

CONSTITUTIONAL LAW
Law 100 Y01
2007-2008

Faculty of Law, University of Victoria
Professor Gillian Calder

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Course Outline: Constitutional Law
Spring 2008

I. Course Description

This course is a required, first-year course which will enable students to develop the critical legal skills necessary to examine Canada's constitutional framework, including the judicial system, the division of powers, the treatment and rights of Aboriginal Peoples, and the Charter of Rights and Freedoms.

II. Course Objectives

Canadian Constitutional law is a large, complex and constantly changing subject. As such, this course cannot be comprehensive in its scope, or in its treatment of any particular constitutional issue. Instead, the course aims to:

- stimulate your interest in constitutional law and the ways in which constitutional law directly affects your life;
- convey basic principles that underlie and inform the division of powers between the federal and provincial governments, the relationship between Aboriginal peoples and the Canadian state, and the rights enumerated in the *Canadian Charter of Rights and Freedoms*;
- enable you to identify constitutional issues and to make persuasive and effective constitutional law arguments and counter-arguments; and
- provide you with an opportunity to examine and discuss the political forces and theoretical debates that shape constitutional law.

III. Administrative Details

A. Class location and Times

Spring: Tuesdays and Thursdays, 9:30 – 11:00 a.m.
Room 152

B. Office Hours

I have an open door policy. If my door is open and I am in my office, you are more than welcome to drop by and ask a question. Please also feel free to call me at 472-5247, e-mail me at gcalder@uvic.ca, or stop me in the hall at any time to talk about the course. I will be happy to schedule an appointment that meets your needs.

IV. Materials

A. Required Materials

The Constitutional Law Group, eds., *Canadian Constitutional Law* (Emond Montgomery, 2003) 3d edition
Supplement, Volume II: on-line at:
http://www.law.uvic.ca/gcalder/100/course_materials_pass/course_materials.html
Leslie Hall Pinder, *The Carriers of No: After the Land Claims Trial* (Vancouver: Lazara Press, 1991).

B. Recommended Materials (on reserve)

Peter W. Hogg, *Constitutional Law of Canada*, 4th Edition;
Peter W. Hogg, *Constitutional Law of Canada: 2007 Student Edition*;
Joel Bakan, *Just Words: Constitutional Rights and Social Wrongs* (Toronto: University of Toronto Press, 1997).

V. Teaching Methodology, Attendance and Participation

This course will be taught through a combination of lectures, class discussion and take-home exercises. The goal is to have an active and engaged class room environment. In this regard, it is my expectation that students will have read and thought about the assigned materials before they come to each class. Each class will be taught on the assumption that students are prepared to discuss the assigned materials.

There will, of course, be times when you will be unable to attend class due to illness, an unexpected occurrence and for other reasons. If you miss a class due to these reasons, you should feel free to come and discuss with me material that was covered in the class you were unable to attend. Please make note of the university's regulations on attendance and assignments, reproduced in part below.

If you would like to discuss classroom, assignment or exam accommodation necessitated by a permanent or temporary disability, or for other reasons, please see Associate Dean Hart Wensley as soon as possible.

VI. Evaluation and Expectations

A. Spring Term

- take-home assignment, worth 25% of your final grade discussed in class Tuesday, January 22, 2008
due: Monday, March 3, 2008
- take-home examination, worth 75% of your final grade if higher than your first term mark; or 50% if lower.

B. Detailed Assessment Expectations

1. Spring take-home assignment

Length: not to exceed 12 pages

Students will be required to write an essay not to exceed 12 pages. Students may write on any topic of their choice, but will have to have the topic approved by me. Students will be expected to do independent research, and write a critical essay that explores an aspect of constitutional law that is engaged by our discussion of the *Canadian Charter of Rights and Freedoms*. More details on this assignment, and suggested topics, will be handed out in class on Tuesday, January 22, 2008.

2. Spring take-home examination

Length: there will be a set page limit

The examination at the end of the second term will be an open-book, 72-hour take-home exam. The exam will cover materials assigned in the second term. The exam will include both problem and essay style questions. Procedure will be discussed in detail in class.

3. Page length

“Pages” mean letter-size (8 ½" x 11") paper, double-spaced, typed, with 12 point font and 1" margins. Students must use Times New Roman Font.

Any assignments that exceed page limits will be docked one grade level (for example, A down to A-, B+ down to B) for each partial page over the limit.

VII. Regulations

- A. Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2007-2008 (“U Vic Calendar”), both generally and specifically for the Faculty of Law.
- B. Any assignments and the examinations in this course will all be open-book.
- C. There will be no extensions permitted for take-home examinations (see U Vic Calendar for regulations which pertain to special examinations).
- E. Academic integrity is expected of all participants in the University Community. **Please familiarize yourselves with the University’s Policy on Academic Integrity set out in the U Vic Calendar; and on-line at:**
<http://web.uvic.ca/calendar2007/FACS/UnIn/UARe/PoAcI.html>
- F. The following breakdown of letters and percentages is the one that the University of Victoria Faculty of Law uses to determine course grades:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	

B-	4	65-69%	
C+	3	60-64%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 and below	Unsatisfactory performance.

VIII. Detailed Outline

A. Syllabus: Term Two

The attached syllabus should serve as *a reading guide* for the Spring term. The listed subjects are not exclusive, but highlight the key questions and cases that will form the basis for the class discussion. We may move more quickly or more slowly through certain material, and we may consider additional cases, legislation and legal issues that arise throughout the year. Any revisions to the reading list will be announced in class, and a final revised syllabus including all the materials covered will be distributed to students prior to the final exam.

PART TWO: The Canadian Charter of Rights and Freedoms

1. The Advent of the *Charter*

a. Rights and Federalism

Reading: CLG: 633-656; 675-681

- *Antecedents of the Charter*
- *Common law Constitution*
- *Roncarelli v. Duplessis*
- *Federalism and Race*
- *Union Colliery Co. v. Bryden*
- *Cunningham v. Tomey Homma*
- *Quon Wing v. The King*
- *The Bill of Rights*

b. Introduction to the *Charter*

Reading: CLG: 683-708

Recommended: Hogg, Chapter 33
Bakan, Chapter 2

- *The Adoption of the Charter*
- *Pierre Trudeau*
- *Lorraine Weinrib*
- *William Bogart*
- *Andrew Petter*

c. A Dialogue between the Courts and Parliament

Reading: CLG: 711-725; 775-780

Recommended: Hogg, Chapter 36

- *Lorraine Weinrib*

- *Allan Hutchison*
- *Peter Hogg and Allison Bushell*
- *Vriend v. Alberta*
- *Section 33*

2. Application of the Charter

Reading: CLG: 781-795; 799-815
Recommended: Hogg, Chapter 34

- *application to private action*
- *Dolphin Delivery*
- *McKinney*
- *Eldridge*
- *Vriend*
- *application to the common law*
- *Charter values*
- *Hill v. Church of Scientology*

3. Remedies

Reading: CLG: 1263-1287
Recommended: Hogg, Chapter 37

- *remedies*
- *section 52*
- *Schachter*
- *remedial options: Vriend, M. v. H.*
- *s. 24(1)*

4. The Framework of the Charter

a. Structural overview and Section One

Reading: CLG: 748-763; 773-775
Supplement: *Newfoundland (Treasury Board) v. N.A.P.E.*
Recommended: Hogg, Chapters 35-36

- *introduction to the structural components*
 - *rights guarantees*
 - *section one*
 - *deference and activism*
- *defining limitations*
- *section 1*

- *R. v. Oakes*
- *Dagenais*

5. Fundamental Rights and Freedoms

a. Equality

History of the Equality Provisions

Reading: CLG: 1133-1160

Recommended: Hogg, Chapter 52
Bakan, Chapter 3

- *the idea of equality*
- *equality as a legal standard*
- *s. 15(1) and substantive equality*
- *Andrews v. Law Society of B.C.*
- *“the trilogy”*
- *Law v. Canada*

Doing a Section 15(1) Analysis

Reading: CLG: 1161-1180

Supplement: *Auton*

- *denial of a benefit provided by law*
- *Auton*
- *differential treatment*
- *Eldridge*
- *adverse effects discrimination*
- *enumerated and analogous grounds*
- *Corbiere*

Working with the *Law* Test

Reading: CLG: 1180-1212

Supplement: *Hodge*
Gosselin

- *discrimination*
- *comparator groups*
- *Hodge*
- *Gosselin*

b. Freedom of Expression

Commercial Speech**Reading: CLG: 906-939****Recommended: Hogg, Chapter 40
Bakan, Chapter 4**

- *purposes of the guarantee*
- *scope of the guarantee*
- *commercial speech*
- *Irwin Toy*
- *R.J.R. MacDonald*

Hate Speech**Reading: CLG: 893-906; 939-962**

- *hate speech*
- *R. v. Keegstra*

Sexually Explicit Speech**Reading: CLG: 962-988**

- *sexually explicit expression*
- *Catherine MacKinnon and Robin West*
- *R. v. Butler*
- *Little Sisters*
- *R. v. Sharpe*

6. Legal Rights**a. Life, Liberty and Security of the Person****The Scope of s. 7****Reading: CLG: 1071-1076; 1091-1103****Recommended: Hogg, Chapter 44**

- *fundamental justice*
- *Reference re Section 94(2) of the Motor Vehicle Act*
- *Rodriguez v. British Columbia (Attorney General)*

Right to Healthcare, Right to Health**Reading: CLG: 1076-1090****Supplement: Chaoulli**

- *R. v. Morgentaler*
- *Chaoulli*

Case Study: Poverty and the *Charter*

Reading: CLG: 1128-1131

Supplement: *Gosselin*

- *the intersection of ss. 7 and 15(1)*
- *Gosselin*

Joint Review Class: Homelessness and the *Charter*

PART THREE: Aboriginal Peoples and the Constitution

1. Introduction to First Nations and the Constitution

Reading: CLG, 511-531

The Carriers of No

Recommended Hogg: Chapter 27

- *Introduction to Aboriginal Peoples and the Law*
- *Common law foundation of Aboriginal Constitutional rights*
- *Guerin v. The Queen*
- *The Distribution of Legislative Authority*

2. The Constitutional Entrenchment of Aboriginal Rights

Reading: CLG, 531-565

- *The Constitution Act, 1982*
- *R. v. Sparrow*
- *R. v. Van der Peet*
- *R. v. Gladstone*
- *R. v. Sappier; R. v. Gray*

3. Aboriginal Title

Reading: CLG, 572-591

Recommended: John Borrows, “Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*”

- *Delgamuukw v. British Columbia*
- *John Borrows, Sovereignty's Alchemy*

4. Aboriginal Treaty Rights

Reading: CLG, 591-607

- *Treaties*
- *R. v. Marshall*

5. Distribution of Legislative Authority and Governance

Reading: CLG, 618-630

- *Aboriginal Self-government*
- *Delgamuukw v. AG B.C.*
- *R. v. Pamejewon and Jones*

PART FOUR: Review and Exam Preparation