CONSTITUTIONAL LAW II - CML 2313

PROFESSOR JOSEPH MAGNET

SYLLABUS

COURSE DESCRIPTION

Constitutional Law II introduces students to the jurisprudence, doctrines and literature that elaborate Canada’s Constitution. Our nineteen classes will explore how the Constitution establishes the institutions of government, invests those institutions with power and dictates how that power may, and may not be used.

Students will explore the concepts of supremacy, limited government, separation of powers, rule of law, legal federalism and constitutional issues relating to aboriginal peoples.

Readings are assigned for each class according to the schedule below. Students are expected to read the assigned materials before class, and be prepared to discuss the materials in class.

Most classes are interactive. All students will be asked to participate actively to enhance learning.

COURSE OBJECTIVES

1. To familiarize students with the structure and substance of Canada’s Constitution, excluding the Charter of Rights;

2. To introduce students to the literature which expounds the Constitution, including case law, doctrine and commentary;

3. To familiarize students with techniques of Constitutional interpretation, including arguing from constitutional principles, purposes and values;

4. To introduce students to techniques for identifying Constitutional issues; and

5. To introduce students to methods of analysis which involve the Constitution in resolving legal problems.

What skills will you learn in this course?
At the conclusion of this course, you should be able to:

• recognize a constitutional issue inside a story;

• analyse what facts are relevant in the story, and which are missing, in order to litigate the constitutional issue in court;

• advise a client about what a court is likely to decide concerning the issue you have identified, and why the court is likely to do so;
• identify the kinds of arguments a court will likely find persuasive on both sides of the issue;
• develop persuasive constitutional arguments.

EVALUATION

One final examination, open book, six hours in length, will count for 100% of the final mark. The exam will consist of (approximately) two issue-spotter or essay questions, and six questions calling for short answers.

The two issue-spotter/essay questions will test understanding of the concepts studied. They will also test the ability to apply constitutional law concepts to practical situations, which means testing the ability to use the five skills listed above. The short answer questions will test mastery of the materials studied.

Students have the option to write the exam at home, or in the law school computer lab, which will be reserved for your use at exam time.

EXAM REQUIREMENTS

• Typed
• Font size = at least 12 pt.
• Maximum length = ten, double spaced pages for issue spotter and essay questions, and three pages for short answers.

HOW TO WRITE EXAMS

Suggestions for answering “issue spotter examinations” are available online at: <http://www.constitutional-law.net/Division%20of%20Powers%20Examinations.htm>. This page includes a link which explains how examinations are graded. Knowing what examiners look for should help you write a better exam.

The page also contains two links that will assist you to improve your legal writing, which is critical to all legal careers. As well, there is a link to some previous exams and model exam answers.

The University of Ottawa has prepared materials to assist students to avoid plagiarism: see http://www.uottawa.ca/plagiarism.pdf

REQUIRED TEXTS


Joseph Magnet, Constitutional Law II: Supplementary Cases 2015 [“Supp.”] (U of O internal)
I recommend that you bring the materials to be studied for the day to class. This will assist you to learn.

**TIME AND PLACE OF CLASSES**

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<thead>
<tr>
<th>Day</th>
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<tbody>
<tr>
<td>Mon.</td>
<td>1-3</td>
<td>FTX 359</td>
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<tr>
<td>Wed.</td>
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**SCHEDULE OF CLASSES**

1. **Feb 02**  
   Welcome! Let's get organized.  
   Sources of constitutional law: Constitutional theory, constitutional principles, constitutional rules  
   **REQUIRED READING**, Text, pp. 1 - 7

2. **04**  
   Sources of Constitutional Law  
   Entrenched statutes and organic statutes. Constitutional conventions  
   **REQUIRED READING**, Text, pp. 7-67;  
   *Reference re Senate Reform*, Supp.  
   Federalism  
   **REQUIRED READING**, Text, pp. 67-78; 27-28, 31-32 (*Secession Reference*, paras. 43 - 44, 55-60)

3. **09**  
   Federalism  

4. **11**  
   Intergovernmental Cooperation Devices  
   Supremacy  
(Family Day – All classes cancelled)

5.  18 Constitutional Review, The Rule of Law, Authority of Government Officials, Separation of Powers


6.  23 “In relation to” and "Ancillary" Doctrines, Test of ‘Fit’

**REQUIRED READING**, Text, pp. 275-324

7.  25 Concurrency, Double Aspect Theory and Paramountcy

**REQUIRED READING**, Text, pp. 324-343; 353-365
*Quebec (Attorney General) v. Canada (HRSD)*, Supp.

8.  Mar 02 Interjurisdictional Immunity, Division of Legislative Powers Principles

**REQUIRED READING**, Text, pp. 365-387

*Marine Services Intern’l Ltd. v. Ryan Estate*, paras 1-32, 47-64, Supp

9-10. 04, 09 Property and Civil Rights in the Province

**REQUIRED READING**, Text, pp. 389-434

*Club Resorts Ltd. v. Van Breda*, Supp.
Text, pp. 444-458

11-12. Mar 11, 16 Residuary and Emergency Powers

**REQUIRED READING**, Text, pp. 458-518

13-14. 18, 23 International and Interprovincial Trade and Commerce

**REQUIRED READING**, Text, pp. 518-582

15.  25 General Trade and Commerce, Regulatory Schemes, Criminal Law

16-17. Mar 30, Apr 1 Criminal Law / Administration of Justice

REQUIRED READING.

Criminal Law

RJR-MacDonald Inc. v. Canada, Text p 707-715;
Ref re Validity of Section 5(a) of the Dairy Industry Act, p 702-04;
Morgantaler v. The Queen, p 704-07;
Reference re Assisted Human Reproduction Act, SUPP p 74-xx;
Rio Hotel Ltd. v. New Brunswick, p 743-45;
Canada v. Montreal, p 746-51;
Singer v. Quebec, p 751-53;
Westendorp v. Calgary, p 753-756

Administration of Justice

DiIorio v. Montreal Jail Warden, p 758
A.G. Que v. A. G. Canada, p 764
Trial Lawyers Association of BC v. BC (AG), paras. 3-37, Supp.

18. Apr 8 Aboriginal Peoples: Constitutional Framework


Aboriginal Title

REQUIRED READING. Tsilhqot’in Nation v. B.C., paras 1, 3-6, 10-18, 24-76 (Supp.)

Infringement and Justification

REQUIRED READING. Tsilhqot’in Nation v. B.C., paras 77-92 Supp.

19. 13 Aboriginal Rights
REQUIRED READING. Text, pp. 926-931, 957-965

Justifications for Infringement


Fiduciary Duty and Honour of the Crown [NB: This topic and following suggested readings are not required and are not examinable.]


Examination: 6 hour take-home (see p. 2, supra for requirements and tips about how to write examinations)

For students in need of learning supports

Students who require accommodations or academic support because of a physical or learning disability, or any condition that affects their ability to learn, are invited to register with ACCESS SERVICE:

Office: UCU 339
Telephone: 613.562.5976
TTY: 613.562.5214
E-mail: adapt@uottawa.ca
Web: www.sass.uottawa.ca/access/

Students can meet with an Access Service specialist to identify their individual needs and to discuss appropriate strategies. All information provided to Access Services and all accommodations received remain strictly confidential.