



Syllabus

Foundations of Canadian Law

(Revised June 18, 2010)

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.



Foundations of Canadian Law

Objectives of the course:

- To provide NCA applicants with an introduction to and an overview of Canada's legal system and the role of law in Canadian society
- To review various legal theories as they apply to Canadian law;
- To introduce the overarching legal framework within which the particular areas of law studied in other courses operate;
- To acquaint applicants with the various sources of Canadian Law;
- To compare the different branches of Canadian government and to analyze the relationships between them;
- To understand the Canadian treaty-making process and the implementation of international law into domestic law;
- To understand the special relationship Aboriginal Peoples have with the Canadian State; and, the contribution of various communities and peoples to the development of the Canadian legal system, in order to critically assess the impact of the Canadian legal system upon these communities;
- To understand the nature and function of judicial review; and the basic approaches to statutory interpretation.



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Evaluation:

Evaluation for this course is based on a 100% open book examination.

The exam will consist of short answer questions or short essay questions.

Short answer questions test candidates' ability to succinctly and correctly evaluate statements about material listed in the syllabus.

Short essay questions test whether candidates' have critically engaged with the material listed in the syllabus and have started to form their own opinions about the strengths and weaknesses of basic doctrine – like the merits of adherence to stare decisis, or the problems with the Supreme Court of Canada's 'purpose approach' to statutory interpretation.

Core Materials:

Craik, N. et al, eds. *Public Law: Cases, Materials and Commentary* (Toronto: Emond Montgomery, 2006). <http://www.emp.ca/index.php/book-catalogue/property/law-school/public-law-cases-materials-and-commentary>).

Required Canadian case law is indicated following each component and is available free of charge on CanLII: <http://www.canlii.ca/>

Supplemental Materials:

(for those interested in reading further on these topics, you may wish to consult the following list of sources available at most Canadian law libraries):

Aylward, Carol. *Canadian Critical Race Theory: Racism and the Law* – publication details at www.fernwoodpublishing.ca/book/24

Gerald Heckman. *The Role of International Human Rights Norms in Administrative Law* (Chapter 12 of Flood and Sossin, eds., *Administrative Law in Context*, Emond Montgomery 2008.)

Forcese, Craig & Aaron Freeman. *The Laws of Government: The Legal Foundations of Canadian Democracy* (Toronto: Irwin Law, 2005).

Forsey, Eugene A. *How Canadians Govern Themselves*, 5th ed. (Ottawa: Library of Parliament, 2003) online: <http://www.parl.gc.ca/information/library/idb/forsey/index-e.asp>.

Gall, Gerald L. *The Canadian Legal System*, 5th ed. (Toronto: Carswell, 2004).

Hogg, Peter W. *Constitutional Law of Canada*, 2009 Student Edition (Toronto: Thomson Carswell, 2009).

Horner, Jessie J. *Canadian Law and the Canadian Legal System* (Toronto: Pearson Education Canada, 2007).

Justice Canada, "Canada's System of Justice" (online) <http://www.justice.gc.ca/eng/dept-min/pub/just/index.html>

Monahan, Partick J. *Constitutional Law* (3rd ed.)(Toronto: Irwin Law, 2006).



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Components:

1. Basic Theories of Law:

- Positivism and Natural law
- Feminist Perspectives on Law
- Critical Legal Studies
- Law and Economics

Readings:

- Craik, Chapter 2, pages 7-47;
- *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130;
- *Société de l'assurance automobile du Québec v. Cyr*, [2008] S.C.J. No. 13; <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk2/ftp03/MQ64296.pdf>;
- The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System (2008), 40 S.C.L.R. (2d) 655-686 [http://cronus.uwindsor.ca/users/tanovich/bio.nsf/9d019077a3c4f6768525698a00593654/cbb2df71007aadcb852572300067cb7a/\\$FILE/TheCharterofWhiteness.pdf](http://cronus.uwindsor.ca/users/tanovich/bio.nsf/9d019077a3c4f6768525698a00593654/cbb2df71007aadcb852572300067cb7a/$FILE/TheCharterofWhiteness.pdf).

2. Sources of Law:

- Early Relations with Aboriginal Peoples
- Reception of English Common Law
- French Civil Law and Bijuralism
- Convention
- Statute
- Treaty

Readings:

- Craik, Chapter 2, pages 47-87;
- "Bijuralism and Harmonization: Genesis" available on the Department of Justice website: <http://canada.justice.gc.ca/eng/dept-min/pub/hfl-hlf/b1-f1/bf1g.html> ;
- *St-Hilaire v. Canada (Attorney General)*, 2001 FCA 63, [2001] 4 F.C. 289;
- *Re: Resolution to amend the Constitution*, [1981] 1 S.C.R. 753;
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (skim headnote for factual context, read paragraphs 69-71, 78-81);
- Brunnee, Jutta & Stephen Toope. *A Hesitant Embrace: Baker and the Application of International Law in Canadian Courts* in David Dyzenhaus (ed.), *The Unity of Public Law*, Hart Publishing 2004 extract available on Google Books: http://books.google.com/books?id=DIO_DF_3Qe4C&pg=PA357&lpg=PA357&dq=stephen+toopoc+international+law+hesitanembrace&source=bl&ots=6zwtFETThE&sig=uPSygsuXstx0mgNBagcPO2zL7HA&hl=en&ei=u3OmSvDKoSKNv7vINcP&sa=X&oi=book_result&ct=result&resnum=1#v;
- *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436.



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3. Fundamental Principles of the Canadian Legal System:

- Rule of Law
- Parliamentary Sovereignty and Constitutional Supremacy
- Separation of Powers
- Judicial Independence

Readings:

- Craik, Chapter 3, pages 89-129;
- *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, paras. 35-48 & 49-82;
- *Singh v. Canada (Attorney General)*, 2000 CanLII 17100 (F.C.A.), paras. 13-44;
- *Reference re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, 1997 CanLII 317 (S.C.C.):
<http://scc.lexum.umontreal.ca/en/1997/1997rcs3-3/1997rcs3-3.html>

4. Basic architecture, and workings, of the Canadian legal system

Introduction to the nature and function of judicial review, basic approaches to statutory interpretation, and the Canadian governmental and constitutional system

- The nature and function of judicial review.
- The basic approaches to statutory interpretation.
- Relationship between branches of government: judicial review; constraints on power of each branch.
 - *Executive Branch*: Structure; powers (i.e. delegated legislation); introduction to nature and role of administrative tribunals.
 - *Legislative Branch*: Structure and operation of Parliament; legislative process; formation of statute versus regulations; ethics and accountability.
 - *Judicial Branch*: Canadian court system; appointment of judges; judicial independence

Readings:

- Craik, chapters 4, 5, 6, 7 and 8.
- *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190: <http://csc.lexum.umontreal.ca/en/2008/2008scc9/2008scc9.html>



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5. Relationship of Aboriginal Peoples to the Canadian state: Selected topics

- Aboriginal Rights and Title
- Aboriginal Self-Government Aspirations
- The Modern Treaty Making Process

Readings:

- Section 91(24) of *The Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3;
- section 35 of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
- Mary C. Hurley, "The Crown's Fiduciary Relationship with Aboriginal Peoples", Library of Parliament, Revised 2002 at: <http://www.parl.gc.ca/information/library/prbpubs/prb0009-e.htm>
- "Highlights from the Report of the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation" (1996) at: <http://www.ainc-inac.gc.ca/ap/pubs/rpt/rpt-eng.asp>

Re: Aboriginal Rights:

- *R. v. Sparrow*, [1990] 1 S.C.R. 1075
- *R. v. Van der Peet*, [1996] 2 S.C.R. 507;
- *R. v. Sappier*;
- *R. v. Gray*, 2006 SCC 54, [2006] 2 S.C.R. 686;
- *R. v. Powley*, 2003 SCC 43;
- *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511;
- *Taku River Tingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74

Re: Aboriginal Title:

- *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010;
- *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, pages 149-186;
- "Why Treaties?" [re: modern day treaties], BC Treaty Commission: http://www.bctreaty.net/files/pdf_documents/why_treaties.pdf.

Re Aboriginal Treaties:

- *R. v. Marshall*;
- *R. v. Bernard*, [2005] 2 S.C.R. 220



Canadian Publishers

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Access to Quicklaw (Lexis Nexis)

Please contact the Lexis Nexis Customer Service Department at: service@lexisnexis.ca or call 1-800-387-0899 for a free account. You must provide your NCA File Number which will be used as a student number (CS will contact me directly for further verification). You will be able to get an immediate response to requests evenings and on weekends. CS also offers immediate research and/or technical assistance.

Internet Sites for Provincial Legislation

www.canlii.org

This is a listing for all the provinces and is highly recommended

Ontario:

<http://www.attorneygeneral.jus.gov.on.ca/english/legis/>

British Columbia (Queen's Printer):

<http://www.bclaws.ca/>

Alberta (Queen's Printer):

<http://www.qp.alberta.ca/>

Supreme Court Judgments

<http://scc.lexum.umontreal.ca/en/index.html>