

## Course Outline

<b>COURSE:</b>	<b>LAWS 3504 A - <i>Law and Aboriginal Peoples</i></b>
<b>TERM:</b>	<b>Fall 2011</b>
<b>PREREQUISITES:</b>	<b>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.</b>
<b>CLASS:</b>	<b>Day &amp; Time: Thursdays, 8:35AM – 11:25AM Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Daniel Albahary, B.A. (Hons), LL.B., J.D., LL.M.</b>
<b>CONTACT:</b>	<b>Office: Loeb D580 Office Hrs: By Appointment Only Email: <a href="mailto:dalbahar@connect.carleton.ca">dalbahar@connect.carleton.ca</a></b>

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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://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 11 November 2011 for December exams and 7 March 2012 for April exams. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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**COURSE DESCRIPTION**

This course is designed to provide an introductory but comprehensive understanding of the basic elements of Canadian law relating to Aboriginal peoples in Canada. Particular emphasis will be placed on Aboriginal perspectives, Canada's constitutional and statutory frameworks, jurisprudence and case law. The final class will address what is known as "traditional knowledge" or "indigenous intellectual property," and will also provide a brief overview of Aboriginal legal concepts that have been incorporated into Canadian law; however, criminal law and justice issues are not addressed in this course.

The objective of the course is to not only analyze and think critically about the law as it relates to Aboriginal peoples, but also to learn how to effectively express that critical analysis in writing.

There are no examinations in this course.

**CLASS FORMAT**

Classes will consist of lectures and class discussion. Questions are encouraged. Students are expected to attend all classes and to have completed the readings before attending classes. Certain classes will also include guest speakers.

**REQUIRED TEXT**

The following textbook is required:

David W. Elliott, *Law and Aboriginal Peoples in Canada* (Concord, ON: Captus Press, 2005) 5th ed.

A copy has been placed on reserve in the MacOdrum library.

Additional reading material may be posted on WebCT. I will apprise you well in advance when content will be posted there.

**SUPPLEMENTARY TEXTS**

You may wish to consult the following texts:

Thomas Isaac, *Aboriginal Law: Commentary, Cases, and Materials* (Saskatoon: Purich Publishing, 2004) 3<sup>rd</sup> ed.

John Borrows et. al., *Aboriginal Legal Issues: Cases, Materials & Commentary* (Markham, ON: LexisNexis Canada, 2007) 3<sup>rd</sup> ed.

**EVALUATION**

Please be aware that papers *must* be researched and written entirely and exclusively by you. All use of other peoples' words or ideas must be fully and clearly acknowledged. It is a very *serious* academic offence to plagiarize. Where you use the words or thoughts of others, cite properly. You should use quotation marks for no more than three or four lines and single-space lengthier passages, citing them in footnotes or endnotes (footnotes are preferred). If you paraphrase, fully acknowledge all the original source(s) you have relied on. Remember, the theories, views, and opinions of others must be *fully acknowledged*. Citation, however, is a good thing. Do not be "afraid" to cite. The fact that you have found case authority and/or other scholarly work that supports or even contradicts your position shows that you have thought about and carefully researched your position. Do not, however, merely string along a series of quotations by others. Your work *must be your own* and demonstrate that you have formed *your own* opinion on the subject and that you have clearly researched and expressed it.

Please be aware that it is a *serious* academic offence to submit work that has previously or is currently being submitted for credit in this or another course. The essays, papers or assignments submitted in this course *must be original work*.

Please be sure to retain a rough draft of any work submitted to me until I have graded and returned it to you. Please hand in all papers, essays and assignments directly to me.

Please familiarize yourself with these regulations if you have not already done so: <http://www4.carleton.ca/cu0809uc/regulations/acadregsuniv14.html#14.3>.

All citations *must* conform to the *Canadian Guide to Uniform Legal Citation*, 7th ed (Toronto: Carswell, 2010) (the "McGill Guide"). Please also see the Department of Law's Style Sheet at: [http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal\\_style\\_sheet.pdf](http://www1.carleton.ca/law/ccms/wp-content/ccms-files/legal_style_sheet.pdf).

All assignments *must* be submitted in 12pt Times New Roman font. Assignments *not* submitted in 12pt Times New Roman font will be returned and not graded until they are re-submitted according to this instruction.

Assignments not submitted on the assigned due date will be assigned a 5% per day penalty for no more than seven (7) calendar days. Assignments will no longer be accepted after seven (7) days.

Please contact me if you require an extension of any of the due dates or need to defer an assignment. Please see <http://www2.carleton.ca/registrar/special-requests/deferral/> for more information on deferrals.

**Class Participation: 5%**

- All students are expected to attend and encouraged to participate regularly in class.
- Students are encouraged to bring news, stories, articles, books, art, or music that may relate to the course material to share with their colleagues at the beginning of each class.

**Guest Speaker Summary: 10%**

- All students are expected to attend and encouraged to be in class for talks by guest speakers.
- Due on or anytime before the last class in the semester, December 1, 2011.
- 400 words (approximately two pages); 1.5 line spacing; 1.5-inch margins.
- There will be approximately four (4) guest speakers throughout the course of the year.
- You are to summarize the talks of at least two (2) of these speakers.
- You are free to write on any subject these speakers have spoken about and how it affected you and your view of the subject matter of the course.
- 7% of the grade accorded to the quality of your writing; 3% to your organization.

**Case Comment: 10%**

- Due on October 6, 2011 at the beginning of class.
- 400 words (approximately two pages); 1.5 line spacing; 1.5-inch margins.
- No additional research required or permitted; however, you may read the case in its entirety.
- A *comment* is a critical analysis of a given case. All students are expected to prepare one case comment on the cases that have been read up to this point in the course. You are free to choose the case, but it must be one that is contained within pages 3 - 64 and 217 – 298 of *Law and Aboriginal Peoples in Canada*. While a summary of the facts is an important part of a case comment, the focus should be on a *critical evaluation* of the case and the legal reasoning employed by the judge(s) to decide it. You should also consider other elements of the case, such as: the sources of law relied on by the judge(s), the composition of the court, the majority and dissenting opinions, policy considerations, and whether you think the decision as a whole is persuasive. Case comments should include the style of cause, an introductory statement about the case, your views on it and what about it you will be discussing, a *short* summary of the facts and decision, your overall opinion and analysis of the case, and finally, a conclusion.
- Headings are appropriate.
- 5% of the grade accorded to the quality of your writing; 3% of the grade accorded to the quality of your analysis; 2% to your organization.

**Mid-term paper: 30%**

- Due on October 20, 2011 at the beginning of class.
- 800 words (approximately four pages); 1.5 line spacing; 1.5-inch margins.
- No additional research required but is permitted. You may read the cases in their entirety.
- All students are expected to prepare a short review that compares and contrasts two (2) but no more than three (3) cases that have been read up to this point in the course. You must discuss at least three different aspects that the cases have in common, three aspects that distinguish them or a combination of both. You must also evaluate how you think the decision impacted the person(s) involved in the case, their community, and Canadian society in general.
- You *may* use the case that you discussed in the case comment assignment.
- Headings are appropriate.
- 15% of the grade accorded to the quality of your analysis; 10% of the grade accorded to the quality of your writing; and 5% to your organization.

**Final Paper Outline: 5%**

- Due on November 3, 2011 at the beginning of class.
- 75 words (one page); 1.5 line spacing; 1.5-inch margins.
- All students are expected to prepare a short statement which describes their research topic and research question. You are free to choose your own topic and research question as long as it (a) relates to Aboriginal issues and the law and (b) you have cleared it with me prior to submitting the outline for grading on November 10, 2011.
- The short statement should identify clearly what *question* you are attempting to *answer* with your paper.
- If you are having difficulty deciding on a topic, please contact me to discuss.
- A bibliography consisting of your ten sources (see below) must also be included.
- 5% accorded to all of the above.

**Final Paper: 40%**

- Due on December 1, 2011 at the beginning of class.
- 1600 words (approximately eight pages); 1.5 line spacing; 1.5-inch margins.
- Additional research required.
- Ten (10) additional research sources *must* be employed. These sources can be scholarly articles found in legal or other academic journals, Canadian including provincial case law and statutes, provincial and federal government policy papers, websites and blogs, among others.
- Although ten (10) additional research sources are required, you may use the course textbook and the cases you have discussed in early course assignments as sources. However, you must cite each *additional* source at least once, which means a minimum of ten (10) citations are expected.
- The paper should explain the topic and clearly state the question it is going to answer. The question need not be complex. A list of possible topics and research questions is provided below.
- The paper should also clearly articulate your opinion or position on this question in the form of a thesis.
- The paper should be written like any other university paper would be written, meaning that proper paragraphs are required, as well as topic and concluding sentences for each paragraph. You may also use headings to organize your thoughts and ideas. Remember, you *must* advance some kind of a position or opinion on the issue.
- 25% of the grade accorded to the quality of your analysis; 10% of the grade accorded to the quality of your writing; and 5% to your organization.
- You may submit the paper one week in advance, on November 24, 2011, for an automatic bonus of 5% to your assigned grade for the paper; for example, if you were to receive 36 points out of a possible 40, an additional 1.8 points (5% of 36) would be added to your grade for a total of 37.8 points out of a possible 40.
- Although you are free to consult me, you may write your paper on any of the following topics (or a combination thereof) *without* obtaining prior approval from me:
  1. "Discuss who an Aboriginal Person is under Canadian law."
  2. "Discuss what Aboriginal *rights* are."
  3. "Discuss how treaties and Aboriginal *rights* are constitutionally protected."
  4. "Discuss why *Sparrow* is an important decision in the case law."
  5. "Discuss why *Delgamuukw* is an important decision in the case law."
  6. "Discuss whether the concept of Aboriginal title as *sui generis* is persuasive"
  7. "Discuss the duty to consult."
  8. "Discuss Honour of the Crown."
  9. "Discuss fiduciary duties."
  10. "Discuss Aboriginal comprehensive and specific claims."
  11. "Discuss who has legislative jurisdiction over Aboriginal Peoples in Canada."
  12. "Discuss the significance of Land Claims Agreements to Canadian law."
  13. "Discuss Aboriginal Self-Government."
  14. "Discuss why *Van der Peet* is an important decision in the case law"
  15. "Discuss the 'distinctive practices' test articulated in *Van der Peet*."
  16. "Discuss whether existing law protects traditional knowledge."
- Remember you should form a *question* that you are going *answer* in your paper.

**\*\*\*PLEASE NOTE: ALL COMPONENTS OF THE COURSE  
MUST BE COMPLETED IN ORDER TO RECEIVE A PASSING GRADE\*\*\***

**SCHEDULE**

**Please note: A revised syllabus will be provided when more Guest Speakers have been confirmed.**

**Class 1: September 8, 2011**

Topic: Introduction

Readings: None; however, please take a look at <http://www.ainc-inac.gc.ca/index-eng.asp> or <http://www.ainc-inac.gc.ca/index-fra.asp> and familiarize yourself with the information available there.

**Class 2: September 15, 2011**

Topic: Who is an Aboriginal Person under Canadian law?

Readings: *Law and Aboriginal Peoples in Canada*, pp. 3 – 29, 217 – 235.

**Class 3: September 22, 2011**

Topic: Aboriginal Rights before *Calder*

Readings: *Law and Aboriginal Peoples in Canada*, pp. 30 – 42, 236 – 254.

**Class 4: September 29, 2011**

Topic: Aboriginal Rights from *Calder* to *Guerin*

Readings: *Law and Aboriginal Peoples in Canada*, pp. 43 – 50, 255 – 271.

**Class 5: October 6, 2011**

Topic: Treaties

Readings: *Law and Aboriginal Peoples in Canada*, pp. 51 – 64, 272 – 298.

**\*\*\*CASE COMMENTS DUE AT START OF CLASS\*\*\***

**Class 6: October 13, 2011**

Topic: Legislative Jurisdiction

Readings: *Law and Aboriginal Peoples in Canada*, pp. 65 – 74, 299 – 314.

**\*\*\*Case comments returned to students at end of class\*\*\***

**Class 7: October 20, 2011**

Topic: *Constitution Act, 1982* and *Sparrow*

Readings: *Law and Aboriginal Peoples in Canada*, pp. 75 – 85, 315 – 329.

**\*\*\*MID-TERM PAPERS DUE AT START OF CLASS\*\*\***

**Class 8: October 27, 2011**

Topic: Fiduciary Duties

Readings: *Law and Aboriginal Peoples in Canada*, pp. 86 – 107, 330 – 337.

**\*\*\*Mid-term papers returned to students at end of class\*\*\***

**Class 9: November 3, 2011**

Topic: Aboriginal Rights I

Readings: *Law and Aboriginal Peoples in Canada*, pp. 108 – 124, 338 – 352.

**\*\*\*OUTLINES DUE AT START OF CLASS\*\*\***

**Class 10: November 10, 2011**

Topic: Aboriginal Rights II  
Readings: *Law and Aboriginal Peoples in Canada*, pp. 125 – 161, 353 – 381.

**\*\*\*Outlines returned to students at end of class\*\*\***

**Class 11: November 17, 2011**

Topic: Aboriginal Claims  
Readings: *Law and Aboriginal Peoples in Canada*, pp. 162 – 189, 382 – 409.

**Class 12: November 24, 2011**

Topic: Aboriginal Self-Government  
Readings: *Law and Aboriginal Peoples in Canada*, pp. 190 – 214, 410 – 440.

**Class 13: December 1, 2011**

Topic: Traditional Knowledge/Indigenous Intellectual Property  
Readings: *United Nations Declaration on the Rights of Indigenous Peoples*  
Available online: <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

**\*\*\*FINAL PAPERS DUE AT START OF CLASS\*\*\***

**\*\*\*IF YOU HAVE NOT ALREADY HANDED IN THE GUEST SPEAKER  
SUMMARY ASSIGNMENT IT IS DUE TODAY\*\*\***

**OTHER**

Please see the Department of Law's *Policy and Procedure Statement* and Carleton University's Undergraduate Calendar for further information:

<http://www1.carleton.ca/law/ccms/wp-content/ccms-files/policy2008.pdf>

<http://www4.carleton.ca/calendars/ugrad/current/university/academicyear.html>

Please consider using the Writing Tutorial Service if you have concerns about or wish to improve your academic writing skills:

<http://www1.carleton.ca/sasc/writing-tutorial-service/>