

# CANADIAN CONSTITUTIONAL LAW

**Professor John Borrows**  
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**Tuesday and Thursday 9:00-10:20**

## **A) COURSE DESCRIPTION**

This course provides an introduction to the law of the Canadian constitution. It examines federalism and the protection of civil liberties. The course considers the structure of the Canadian constitution, the role of judicial review, and general principles of interpretation with regard to the distribution of legislative powers and civil liberties. Selected federal, provincial and aboriginal powers and sections of the Canadian Charter of Rights and Freedoms will be examined.

## **B) LEARNING OBJECTIVES**

1. To gain an appreciation of the Social, Political and Economic Context of Constitutional law and policy
2. To consider the problems of allocating legislative power in an federal state: Federal, Provincial, First Nations
3. To understand the nature of judicial review in Canada
4. To become familiar with federal, provincial and aboriginal jurisdictional powers under section 91, 92 and 35 of the Constitution
5. To consider the general nature of rights
6. To acquire an understanding of legal issues under the Canadian Charter of Rights and Freedoms
7. To learn how to synthesize facts, identify legal issues, analyze the law, and apply the law to the relevant facts

## C) COURSE REQUIREMENTS

### Mid-term Exam: 30% fail-safe

Your mid-term exam is fail safe because it will count for 30% of your final mark if, and only if, your mid-term mark is higher than your mark for the spring exam. If your mid-term mark is lower than your spring mark then your spring mark will count for 100% of your final grade in the course.

The mid-term exam is December 17<sup>th</sup>. Sitting this exam is compulsory. In the absence of a documented medical or other acceptable reason, failure to write the exam in December will mean that a *penalty of one grade point* will be deducted from your grade in the final examination in April. Faculty regulations concerning medical and other kinds of deferrals apply.

Students should be aware that, although the December examination in this course cannot adversely affect your final grade in the course, mid-term grades have recently become relevant in other contexts. For example, you may be asked or required to provide your unofficial mid-term grades to prospective employers. The law school may refer to these grades if you apply for a summer research position. 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 determine whether the student should be allowed to apply for a summer work term. In addition, in January the Faculty meet to review the December grades in order to identify students who are experiencing academic difficulties and thus be in a better position to assist them. A grade of less than C in the December examination in this course may result in remedial work of some kind being required.

### Spring Mark: Spring Exam:

In the spring you will be in Professor Janna Promislow's class, studying Aboriginal rights and the Charter. Please note that the spring exam will cover material from BOTH the fall and spring semesters and will be worth 70% or 100%, depending on your mid-term grade.

### CLASS PARTICIPATION: 5% (Penalty only)

Each student, each semester, must speak in class at least once in five separate classes. Asking a substantive question, answering a substantive question, commenting upon materials or class discussion all count. However, not all oral comments or questions will count. For example, asking what page a case is on, what time a make-up class is, what the reading is for next class, and so on, will not count as an oral contribution to class discussion. That is, each student must have five classes each semester during which she or he contributed in some substantive manner to the oral discussion. (You may, of course, contribute more than five times!)

Students must keep track of the number of times they contribute and when the fifth class is reached each term an email message noting that the five contributions requirement has been met must be sent, that day, to the professor at [jborrows@uvic.ca](mailto:jborrows@uvic.ca). Please put Law 100 in the subject line. It is each student's own responsibility to ensure that this requirement is met and that notice of its satisfaction is duly emailed to the professor. You will not be reminded about this requirement.

Failure to successfully complete this requirement will result in a deduction of *one grade point* from the mid-term exam.

Satisfaction of the participation requirements prevents this deduction and results in your final mark reflecting only your grades on the formal exams as described above.

## **D) TEACHING METHODOLOGY**

The course will be taught using a variety of techniques, including class discussion, lectures, student presentations, and (occasional) visiting speakers. A strong emphasis will be placed on class discussion. The small size of UVIC's student body is a rare thing in Canadian legal education. It provides a great opportunity for you to interact with one another in a more frequent way, and hopefully translates into a more relaxed atmosphere in which to pursue detailed discussion of the course's core concepts. In order to take advantage of this opportunity and to encourage different perspectives on the issues, students are expected to attend classes, having prepared for them by reading the assigned materials beforehand. Students are encouraged to take the initiative by offering answers and comments as they feel 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.

## **E) CLASSROOM CLIMATE**

An inclusive and respectful classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment. For your reference, you may wish to consult the University's Discrimination and Harassment Policy (<http://web.uvic.ca/uvic-policies/pol-1000/1150HPP.html>). The University of Victoria and the Faculty of Law are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. I expect all aspects of this class to be conducted with this commitment firmly in mind. If you have any concerns about the climate of the class, please feel free to contact me (or the Associate Dean).

## **F) OFFICE HOURS**

I have no set office hours. Instead I have an open door policy, i.e. if my door is open you are welcome to drop in. Times when I am likely to be *unavailable* are Monday afternoon, all day Friday and the hour after our class meetings. You can also set up an appointment with me by email.

**CANADIAN CONSTITUTIONAL LAW**  
**Class schedule**  
**First Term**  
**Federalism**

| <u>DATE</u> | <u>TOPIC</u>                             | <u>Page #'s</u> | <u># of</u> |
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| Sept. 21    | Nature and Sources of Constitutional Law | 1 - 11          | (11)        |
| Sept. 23    | Constitutionalism and the Rule of Law    | 11 - 27         | (24)        |
| Sept. 24*   | Canada's Indigenous Constitution         | 6 - 22          | (16)        |
| Sept. 28    | Judicial Review and Legitimacy           | 29 - 54         | (25)        |
| Sept. 30    | From Contact to Confederation            | 63 - 94         | (31)        |
| Oct. 05*    | Canada's Indigenous Constitution         | 107 - 136       | (29)        |
| Oct. 07     | Late Nineteenth Century                  | 95 - 119        | (24)        |
| Oct. 12     | Early Twentieth Century                  | 129 - 158       | (29)        |
| Oct. 14     | The 1930's                               | 159 - 188       | (29)        |
| Oct. 19     | Characterization: Pith and Substance     | 210 - 235       | (25)        |
| Oct. 21     | Ancillary and Double Aspect Doctrines    | 235 - 249       | (14)        |
| Oct. 26     | Interjurisdictional Immunity             | 249 - 272       | (23)        |
| Oct. 28     | Paramountcy                              | 272 - 294       | (22)        |
| Nov. 02     | Peace, Order and Good Government         | 295 - 323       | (28)        |
| Nov. 04     | Peace, Order and Good Government         | 323 - 347       | (24)        |
| Nov. 09     | Economic Regulation: Provincial          | 349 - 381       | (32)        |
| Nov. 11     | No Class – Remembrance Day               |                 |             |
| Nov. 16     | Economic Regulation: Federal             | 381 - 413       | (32)        |
| Nov. 18     | Criminal Law: Federal                    | 421 - 450       | (29)        |
| Nov. 23     | Criminal Law: Provincial                 | 451 - 462       | (19)        |
| Nov. 25     | The Judicial Function                    | 505 - 536       | (31)        |
| Nov. 30*    | Canada's Indigenous Constitution         | 177 - 218       | (41)        |
| Dec. 02     |  |                 |             |
| Dec.        | Exam                                     |                 |             |

Readings with an \* are drawn from John Borrows, *Canada's Indigenous Constitution*, (Toronto: University of Toronto Press, 2010) all other readings are from The Constitutional Law Group, eds., *Canadian Constitutional Law* (Emond Montgomery, 2010) 4<sup>th</sup> edition.