

CAMOSUN COLLEGE
School of Arts & Science
Department

Political Science 212 – Winter 2004

Law and Politics

COURSE OUTLINE

**The Approved Course Description is available on the web
@<http://www.camosun.bc.ca/calendar/psc.php#104>**

*Ω Please note: This outline will not be kept indefinitely. It is recommended
students keep this outline for their records.*

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1. Instructor Information

- (a) Instructor - Ross Lambertson
- (b) Office hours - Monday, Tuesday, Thursday, 1:30-3:00, and by appointment
- (c) Location – Paul-228
- (d) Phone – 370-3373 Alternative (home) – 384-3390
- (e) E-mail – lamberts@camosun.bc.ca

2. Intended Learning Outcomes - At the conclusion of the course the student should be able to describe, explain, and critically assess:

- 1. The nature of law, its relationship to politics, and the study of law in political science.
- 2. Elements of the constitution, including the role of the judiciary.
- 3. The nature of human rights and some important pre-Charter human rights cases in Canada.
- 4. History and elements of anti-discrimination legislation – and a number of important legal cases.
- 5. History and elements of the Charter – and a number of important legal cases.
- 6. Both left-wing and right-wing critiques of the Charter and the judiciary.
- 7. Aboriginal rights – and some important legal cases.

3. Required Materials

Text: “Law and Politics – 2004” - a collection of readings for sale in the College bookstore.

4. Course Content and Schedule

Lectures: Tuesday and Thursday – 3:00-4:20 – Young 211.

5. Basis of Student Assessment (Weighting)

- (a) Assignments – one term paper, worth 40% of the final grade; this paper can be rewritten and resubmitted after your instructor has graded it. The higher of the two grades will be official.
- (b) Quizzes – three multiple choice tests, each worth 20%, for a total of 60%.
- (c) Exams – none during examination week.
- (d) Class participation – an optional 2%.

6. Grading System

The following percentage conversion to letter grade will be used:

A+ = 95 - 100%	B = 75 - 79%	D = 50 - 59%
A = 90 - 94%	B- = 70 - 74%	F = 0.0 - 49%
A- = 85 - 89%	C+ = 65 - 69%	
B+ = 80 - 84%	C = 60 - 64%	

LEARNING SUPPORT AND SERVICES FOR STUDENTS

There are a variety of services available for students to assist them throughout their learning. This information is available in the College Calendar, Registrar's Office or the College web site at <http://www.camosun.bc.ca>

ACADEMIC CONDUCT POLICY

There is an Academic Conduct Policy. It is the student's responsibility to become familiar with the content of this policy. The policy is available in each School Administration Office, Registration, and on the College web site in the Policy Section.

www.camosun.bc.ca/divisions/pres/policy/2-education/2-5.html

TENTATIVE TIME-TABLE

Tuesday	Jan	6	First class - Course introduction.
Thursday	Jan	8	Lesson 1 - Yates and Yates, "Introduction to law" (in "Law and Politics – 2002").
Tuesday	Jan	13	Lesson 2 - Yates and Yates, "Constitutional law."
Thursday	Jan	15	Lesson 3 - Greene, "Setting the Stage..."
Tuesday	Jan	20	Lesson 4 - Greene, "Setting the Stage" (cont.)
Thursday	Jan	22	Lesson 5- Greene, "Setting the Stage" (again)
Tuesday	Jan	27	Lesson 5 - Howe, "The Evolution of Human Rights Policy."
Thursday	Jan	29	Lesson 6 - Review - Pretest
Tuesday	Feb	3	TEST #1 - Lessons 1-6
Thursday	Feb	5	Lesson 7 - Antidiscrimination cases I - notes to be handed out.
Tuesday	Feb	10	Lesson 8 - Antidiscrimination cases II - notes to be handed out.
Thursday	Feb	12	NO CLASS - reading break
Tuesday	Feb	17	Lesson 9 – Antidiscrimination cases III - notes to be handed out.
Thursday	Feb	19	Lesson 10 - Dyck, "Civil Liberties and the Charter."
Tuesday	Feb	24	Lesson 11 - Charter cases I - notes to be handed out.
Thursday	Feb	26	Lesson 12 - Charter cases II - notes to be handed out.
Friday	Feb	27	TERM PAPER DUE – Office (P-228) – 11:00 A.M.
Tuesday	Mar	2	Lesson 13 – Charter cases III - notes to be handed out.
Thursday	Mar	4	Review - Pretest
Tuesday	Mar	9	TEST #2 – Lessons 7-13
Thursday	Mar	11	Lesson 14 - Morton and Knopff, "Introduction"
Tuesday	Mar	16	Lesson 15 - Morton and Knopff, "What's Wrong with the Charter Revolution....?"
Thursday	Mar	18	Lesson 16 - Bateman, "Rights Application Doctrine...."
Tuesday	Mar	23	Lesson 17 - Smith, "Ghosts Of The Judicial Committee of the Privy Council...."
Thursday	Mar	25	Lesson 18 - Mandel, "The Charter and Democracy."
Friday	Mar	26	PAPER REWRITE DUE – Office (P-228) – 11:00 A.M.
Tuesday	Mar	30	Lesson 19 – Brickey and Comack "The Role of Law In Social Transformation: Is a Jurisprudence Of Insurgency Possible?"
Thursday	Apr	1	Lesson 20 – Aboriginal Rights cases - notes to be handed out
Tuesday	Apr	6	Review - Pretest
Thursday	Apr	8	TEST #3 - Lessons 14 to 20

CLASSES

- Students are expected to read the material *before* the lectures so they will be ready to ask and answer questions.
- As much as possible, the classes should be a dialogue between the instructor and the students, with the instructor helping the students understand the readings, and responding to questions and arguments.
- The purpose of the classes will be: to explain the more difficult concepts; to look at things from other perspectives; to bring things up to date; to express disagreement with the readings; to give students a chance to ask questions, to evaluate, and to disagree

MULTIPLE-CHOICE TESTS

- VALUE - there are three multiple-choice tests, each worth 20%.
- DATE - See the timetable on page 2.
- CONTENT - The tests will be based upon the “Key Terms” listed in the “Lesson Notes” (handed out at the course progresses) and any other materials handed out in class.
- FORMAT - The multiple-choice tests will be done on special answer sheets (supplied by your instructor), which are marked by a computer. Please bring a soft-lead pencil and an eraser.
- AFTER - After each test you will be given the answers so that you will know immediately how well you have done. After the computer has marked the tests the grades will be posted outside your instructor’s door. Since the computer is not infallible, please check to ensure that you have been given the grade that you deserve.
- MISSED TESTS
- You are expected to write your tests at the scheduled times and place. A student will not be permitted to write at another time unless he/she has a reasonable excuse involving events beyond his/her control, such as illness, a death in the family, etc.
 - Should you miss a test, and have a reasonable excuse, please consult with your instructor in order to arrange a make-up test. This should normally be done within one week of missing your test.
 - A make-up test will normally not be a multiple-choice test, but will consist of a number of “Key Terms” that have to be defined and/or explained.

TERM PAPER

- VALUE - One term paper, worth 40% of your final grade.
- DUE - See the time-table in this course outline. Either hand it in personally, or slip it under your instructor's office door (P-228).
- WARNING - Any work handed in late without a *written* explanation of a reasonable excuse (i.e. illness, a death in the family, etc.) will be penalized.
- TOPIC - "The Law and Politics of Discrimination in Canada." Remember, in writing this paper you should be demonstrating how much you have learned from the readings in this course. This is *not* a research paper, so you do not have to bring in any other references.
- FORMAT - All term papers must be *at least* three to six typewritten pages, written in #12 font, preferably Times New Roman, with footnotes and a bibliography. (Refer to "Political Science Papers – Guide to Footnotes and Bibliography" – on reserve in the Camosun library).
- Note that the readings in this course have only limited bibliographical information. You are expected to find missing information (e.g. the name of the book's editor or author) and include this in your footnotes and bibliography.
- HELP - You may consult with your instructor before writing (bring him questions, a summary, or a rough draft).
- REWRITE - You may rewrite the paper if you are not satisfied with your mark. This version should be marked "REWRITE" and stapled to the original version. Note that you will not receive a better mark unless you pay attention to most or all of the critical comments on your first draft. However, you will certainly not lose points by attempting a rewrite; the higher of the two marks will be used.

EVALUATION

Your written work (except for your project report) will be graded as follows:

“A” level work (95-100% = A+ / 90-100% = A / 85-89% = A-)

1. AMOUNT OF WORK/RESEARCH - 8.5 to 10
 - the work is long enough (close to the maximum) and
 - it deals with all the prescribed reading materials (and additional research, if called for).
2. PRESENTATION (ORGANIZATION, GRAMMAR, SPELLING, PUNCTUATION, SYNTAX, FOOTNOTES, BIBLIOGRAPHY) - 8.5 to 10
 - the work is free or nearly free of elementary errors in spelling, punctuation, etc.,
 - the work is well organized, and
 - there are adequate footnotes, and a bibliography done according to the instructions.
3. UNDERSTANDING (BASED ON WHAT YOU SHOW ME) - 8.5 to 10
 - the student has demonstrated a superior understanding of all the prescribed materials.
4. IDEAS (INCLUDING CRITICAL ANALYSIS) - 8.5 to 10
 - the student has developed superior ideas.

“B” level work (84-80% = B+ / 75-79% = B / 70-74% = B-)

1. AMOUNT OF WORK/RESEARCH - 7 to 8
 - the work is not quite maximum length, or
 - the work deals with not quite enough of the prescribed reading materials.
2. PRESENTATION (ORGANIZATION, GRAMMAR, SPELLING, PUNCTUATION, SYNTAX, FOOTNOTES, BIBLIOGRAPHY) - 7 to 8
 - the work is at a high level, but there are still some errors in spelling, punctuation, etc., or
 - the work is well organized, but could be better, or
 - there are adequate footnotes, and a bibliography done according to the instructions, but they have not been done quite correctly.
3. UNDERSTANDING (BASED ON WHAT YOU SHOW ME) - 7 to 8
 - the student has demonstrated a high level of understanding of all the prescribed materials, but it could be better.
4. IDEAS (INCLUDING CRITICAL ANALYSIS) - 7 to 8
 - the student has developed some ideas that, although not yet superior, are at a high level.

EVALUATION (cont.)

“C” level work (65-69% = C+ / 60-64% = C)

1. AMOUNT OF WORK/RESEARCH - 6 to 6.5 out of 10.
 - the work is satisfactory, but fairly short, or
 - the work does not really cover enough of the required readings.

2. PRESENTATION (ORGANIZATION, GRAMMAR, SPELLING, PUNCTUATION, SYNTAX, FOOTNOTES, BIBLIOGRAPHY - 6 to 6.5 out of 10.
 - the work is satisfactory, but has too many elementary errors in spelling, punctuation, etc., or
 - the student misuses the apostrophe, or
 - the work is not well organized, or
 - there are few footnotes and bibliography; or they are not done correctly.

3. UNDERSTANDING (WHAT YOU SHOW ME) - 6 to 6.5 out of 10.
 - this work shows a satisfactory understanding of the material, but not much more than this; it is sometimes not clear or just plain wrong, or leaves out some important points.

4. IDEAS (INCLUDING CRITICAL ANALYSIS) - 6 to 6.5 out of 10.
 - the student has tried to develop some ideas, but they are not well-reasoned and/or they are not based on correct information.

“D” level work (50-59%)

1. AMOUNT OF WORK/RESEARCH - 5 to 5.5 out of 10.
 - the work is unsatisfactory, it is below minimum length, or
 - the work shows inadequate use of the mandatory readings.

2. PRESENTATION (ORGANIZATION, GRAMMAR, SPELLING, PUNCTUATION, SYNTAX, FOOTNOTES, BIBLIOGRAPHY - 5 to 5.5 out of 10.
 - the work is unsatisfactory; it is full of elementary errors, or
 - it is very poorly organized.

3. UNDERSTANDING (WHAT YOU SHOW ME) - 5 to 5.5 out of 10.
 - the work is unsatisfactory; the student has misunderstood several major points, or
 - has omitted several major points.

4. IDEAS (INCLUDING CRITICAL ANALYSIS)- 5 to 5.5 out of 10.
 - the student has made almost no attempt to develop ideas, or the ideas are inadequate.

EVALUATION (cont.)

“F” level work (below 50%)

1. AMOUNT OF WORK/RESEARCH - less than 5 out of 10.
 - the paper is below minimum length, or
 - the paper deals with less than half of the mandatory material.
2. PRESENTATION (ORGANIZATION, GRAMMAR, SPELLING, PUNCTUATION, SYNTAX, FOOTNOTES, BIBLIOGRAPHY) - less than 5 out of 10.
 - there are so many elementary errors that this is unacceptable, or
 - the student has committed an act of plagiarism or quasi-plagiarism.
3. UNDERSTANDING (WHAT YOU SHOW ME) - less than 5 out of 10.
 - this shows no real understanding of the main points.
4. IDEAS (INCLUDING CRITICAL ANALYSIS) - less than 5 out of 10.
 - there is no real attempt to develop any ideas.

All grades

5. FINAL GRADE: _____ out of 40.

- The FINAL GRADE is *not* an average of the four grades. It primarily based on the lowest grade of the first three criteria, multiplied by 4. (Your grade for “Ideas” will also be taken into consideration, although primarily for papers which are B+ or A level.)

- Your instructor sees the term papers as involving a set of hurdles, each of which is equally important. To receive a passing grade you must pass each one of these hurdles -- to receive an “A” you must do first-rate work at each level, to get a “B” you must do at least second-rate work at each level, and so forth. This is not the usual way of marking papers, but it can be defended on the basis that each student can rewrite his/her paper for a higher grade, and in doing so can concentrate upon improvements where they are most needed.

- Your paper should be a very carefully written draft, representing your best effort without detailed help from the instructor. When you get it back, you will receive comments about how to improve it, and you can decide whether or not you want to put in the extra work required to raise your grade. The process of writing a paper for this course should, therefore, be seen as involving an extended conversation between your instructor and yourself.

POL. SCI. 212 - LESSON NOTES - LESSON 1 - INTRODUCTION TO LAW

READING: Richard and Ruth Yates, Chapter 1 (“Introduction”) of *Canada’s Legal Environment*. This is the first reading in “Law and Politics - 2003,” which is for sale in the College bookstore.

KEY TERMS: Key terms marked with an asterisk (*) are either not mentioned in the reading, or not well explained. They will be explained in class.

law

- rule (norms of behaviour)
- imperative (obligatory)
- authoritatively recognized (see Hart, below)

legal theories:

1. natural law
 - St. Thomas Aquinas - law is social rules which do not violate the higher norms of natural law
 - natural law is discerned by religion and/or reason
 - natural law invalidates unjust human “laws”
2. positivist
 - Austin - law is the command of sovereign
 - Hart - law consists of primary (substantive) and secondary (procedural) rules, authoritatively recognized according to a fundamental secondary rule, the “rule of recognition.”*
 - no natural law can invalidate human law
3. legal realist - Holmes - law is whatever the judges say it is
 - the task of lawyers is prediction
 - prediction depends upon past cases, procedural rules, and the judges’ backgrounds
 - Frank - $R \times F = D$ or $R \times F \times JV = D$
(Rules x Facts x Judicial Values = Decision)*
4. critical legal
 - moves away from a discussion of what the law is to a discussion of what the law *does*.
 - the law is an instrument of “hegemony” by which the dominant class or classes maintain control over the rest of society.
 - usually connected to Marxist analysis*

5. feminist - builds on insights of critical legal theory

- emphasizes the ways in which the law supports the hegemony of male dominance (patriarchy)

function of
law

- to regulate social conduct, encouraging some kinds of behaviour and discouraging others

- liberal view* - the law in modern liberal-democracies provides protection from crime and an orderly way to engage in business, marriage, etc. In general, the law is neutral, benefiting all people equally.

- critical legal theory view - the law benefits the capitalist class more than the workers

- feminist theory view - the law benefits men more than women

types
of law

- either judge-made (common law) or legislated (statutory)

1. international law - e.g. International Bill of Rights (1948 Universal Declaration of Human Rights [UDHR], International Covenant on Civil and Political Rights, and International Covenant on Economic, Social, and Cultural Rights).*

2. municipal law - common law system (federal, nine provinces)
- civil law system (Quebec)

a. public law

i. constitutional - Constitution Act, 1867 (aka BNA Act)
- Charter of Rights and Freedoms, 1982
- other*

ii. criminal (Crown prosecutions)

iii. administrative*

b. private law (civil law) - torts
- contracts
- etc.