

Course Outline

COURSE:	LAWS 3504 A – Law and Aboriginal Peoples
TERM:	Fall 2010
PREREQUISITES:	LAWS 2005 [1.0] (no longer offered) or LAWS 2501 or LAWS 2502 or LAWS 3500 or LAWS 3503 or LAWS 3503 [1.0] (no longer offered) or LAWS 3509
CLASS:	Day & Time: Monday 8:35-11:25 am Room: Please check with Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Andrew Unger, B.A., LL.B., B.C.L.
CONTACT:	Office: C476 LA (Loeb) Office Hrs: By Appointment Email: ungera@ainc-inac.gc.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 **November 15, 2010 for Fall exams and March 11, 2010 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

Note that plagiarism is a serious offence that cannot be resolved with the course instructor. The Associate Deans of the Faculty conduct a rigorous investigation when an instructor suspects plagiarism. Severe sanctions for plagiarism are possible.

The University Senate defines plagiarism as "presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own." This can include:

- submitting a take home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- failing to acknowledge sources through the use of proper citations when using another's works and/or failing to use quotation marks.

COURSE DESCRIPTION

This course will introduce students to the fundamental concepts and issues in aboriginal law in Canada. The course will begin with a general survey and will then go on to cover the following topics in some depth:

- Aboriginal Rights and Title
- Aboriginal Rights and the Constitution Act
- Jurisdiction and Aboriginal Rights
- Treaty Rights: Historic and Modern Treaties
- Duty to Consult
- The Fiduciary Relationship
- The Métis and Inuit
- Self-Government
- Residential Schools

READINGS

Mandatory texts:

- Isaac, Thomas. *Aboriginal Law: Commentary, Cases, and Materials* 3rd Edition (Purich Publishing Ltd., 2004).
- Macklem, Patrick. *Indigenous Difference and the Constitution of Canada* (University of Toronto Press, 2001).

Select readings will also be posted on WebCT.

COURSE EVALUATION – All components must be completed to pass this course

Students will be required to prepare a seminar presentation and a term paper during the course. The term paper will be worth 50% of the final grade. Students will be given a list of topics/questions from which to choose. The term paper is due on November 29. The seminar presentation will be worth 35% of the final grade. Students are strongly encouraged to work with a partner on seminar presentations. In addition to the seminar presentation and term paper, 15% of the final grade will be allocated based on class participation. Class participation grades will be evaluated on the basis of attendance, preparedness, and participation/contribution to class discussions. There will be no final examination in the course.

Presentation 35%
Term Paper 50%
Class Participation 15%

Introductory Materials on Aboriginal Law

- Isaac – Aboriginal Rights and Title – Introduction [pages 1-26]
- Macklem – Introduction and Chapter 3 (Territory)

Case Excerpts in Isaac

- Royal Proclamation of 1763 – page 4
- *Calder* – pages 32-39
- *Delgamuukw* – pages 39-66

Aboriginal Rights and the Constitution Act

- Isaac – Aboriginal Rights and the Constitution Act – Introduction – pages 364-389

Case Excerpts in Isaac

- *Sparrow* – pages 390-404
- *Van der Peet* – pages 404-422

Jurisdiction and Aboriginal Rights

- Isaac – Federal, Provincial, and Territorial Powers and Duties [pages 189-213]

Treaty Rights: Historic and Modern Treaties

- Isaac – Treaty Rights – Introduction [pages 71-110]
- Macklem – Chapter 5 (The Treaty Process) and Chapter 9 (State Obligation and Treaty Negotiations)

Case Excerpts in Isaac

- *Sioui* – pages 115-124
- *Marshall* – pages 151-167

Duty to Consult

- Isaac – Consultation and Accommodation – pages 213-229
- *Haida Nation* and *Taku River* Supreme Court of Canada decisions [cases will be posted on WebCT]

The Fiduciary Relationship

- Isaac – The Fiduciary Relationship – pages 229-239
- Macklem – Fiduciary Duties of the Crown – pages 252-257

Case Excerpts in Isaac

- *Guerin* – pages 266-271
- *Wewaykum* – pages 271-276

The Métis and Inuit

- Isaac – The Métis and Inuit – Introduction – pages 277-288

Case Excerpts in Isaac

- *Powley* – pages 293-302.

Self-Government

- Isaac – Self Government – Introduction – pages 453-469
- Macklem – Aboriginal Rights of Self Government – pages 172-180

Case Excerpts in Isaac

- *Pamajewon* – pages 471-475

The Residential Schools

Materials for this topic will be posted on WebCT