

# INDIAN LAW

Fall, 2007  
Professor Mary C. Wood

## Syllabus

**Time:** MW, 2:30 – 3:45 p.m.

**Text:**

Getches, Wilkinson, and Williams: Federal Indian Law, 5d., West.

Supplemental material (class handouts or library reserve).

Handouts will be available in class. If a student misses a class, she or he is responsible for acquiring any handouts for that class. A master set of all handouts will be maintained at Jill Forcier's desk, 3rd floor.

**Supplemental reading and reference sources (useful for study, not required):**

Canby, William, American Indian Law (nutshell series).

Deloria, Vine, American Indians, American Justice.

Handbook of Federal Indian Law (2005).

**Attendance:**

Attendance is mandatory, and **unexcused absences will affect the final grade received in the course**. Students will be expected to maintain a record of attendance for submission at the end of the semester. Each student may have three unexcused absences without affecting his/her grade, however every unexcused absence thereafter **will** affect the grade by lowering the student's overall score in the class by 5% (for each absence). Excused absences will not affect the grade. Excused absences include absences due to illness, compelling family needs, work demands and job interviews. Attending conferences, doing outside extracurricular work and vacationing are not excused absences.

**Class project:**

Students will perform one graded class project (research paper) during the semester. Projects focus on contemporary issues facing tribes.

Students will work together in panels to share research and formulate analysis. Each student must individually prepare a paper setting forth his/her findings and legal conclusions. The paper is worth 90% of the course grade and must be 15-20 double spaced pages. Panels will make presentations to the class at the end of the semester. The presentation will be worth 10% of the course grade.

**Class participation:**

While not required, class participation is greatly encouraged. Students will receive extra credit for significant contribution to class discussion. This extra credit can raise a student's grade if his/her final score falls between two grades.

**Grade:**

The final grade will be based on the project paper (90%) and the class presentation (10%). As noted above, class participation and attendance can affect the final grade.

**TOPICS/ASSIGNMENTS**

**PART I: INTRODUCTION AND HISTORICAL UNDERPINNINGS OF FEDERAL INDIAN LAW**

**Class #1**

Topic:

1. Introduction to Indian law

Assignment:

Text, pp. 1-37 (skim only)

**Class #2**

Topic:

1. Colonialist underpinnings of Indian law: The discovery doctrine
2. Initial judicial conceptions of native nations: Johnston v. McIntosh

Assignment:

Text, pp. 41-52; 62-71

**Class #3**

Topic:

1. The treaty years and initial Indian policy
2. The Trade and Intercourse Acts
3. Removal/reservation policy
4. Cherokee Nation v. Georgia

Assignment:

Text, pp. 84-112

**Discussion questions:**

1. Were the Trade and Intercourse Acts designed to protect the autonomy of tribes, or destroy their separatism?
2. How did the government delineate reservations, and what consequences persist today?

**Class #4**

Topic:

1. Worcester v. Georgia
2. The status of treaties in the law

Assignment:

Text, pp. 112-139

**Class #5**

Topic:

1. Assimilation policy
2. Shifting judicial conceptions of tribal sovereignty: from Ex Parte Crow Dog to Kagama to Sandoval
3. Breaking up tribal land holdings: the General Allotment Act

Assignment:

Text, pp. 140-165

**Class #6**

Topic:

1. The General Allotment Act, continued
2. The pendulum shifts: the Indian Reorganization Act
3. The pendulum swings again: the period of Termination Policy
4. And back: the current era of Self-Determination

Assignment:

Text, pp. 165-176, 186-207; 216-226

**Class #7**

Topic:

1. The status of Indian nations in the courts: contrasting Lone Wolf v. Hitchcock and Morton v. Mancari
2. The scholarly debate over appropriate conceptions of native nations

Assignment:

Text, pp. 182-84; 226-234

Class exercise

**PART II: THE FIRST ATTRIBUTE OF SOVEREIGNTY: THE NATIVE  
LAND BASE AND PROPERTY RIGHTS**

**Class #8**

Topic:

1. The first attribute of sovereignty: property rights
  - a. Nature of Indian title

Assignment:

Text, pp. 258-281

**Class #9 - CLASS CANCELLED DURING REGULAR SESSION – attend First Rennard Strickland Lecture Series (time, place to be announced)**

**Class #10**

Topic:

1. Property rights continued
  - a. Compensation for Indian lands and property rights taken by government
  - b. Equitable claims for land
  - c. International dimensions

Assignment:

Text, pp. 281-309

**Class #11**

Film, Sacred Sites

**PART III: THE SECOND ATTRIBUTE OF SOVEREIGNTY: SELF-GOVERNANCE AND TERRITORIAL JURISDICTION**

**Class #12**

Topic:

1. The federal-tribal relationship: a two-edged sword
  - a. Federal control over Indian nations: the plenary power doctrine and treaty abrogation

Assignment:

Text, pp. 315-340

**Class #13**

Topic:

1. The federal-tribal relationship continued:
  - a. the contours of the federal trust responsibility
    - i. Executive branch

Assignment:

Text, pp. 340-365

**Class #14**

Topic:

1. The federal-tribal relationship continued:
  - a. the contours of the federal trust responsibility
    - i. Congressional branch

Assignment:

Text, 365-76

**Class #15**

Working session for papers (no class)

**Class #16**

Topic

1. Inherent sovereignty of Indian Nations and self-governance
2. Territorial sovereignty and its limits

Assignment:

Text, 377-390; 414-16

**Class #17**

Topic:

1. Sovereignty in a complex modern form, continued
  - a. PL-280 and its legacy of confusion
  - b. Tribal control over non-Indians

Assignment:

1. Text, pp. 492-520; 537-541

**Class #18**

Topic:

1. The limits of state jurisdiction:
  - a. Sovereignty as a buffer to state incursions
  - b. Federal preemption as a buffer to state incursions

Assignment:

Text, 416-18; 554-565; 579-586

**Class #19**

Topic:

1. Sovereignty continued
  - a. Conflict between state and tribal jurisdiction: the Brendale case

**Class exercise**

Assignment:

Read Brendale v. Yakima Indian Nation, 492 U.S. 408 (1989); text pp. 550-54; (notes 3-6)

**PART IV: THE THIRD ATTRIBUTE OF SOVEREIGNTY: ECONOMIC VIABILITY**

**Class #20**

Topic:

1. The Columbia River Salmon: treaty allocation, regulation, and management

Assignment:

none: in-class video

**Class #21**

1. The Columbia River Salmon: treaty allocation, regulation, and management, continued
  - a. regulation of tribal fishing: the Puyallup cases
  - b. defining the tribal harvest right: Washington Passenger Fishing Vessel

Assignment:

1. Text, pp. 856-876

**Class #22**

Topic:

1. The Columbia River Salmon: treaty allocation, regulation, and management, continued
  - a. Environmental protection of treaty resources

Assignment:

Mary Christina Wood, *Restoring the Abundant Trust: Tribal Litigation in Pacific Northwest Salmon Recovery*, 36 ENVIRONMENTAL LAW REPORTER 10163 (2006).

**PART V: MODERN ISSUES FACING TRIBES**

**Class #23 – Working session**

**Class #24 – Tribes as Trustees Again**

**Class #25 - #28**

Panel presentations (to be scheduled)

All **papers are due** in the administration office by 4:00, Wednesday, Nov. 28. Late papers will receive a penalty point deduction.

**Class #29 – reserved for speaker (floating date – will be announced)**