

LAW 100: CONSTITUTIONAL LAW

**Professor Hester Lessard
Fall, 2011**

I. THE CONSTITUTIONAL FRAMEWORK AND PRINCIPLES

- A. Introduction to the Study of Constitutional Law
 - Sources of Constitutional Law
 - Conventions (Hogg Handout)
- B. Parliamentary Sovereignty, Crown Prerogative and Rule of Law
 - Note on Parl. Sovty and Rule of Law
 - John Borrows
 - C. MacKinnon
 - Imperial Tobacco*
 - Re Canada Assistance Plan*
- C. Constitutional Supremacy, Unwritten Principles, and the Courts
 - Reference Re Secession of Quebec*
- D. Personhood: Constitutional Law and Social Change
 - Persons Case* (both S.C.C. and J.C.P.C. decisions)
 - Note on "Personhood"
 - Living Tree Doctrine

II. COLONIALISM AND THE SETTLER GOVERNMENTS

- A. Sources of Constitutional Law
 - Conventions (Hogg Handout see above)
 - Imperial statutes
 - Colonial Laws Validity Act
 - Statute of Westminster 1931
- B. The Colonial Period and the Development of Responsible Government
 - Cheffins & Johnson

III. COLONIALISM AND ABORIGINAL PEOPLES

- A. Canada's Indigenous Constitution
 - John Borrows, "Canada's Indigenous Constitution," (Handout)
- B. First Contact between North American First Nations and European Settlers
 - Royal Commission on Aboriginal Peoples
 - Royal Proclamation 1763
 - Sioui*
 - Chippewas of Sarnia*

- B. The Common Law Doctrine of Aboriginal Title
Royal Commission on Aboriginal Peoples
Guerin
- C. The Fiduciary Relationship between First Nations and the Crown
Guerin
- D. Rethinking Sovereignty in a Post Colonial Framework
Macklem on Sovereignty

IV. COURTS AND THE CONSTITUTIONAL STRUCTURE OF THE CANADIAN STATE

- A. Introduction
Note on Constitutional Provisions
Review Note on Rule of Law in Chap One
Amax Potash
- B. The Reference Power
Supreme Court Act
Constitutional Question Act (B.C.)
Note on Citizen Standing
- C. Section 96 and Judicial Independence
Constitution Act 1867, sections 96-101
Constitution Act 1982, section 11(d)
Residential Tenancy Reference 1988
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Sobey's Stores
Note on *McEvoy*
- D. Judicial Independence: An Inherent Principle of Constitutional Law?
Reference Re Provincial Judges

V. DIVISION OF POWERS

- A. Introduction
Constitution Act 1867, sections 91-95
Parliamentary Sovty and the Division of Powers
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Campbell
Note on the Interpretation Doctrines
Parsons: Watertight Compartments and Property and Civil Rights
- B. Pith & Substance/Incidental Effects Doctrine; Extrinsic Evidence; Severance;
Living Tree Principle
R. v. Morgentaler
Same Sex Marriage Reference

- C. Ancillary Doctrine
Note on *General Motors* and General Branch of Trade and Commerce
General Motors
Lacombe
- D. Double Aspect and Paramountcy Doctrine
Constitution Act 1867, section 91-92 opening and closing phrases
Multiple Access
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- F. Interjurisdictional Immunity
Note on Interjurisdictional Immunity: s. 92(10) Works and Undertakings
Canada Western Bank
Note on *Lafarge* and *COPA*

VI. DIVISION OF POWERS AND ABORIGINAL PEOPLES

- A. Introduction
Constitution Act 1867 section 91(24) and 92(13)
Report of the Aboriginal Committee
Indian Act, section 88
- B. Section 88
Note on Natural Parents and Dick
Natural Parents
RCAP on Child Welfare Reform
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VII. DIVISION OF POWERS: THE FEDERAL PEACE ORDER AND GOOD GOVERNMENT POWER

- A. Introduction
- B. Emergency Power
Anti-Inflation Reference
- C. National Concern Doctrine
Anti-Inflation Reference
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VIII. DIVISION OF POWERS: THE CRIMINAL LAW

- A. Criminal Law Purposes
Margarine Reference
RJR MacDonald
Firearms Reference
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B. Provincial Regulation of Morality

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C. Criminal Law Form: Prohibition plus Penalty?

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**IX. DIVISION OF POWERS: THE FEDERAL SPENDING POWER AND STATE
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A. Introduction

Petter

Winterhaven Stables

B. Recent Developments

Re Canada Assistance Plan

L. Sossin