

CONSTITUTIONAL LAW
Fall 2011 and Spring 2012

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Course Introduction

1. COURSE DESCRIPTION

This course examines the institutions, values, texts, practices and frameworks that together form the Canadian constitutional order. The course is organized into two parts. Generally, the first part examines the nature of the Canadian state, its colonial roots, and the role of the courts in the Canadian constitutional order. In addition, we will study the ordering of relations between federal and provincial levels of government as well as of relations between the Crown and Aboriginal Peoples. The second half of the course begins with an overview of rights protection in Canada and returns to the topic of the role of courts by examining access to the courts. We then move on to a study of the *Canadian Charter of Rights and Freedoms* and finish with a segment on Aboriginal rights. For a fuller overview of the course, see the introduction in Chapter 1 of the materials.

2. COURSE OBJECTIVES

The course objectives are that, by the end of the course:

- students will understand the legal doctrines regulating relationships within the Canadian state between governments, communities, and individuals;
- students will be able to place doctrinal developments in a larger political, social, and theoretical context;
- students will be able to apply doctrinal and theoretical analyses to specific constitutional problems and issues;
- students will start to develop a critical understanding of how constitutional law regulates the Canadian social and political order, and how it contributes to the construction of a Canadian political identity;
- students will develop an appreciation of the depth and diversity of experiences, values, and circumstances they each bring to constitutional law and how these in turn both obscure and reflect diversity in the larger Canadian community.

3. CLASS FORMAT

Class time will consist of lecture, discussion and a variety of classroom exercises. Students are expected to attend regularly and to be prepared to discuss the readings assigned for class. Students are also expected to engage seriously with the materials and issues discussed in class.

4. 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).

5. COURSE MATERIALS

a. **REQUIRED MATERIALS**

Volume I and Volume II are posted on the Course Moodle website. Volume I contains the materials for first term. Volume II contains the materials for second term.

The *Constitution Acts, 1867 and 1982* is available at the University Bookstore.

Additional materials may be distributed in class or via the listserv.

b. **SECONDARY SOURCES AVAILABLE AT BOOKSTORE**

The University Bookstore also has a substantial number of copies of the following text:

Peter Hogg, *Constitutional Law of Canada* (2006 Student Edition), Toronto: Carswell 2001.

***Hogg is NOT a required text. There are copies on reserve in the Law Library. Most students should find reserve access adequate for the purposes of this course. Also, if you wish to own a copy but find purchasing a new edition prohibitive, editions from previous years are likely to be fine for the purposes of this course.**

c. MATERIALS ON RESERVE

The following materials have been placed on reserve:

Peter Hogg, *Canada Act 1982, Annotated*

Peter Hogg, *Constitutional Law of Canada* (looseleaf)

Anne Bayefsky, *Canada's Constitution Act 1982 & Amendments: a Documentary History*

Bernard Fuston and Eugene Meehan, *Canada's Constitution in a Nutshell*

Laskin et al, *Canadian Charter of Rights Annotated* (looseleaf)

Barry Strayer, *Canadian Constitution and the Courts: The Function and Scope of Judicial Review*

Patrick Monahan, *Constitutional Law*

Patrick Monahan, *Politics and the Constitution: the Charter, Federalism, and the Supreme Court of Canada*

Kent Roach, *Constitutional Remedies in Canada*

Peter Russell, *Judiciary in Canada: the Third Branch of Government*

Ronald Cheffins and Patricia Johnson, *Revised Canadian Constitution: Politics as Law*

John McMenemy, *The Language of Canadian Politics: A Guide to Important Terms and Concepts*, Waterloo, Wilfrid Laurier Press 1995.

7. EVALUATION

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.

There will be an in class, open book mid-term exam on December 16th. 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 two grade points* may be deducted from your grade in the final examination in April (e.g., a B may be lowered to a C+; a B- to a C etc). Faculty regulations concerning medical or other kinds of deferrals apply.

Students should also 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. 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 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 Exam: 70% or 100% (depending on your mid-term mark)

The spring final exam is April. It will also be an in class, open book exam although part of the mark may be based on a take home essay given out earlier in the term. Please note that the spring exam may cover material covered in **BOTH** the fall and spring semesters. It will count for 70% if the mark is lower than your mid term mark. It will count for 100% if the mark is higher than your mid term mark.

8. 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. You can also set up an appointment with me by email.