes of your comment and/or paper together and make your "final statement" about your topic.

Writing: Your work should be well-written in terms of word usage, sentence structure, grammar, and spelling. Please read all your work with a critical eye, *before* submitting it to me. Ask yourself if each sentence is a complete sentence. Does it make sense? Is it too wordy? Is it clear? Do the sentences, paragraphs and sections flow logically from one idea or topic to the next? Is there sufficient "bridging" text between sections to improve "readability"?

Format and Presentation: You must use proper style for case citations and other footnotes. (Follow the *Canadian Guide to Uniform Legal Citation*, except for comments where you should only cite to the casebook since extra research is discouraged). Your final product should also be well-presented in terms of its overall appearance. *Run the spell and grammar check functions on the entire paper before submitting it.*

D) Class Schedule - Fall Term 2010

<u>DATE</u>	<u>TOPIC</u>	<u>PAGE #'s</u>	<u># of PAGES</u>
Sept. 09	Governance	1 -36	(36)
Sept. 14	Governance	35-88	(53)
Sept. 16	Aboriginal Rights	93-120	(27)
Sept. 21	Aboriginal Rights	120-149	(29)
Sept. 23	Aboriginal Rights	149-183	(34)
Sept. 28	Aboriginal Title	185-214	(29)
Sept. 30	Aboriginal Title	214-248	(34)
Oct. 05	Aboriginal Title	248-286	(38)
Oct. 07	Treaties	302-340	(38)
Oct. 12	Treaties	340-384	(44)
Oct. 14	Treaties	385-426	(41)
Oct. 19	Crown Obligations	435-470	(35)
Oct. 21	Crown Obligations	470-505	(35)
Oct. 26	Crown Obligations	506-541	(35)
Oct. 28	Inuit Rights	545-584	(39)
Nov. 02	Metis Rights	585-628	(43)
Nov. 04	Federalism	647- 688	(41)
Nov. 09	Aboriginal Women	731- 759	(28)
Nov. 11	No Class – Remembrance Day		
Nov. 16	Aboriginal Women	759-804	(45)
Nov. 18	Child Welfare	825-864	(39)
Nov. 23	Child Welfare	864-900	(36)
Nov. 25	Taxation	901-944	(43)
Nov. 30	Taxation	944-986	(42)
Dec. 02	Criminal Justice	1027-1060	(28)

Readings are found in John J. Borrows and Leonard I. Rotman, Aboriginal Legal Issues: Cases, Materials and Commentary, 3rd (Toronto: Butterworths, 2007), and selected handouts.

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