



Federation of
Law Societies
of Canada

NCA National Committee
on Accreditation

Syllabus

Foundations of Canadian Law

Revised for 2023

Candidates are advised that this 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 essay questions, and/or problem questions, and/or multiple-choice questions.

Short answer questions and multiple-choice questions test candidates' ability to succinctly 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

1. Forcese, Dodek *et al*, *Public Law: Cases, Commentary, and Analysis, Fourth Edition* (Toronto: Emond Montgomery, 2020). [Referred to below as “Forcese”.]
[Public Law: Cases, Commentary, and Analysis, 4th Edition | Emond Publishing](#)
2. Prescribed cases that are not included in the Forcese text are available free of charge from CanLII: www.canlii.ca/
3. Prescribed articles that are not included in the Forcese text are available online free of charge (website address is specified).

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:

Gerald Heckman. “International Human Rights Norms and the Substantive Review of Administrative Decision-Making” (Chapter 14 of Flood and Daly, eds., *Administrative Law in Context, 4th Edition*, Emond Montgomery 2021)

Eisenberg, M., *The Nature of the Common Law*, (Cambridge, Mass: HUP, 1991)

Fairlie, John, *Introduction to Law in Canada*, 3rd ed. (Toronto: Emond, 2023)

Forcese, Craig & Aaron Freeman. *The Laws of Government: The Legal Foundations of Canadian Democracy, 2nd Edition* (Toronto: Irwin Law, 2011).

Forsey, Eugene A. *How Canadians Govern Themselves, 10th ed.* (Ottawa: Library of Parliament, 2020): <https://lop.parl.ca/about/parliament/senatoreugeneforsey/book/preface-e.html>

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

Hogg, Peter W. & Wade K. Wright. *Constitutional Law of Canada, 2022 Student Edition* (Toronto: Carswell, 2022).

Justice Canada, “Canada’s System of Justice”: www.justice.gc.ca/eng/csj-sjc/

Schauer, F., *Thinking Like a Lawyer: A New Introduction to Legal Reasoning*, (Cambridge, Mass: HUP, 2012)

Waddams, S.M., *Introduction to the Study of Law, 8th Edition*, (Toronto: Carswell, 2016)



COMPONENTS:

1. Basic Theories of Law; Racism & the Law

Positivism and Natural Law

Feminist Perspectives on Law

Critical Legal Studies

Law and Economics

Required Readings:

- Forcese, Chapter 2
- *R. v. Morris*, 2021 ONCA 680
- *8573123 Canada Inc. v. Keele Sheppard Plaza Inc.* 2021 ONCA 371
- *R. v. Gladue* [1999] 1 S.C.R.
- Michael Trebilcock, "Law and Economics" (1993) 16:2 Dal LJ 360, online: <https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1680&context=dli>
- Alyssa Clutterbuck, "Rethinking Baker: A Critical Race Feminist Theory of Disability", 2015 20 Appeal: Review of Current Law and Law Reform 51, 2015 CanLIIDocs 49, <https://canlii.ca/t/6sx>

2. Indigenous Peoples and the Law

Aboriginal Rights and Title

Indigenous Self-Government Aspirations

The Modern Treaty-Making Process

A. Required Readings:

- Forcese, 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
- "Introduction" in Summary of the Final Report of the Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling for the Future, pp. 1-21: http://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf
- United Nations Declaration on the Rights of Indigenous Peoples: <https://undocs.org/A/RES/61/295>
- An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/royal-assent>



B. Required Readings Re - Indigenous Institutions and Self-Government:

- Douglas Sanderson, “Redressing the Right Wrong: The Argument from Corrective Justice” (2011) 62 University of Toronto Law Journal 93
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1945380
- Indigenous Law Research Unit, Secwepémc Lands & Resources Law, Summary
<https://ilru.ca/wp-content/uploads/2021/05/ILRU-SNTC-Lands-Summary.compressed.pdf>
- Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families, 2022 QCCA 185, (Unofficial English Translation of the Court), pages 4-19, 120-192
https://courdappelduquebec.ca/fileadmin/Fichiers_client/Jugement/500-09-028751-196_AVIS_final_EN.pdf

C. Required Readings Re - Aboriginal Title:

- *Chippewas of the Thames First Nation v. Enbridge Pipelines*, [2017] 1 SCR 1099
- *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40
- *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC
- *Pastion v. Dene Tha' First Nation*, 2018 FC 648
- Nora Refai, “The Beaufort Sea Boundary Dispute: A Consideration of Rights of Inuit in Canada and the United States” (2022) 60 Alberta Law Review 267
<https://journals.library.ualberta.ca/www.albertalawreview.com/index.php/ALR/article/view/2717>

D. Required Readings – Re - Aboriginal Title:

- Dwight Newman, “The Economic Characteristics of Indigenous Property Rights: A Canadian Case Study” (2016) 95 Nebraska Law Review 432
<https://digitalcommons.unl.edu/nlr/vol95/iss2/4/>
- *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani Utenam)*, 2020 SCC 4
- *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44

E. Required Readings – Re - Aboriginal Treaties:

- *Restoule v. Canada (Attorney General)*, 2021 ONCA 779, paras. 1-333, 360, 581-628
- Christina Gray and Hayden King, eds., “Treaty Interpretation in the Age of Restoule” (Yellowhead Institute, May 2022) <https://yellowheadinstitute.org/wp-content/uploads/2022/05/Restoule-Special-Report-YI-May-2022.pdf>



3. Sources of Canadian Law

The Common Law and Civil Law Traditions

- i. Reception of European Law
- ii. Bijuralism
- iii. Common Law Method: Precedent and Equity

Statutory Law

International Law

Required Readings:

- Forcese, Chapter 4

Civil Law and Common Law

- *Grimard v. Canada* [2009] FCA 47
- *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21, [2014] 1 S.C.R. 433, paras. 1-12 and 72-107

Common Law Method, Stare Decisis, Equity

- Irit Samet-Porat, "Equity" in H Dagan and B Zipurskey, eds., *Research Handbook in Private Law Theories* (2020)
https://kclpure.kcl.ac.uk/portal/files/128732978/Equity_Final.pdf
- S. Lewis, "On the Nature of *Stare Decisis*"
Forthcoming in Endicott, Kristjánsson, Lewis (eds), *Philosophical Foundations of Precedent* OUP, 2023.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4269652
- T. Skolnik, "Precedent, Principles, and Presumptions" (2021) 54:3 UBC Law Review 935
https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3992781

Common Law Method: Appellate Review

- *Housen v Nikolaisen*, 2002 SCC 33
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1972/index.do>

International Law and the Domestic Legal Order

- Barnett, "Canada's Approach to the Treaty-Making Process", 2021, Library of Parliament
<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/2008-45-e.pdf>
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (read headnote for factual context, read paras. 69-71, 78-81)
- *R. v. Hape* 2007 SCC 26, [2007] 2 SCR 292, (read paras. 1-56)
- *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, (read paras. 1-26; and 60-133)



4. Fundamental Principles of the Canadian Legal System:

The Constitution of Canada

Principles Underpinning

Public Law

- i. Rule of Law
- ii. Constitutional Supremacy
- iii. Parliamentary Sovereignty
- iv. Federalism
- v. Separation of Powers
- vi. Judicial Independence (Overview)

Constitutional Amendment

Required Readings:

- Forcese, Chapter 5

Rule of Law

- *Singh v. Canada (Attorney General)*, 2000 CanLII 17100 (F.C.A.), paras. 13-44
- Cass R Sunstein, "The Rule of Law"
<https://ssrn.com/abstract=4405238>

Constitutional Supremacy

- *R. v. Sullivan*, 2022 SCC 19
<https://www.canlii.org/en/ca/scc/doc/2022/2022scc19/2022scc19.html>

Separation of Powers

- *Schmidt v. Canada (Attorney General)*, 2018 FCA 55 (CanLII)
<https://www.canlii.org/en/ca/fca/doc/2018/2018fca55/2018fca55.html>
- *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27
<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18933/index.do>

5. Parliament and its Components

The Monarch and Governor General

- Luke Beck, [The Role of Religion in the Law of Royal Succession in Canada and Australia](#) (2017) 43:1 Queen's LJ

Senate

- Joel I. Colón-Ríos and Allan C. Hutchinson, [Constitutionalizing the Senate: A Modest Democratic Proposal](#), (2015) 60:4 McGill LJ 500



House of Commons

Required Readings:

- Forcese, Chapter 6

6. Functions of Parliament

Summoning

Prorogation

Dissolution

Key Actors

Parliamentary Procedure and Law-Making

Required Readings:

- Forcese, Chapter 7
- *Duffy v. Senate of Canada*, 2020 ONCA 536
- *Chagnon v. Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39
- *Singh v. Attorney General of Quebec*, 2018 QCCA 257
- Jennifer A. Klink, [Modernizing Judicial review of the Exercise of Prerogative Powers in Canada](#), *Alberta Law Review*, (2017) 54:4

7. The Executive and its Functions

The Functions of the Executive

Sources of Executive Power

Executive Institutions and the Political Executive

Required Readings:

- Forcese, Chapter 8
- *Walter v. British Columbia*, 2019 BCCA 221 (CanLII), <https://canlii.ca/t/j109v>
- *Tesla Motors Canada v. Ontario (Ministry of Transportation)*, 2018 ONSC 5062 (CanLII)
- *Toronto v. Ontario (Attorney General)*, 2021 SCC 34
- Patrick F. Baud, "The Crown's Prerogatives and the Constitution of Canada" (2021) 3 *Journal of Commonwealth Law* 219
<https://www.journalofcommonwealthlaw.org/article/31330-the-crown-s-prerogatives-and-the-constitution-of-canada>
- *Ontario (Attorney General) v. Clark*, 2021 SCC 18 (CanLII), <https://canlii.ca/t/jfnmp>



8. The Courts and the Judiciary

Structure of the Canadian Court System

Judicial Appointments

Judicial Independence

Required Readings:

- Forcese, Chapter 9
- *Smith v. Canada (Attorney General)*, 2020 FC 629

9. Statutory Interpretation

Approaches to Interpretation

The Modern Approach to Interpretation

Required Readings:

- Forcese, Chapter 10, pp. 408-516
- *Agrium v Orbis Engineering Field Services*, 2022 ABCA 266
<https://www.canlii.org/en/ab/abca/doc/2022/2022abca266/2022abca266.html>
- Sullivan, R. (2000). "[The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation](#)," in E MacKay (ed.), *Law and Certainty, Les Certitudes de Droit*. Ottawa: 2000

10. Constraints on Legislative and Administrative Action

Judicial Review in a Democratic Society

Judicial Review of Administrative Action

Required Readings:

- Forcese, Chapter 11
- *Brown v. Canada (Citizenship and Immigration)* 2020 FCA 130 (read paras. 1-23; and 136-149)
- *Shuttleworth v. Ontario (Safety, Licensing Appeals and Standards Tribunals)*, 2019 ONCA 518
- *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26



- Lorne Sossin, "The Impact of Vavilov: Reasonableness and Vulnerability" *Supreme Court Law Review*, 2nd Series, Volume 100 (2021) pp. 265-277
<https://www.ontariocourts.ca/coa/en/ps/publications/impact-vavilov.pdf>
- Mark Mancini, "The Promise of Habeas Corpus Post-Vavilov: The Principle of Legality" (2022) 100:2 *Canadian Bar Review* pp. 223-253
<https://cbr.cba.org/index.php/cbr/article/view/4768>
- Teresa Scassa, "Administrative Law and the Governance of Automated Decision-Making: A Critical Look at Canada's Directive on Automated Decision-Making" (2021) 54:1 *University of British Columbia Law Review*, SSRN: <https://ssrn.com/abstract=3722192>



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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). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your exam registration fee also includes free access to the Advance Quicklaw resources of LexisNexis. 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.

Sign in to Advance Quicklaw via <http://www.lexisnexis.com/ca/legal>. The first time you sign in you will be asked to change or personalize your password. Remember your User ID and password are personal, and should not be shared with anyone.

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