

FEDERAL INDIAN LAW
FALL 2017
TUESDAYS AND THURSDAYS 10:30-11:50 AM
SYLLABUS

Professor Ezra Rosser
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Overview:

This course explores the principles, doctrines, and history underlying the legal relationship between the United States and Indian tribes; the powers of tribal governments; economic development in Indian country; the role of tribal custom in tribal law; the relevance of developing international indigenous law to Indian nations; and introduces some of the ongoing debates in Indian legal scholarship.

Course Materials:

David H. Getches, Charles F. Wilkinson, Robert A. Williams, Jr., Matthew L.M. Fletcher & Kristen Carpenter, *Federal Indian Law: Cases and Materials* (7th ed. 2016).

Limited additional readings, available for download on myWCL.

Expectations:

The expectation is that you will come to class, on time, prepared to discuss the readings, and that you will participate actively in discussions. Attendance will be taken and if you miss too many classes, I will ask you to withdraw from the class, as required by the ABA. Although there can be limited exceptions, in general I do not record classes and I do not permit unauthorized recording of the class. You are also expected to check your email for course related announcements. You can expect that I will do my best to answer any questions you have during class or in the subsequent class. If any questions do arise but you thought of them outside of class, email me.

Evaluation:

The class will be graded by means of a final take-home exam, handed out on the last class and due two weeks later. Finally, I reserve the right to bump up or down final grades bordering between two grades up for classroom participation and involvement, for example, a borderline B+/A- can become an A- for classroom participation.

Learning Outcomes (section required to be included in syllabi by the ABA):

- Students will learn the basics of Federal Indian Law necessary to practice law in the field.
- Students will improve their logical reasoning when faced with alternative fact patterns or rules.
- Students will become better, more concise writers.
- Students will be able to put themselves into the shoes of different parties, understanding how parties to a dispute will view things from their unique perspectives.
- Students will become interested and perhaps even enthusiastic about Federal Indian Law.

Supplemental Indian Law Activities:

I am happy to supervise Indian related ULWR articles, externships with Indian law organizations (I can help place you with these), and independent studies/projects, so do not hesitate to contact me if you would like to pursue such out-of-class opportunities. Additionally, the school often sponsors an alternative spring break trip to the Navajo Nation, which is not associated with this class but is a valuable experience.

READINGS

I. Introduction

p1-43 (skim 1-31, read closely 31-43)

Introduction to tribes and different perspectives on Indian law.

II. Doctrine of Discovery

p45-84

Historical influences on Indian law and *Johnson v. McIntosh*.

p71-84 (review), p1085-1100

Comparative ideas on doctrine of discovery, *Mabo*.

III. Formative Years (1789-1871)

p85-116

Treaty traditions and perspectives.

p116-153

Cherokee Nation v. Georgia and *Worcester v. Georgia*.

p154-166, p942-953

Reserved rights and canons of construction, *Winans* and *Mille Lacs*.

IV. A Century of Shifting Policy

p167-194

Crow Dog, *Kagama*, and *Sandoval*. Plenary power and guardian/ward.

p194-216

Allotment and *Lone Wolf*.

p216-247

Indian Reorganization Act and Termination Era. Felix Cohen.

p247-277, p1030-1047

Self-Determination, *Morton v. Mancari*, *Rice v. Cayetano*, and *Office of Hawaiian Affairs*.

V. Federal-Tribal Relationship

p279-320

Shoshone Tribe, *Sioux Tribe*, *Montana*, *Tee-Hit-Hon*, and *Dann*.

p320-338; Sarah Krakoff, *A Regretful Postscript*, *Tulsa Law Review* (2005)

Sherrill.

p338-361; Perspectives on Indian Law Summary
The Actual State of Things and *Dion*.

p361-392, p402-413
Seminole, Navajo Nation, Cobell, Sioux Nation, and Jicarilla.

VI. Tribal Sovereignty

p415-465 (likely we will not finish everything and may need to continue into next class)
Williams v. Lee, McClanahan, Talton v. Meyes, Wheeler, ICRA, Martinez, Kiowa, and Michigan v. Bay Mills

p465-507; Optional: Customary Law & Displacing the Judiciary
Tribal justice systems and customary law

p686-718
ICWA, Mississippi Band of Choctaw Indians v. Holyfield, and Adoptive Couple

VII. Limits of Tribal Jurisdiction

p509-531, p531-542 (skim), p543- 574 (we may need to continue into next class)
Solem, definition of Indian Country, *Nebraska v. Parker*, criminal jurisdiction, *U.S. v. Antelope, U.S. v. Bryant, PL-280, Bryan*

p574-599 (plus review materials from last class)
Oliphant, Duro, and Lara Limitations on non-member jurisdiction.

VIII. Taxation and Regulation

p601-631
Civil regulatory and adjudicatory jurisdiction, *Montana, Merrion v. Jicarilla Apache, National Farmers Union, and A-1*.

p631-653
Nevada v. Hicks and Plains Commerce.

p653-686
White Mountain v. Bracker, Oklahoma Tax Commission v. Potawatomi, Cotton Petroleum, and Montana v. Blackfeet

IX. Tribal Economic Development and Prior Rights

p719-763
Harvard Project and gaming, *Cabazon, Seminole Tribe, Bay Mills*

p815-842, 859-864, 882-884
Winters, Arizona v. California, Adair, and water marketability

p957-978 (and catch up)
ANCSA, Venetie, and John v. Baker

Ahistorical Indians (skim 438-521)
Tribal environmental regulation and federal oversight.

X. International Law

p1100-1028
Indigenous rights and international law.