LAW 358D.001

CRITICAL ANALYSIS OF
ABORIGINAL AND TREATY RIGHTS

FALL 2013

FACULTY OF LAW at ALLARD HALL
UNIVERSITY OF BRITISH COLUMBIA

Instructor:

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Class Meeting Times and Location:

Thursday 2:00 – 5:00 Allard Hall 112

Office/Contact Hours:

Monday and Wednesday 12:30 – 3:00
And by Arrangement/Appointment

Policies on Academic Misconduct (Plagiarism):

All UBC law students are subject to the University's rules on Academic Misconduct (http://vpacademic.ubc.ca/integrity/ubc-regulation-on-plagiarism/), and are expected to act with academic integrity at all times. Students should be especially aware of the University's rules in relation to plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course in this degree or another degree, passing off the ideas of another person as your own. If you plagiarize, you will be subject to penalties set out in the UBC calendar (http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959)

If you would like to learn more about academic misconduct, visit the UBC Library's website on academic integrity (http://learningcommons.ubc.ca/guide-to-academic-integrity/). Examples of academic misconduct can also be found in the UBC Annual Report on Student Discipline (http://universitycounsel.ubc.ca/discipline/).
Course Description:

The focus of this course are those Aboriginal and treaty rights constitutionally protected in Section 35 of the Constitution Act, 1982. A fairly robust jurisprudence has built up around the ‘recognition and affirmation’ of Aboriginal and treaty rights under section 35. This course focuses on several key cases drawn from this jurisprudence, and within these on several key concepts, tests and principles, with the aim of subjecting this material to critical analysis. The aim is not to analyze this slice of jurisprudence as doctrine, but to subject it to varying forms of criticism. Works of a number of critical scholars will be put to use, though often the expectation will be that students in the seminar carry out the actual analysis, making use of various critical perspectives.

This is not a ‘theory course’ – while a number of legal and political theories will structure certain forms of critical analysis, neither grounding in theory nor an aptitude in theorizing are expected of participants in the seminar. A student should come armed with (a) a basic background in the jurisprudence around Aboriginal and treaty rights, (b) curiosity about ‘what is really going on’ in Canadian jurisprudence as it relates to Aboriginal or Indigenous interests, and (c) a willingness to grapple with forms of critical analysis.

Teaching Method & Expectations:

Students are expected to attend each and every seminar. Students are expected (1) to have read the assigned readings before class, and (2) to be prepared to discuss the materials during the seminar.

Evaluation:

Students will be expected to submit (a) 2 short descriptions (on the order of a 1000 words or so each), over the course of the term, each detailing a particular critical perspective and how it might function to make sense of an aspect of the law relating to Aboriginal and treaty rights (worth 20% of the grade), and (b) a final paper (approximately 30 pages, double-spaced), analyzing (from a critical perspective) an aspect of the jurisprudence covered by the course (worth 80% of the grade).

Course Materials:

Almost all required readings are accessible electronically at addresses provided in the syllabus. Material not accessible in that manner will be made available on reserve, with several copies. You can read those materials in the reserve area or copy them for personal use.

Supplementary Materials: It may be that along the way a few cases, or pieces of cases, or short articles will be suggested as supplementary reading. If and when this occurs citations for these cases or materials, including details about relevant pages/paragraphs, will be provided. Students will be able to find all the cases noted through Quicklaw, or
online at such sites as [www.canlii.org](http://www.canlii.org), and the website for the courts of British Columbia. Articles will either be provided or links for them will be sent.

**General Structure:**  
Note: Subject to change, depending on class pacing

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<th>WEEK</th>
<th>Topic(s)</th>
<th>Reading(s): Required</th>
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| 1) Sept. 5 | Reintroduction to Aboriginal and treaty rights (an overview of section 35 jurisprudence) | 1 Electronic package, for review, and;  
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<th>Date</th>
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<td>13 Nov</td>
<td>Ways Forward?</td>
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