

**LAW 505.001 – CANADIAN PUBLIC LAW**  
**(5 credits)**  
**COURSE SYLLABUS**

**Course Information**

Class Dates: June 18 – July 18, 2019  
Days & Times: Tues & Thurs, 9:00 a.m. – 12:30 p.m., and 2:00 - 5:00 p.m.  
Location: Allard, Room 123  
Final Exam: July 25, 9:00 a.m.  
Allard 123 (ExamSoft Examplify users) & 114 (hand-writers)

**Instructor Information:**

Oliver Pulleyblank  
Adjunct Professor  
[oliver@pulleyblank.ca](mailto:oliver@pulleyblank.ca)

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About the Course

Welcome to Law 505, Canadian Public Law. This is a graduate level course for students enrolled in the course based Masters of Law (Common Law) program at UBC. In broad terms, this course surveys the foundations of the Canadian legal system as well as the basic principles of Canadian constitutional law.

This course will cover four main topics:

1. Fundamental principles of Canadian public law including the rule of law, sources of Canadian law, principles of statutory interpretation and the structure of courts in Canada;
2. The nature and sources of the Canadian constitution and the distribution of powers in Canada as between the federal and provincial governments;
3. The *Canadian Charter of Rights and Freedoms*;
4. The relationship of Aboriginal Peoples to the Canadian State.

Each section will encourage students to think critically about the Canadian legal system. By the end of the course, students will

- understand key legal doctrines and the basic principles that inform them;
- understand the sources of Canadian law and the historical context in which it was established;
- be able to apply legal analysis to specific constitutional problems and issues; and
- develop their own understanding of how Canadian public law regulates the Canadian social and political orders and how it contributes to the construction of the Canadian national identity.

The course will be taught through a combination of presentations by the instructor, class discussions and small group exercises. Students are expected to attend class regularly, to have completed the

assigned readings for each class and to participate in class discussions, which will be interactive. In discussion, the emphasis will be on developing a critical understanding of the material, and as such students are strongly encouraged to reflect on the material and form their own views on the law and related policy issues before the class. The course will also provide students with opportunities to engage in problem-solving exercises in class, and to develop their legal writing skills.

### **About the Instructor**

I am a practising lawyer with my own small firm focusing on public law, specifically administrative, environmental, aboriginal and constitutional law. I previously worked for six years as a litigator at the Department of Justice in Vancouver, where I argued a number of constitutional and administrative law cases. Following Law School I served as a judicial law clerk at both the Supreme Court of Canada, for Chief Justice McLachlin, and at the British Columbia Court of Appeal.

The best way to communicate with me is through email at: [oliver@pulleyblank.ca](mailto:oliver@pulleyblank.ca). I do not intend to hold regular office hours, but will be available to meet with students on an as needed basis. I will try to ensure that I can be available outside of class at convenient times to answer questions or discuss the material.

### **Course Readings**

Readings for week 1 will be distributed via email several weeks before the commencement of the class. A detailed reading list for the balance of the course will be distributed on the first day of class.

**Required textbook** (available at the bookstore and on reserve in the law library):

- **Peter Hogg, *Constitutional Law of Canada, 2018 Student Edition* (Students can obtain earlier editions of the text, though prior to 2012 is not recommended)**

### **Required Cases and Articles**

In addition, there will be a number of cases / case excerpts for review. These will be available electronically for you to access and print.

### **Course Structure**

This course is divided into 4 parts, each focusing on an important theme in public law:

- |  |           |
|--|-----------|
| I. Fundamental principles of Canadian public law                 | Week 1-2  |
| II. The Canadian Constitution and Division of Powers             | Week 2-3  |
| III. The <i>Charter of Rights and Freedoms</i>                   | Week 3-4  |
| IV. The relationship of Aboriginal Peoples to the Canadian State | Week 4 -5 |

Please note that classes run all day. We have a scheduled break for lunch and there will be short breaks during the morning and afternoon sessions. Attendance at each session is very important as considerable material will be covered in a short timeframe.

## **Course Expectations & Evaluation**

Class participation facilitates a dynamic and interactive learning environment. This course will include a variety of teaching methodologies appropriate to the subject matter and course format, including: lectures; class discussion and exercises; and in-class presentations. Students are expected to have read all required materials and completed any preparatory exercises in advance of each class. Throughout the semester, you are expected to maintain regular and timely attendance in this course, as well as contributing in an informed manner to class discussion and exercises.

**The overall grade for this course is comprised of three parts:**

- **Short Paper: 20%**
- **Presentation: 15%**
- **Final Exam: 65%**

### Short Paper – 20%

Each student will prepare and submit by the last lecture a short paper (3,000 word **maximum**). The papers are to be comparative. Specifically, students are to compare the approaches taken in Canada and in the jurisdiction where the student previously studied law with respect to one component of public law covered in this course. Additional information regarding this assignment will be distributed in class during the first week.

### Presentation – 15%

During the 3<sup>rd</sup> – 5<sup>th</sup> weeks, students will each make a short (5 minute) presentation on their chosen paper topic, explaining to the class their preliminary conclusions.

### Final Exam – 65%

The primary evaluation for this course will be comprised of the final exam at the end of the course. **This exam will be held July 26 at 9am. (date to be confirmed by law school).** This will be an open-book exam. Students may have with them any hard-copy written material they wish during the exam. Laptops will only be permitted for the use of ExamSoft. All material, topics and themes from the course, including the readings and in-class discussions and exercises, are examinable.

Final Exam: July 26, 9:00 a.m., Allard 123 (ExamSoft Exemplify users) & 114 (hand-writers) **TO BE CONFIRMED**

Students needing accommodation about exam or coursework should contact the Assistant Dean, Students (Kaila Mikkelsen: [mikkelsen@allard.ubc.ca](mailto:mikkelsen@allard.ubc.ca))

For more information please see: <http://www.allard.ubc.ca/academic-concessions-accommodations>.

## **Information for Graduate Students**

UBC Graduate students are subject to special considerations depending on their program. The following Information for grading is excerpted from the Peter A. Allard School of Law Department website: *Master of Laws (Common Law) Program – Curriculum*

<http://www.allard.ubc.ca/master-laws-llm-common-law-program-curriculum>

Students are subject to the minimum grading requirements as set by Graduate and Postdoctoral Studies. Master's students must achieve a minimum of 68% in all courses. However, up to 6 credits of coursework with grades of 60-67% may be counted towards a master's program. A standing of Fail (F) will be assigned to courses with grades that fall below 60%. Students who repeat a course must obtain a minimum mark of 74%. When a student repeats a course, both marks will appear on the transcript. Under Allard School of Law rules, all grades above 90% must be approved by the Graduate Committee.

#### Grading Scale

90-100	A+
85-89	A
80-84	A-
76-79	B+
72-75	B
68-71	B-
64-67	C+
60-63	C
0-59	F

For further information on Graduate Assessment, please consult the UBC Graduate School: <https://www.grad.ubc.ca/current-students/managing-your-program/academic-assessment>

#### **Academic Integrity**

All students are subject to the University's rules on Academic Misconduct: <http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,0>. All students are subject to these rules, and are expected to act with academic integrity at all times.

#### **Classroom Expectations**

The classroom is intended to provide a safe, open and respectful space for the exchange of ideas and collaborative learning. All students are expected to maintain a respectful and professional demeanor in the classroom. Timely attendance is expected in this course. If you require any accommodations in the classroom, please do not hesitate to contact me.

#### **Class Schedule & Descriptions**

Readings for Week 1 will be distributed via email several weeks prior to the commencement of the class. A detailed reading list for the balance of the course will be distributed at the first class

<p><b>Week 1</b></p>	<p><b>June 18 - Introduction</b> <b>Introductions and Syllabus Review</b> <b>Fundamental Principles of the Canadian Legal System</b></p> <ul style="list-style-type: none"> <li>- Rule of Law</li> <li>- Sources of Law</li> <li>- The Common Law</li> <li>- Bijuralism</li> <li>- The Effect of International Law of Domestic Law</li> </ul>	<p><b>June 20 - Parliament, the Courts and Statutory Interpretation</b></p> <ul style="list-style-type: none"> <li>- Parliamentary Law Making</li> <li>- Courts in Canada</li> <li>- The Judiciary</li> <li>- The Exercise of Public Power</li> </ul>
<p><b>Week 2</b></p>	<p><b>June 25 – Judicial Review of Administrative Action &amp; Intro to Judicial Review of Statutes</b></p> <ul style="list-style-type: none"> <li>- The Availability of Judicial Review</li> <li>- The Theory of Judicial Review</li> <li>- The Administrative State</li> </ul>	<p><b>June 27 – The Canadian Constitution and Federalism: Validity, Applicability and Operability Review</b></p>
<p><b>Week 3</b></p>	<p><b>July 2- Scope of Selected Powers</b></p> <ul style="list-style-type: none"> <li>- Property and Civil Rights</li> <li>- Trade and Commerce</li> <li>- Criminal Law</li> <li>- P.o.G.G</li> </ul>	<p><b>July 4 – Intro to and history of the Charter; Section 1; Notwithstanding Clause</b></p> <ul style="list-style-type: none"> <li>- Bill of Rights</li> <li>- Negotiation of Charter</li> <li>- Evolution of Charter Interpretation</li> </ul>
<p><b>Week 4</b></p>	<p><b>July 9 – Substantive Charter Rights</b></p> <ul style="list-style-type: none"> <li>- Freedom of Expression</li> <li>- Fundamental Justice</li> <li>- Equality</li> </ul>	<p><b>July 11 – Introduction to Aboriginal Law</b></p> <ul style="list-style-type: none"> <li>- Constitutional division of powers</li> <li>- Fiduciary Relationship</li> <li>- Reconciliation</li> <li>- Section 35</li> </ul>
<p><b>Week 5</b></p>	<p><b>July 16 – Aboriginal Title, the Duty to Consult, and the Honour of the Crown</b></p> <ul style="list-style-type: none"> <li>- Theory of Title</li> <li>- Proof of Title</li> <li>- Duty to Consult</li> <li>- Extension of Honour of the Crown</li> </ul>	<p><b>July 18 - Review and Recap; Exam Prep</b></p>
		<p><b><i>PLEASE CONFIRM EXAM TIMES AND ROOMS WITH FINAL FACULTY TIMETABLE</i></b></p> <p><b><i>FINAL EXAM: July 26, 9:00 a.m</i></b></p>