

LAW 340: INDIAN RIGHTS, LAND AND GOVERNMENTS

STATEMENT OF COURSES OBJECTIVES AND EVALUATION

Prof. Foster, Fall 2009

hamarf@uvic.ca

250 721 8178

1. Description. This is an introductory course that builds on what students will have learned about aboriginal rights law in their First Year courses in Property, Constitutional Law and the Legal Process. It examines most of the major legal issues concerning indigenous peoples (Indian, Inuit and Métis) in Canada today, although we will not have time to cover all the topics in the Course Book and Course Outline. Our goal is to do all the Topics in Part A and some or all of the ones in Part B, time permitting. The readings for the course are in Borrows and Rotman, *Aboriginal Legal Issues: Cases, Materials and Commentary*, 3rd edition, 2007 [B&R] and the Supplementary Materials [SM] in the pdf package on the course website: <http://www.law.uvic.ca/hamarf/340/>. The user name and password are the usual ones, and will be provided at our first class.

The object of the course is to explore the development of Canadian case law respecting Aboriginal peoples and its simultaneous preservation and dispossession of their rights. More specifically, it is to provide you with an overview of aboriginal rights and title, treaties, the distribution of legislative authority with respect to aboriginal peoples, fiduciary law and the unique history of the BC Indian Land Question (Part A). The Course Outline also contemplates looking at aboriginal women and the law, taxation, aboriginal child welfare and criminal justice issues (Part B). Because of time restraints, however, we may not be able to do all or even any of Part B (although the topics in this part are equally suited to term papers). Comparisons will be drawn with other jurisdictions – primarily the United States, New Zealand and Australia - and we will also examine and assess a variety of normative and political justifications for aboriginal rights.

2. Methodology. The course will be taught on Mondays and Wednesdays from 1:30 to 3:00 p.m. using a variety of techniques, including lectures, class discussion, videos and visiting speakers. In order 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 also expected 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 (see below under “Evaluation”).

3. Evaluation. The enrolment cap is such that the course is too big to run as a conventional seminar. Nonetheless, its subject matter demands discussion and

respectful debate, so **30%** of the grade for the course will be evaluated as follows. Excluding the first and last class there will be 21 classes that deal with substantive material this term. Each student is required to submit one written question or comment about the assigned material *for no more (and no less) than ten (10) of these classes*. That is just under half the course. It is up to you which 10 of the 21 classes you choose, but your question/comment must be submitted no later than 5 p.m. on Sunday for our Monday class and 5 p.m. on Tuesday for our Wednesday class. Each of the 10 questions/comments is worth 3 marks and should be approximately 100 words and no more than 150. They should be sent to me at hamarf@uvic.ca, with a copy to my assistant, Ms. Rosemary Garton, at rgarton@uvic.ca. The student names will then be deleted and the anonymous questions/comments will be put on the list serve later in the week for everyone to see.

The questions/comments should not be simple factual inquiries but deal with historical, theoretical or policy issues. An example - and it is only one of many, many possible ones - might be: "According to both the common law and s. 35 of the Constitution Act, 1982, as interpreted by the courts, aboriginal title survives the imposition of British sovereignty over a territory. In other words, the assertion of sovereignty does not automatically and unilaterally extinguish the property rights of the indigenous inhabitants. But what about the assertion of sovereignty itself? In the absence of a military conquest or a voluntary cession of sovereignty by indigenous peoples - the Six Nations of the Iroquois, for example - how did Britain automatically and unilaterally acquire sovereignty over them? And whose law determines the answer to this question?"

I will also review all of each student's 10 questions/comments at the end of the term in order to assign a grade for this part of the course.

A term paper will account for the remaining **70%** of the grade.

Grading will be on the usual UVic 9 point scale where, for example, an A = 85 to 89 and a B = 70 to 74.

4. The term paper. Students must submit a reflective analytical or historical paper based on the readings in the course. The object is to master the course materials, to think beyond them, and to research beyond them where necessary. There are suggestions for further reading in the Course Outline, and there is much, much more out there.

The paper should be approximately 20 pages long, with a maximum of 25 pages (typed 12 point font and double-spaced) including endnotes, which can include brief references to matters that you would have liked to discuss were it not for this length restriction. Marks will be assigned for theoretically innovative and practically creative arguments, insights and observations. The choice of topic is up to the student, the only restriction being that you address some aspect of an issue or issues contained in B&R or the Supplement, including material in B&R that we did not cover. A late penalty of 2% of your final mark per day will be imposed for papers received past **Friday November 27 at 4:30 p.m.** Extensions will be granted only in exceptional circumstances and only if requested a reasonable time before the deadline. I encourage you to talk to me if you need direction.

Content: The paper should involve a significant amount of thought on the topic you have chosen and it should demonstrate your engagement with some aspect of the materials in the casebook and class discussion.

"New" Work Requirement: The work that you do for the paper 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 research paper all or part of a memo, report, or other work product that you undertook or completed outside the academic context, *e.g.*, for employment purposes. Accordingly, if you wish to make use in your 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.

Knowledge and Thought: The 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 or the conventional historical account of an issue or event, 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 in a particular area).

Organization: The paper should be 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 paper is about, what your thesis is, and how the paper will unfold. (Try to capture the reader's interest and make him/her want to keep reading.) The "middle" sections of the paper should "tell the story you want to tell" and provide the reader with the background he/she will need to understand that story. 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 should draw the themes of your paper together and make your "final statement" about your topic.

Writing: The paper 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. Try to be objective about what you have written. Put yourself in the shoes of the reader and 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"?

Style, Format and Presentation: The paper should be well-organized, well-written and well-presented. You must use proper style for case citations and other footnotes. (Follow the *Canadian Guide to Uniform Legal Citation*.) Your final product should also be well-presented in terms of its overall appearance. Margins should be 1.25 inches and lines should be double-spaced in 12 point font. Time permitting,

papers in excess of the page-limit will be returned for editing; otherwise the paper will be graded on the first 15 pages only.

Run the spell and grammar check functions on the entire paper before submitting it.

Students are also advised to read the University Regulation on Academic Offences *and to consult the instructor if they have any doubts or questions about what constitutes plagiarism and the proper way to write a research paper.*

5. Contact information. I am in Fraser 224 and my email and telephone local are listed above. My website is at <http://www.law.uvic.ca/hamarf/index.html>.