

Course Outline

COURSE: LAWS 3500A - Constitutional Law

TERM: Winter 2009-10

PREREQUISITES: LAWS 2005 or a Political Science course in Canadian government

CLASS: **Day & Time:** Friday - 8:35-11:25 am
Discussion Groups in class and in Rm 432 TB (Tory) – 10:30-11:25 am

Room: Please check with Carleton Central for current room location

INSTRUCTOR: Gordon DiGiacomo
(CONTRACT)

CONTACT: **Office Hrs:** Friday - 11:45-1:45 pm
Email: gdigiaco@magma.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION:

An investigation of Canada's constitution, focusing on the sections pertaining to the division of powers and the Canadian Charter of Rights and Freedoms.

COURSE OBJECTIVE:

To provide students with the tools to undertake a critical analysis of Canada's constitutional law and constitutional development.

REQUIRED TEXT:

Peter Hogg, Constitutional Law of Canada, student edition, (Scarborough, ON: Thomson/Carswell, 2008).

EVALUATION: (all components must be completed in order to get a passing grade)

1. **Research Proposal or Presentation:** students have the option of doing a 10-page research proposal or giving a class presentation on a course-related topic or reading. On the research proposal, more will be said later in class. On the class presentation, it should include a summary, a commentary, a 1-page handout to the class, and questions for the class to discuss. The presentation itself should be about 20 minutes in length. The student is to hand in an 8-10-page, double-spaced paper and it is this that will be marked. The research proposal is to be handed in February 26. The submission date of the presentation depends on the topic/reading chosen. Both are worth 15% of the final grade. Please let me know your choices by January 15.
2. **Simulation:** students will undertake an exercise simulating a federal-provincial-territorial conference called to discuss a constitutional amendment on environmental protection. The simulation will last an entire class. Students will “represent” the fourteen governments in the country. More information on this will be provided in class and in written instructions to each “government.” Materials to be submitted as part of this exercise, which will include a 20-25 page background paper, are due on the last class of this course. This exercise is worth 40% of the final grade; 20% of this will be allocated to the background paper. The members of each group will get the same mark.
3. **Participation:** students are expected to participate fully in class discussions, in the Discussion Groups, and in the Simulation. Participation is worth 15% of the final grade.
4. **Final Exam:** this will consist of true/false questions, multiple choice questions, short definition-type questions, and longer essay-type questions. It will take place during the exam period and it is worth 30% of the final grade.

Assessment Criteria

In the case of the research proposal, the assessment criteria are how well it is written; how well it is researched; and how well the format was followed.

The assessment of the presentation will be based on how well the reading is captured or, if a topic is presented, how well the issues involved are understood; how well it is written; and whether the student offered an insightful analysis/commentary.

With respect to the simulation, the assessment will be based on the comprehensiveness of the planning and preparation work done by each group, the presentation made during the conference, the negotiation effort of the group, and the extent to which the group followed the instructions that I will provide. The assessment of the background paper will be based on the writing, the research, and the argumentation.

The introduction in academic papers is particularly important. Written well, it can help the student focus his/her research work. The requirements of a proper introduction will be discussed in class. Submitted papers that do not have a proper academic introduction will be penalized; 10% of the student's total will be deducted.

Students are expected to make high-quality writing a top priority. This means not only that punctuation marks are used properly but also that the text is coherent and written in an academic style. Writing and research skills are highly valued in the academic setting and in many workplaces. It is in students' academic and career interest to become skilled researchers and exceptional writers.

Submitting Assignments on Time

It is important that you get your assignments in on time. Assignments handed in late will be penalized on the basis of the number of days late; 5 **marks** will be deducted each day. An assignment more than three days late will get zero. No extensions will be granted, unless a health matter is at issue. Computer problems will not be considered an acceptable reason for a late submission.

CLASS TOPICS:**Class 1 Jan 8 Introduction – Constitutions, Constitutionalism**

definitions, purposes of constitutions, federal constitutions

- Readings:
- V. Bogdanor, Constitutions in Democratic Politics, Introduction;
 - M. Foley, The Silence of Constitutions, chapter 1;
 - P. Hogg, Constitutional Law of Canada, chapter 1;
 - J. Kincaid, "Comparative Observations," in J. Kincaid, G. Alan Tarr, (eds.) Constitutional Origins, Structure, and Change in Federal Countries;
 - J. Tully, Strange Multiplicity: Constitutionalism in an Age of Diversity.

Class 2 Jan 15 The Confederation Moment

- Readings:
- P. Russell, Constitutional Odyssey, 3rd edition, chapter 3;
 - F. Vaughan, The Canadian Federalist Experiment;
 - J. Aizenstat, Canada's Founding Debates;
 - A.I. Silver, The French-Canadian Idea of Confederation;
 - J.T. Saywell, The Lawmakers, chapter 1;
 - P. Hogg, Constitutional Law of Canada, chapter 2;
 - A. Smith, British Businessmen and Canadian Confederation.

Discussion Group

Class 3 Jan 22 Constitutional Evolution, Interpretation

- Readings:
- H. Bakvis, G. Baier, D. Brown, Contested Federalism: Certainty and Ambiguity in the Canadian Federation, chapters 4, 5;
 - J. Saywell, The Lawmakers: Judicial Power and the Shaping of Canadian Federalism, chapters 3-9
 - G. Stevenson, Ex Uno Plures: Federal-Provincial Relations in Canada, 1867-1896
 - P. Russell, Constitutional Odyssey, 3rd edition
 - G. DiGiacomo, "The Federal Treaty Implementation Power and International Labour Agreements," Canadian Labour and Employment Law Journal, Vol. 11, 2004.
 - G. DiGiacomo, "Support for a Centralist Vision of Labour Policy in Early Canada," Journal of Canadian Studies, Vol. 38: 3;
 - P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases, cases 1 to 10;
 - B. Reesor, The Canadian Constitution in Historical Perspective;
 - P. Hogg, Constitutional Law of Canada, chapters 3, 17, 20, 21.

Class 4 Jan 29 Constitutional Evolution, Amendment

- Readings:
- P. Russell, Constitutional Odyssey, 3rd ed., chapters 8, 9, 10, 11;
 - J. T. Saywell, The Lawmakers, chapters 10-11;
 - R. Jackson, D. Jackson, Politics in Canada, 7th edition, chapter 5: The Constitution
 - P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases, cases 11 to 18, 45 to 48;
 - B. Reesor, The Canadian Constitution in Historical Perspective;
 - P. Hogg, Constitutional Law of Canada, chapter 4.

Discussion Group

Class 5 Feb 5 Canadian Federalism

- models of and approaches to federalism in Canada

- Readings:
- F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition, Introduction, chapter 1;
 - H. Bakvis, G. Baier, D. Brown, Contested Federalism: Certainty and Ambiguity in the Canadian Federation, chapters 1,5,6;
 - H. Bakvis, G. Skogstad, (eds.), Canadian Federalism: Performance, Effectiveness, and Legitimacy, chapters 2,3,4,5
 - A.-G. Gagnon, R. Iacovino, "Canadian Federalism and Multinational Democracy: 'Pressures' from Quebec on the Federation," in H. Bakvis, G. Skogstad, (eds.), Canadian Federalism: Performance, Effectiveness, and Legitimacy, 2nd edition;
 - P. Hogg, Constitutional Law of Canada, chapter 5.

Class 6 Feb 12 Intergovernmental Agreements: Economic Union, Social Union, Environmental Union

- Readings:
- G. DiGiacomo, The Democratic Content of Intergovernmental Agreements in Canada (www.uregina.ca/sipp, then click on "Publications," then click "SIPP Public Policy Papers");
 - J. Poirier, "Intergovernmental Agreements in Canada: At the Crossroads Between Law and Politics," in J.P. Meekison, H. Telford, H. Lazar, (eds.), Canada: The State of the Federation 2002: Reconsidering the Institutions of Canadian Federalism;
 - J. Simmons, "Democratizing Executive Federalism: The Role of Non-Governmental Actors in Intergovernmental Agreements," in H. Bakvis, G. Skogstad, (eds.), Canadian Federalism: Performance, Effectiveness, and Legitimacy, 2nd edition;
 - J. Poirier, "Federalism, Social Policy and Competing Visions of the Canadian Social Union," National Journal of Constitutional Law, 13: 3, October 2002;
 - H. Bakvis, G. Baier, D. Brown, Contested Federalism, chapters 3, 10,11, 12
 - M. Winfield, D. Macdonald, "The Harmonization Accord and Climate Change Policy: Two Case Studies in Federal-Provincial Environmental Policy," in H. Bakvis, G. Skogstad, (eds.), Canadian Federalism: Performance, Effectiveness, and Legitimacy, 2nd edition.
 - K. Harrison, "Passing the Environmental Buck," in F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition;
 - M. Macdonald, "The Agreement on Internal Trade: Trade-Offs for Economic Union and Federalism," in H. Bakvis, G. Skogstad, (eds.), Canadian Federalism: Performance, Effectiveness, and Legitimacy, 1st edition;
 - D. Cohen, "The Internal Trade Agreement: Furthering the Canadian Economic Disunion?" Canadian Business Law Journal, Vol. 25, 1995, 257;
 - K. Swinton, "Courting Our Way to Economic Integration: Judicial Review and the Canadian Economic Union," Canadian Business Law Journal, 25;
 - P. Hogg, Constitutional Law of Canada, chapter 16.

Discussion Group

Class 7 Feb 26 Federal Spending Power

- Readings:
- A. Petter, "Federalism and the Myth of the Federal Spending Power," Canadian Bar Review, Vol. 68, 1989;
 - A. Petter, "The Myth of the Federal Spending Power Revisited," Queen's Law Journal, 34, No. 1, fall 2008;
 - D. Yudin, "The Federal Spending Power in Canada, Australia and the United States," National Journal of Constitutional Law, 13: 3, October 2002;
 - A. Lajoie, "The Federal Spending Power and Fiscal Imbalance in Canada," in S. Choudhry, J.-F. Gaudreault-Desbiens, L. Sossin, (eds.), Dilemmas of Solidarity: Rethinking Redistribution in the Canadian Federation;
 - P.E. Trudeau, Federal-Provincial Grants and the Spending Power of Parliament;
 - P. Hogg, Constitutional Law of Canada, chapter 6.

Discussion Group

Class 8 Mar 5 Canadian Charter of Rights and Freedoms

- introduction, origins, major decisions; the judicial review critique

- Readings:
- P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases, cases 19 to 21;
 - C. Manfredi, Judicial Power and the Charter;
 - J. Kelly, Governing with the Charter: Legislative and Judicial Activism and the Framers' Intent, chapters 1-3, 5, 7;
 - H. MacLvor, Canadian Politics and Government in the Charter Era, chapters 1, 2, 4
 - R. Sharpe, K. Roach, The Charter of Rights and Freedoms, chapters 1, 2, 4,5;
 - J. Hiebert, Charter Conflicts: What is Parliament's Role?
 - J. Hiebert, Limiting Rights: The Dilemma of Judicial Review, chapters 1-5;
 - P. Hogg, Constitutional Law of Canada, chapters 12, 34-39.

Class 9 Mar 12 Canadian Charter of Rights and Freedoms – Criticisms

- Readings:
- F.L. Morton, "The Effects of the Charter of Rights on Canadian Federalism," Publius, 25;
 - S. LaSelva, The Moral Foundations of Canadian Federalism, chapter 5;
 - J. Kelly, "The Courts, the Charter, and Federalism," in H. Bakvis, G. Skogstad, Canadian Federalism: Performance, Effectiveness, and Legitimacy;
 - J. Kelly, Governing with the Charter, chapter 6;
 - R. Sharpe, K. Roach, The Charter of Rights and Freedoms, chapters, 12, 16
 - H. MacLvor, Canadian Politics and Government in the Charter Era, chapter 7;
 - W. MacKay, "Social and Economic Rights in Canada: What Are They, and Who Can Best Protect Them?," Supreme Court Law Review, Vol. 45, 2009;
 - R. Knopff, A. Banfield, "It's the Charter, Stupid! The Charter and the Courts in Federal Partisan Politics," Supreme Court Law Review, Vol. 45, 2009;
 - H. Arthurs, B. Arnold, "Does the Charter Matter?," Review of Constitutional Studies, Vol. 11, No. 1, 2005;
 - Y. Hameed, "The Charter, Poverty Rights and the Space Between: Exploring Social Movements as a Forum for Advancing Social and Economic Rights in Canada," National Journal of Constitutional Law, Vol. 23, 2007;
 - J. Hendry, "Developments in Equality Rights in the Economic and Social Sphere under the Charter," National Journal of Constitutional Law, Vol. 21, 2006;

- F. Faraday, "Access to Social Programs: Substantive Equality Under the Charter of Rights," National Journal of Constitutional Law, Vol. 21, 2006;
- M. Mandel, The Charter of Rights and the Legalization of Politics in Canada;
- P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases, cases 24, 26, 36, 48.

Discussion Group

Class 10 Mar 19 Simulation Exercise – location TBA

Class 11 Mar 26 The Constitution and Aboriginal Rights

- Readings:
- P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases, cases 38-42;
 - K. Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalism," in F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition;
 - K. Ladner, C. Dick, "Out of the Fires of Hell: Globalization as a Solution to Globalization – An Indigenous Perspective," Canadian Journal of Law and Society, Vol. 23, Nos. 1-2, 2008;
 - S. LaSelva, The Moral Foundations of Canadian Federalism, chapter 8;
 - P. Hogg, Constitutional Law of Canada, chapter 28.

Class 12 Apr 5 Last Class – Wrap up Lecture and Discussion

GROUND RULES:

1. Please try to get to class on time.
2. Class attendance will be taken from time to time, beginning with the third class. A student who misses more than one class for reasons not health-related or related to one's religion will get zero as his/her participation mark. If a student does miss a class for a health matter, a medical certificate will have to be provided. Work-related reasons will not be considered acceptable reasons for absence.
3. A student who misses the Simulation or a Discussion Group for reasons not health-related or not related to religious observance will get zero as his/her participation mark.
4. Using cell phones, text messaging, browsing the web/sending e-mails/chatting online, and working on other courses during class time are strictly prohibited activities. A student determined to be engaged in any of these activities will be marked absent and will bear the consequences of that determination.