Syllabus

Foundations of Canadian Law

(Revised April 2018)

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:

- Fairlie, John & Philip Sworden, Introduction to Law in Canada (Toronto: Emond Montgomery 2014).
- 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

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
The following two excerpts only (from UNDRIP Implementation below):

i) Oonagh Fitzgerald and Risa Schwartz, “Introduction”; and

ii) Sarah Morales, “Braiding the Incommensurable: Indigenous Legal Traditions and the Duty to Consult”, from


Current Status of Bill C262: 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


Meeting of the Standing Committee on Indigenous and Northern Affairs, Tuesday March 27, 2018, read Evidence by Perry Bellegarde and Craig Benjamin, from 16:05 to 16:50 in the transcript: www.ourcommons.ca/DocumentViewer/en/42-1/INAN/meeting-100/evidence

Alicia Elliot, “A Memo to Canada: Indigenous People are not Your Incompetent Children” The Globe and Mail, January 5, 2018: www.theglobeandmail.com/opinion/indigenous-memo-to-canada-were-not-your-incompetent-children/article37511319/

B. Required Readings - Re: Aboriginal Rights:

Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council, [2010] 2 S.C.R. 650

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

Canada v. Mikisew Cree First Nation, 2016 FCA 311

C. Required Readings Re: Aboriginal Title:

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


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


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

6. **Functions of Parliament**

- Summoning
- Prorogation
- Dissolution
- Key Actors
- Parliamentary Procedure and Law-Making
Required Readings:
Forcese, Craig, Chapter 7

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

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
Schnarr v. Blue Mountain Resorts Limited, 2018 ONCA 313
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


Naiomi Metallic, “Deference and Legal Frameworks Not Designed By, For or With Us” (2018):
Canadian Publishers

**Carswell (Thomson Reuters)**
Corporate Plaza  
2075 Kennedy Road  
Scarborough, ON M1T 3V4  
Tel: 416.609.3800 or 1.800.387.5164  
Email: carswell.customerrelations@thomsonreuters.com  
URL: [http://www.carswell.com/](http://www.carswell.com/)

**Irwin Law Inc.**
14 Duncan St.  
Toronto, ON M5H 3G8  
Tel: (Canada & U.S.) 416.862.7690 or 1.888.314.9014  
Fax: 416.862.9236  
Email: contact@irwinlaw.com  
URL: [http://www.irwinlaw.com/](http://www.irwinlaw.com/)

**Emond Montgomery**
60 Shaftesbury Ave.  
Toronto, ON M4T 1A3  
Tel: 416.975.3925  
Fax: 416.975.3924  
Email: info@emp.ca  
URL: [http://www.emp.ca/](http://www.emp.ca/)

**Lexis Nexis Canada Inc.**  
(For printed material only and not for access to Quicklaw)  
Contact: Customer Service  
Tel: 905.415.5823 or 1.800.668.6481  
Fax: 905.479.4082 or 1.800.461.3275  
Email: Customerservice@lexisnexis.ca  

**Canada Law Books**
240 Edward St.  
Toronto, ON L4G 3S9  
Tel: (Canada & U.S.) 416.609.3800 or 1.800.387.5164  
Email: carswell.customerrelations@thomsonreuters.com  
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.

Sign in to Quicklaw via [http://www.lexisnexis.com/ca/legal](http://www.lexisnexis.com/ca/legal). The first time you sign in to Quicklaw 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.

If you forget or lose your password to Quicklaw you may retrieve it by clicking on the “Forget Password?” link on the Quicklaw sign-in page. Any other issues please Email ftang@flsc.ca.

Please review and abide by all Terms of Use when you receive your Quicklaw credentials, otherwise your Quicklaw account will be closed without any prior notice.

Lexis Nexis Quicklaw customer support is available via service@lexisnexis.ca, or calling 1.800.387.0899.