

**Political Science 3331G – Courts and the Constitution
Course Outline, Winter 2013**

Professor: Dr. Vuk Radmilovic

Lectures: Wednesday, 3:30-5:30, UCC 66.

Office: SSC 4162.

Office Hours: Tuesday, 3-4pm.

E-mail: vradmilo@uwo.ca

Contact Information: Professor will do his best to reply to e-mails within 48 hours (**excluding weekends**). Do note that university policy precludes the Professors and T.A.s from responding to email messages that were not sent from a Western email account.

Introduction:

This course investigates the Canadian constitution and the role that courts have played in interpreting it. Among the issues explored are: political, moral and historical foundations of the Canadian constitution; the nexus of written and unwritten rules that determine the constitution; the character and evolution of the division of powers between the federal and provincial governments; the role and function of judicial interpretation of the constitution; and the scope and the effect of judicial power in the wake of the introduction of the Charter of Rights and Freedoms.

Required Texts:

Robert J. Sharpe and Kent Roach. *The Charter of Rights and Freedoms*. (5th ed.). Irwin Law. 2013.

Students will be required to read a number of additional materials which will be available through the UWO library or through the OWL course page.

Evaluation:

- *Participation and Attendance (15%).*
Regular attendance is critical for achieving success in the class and ensuring an overall valuable experience in the course. Students are expected to be prepared for the class and to have completed their required readings before arriving to class. The students will also have opportunities to engage in discussions of a given week's topic(s). Course lectures and reading materials are designed to complement one another. Regular attendance and participation during classes is

essential for a successful completion of the course.

- *Midterm (20%) - HELD FEBRUARY 26TH IN CLASS.*
Midterm will occur in-class and it will last 2 hours. It will be composed of a number of short-answer and essay questions. Students will be provided guidance on how to prepare for the midterm during lectures.
- *Supreme Court Factum (25%) – DUE MARCH 19TH IN CLASS.*
Each student will be required to participate in a group project and write a mock submission to the Supreme Court on the constitutionality of the so-called Quebec Charter of Values. In it, students will be required to argue that the Quebec Charter of Values either infringes or fails to infringe the Canadian Charter of Rights and Freedoms. A copy of the Quebec Charter of Values, as well as samples of Supreme Court submissions, will be provided and posted on the course website.
Essays should be approximately 2500-3000 words (10-12 pages), excluding endnotes, parenthetical notes, and bibliography. Essays should be typed and double-spaced, using a standard 12 point font and standard (1"/2.54 cm) margins.
Further information about the assignment will be provided in class.
A penalty of 5% per day (including weekends) will be applied to late papers.

Important information about Plagiarism: *Your research paper must be your own work. If you refer to someone else's work, quote them, or borrow ideas, you must cite them! This outline includes a policy statement on plagiarism – read it and follow it. If you are in doubt as to what to cite, remember: in this case, more is better than less.*

*Papers must be submitted to Turnitin.com (through the course webpage on WebCT) electronically prior to submitting hard copies for grading. Students must attach the Turnitin.com submission receipt with their assignment **or the paper will not be marked.***

- *Final Exam (40%).*
Final exam will be composed of a number of short-answer and essay questions. Guidance on how to prepare for the final exam will be provided during the last week of classes.

Extensions:

Extensions will not be granted. Students are able to hand assignments in late subject to the stated policy above. However, where there are genuine and unavoidable family or medical circumstances, students may seek academic accommodation, as detailed below. If you fail to hand in an assignment, but are pursuing academic accommodation, **please**

advise your professor immediately.

A Note Regarding Computer Problems:

Students are expected to back up their written work and lecture/tutorial notes. Furthermore, students will be responsible for finding replacement lecture notes where they fail to back-up their files.

Academic Accommodation:

If a situation should arise where you require accommodation because of a medical or personal issue, Social Science Academic Counselling (located at SSC 2105/2114) is available to help you. You can talk to a counsellor, who can then pass along any recommendations for accommodation. Their contact information is:

Telephone: 519 661-2011
Recorded information: 519 661-2052
Fax: 519 661-3384
Email: ssaco@uwo.ca
Office hours: 9:30am - 4:00pm

This procedure means that you do not have to provide your instructor with any details of your situation, but ensures that the proper documentation has been provided. IT IS YOUR RESPONSIBILITY TO SPEAK WITH A COUNSELLOR AS SOON AS POSSIBLE AFTER AN ISSUE ARISES. Academic accommodation will ONLY be provided if you speak with an Academic Counsellor and provide them with documentation of your issue and if the issue is brought to their attention in a timely fashion. While academic accommodation may be warranted, students should not assume that a full week's extension will be granted. Instead, **the accommodation will reflect the seriousness of the situation**. For example, if a student produces medical documentation detailing that s/he was sick for two days, a two-day extension normally will be granted. Therefore students should submit their work accordingly, even if the academic accommodation process is still underway.

Class Schedule and Reading Assignments:

January 8th – Week 1: Introduction to the Course

Readings: None.

January 15th – Week 2: Introduction to important concepts; theorizing constitutionalism and judicial decision-making; sources of the Canadian Constitution.

Readings:

- Peter Hogg, Constitutional Law of Canada: pages 1-1 to 1-30. Available on the course website (OWL).

January 22nd – Week 3: Judicial Review of Federalism I

Readings:

- Samuel LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements and Tragedies of Nationhood* (Montreal/Kingston: McGill-Queen's University Press, 1996), pages 31-48 (Chapter 2 only). Available on the course website (OWL).

January 29th – Week 4: Judicial Review of Federalism II

Readings:

- Patrick Monahan, *Constitutional Law* (3rd edition; Irwin Law, 2006), **CHAPTER 7, The Courts and Canadian Federalism: From Watertight Compartments to Shared Responsibility, pages 231-252**. Available on the course website (OWL).
- *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837. Available on the course website (OWL).

February 5th – Week 5: Aboriginal Rights

Readings:

- Peter Hogg, *Constitutional Law of Canada*, pages 28-1 to 28-9; 28-20 to 28-59. Available on the course website (OWL).

February 12th – Week 6: Charter Rights – History and Interpretive Approaches.

Readings:

- Sharpe and Roach: Chapter 1.
- Sharpe and Roach: Chapter 3.

February 19th – Week 7: Reading Week. **NO CLASSES**

February 26th – Week 8: **MIDTERM**

March 5th – Week 9: Limitation and Override of Charter Rights.

Readings:

- Sharpe and Roach: Chapter 4.
- Sharpe and Roach: Chapter 5.

March 12th – Week 10: Remedial Discretion and Judicial Decision Making

Readings:

- Sharpe and Roach: Chapter 17.

MARCH 19th – Week 11: Freedom of Conscience and Religion **SUPREME COURT FACTUM DUE**

Readings:

- Sharpe and Roach: Chapter 8.

- Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6. Available on the course website (OWL).

MARCH 26th – Week 12: Democratic Rights

Readings:

- Sharpe and Roach: Chapter 11.

April 2nd – Week 13: Legitimacy of the Charter of Rights and Freedoms

Readings:

- Sharpe and Roach: Chapter 2.
- Peter W. Hogg and Allison A. Thornton, "The Charter Dialogue Between Courts and Legislatures." *Policy Options*, April 1999: 19-22. Available on the course website (OWL).
- F.L. Morton, "Dialogue or Monologue," *Policy Options*, April 1999: 23-26. Available on the course website (OWL).
- Vuk Radmilovic, "Governmental Interventions and Judicial Decision Making: Supreme Court of Canada in the Age of the Charter." *Canadian Journal of Political Science*, 46:2 (June, 2013): pp. 323-344. Available on the course website (OWL).

**APPENDIX TO UNDERGRADUATE COURSE OUTLINES
DEPARTMENT OF POLITICAL SCIENCE**

Prerequisite checking - the student's responsibility

"Unless you have either the requisites for this course or written special permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites."

Essay course requirements

With the exception of 1000-level courses, most courses in the Department of Political Science are essay courses. Total written assignments (excluding examinations) will be at least 3,000 words in Politics 1020E, at least 5,000 words in a full course numbered 2000 or above, and at least 2,500 words in a half course numbered 2000 or above.

Use of Personal Response Systems ("Clickers")

"Personal Response Systems ("clickers") may be used in some classes. If clickers are to be used in a class, it is the responsibility of the student to ensure that the device is activated and functional. Students must see their instructor if they have any concerns about whether the clicker is malfunctioning.

Students must use only their own clicker. If clicker records are used to compute a portion of the course grade:

- the use of somebody else's clicker in class constitutes a scholastic offence,
- the possession of a clicker belonging to another student will be interpreted as an attempt to commit a scholastic offence."

Security and Confidentiality of Student Work (refer to current *Western Academic Calendar* (<http://www.westerncalendar.uwo.ca/>))

"**Submitting or Returning Student Assignments, Tests and Exams** - All student assignments, tests and exams will be handled in a secure and confidential manner. Particularly in this respect, leaving student work unattended in public areas for pickup is not permitted."

Duplication of work

Undergraduate students who submit similar assignments on closely related topics in two different courses must obtain the consent of both instructors prior to the submission of the assignment. If prior approval is not obtained, each instructor reserves the right not to accept the assignment.

Grade adjustments

In order to ensure that comparable standards are applied in political science courses, the Department may require instructors to adjust final marks to conform to Departmental guidelines.

Academic Offences

"Scholastic offences are taken seriously and students are directed to read the appropriate policy, specifically, the definition of what constitutes a Scholastic Offence, at the following Web site:

<http://www.uwo.ca/univsec/handbook/appeals/scholoff.pdf>."

Submission of Course Requirements

ESSAYS, ASSIGNMENTS, TAKE-HOME EXAMS **MUST** BE SUBMITTED ACCORDING TO PROCEDURES SPECIFIED BY YOUR INSTRUCTOR (I.E., IN CLASS, DURING OFFICE HOURS, TA'S OFFICE HOURS) OR UNDER THE INSTRUCTOR'S OFFICE DOOR.

THE MAIN OFFICE DOES NOT DATE-STAMP OR ACCEPT ANY OF THE ABOVE.

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. <http://www.uwo.ca/univsec/handbook/>

Students registered in Social Science should refer to <http://counselling.ssc.uwo.ca/> <http://counselling.ssc.uwo.ca/procedures/havingproblems.asp> for information on Medical Policy, Term Tests, Final Examinations, Late Assignments, Short Absences, Extended Absences, Documentation and other Academic Concerns. Non-Social Science students should refer to their home faculty's academic counselling office.

Plagiarism

"Plagiarism: Students must write their essays and assignments in their own words. Whenever students take an idea, or a passage from another author, they must acknowledge their debt both by using quotation marks where appropriate and by proper referencing such as footnotes or citations. Plagiarism is a major academic offence." (see Scholastic Offence Policy in the Western Academic Calendar).

Plagiarism Checking: "All required papers may be subject to submission for textual similarity review to the commercial plagiarism detection software under license to the University for the detection of plagiarism. All papers submitted for such checking will be included as source documents in the reference database for the purpose of detecting plagiarism of papers subsequently submitted to the system. Use of the service is subject to the licensing agreement, currently between The University of Western Ontario and Turnitin.com (<http://www.turnitin.com>)."

Multiple-choice tests/exams: "Computer-marked multiple-choice tests and/or exams may be subject to submission for similarity review by software that will check for unusual coincidences in answer patterns that may indicate cheating."

Note: Information excerpted and quoted above are Senate regulations from the Handbook of Scholarship and Academic Policy. <http://www.uwo.ca/univsec/handbook/>

PLAGIARISM*

In writing scholarly papers, you must keep firmly in mind the need to avoid plagiarism. Plagiarism is the unacknowledged borrowing of another writer's words or ideas. Different forms of writing require different types of acknowledgement. The following rules pertain to the acknowledgements necessary in academic papers.

A. In using another writer's words, you must both place the words in quotation marks and acknowledge that the words are those of another writer.

You are plagiarizing if you use a sequence of words, a sentence or a paragraph taken from other writers without acknowledging them to be theirs. Acknowledgement is indicated either by (1) mentioning the author and work from which the words are borrowed in the text of your paper; or by (2) placing a footnote number at the end of the quotation in your text, and including a correspondingly numbered footnote at the bottom of the page (or in a separate reference section at the end of your essay). This footnote should indicate author, title of the work, place and date of publication, and page number.

Method (2) given above is usually preferable for academic essays because it provides the reader with more information about your sources and leaves your text uncluttered with parenthetical and tangential references. In either case words taken from another author must be enclosed in quotation marks or set off from your text by single spacing and indentation in such a way that they cannot be mistaken for your own words. Note that you cannot avoid indicating quotation simply by changing a word or phrase in a sentence or paragraph which is not your own.

B. In adopting other writers' ideas, you must acknowledge that they are theirs.

You are plagiarizing if you adopt, summarize, or paraphrase other writers' trains of argument, ideas or sequences of ideas without acknowledging their authorship according to the method of acknowledgement given in 'A' above. Since the words are your own, they need not be enclosed in quotation marks. Be certain, however, that the words you use are entirely your own; where you must use words or phrases from your source, these should be enclosed in quotation marks, as in 'A' above.

Clearly, it is possible for you to formulate arguments or ideas independently of another writer who has expounded the same ideas, and whom you have not read. Where you got your ideas is the important consideration here. Do not be afraid to present an argument or idea without acknowledgement to another writer, if you have arrived at it entirely independently. Acknowledge it if you have derived it from a source outside your own thinking on the subject.

In short, use of acknowledgements and, when necessary, quotation marks is necessary to distinguish clearly between what is yours and what is not. Since the rules have been explained to you, if you fail to make this distinction your instructor very likely will do so for you, and they will be forced to regard your omission as intentional literary theft. Plagiarism is a serious offence which may result in a student's receiving an 'F' in a course or, in extreme cases in their suspension from the University.

*Reprinted by permission of the Department of History

Adopted by the council of the Faculty of Social Science, October, 1970; approved by the Dept. of History August 13, 1991

Accessibility at Western: Please contact poliscie@uwo.ca if you require any information in plain text format, or if any other accommodation can make the course material and/or physical space accessible to you.

SUPPORT SERVICES

Students who are in emotional/mental distress should refer to Mental Health@Western

<http://www.uwo.ca/uwocom/mentalhealth/> for a complete list of options about how to obtain help.