



Lakehead University

Democracy and the Law (2020)

POLI-4150-WA

T/Th 1-2:30 pm

Instructor: Dr. Patrick Cain (Political Science)

Email: pncain@lakeheadu.ca (email is for course inquiries that cannot be dealt with in person before/during/after class time)

Office hours: by appointment

COURSE DESCRIPTION

This course studies the relationship between democracy and the law, emphasizing constitutional guarantees liberty, equality and due process as they have been practiced and understood in Canada and the United States. Of special interest is the role equality and due process play in the concept of the rule of law, especially in regards to legal claims involving race, nationality, gender and sexual identity, and the family. These constitutional issues will be studied primarily through the examination of important legal arguments issued by the Canadian and American Supreme Courts, and through the study of related political writings and speeches. As part of this course, students will develop a better understanding of the power and purpose of the Judiciary, including the various means used by the Court in interpreting and applying the Constitution, including its use of precedent, history, textual analysis, reason, and prudence. Students are expected to engage all these important legal and political issues and questions through a number of academically robust experiential exercises.

Required Texts:

Some readings will be posted online. Many readings are Canadian and American Supreme Court opinions. Some of these will be posted on the course website, but others will need to be retrieved AND PRINTED OUT by students themselves. For full versions of U.S. Supreme Court Cases, and other resources, see <https://www.oyez.org> . For Canadian Cases, see <https://www.canlii.org/en/ca/> . Students are expected to print reading materials and bring them to class.

Grading:

Group Worksheet: 10 %

Online Lecture Respondent Sheets: 2 X 10% = 20%

Oral Arguments: 2 X 10% = 20%

Participation (especially Supreme Court Questioning): 20%

Final Exam: 30%

Group Work—Experiential Learning Component

Students will be divided into small groups. Over several classes, each group will examine a different constitutional case or issue in detail, filling out provided worksheets to be submitted online, and preparing a 5-minute oral argument in response to their assigned case. Late work loses 10% per day late.

During these classes, individual members of the group will be asked to update their class on their work through presentations (group presentations/arguments count toward each student's presentation grade). This part of the course is meant to (among other things) lay the foundation for the successful delivery of individual oral arguments.

Individual Oral Arguments (with handout)—Experiential Learning Component

Students are required to prepare a 5-minute oral argument in response to an assigned case. A sign up sheet will be provided. Acting as a Lawyer, each student will prepare a 5-minute oral argument in response to their assigned cases, and will argue in favour of a selected side of the legal issue identified in the case. Following their presentation, students are expected to develop and clarify their argument by fielding challenging questions from the instructors and class (who will together act as members of the Supreme Court). Because of scheduling constraints, missed presentations may not be able to be made up.

As part of their presentation students will also provide an organized one-page handout to each member of the class that outlines the legal argument they intend to pursue. A template will be provided and must be used. The handout and oral argument should focus on the argument being made, and not on the facts and history of the case (which should be outlined only as much as necessary to advance the argument being made).

Lecture Respondent Sheets

Students are to fill out and submit two sets of worksheets on two different assigned online academic lectures (videos and worksheets will be provided on the course website). The worksheets with their due dates will be posted to the course website. Late work loses 10% per day late.

Class Participation

Although the instructor will occasionally lecture, the majority of class will be spent discussing the assigned readings during and after the course's experiential components. Students are expected to fully participate in this discussion, **especially during the question and answer periods during oral arguments**. To do so, students should: 1. Read assigned material carefully; 2. Bring the readings to class; 3. Be prepared to discuss the readings; 4. Prepare challenging questions during in-class oral arguments; 5. Avoid being inattentive and/or appearing inattentive.

Although the instructor will facilitate discussion in a number of ways (such as playing "devil's advocate"), students should be prepared enough to drive the discussion themselves. In order to facilitate discussion, and in order to allow the lectures to be

executed in the most effective manner, students are required to follow the seating direction of the instructor.

Class Readings

The readings from this course can involve complicated ideas and difficult arguments. Moreover, the presentation of these ideas and arguments sometimes take forms that may not be familiar to students. Students should therefore read the assigned readings carefully, slowly, and several times in order to grasp their content.

Other Policies:

Accessibility and Accommodations

If you have a request for accommodations, please contact the Student Accessibility office.

Communication

The instructor will regularly communicate with students about a variety of matters, both through in-class announcements and via email (using students' Lakehead email account). Students are encouraged to contact the instructor with any questions that arise during the course of the year.

Electronic Devices

No laptops are allowed. Cell phone use is not allowed. Regular use of electronic devices without permission will significantly diminish a student's participation mark. No audio or video recording of the class is allowed without the permission of the instructor, and any permitted recording is for private use only.

Academic Honesty

Academic honesty is expected of all Lakehead University students. Cheating, collusion, and/or plagiarism will not be tolerated. Students are expected to make themselves fully familiar with Lakehead's policy in this area. Although all these policies will be enforced in full, it is worth emphasizing the following:

Plagiarism involves presenting another's work, ideas, theories, or interpretation as one's own.

To avoid plagiarism, writers should always:

1. Put quotation marks around any words from sources
2. Give accurate and complete citations for all material including paraphrased material!
3. Avoid borrowing entire arguments or approaches to a subject from another writer. Make it 'original' while staying faithful to the assignment parameters.

COURSE READING AND ASSIGNMENT SCHEDULE

Note 1: Some readings will be posted on the course website. If a reading is not found there, students are expected to find it themselves

Note 2: At the instructor's discretion, the readings and/or schedule may be altered

- 1/7 Course Outline
Opening Lecture
- 1/9 Intro to Reading a Supreme Court Case
Supreme Court of Canada, *Edwards v. Canada* (1930)
Supreme Court of Canada, *Law v. Canada* (1999)
Oakes Test
- 1/14 Split into assigned groups for Group Workshopping
Group Worksheet Assigned (begun in class, completed at home)
Group 1—U.S. Supreme Court, *Plessy v. Ferguson* (1896)
Group 2—*Brown v. Board of Education* (1954)
Group 3— *Fisher v. University of Texas at Austin* (2013)
- 1/16 **Group work (taken up and edited in groups)**
Group 1—U.S. Supreme Court, *Plessy v. Ferguson* (1896)
Group 2—*Brown v. Board of Education* (1954)
Group 3— *Fisher v. University of Texas at Austin* (2013)
- 1/21 Department Special Presentation from 11:30-1:00 in RC 0005 (optional with details to be provided)
- 1/23 **Group Oral Arguments**
Group 1—U.S. Supreme Court, *Plessy v. Ferguson* (1896)
Group 2—*Brown v. Board of Education* (1954)
Group 3— *Fisher v. University of Texas at Austin* (2013)

*****Group worksheet due online Friday, January 24*****

Individual Oral Arguments Part One

- 1/28 U.S. Supreme Court, *Ricci v. DeStefano* (2009)
- 1/30 Supreme Court of Canada, *Meiorin Case* (1999)
U.S. Supreme Court, *United States v. Virginia* (1996)

- 2/4 Supreme Court of Canada, *Leary v. The Queen* (1977)
Supreme Court of Canada, *R. v. Daviault* (1994)
- 2/6 U.S. Supreme Court, *Jacobson v. MA* (1905)
U.S. Supreme Court, *Buck v. Bell* (1927)
- 2/11 Supreme Court of Canada, *E (Mrs.) v. Eve* (1986)
- 2/13 Discussion of Online Lecture
*****Online Lecture Respondent Sheets Due Online by Class Time*****
- 2/18 READING WEEK
- 2/20 READING WEEK
- 2/25 Supreme Court of Canada, *Weatherall v. Canada* (1993)
U.S. Supreme Court, *Safford v. Redding* (2009)
- Individual Oral Arguments Part Two*
- 3/3 Supreme Court of Canada, *R v Jobidon* (1990)
- 3/5 Supreme Court of Canada, *R v Ewanchuk* (1999)
- 3/10 Supreme Court of Canada, *R v. J.A.* (2011)
- 3/12 Supreme Court of Canada, *Child/Family Services v. K.L.W.* (2000)
Supreme Court of Canada, *A.C. v. Manitoba* (2009)
- 3/17 Supreme Court of Canada, *Mclvor v. Canada* (2009)
U.S. Supreme Court, *Adoptive Couple v. Baby Girl* (2013)
- 3/19 Supreme Court of Canada, *Carter v. Canada* (2016)
- 3/24 Supreme Court of Canada, *Hunter v. Southam* (1984)
Supreme Court of Canada, *R v. Finley and Grellete* (1985)
- 3/26 Discussion of 2nd Online Lecture
*****2nd Online Lecture Respondent Sheets Due Online by Class Time*****
- 3/31 Supreme Court of Canada, *R v. Patrick* (2009)
Supreme Court of Canada, *R v. Tse* (2012)
- 4/2 Exam Review and Catch-up

*****Final Exam—Details TBA*****