

**CONSTITUTIONAL LAW 100 (AO3)  
WEBBER**

**COURSE DESCRIPTION 2010-11**

**1. CONTACT DETAILS:**

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There is also a class listserv. Your e-mail should already be on it. It will be used primarily to make changes to the reading schedule or to class meetings. Please ensure that you check your e-mail regularly.

**2. COURSE DESCRIPTION:**

This course is designed to provide an in-depth introduction to Canadian Constitutional Law and to a number of theoretical concerns bearing upon the Canadian constitution. The class essentially divides into three components: 1) constitutionalism, parliamentary sovereignty and the courts; 2) the federal division of powers; 3) rights guarantees, including aboriginal rights, the *Canadian Charter of Rights and Freedoms*, and other rights protections (although, as you will see, indigenous concerns will be discussed throughout the course; it is misleading to consider them and other forms of collective accommodation to be simply about “rights”). From time to time the class will refer to approaches taken in other constitutions, primarily as a way of revealing choices or principles inherent in Canadian law.

If there is one animating idea in this course, it is that constitutional law is about the possibility of political community – and about the structuring of political community – in situations of diversity and normative disagreement. Although people often speak of social consensus or “Canadian constitutional values”, these values are often much more contested – at least when it comes to applying them in practice – than our brave statements suggest. Constitutional law creates and regulates the basic public institutions through which these disagreements are channeled and resolutions attempted.

Canadian constitutional law is a rich field. This course cannot be exhaustive. Many intriguing and important issues cannot be covered. I hope that it will whet your appetite for further constitutional study in the years to come.

### 3. OBJECTIVES:

By the end of the course, students should:

- Understand the structure of Canadian constitutional law, together with the fundamental principles and methods of approach governing the relations between the legislature, the executive and the judiciary; dividing authority between the provincial and federal levels of government; and providing protections for the rights and freedoms of individuals and particular communities;
- Be able to provide rigorous, reasoned and dependable assessments of how constitutional law applies to specific fact situations;
- Understand broader themes in constitutional theory and Canadian history that bear upon Canadian constitutional law;
- Have developed some critical understanding of Canadian constitutional law and its application to Canadian social and political orders.
- Have an appreciation of the diversity of experiences, values and circumstances that bear upon the Canadian constitution (including their own and those of their classmates).

### 4. CLASS FORMAT:

The course will be run primarily as a lecture course, but with strong student participation. You will be expected to attend, to have read the required material in advance of class, and to be ready to discuss that material. Although participation is encouraged, please be mindful of the number of students and the consequent need to allow others space to participate. All participants must treat others with respect.

### 5. COURSE MATERIALS:

#### **Required:**

- Coursepack available for purchase at the CDC. Please make sure you get the materials for my section of the course.
- John Borrows, *Canada's Indigenous Constitution* (Toronto: U of Toronto Press, 2010).
- *The Constitution Acts, 1867 and 1982*.  
[These two publications are available in the Bookstore under "Law 100(A03)"]
- Additional material distributed in class or added to the website.

#### **Recommended:**

- Peter Hogg, *Constitutional Law of Canada*, Student Edition 2010 (Toronto: Carslaw, 2010) Available in the Bookstore under "Law 100(A03)".  
[Hogg is not strictly required, but it is strongly recommended as an invaluable support system. I encourage you to purchase it or use it regularly in the Library. I will give section and chapter references to Hogg in the Course Outline. Older versions of Hogg might also be used, but take care to note changes.]
- Recommended materials will be placed on reserve from time to time.

## 6. EVALUATION:

### **December Exam: 17 December 2010, 1 pm.**

- 30 per cent fail-safe, but compulsory (see below)
- Qualified Open Book (ie, you may bring your notes, your own study aids, the Coursepack, and the *Constitution Acts*, but nothing else).
- Please see full information with respect to December Examination below.

### **April Exam: 12 April 2011, 1 pm.**

- 70 per cent or 100 per cent, depending on your December mark.
- Qualified Open Book (ie, you may bring your notes, your own study aids, the Coursepack, and the *Constitution Acts*, but nothing else).
- **NB: Material from both the first and second semesters is eligible for examination on the April Exam.**

## DECEMBER EXAMINATIONS

### **The December Examination and the Calculation of Final Grades**

The December examination in this course is qualified open book, and is potentially worth 30% of your final grade for the course. However, it will count as 30% of the final grade in the course ONLY if it raises that grade. That is, if the December grade is lower than your final examination grade, your grade in the course will be based solely upon the final examination grade.

“Qualified open book” in this course means you may bring your notes, your own study aids, the Coursepack, and the *Constitution Acts*.

### **A Mandatory Requirement – Penalty for Failure to Write the December Examination**

The December examination in this course MUST BE WRITTEN, *i.e.*, it is COMPULSORY. **In the absence of a documented medical or other acceptable reason, failure to write the examination in December will mean that a penalty of one grade point will be deducted from your grade in the final examination in April.** (For example, if this penalty were to be applied, a final grade of B+ would become a B.)

### **Establishing Acceptable Reasons for Failure to Write December Examination**

An acceptable reason for not writing a December examination is a reason that would normally justify a Special Examination in a course (i.e. illness, family affliction or other pressing special circumstances) and the procedures to be followed to establish that an acceptable reason exists are the same as those that apply to Special Examinations. Among other things, these procedures require that you contact the Associate Dean as soon as possible, and no later than five days after the scheduled date of the examination, to inform her of the problem and provide the documentation necessary to substantiate your grounds for missing the examination. (All students should ensure that they are familiar with the Faculty’s Regulations regarding Special Examinations that are set out in the calendar and posted on the main notice board.)

### **Writing the December Examination on a Deferred Basis**

A student who establishes an acceptable reason for failing to write the December examination on the scheduled date may be granted special permission to write the examination on a deferred basis, provided that he or she is capable of doing so within the regular examination period in December. In such a case, the December examination grade will count in the calculation of the final grade for the course in the usual way. Arrangements to write an examination on a deferred basis must be made through the Associate Dean’s office and an undertaking regarding non-discovery of the contents of the examination will be required.

A student who has an acceptable reason for failing to write a December examination on the scheduled date and who cannot write the examination within the regular examination period, will not be allowed to write the examination at a later date and have it count in the calculation of his/her final grade for the course. In such a case, the penalty for failure to write the examination will not apply and calculation of the final grade will be made on the basis of the final exam alone.

**Relevance of December Examination In Other Contexts**

Students should also be aware that, although writing the December examination in this course cannot adversely affect your final grade in the course, December grades for first year students have become relevant in other contexts. For example: you may be asked to provide your unofficial December grades to prospective employers; the law school will refer to these grades if you apply for a summer research position; and the Director of Co-op may refer to them if a First Year student is not performing well in the Co-op preparation course, to help her determine whether that student should be allowed to apply for a summer work term.

In addition, in January, the faculty will meet to review the December grades in order to identify students who are experiencing academic difficulties so as to be in a better position to assist students. A grade of less than C in the December examination in this course may result in remedial work of some kind being required in order to assist the student in preparing for the final exam.

**Faculty Grading Scale:**

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 or below	Unsatisfactory performance.

I mark each question essentially on the basis of letter grades, but then convert to numerical values in order to add results on the different questions. In the conversion to numerical values, I distinguish between high, low and medium performance within each letter grade.