

American Indian Law
Law A565 A, B, C - 4 Credits Winter 2020

Professor

Eric D. Eberhard, JD, LL.M

Office Hours: By Appointment

American Indian Law
T and TH 1:30-3:20 PM
William H. Gates Hall Room 118

Course Description. This course examines the history, from 1789, of vacillating federal laws and policies towards Indians, current federal law and policy. We review and analyze judicial trends in Indian cases that define the federal trust responsibility toward Indian tribes, tribal powers of self-government, the authority of tribal courts, federal supremacy (preemption) over state law in Indian country, tribal/state/federal judicial and legislative jurisdiction in Indian country, criminal and civil jurisdiction, Indian religious freedom, Indian water rights, hunting and fishing rights, and the protection of children and families.

Learning Objectives:

This seminar is intended to:

- Provide you with a basic understanding of the foundational laws and policies governing the American Indian peoples in the United States and the authority and rights of those people to be self-governing.
- Strengthen your core skills in critical thinking, legal research, analysis and writing.

Required Texts, Additional Course Materials and Reading Assignments:

Required Text:

WILLIAM STRUNK, JR., THE ELEMENTS OF STYLE: CLASSIC EDITION 2018 (Richard De A'Morelli ed., 2018)) (ISBN 978-1-64399-000-2)

ROBERT T. ANDERSON, ET AL., AMERICAN INDIAN LAW: CASES AND COMMENTARY (2015 4th ed.) (ISBN 978-0314290236)

Additional Course Materials

Depending on developments in the law during the quarter, some course materials may be made available in PDF format and will be posted on TWEN in the Course Materials Folder when they become available.

Reading Assignments and Written Questions

The reading assignments for each class are listed below. All assigned reading is required. Class participation is required. You should be prepared to discuss the material in class every day. Reading assignments are sequential and for the dates indicated. **On or before noon on Monday of each week during the quarter you are required to submit to me via e-mail two questions you have based on the reading assignments for that week.** The questions should be based on the reading for that week. They can be related to a specific holding in a case, a comparison of one case to another, the differences in the majority and dissenting opinions, the burden of proof of a party to a case, the context in which the court decided the case, how the case fits into the historical arc of federal Indian law and the governing precedents, or similar inquiries

Attendance

I assume that you are in the class because of a desire to learn the law involved and that you will attend and participate accordingly. Reading the assignments is required. Class participation and preparation are important and will be a factor in your final grade. With a few exceptions, the format will be discussion as opposed to lecture. Attendance will be checked each week. If you are ill or cannot attend a class for any reason, please notify me by e-mail in advance whenever possible and as soon as possible after the class if prior notice is not possible. We will adhere to the ABA standards for attendance.

E-mail

I will communicate with you throughout the quarter by e-mail. Consistent with the Rules of Professional Conduct, it is your responsibility to check your e-mail regularly and to respond in a timely way to e-mail when appropriate. I will use e-mail to distribute material or to advise you that new material is available on the TWEN site for the class. I will also use e-mail to notify you of any last-minute changes for a particular class or to schedule appointments to meet with you. If you would like to schedule an appointment to meet with me please let me know before or after class or by e-mail.

Disability-Related Needs

I want to make sure that you can attend class and do so comfortably and conveniently.

If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but are not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 011 Mary Gates Hall or 206-543-8924 or uwdrs@uw.edu or disability@uw.edu DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

Religious Accommodations

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at [Religious Accommodations Policy](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) (<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/>).

Accommodations must be requested within the first two weeks of this course using the [Religious Accommodations Request form](https://registrar.washington.edu/students/religious-accommodations-request/) (<https://registrar.washington.edu/students/religious-accommodations-request/>)

Cell Phones and Computers

Cell phones should be turned off in the classroom.

Computers should only be used to take notes during the discussion in class or to access the materials for the course.

Course Evaluation

Course evaluations are available online during the last full week of classes. Class time will be made available on **March 10th** for completing your evaluation. Please bring a laptop or mobile device to class on this date to participate in the evaluation.

Guests and Visitors

Guests and visitors are welcome to observe the class with my prior approval.

Papers

This course requires you to do the research and writing necessary to present and defend a thesis on a topic in Indigenous law. Papers will be graded based upon the degree to which the topic lends itself to original, rigorous analysis; the quality of the analysis; the research conducted and applied; and the basic requirements for legal writing. I will suggest possible topics as we discuss the materials for each class and I will confer with you about the suitability of your topic, but you should select a topic that interests you first. I will suggest additional reading material to assist you in selecting a topic for your paper or to assist you in doing the research for your paper.

Your paper must reflect your original research and writing – it should not be a paper prepared for another class or purpose.

In general, your paper should follow the format for a case note. On **January 16th** we will devote most of the class time to a discussion of the case note format, how to select a case that you would like to use, the steps for development of a final paper and some of the basics of writing as discussed in *The Elements of Style* by William Strunk, Jr.

Papers should not be **less** than 15 pages and must not be **more** than 20 pages in length, including a bibliography or footnotes, but excluding the title page. MJ degree candidates may use a bibliography that is consistent with the requirements of the Chicago Manual of Style. JD and LL.M. students must use footnotes that conform to the Bluebook. Footnotes are an important part of legal writing and analysis. A bibliography or endnotes are not acceptable for JD and LL.M students.

The title page should include your name, the title of the paper, the name of the course and the date on which it is submitted. Pages should be numbered. Text should be double spaced, 12-point font with one inch margins. Footnotes should be in 10-point font and single spaced.

Primary source materials such as judicial opinions, statutes and regulations should be read and analyzed rather than referenced based on their inclusion in a law review article. Ideas that are not your original thinking should be properly attributed.

Be sure you proofread your paper carefully and use available software to check spelling and grammar. Use a dictionary and/or a thesaurus to check proper usage of words and terms if you are unsure of their meaning.

Wikipedia, AmJur and CJS are not acceptable sources of authority and should not be cited.

Your paper topic is due on or before **January 28th**. On **February 11th** we will devote the class time to a writing workshop where you will present your draft thesis to the class and discuss it. A detailed outline of your paper must be submitted to me by e-mail on or before **February 25th at 5:00 PM**. Final papers must be submitted to me by e-mail on or before **March 20th at 5:00 PM**.

Grades

Grades will be based on your paper, your preparation for and participation in class, the questions you submit in writing each week, and your attendance.

The paper will count for up to 60 points:

Complexity of topic and issue addressed	10 points
Research quality/quantity	15
Writing – grammar, spelling, citation form, style	15
Analysis of issues, application of research, conclusion	20

Participation in discussions during class will be weighed based on quality, not quantity, and will include questions asked, issues raised, arguments presented and discussions joined. Class participation and attendance will count for up to 40 points toward the final grade.

Reading Assignments

Unless otherwise indicated, the reading assignments are to the casebook and 2019 Supplement

Week 1 – January 7th and 9th – Course Introduction; Early History: Federalism and Tribes; Early Statutes *Johnson v. M'Intosh*; *Cherokee Nation v. Georgia*; *Worcester v. Georgia*.

Jan. 7th Read pages 1-6; **Supp. p.1**; 15-48

Jan. 9th Read pages 48-89

Week 2 – January 14th and 16th

Jan. 14th Read Matthew L.M. Fletcher, *The Iron Cold of the Marshall Trilogy*, 82 N. D. L. REV. 627 (2006) (PDF)

Jan. 16th Read *The Elements of Style* pages 5-106

Week 3 – January 21st and 23rd Experiments in Federal Policy; Allotments, *Lonewolf v. Hitchcock*; *U.S. v. Winans*; Indian Citizenship; Indian New Deal; Termination; Self-Determination, Federal Power

Jan. 21st Read pages 89-127; **Supp. p 1**;

Jan. 23rd Read pages 127-163, 165-170

Week 4 – January 28th and 30th – Abrogation of Treaty Rights; *Menominee v. U.S.*; *U.S. v. Dion*; **General Federal Statutes; Equal Protection Limits; *Morton v. Mancari*; *Tee-Hit-Ton***

Paper Topics are Due January 28th

Jan. 28th Read pages 170-192; **Supp. P.1.**

Jan. 30th Read pages 192-218

Week 5 – February 4th and 6th – Property Rights; Takings; Definition of Tribe; Indian Country (Paper Topics and Draft Thesis Are Due)

Feb. 4th Read pages 218-230; 250-258; 268; **Supp. 2-11**

Feb. 6th Read pages 271-295, **Supp. 5-11**

Week 6 – February 11th and 13th – Criminal Jurisdiction; P.L.83-280; Tribal Sovereignty; *Talton v. Mayes*; *Wheeler*; **Indian Civil Rights Act; *Santa Clara Pueblo v. Martinez***

Feb. 11th **Writing Workshop – Present Thesis**

Feb. 13th Read pages 307-351; **Supp.11-15**; 408-410

Week 7 – February 18th and 20th – Tribal Sovereign Immunity; State-Tribal Disputes Over Jurisdiction, P.L. 83-280; *White Mountain Apache*; *New Mexico v. Mescalero Apache*; *California v. Cabazon Band*

Feb. 18th Read pages 353-362; **Supp. 15-16**; 391-417;

Feb. 20th Read pages 417-453 **Supp. 16**

Week 8 –February 25th and 27th - *Cotton Petroleum* and Notes; Indian Child Welfare Act; Tribal Jurisdiction Over Non-Members

Detailed paper outlines are due on February 25th

Feb. 25th Read pages 454-462; **Supp. 16-17**; 486-520; **Supp. 17-20**;

Feb. 27th Read pages 521-554; 567-574

Week 9 –March 3rd and 5th (Course Evaluation) Tribal Jurisdiction; Hunting and Fishing Rights

Read pages 574-585; 590-594; 668-683; **Supp. 22-26**

Week 10 –March 10th – Class Wrap-Up and Course Evaluation

Papers are Due on March 20th at 5:00 P.M. and should be submitted by e-mail to ee23@uw.edu