Syllabus

Foundations of Canadian Law

(Revised June 2019)

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 and among them;
- To provide applicants with an understanding of the Canadian treaty-making process and the implementation of international law into domestic law;
- To provide applicants with an understanding of the special relationship Aboriginal Peoples have with the Canadian State, and to enable applicants to critically assess the impact of the Canadian legal system upon Aboriginal and other minority communities;
- To provide applicants with an understanding of the nature and function of judicial review and of the basic approaches to statutory interpretation.

EVALUATION:

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

The exam will consist of short answer questions, and/or short essay questions, and/or problem questions.

- Short answer questions test candidates’ ability to succinctly and correctly evaluate statements about material covered in the syllabus.
- 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 the arguments, principles, and doctrines discussed in those materials.
- Problem questions test candidates’ ability to identify legal issues, accurately state the applicable legal rules, apply those rules to novel situations, and draw conclusions supported by analysis. In other words, problem questions require the exercise of independent judgment grounded in the application of general rules to specific fact situations.
CORE MATERIALS

- Required Canadian case law is indicated following each component and is available free of charge from 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:

- Sasha Baglay, Introduction to the Canadian Legal System, (Toronto: Pearson, 2015)
COMPONENTS:

1. Basic Theories of Law

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

Required Readings:
Forcese, Craig, Chapter 2


Leslie Green, “Legal Positivism” (2003), Stanford Encyclopedia of Philosophy:
https://plato.stanford.edu/entries/legal-positivism/


2. Indigenous Peoples and the Law

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

A. Required Readings:
Forcese, Craig, Chapter 3

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

Summary of the Final Report of the Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling for the Future:

https://llj.lakeheadu.ca/article/view/1490/825
United Nations Declaration on the Rights of Indigenous Peoples:  
https://undocs.org/A/RES/61/295

Hayden King, “UNDRIP’s Fundamental Flaw” (2019):  
https://www.opencanada.org/features/undrips-fundamental-flaw/

Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples:  

Current Status of Bill C-262: An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples:  
https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=8160636&Language=E

Thomas Isaac and Arend J.A. Hoekstra, “Implementing UNDRIP in Canada: Challenges with Bill C-262”:  


**B. Required Readings - Re: Aboriginal Rights:**


*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, [2017] 1 SCR 1099

*Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40

*Pastion v. Dene Tha’ First Nation*, 2018 FC 648

**C. Required Readings Re: Aboriginal Title:**

https://digitalcommons.osgoode.yorku.ca/scholarly_works/2709/

*Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44

*Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12

*Brown v. Canada (Attorney General)* 2017 ONSC 251
D. **Required Readings - Re: Aboriginal Treaties:**


3. **Sources of Canadian Law**

- The Common Law and Civil Law Traditions
  - Reception of European Law
  - Bijuralism
  - Common Law Method: Precedent and Equity
- Statutory Law
- International Law

**Required Readings:**

Forcese, Craig, Chapter 4

Marie-Claude Gervais and Marie-France Seguin, “Some thoughts on Bijuralism in Canada and the World” (2001) Department of Justice Canada:


Debra Parkes, "Precedent Revisited: *Carter v Canada (AG)* and the Contemporary Practice of Precedent” (2016) 10 McGill Journal of Law and Health 123:

**Tan v. Canada (Attorney General),** 2018 FCA 186

Lionel Smith, “Equity is Not a Single Thing” (2018):


**De Guzman v. Canada (Minister of Citizenship and Immigration),** 2005 FCA 436

Reference re Supreme Court Act, ss. 5 and 6, 2014 SCC 21, [2014] 1 S.C.R. 433, paragraphs 1-12 and 72-107

4. Fundamental Principles of the Canadian Legal System:

- The Constitution of Canada
- Principles Underpinning Public Law
  - Rule of Law
  - Constitutional Supremacy
  - Parliamentary Sovereignty
  - Federalism
  - Separation of Powers
  - Judicial Independence (Overview)
- Constitutional Amendment

Required Readings:
Forcese, Craig, Chapter 5
Singh v. Canada (Attorney General), 2000 CanLII 17100 (F.C.A.), paras. 13 - 44

5. Parliament and its Components

- The Monarch and Governor General
- Senate
- House of Commons

Required Readings:
Forcese, Craig, Chapter 6
6. Functions of Parliament

- Summoning
- Prorogation
- Dissolution
- Key Actors
- Parliamentary Procedure and Law-Making

*Required Readings:*
Forcese, Craig, Chapter 7

*Duffy v. Senate of Canada, 2018 ONSC 7523*

*Chagnon v. Syndicat de la fonction publique et parapublique du Québec, 2018 SCC 39*

*Singh v. Attorney General of Quebec, 2018 QCCA 257*

7. The Executive and its Functions

- The Functions of the Executive
- Sources of Executive Power
- Executive Institutions and the Political Executive

*Required Readings:*
Forcese, Craig, Chapter 8

*Tesla Motors Canada ULC v. Ontario (Ministry of Transportation), 2018 ONSC 5062*

*Toronto (City) v. Ontario (Attorney General), 2018 ONCA 761*

8. The Courts and the Judiciary

- Structure of the Canadian Court System
- Judicial Appointments
- Judicial Independence

*Required Readings:*
Forcese, Craig, Chapter 9
9. Statutory Interpretation

- Approaches to Interpretation
- The Modern Approach to Interpretation

**Required Readings:**

Forcese, Craig, Chapter 10, pp.425-480; 506-518


10. Constraints on Legislative and Administrative Action

- Judicial Review in a Democratic Society
- Judicial Review of Administrative Action

**Required Readings:**

Forcese, Craig, Chapter 11

*Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257


Canadian Publishers

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Fax: 416.975.3924  
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URL: [http://www.emp.ca/](http://www.emp.ca/)

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URL: [http://www.carswell.com/](http://www.carswell.com/)

**Online Resources**
The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada ([www.canlii.org](http://www.canlii.org)). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your registration fee also includes free access to the Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.

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