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# Property Law

CML 1108 C

[jeremydebeer.ca/teaching/property](http://jeremydebeer.ca/teaching/property)

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**A contemporary twist on this staple course in the law school curriculum, our introduction to property excites students with questions that connect foundational principles and real-world problems.**

Who may own human body parts? What's proprietary about news or sports scores? How does patent ownership impact access to medicine? Does property law adequately address problems of homeless and poverty? What is a cyber-trespass? Are racist trust funds illegal? When did women win rights to a fair share of family property? Those topics are in addition to traditional core issues of real and personal property, like boundaries, possession, estates, future interests, trusts and Aboriginal perspectives on property. Using Canada's leading property law casebook, equal attention is paid to conceptual and doctrinal aspects of the law. Emphasis is placed on the analytical skills required for legal practice, without losing sight of public policy and social justice.

My philosophy of teaching can be summarized in one word: excitement. Everything that happens in and outside of my classroom is designed to excite students about the subject they are studying. Excitement inspires students to explore as many aspects of their chosen field as possible, individually as well as collectively with their peers, and to share their passion with others. Engaging excited students helps them to solve real-world issues, not recite facts. To harness creative skills, not set routines. Read more about my teaching philosophy at [jeremydebeer.ca/about/teaching/](http://jeremydebeer.ca/about/teaching/).

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FTX 302 Norton Rose Classroom

Mondays\* 16:00 – 17:50

Wednesdays 08:30 – 9:50

Fridays 11:30 – 12:50

\* Sep 16, 30, Oct 21, 28, Nov 11, 18, 25, Dec 2

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Phone: 613-562-5800 ext 3169

Office Hours: Anytime, by appointment.

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## Friday, September 6

### **The Magical Mystery Tour:**

An introduction to Professor de Beer's introduction to the law of property. Read the full syllabus, and surf the [course webpage](#).

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## Wednesday, September 11

### **The Properties of Property:**

What is "property"? We'll ask this question while studying the Australian High Court's decision in *Yanner v Eaton*. Read pages 1-19 in the casebook.

## Goals

The overarching objective of this course is to introduce you to the basics of property law in an exciting and engaging way, so that you'll want to learn more about it throughout law school and your professional career. So, we:

**1. Confront the meaning of and justifications for “property.”** The theoretical “what” and “why” questions may seem practically unimportant at first. They are not. We'll see many concrete examples of cases that turn on judges' views about such matters, or statutes that embody legislators' attitudes about property's philosophical purposes. Solid theoretical understanding also encourages critical evaluation and positive legal reforms.

**2. Introduce key legal rules and principles.** An introductory course can't exhaustively cover all the interesting and important property issues, but it can lay a foundation for future study and practice in wide variety of legal fields, in provinces across Canada or even other common law countries. That's what we're trying to accomplish through this course.

**3. Develop some property-based practice skills.** You will not learn the intricate logistics of closing real estate transactions or drafting wills. But you will get to dig into some documentary analysis and even legal drafting, as well as practical litigation strategy. We will stress a general approach to the practice of property law in everything that we do.

**4. Evaluate law's impacts on social justice.** This involves critical analysis of property-related issues of race, class, and gender (all defined broadly). We examine aboriginal, feminist and other critical perspectives on the law. Doing so requires exploration of linkages between property law and other disciplines. It also highlights linkages between property and other courses you'll study in first-year law school.

## Methods

Everyone learns differently. Some people are visual, or hands-on; others like lectures. Discussion works in certain cases, but sometimes reading is preferred. We use various teaching methods to suit different students' styles.

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### Friday, September 13

#### **Imagine No Possessions:**

Why is respect for private property so predominant in Western civilizations?

Today's readings on pages 29-41 are about justifying property rights.

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### Monday, September 16

#### **Trick or Treaty:**

This documentary profiles Indigenous leaders in their quest for justice as they seek to establish dialogue with the Canadian government.

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### Wednesday, September 18

**Second Hand News:** How does the law deal with novel claims to ownership of things like the news or sports spectacles? *INS v AP* and *Victoria Park Racing* on pages 41-54 cover that topic.

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### Friday, September 20

#### **Somebody Else's Body:**

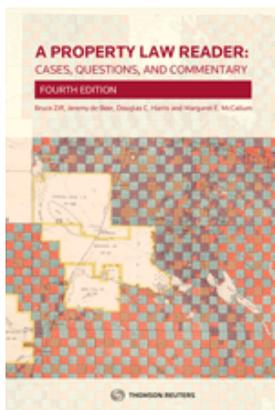
Do you *own* your own body? Could somebody else? Read about John Moore's famous case on pages 54-71.

Classes cover distinct but interconnected topics, organized into thematic lessons that cover the basic principles of property law. To put everyone on the same page—those who are prepared, and even those who aren't—most classes begin with a brief introductory overview the day's topic. That's followed by in-depth analysis, small group conversations and plenary discussion of the cases and other materials we're tackling during that class. Some classes also involve exercises in legal drafting, moot debates and other activities.

Music playlists, film clips and other popular culture references routinely reinforce key points and learning objectives. Monday classes (when we do meet Mondays) will feature cinema classics, modern films, documentaries or guest speakers about the law of property.

Visual presentation aids guide students' paths through each part of the course, and are available online to refresh students' memory afterwards. I happen to use [Prezis, which are continuously being updated and are available online](#). Because the Prezis are being updated as we go, I don't recommend using them before class. In fact, they're only designed to guide our class discussions, and aren't intended for download at all.

[Website updates](#), emails to the class, and the Twitter hashtag [#PropertyLaw](#) from [@jdebeer](#) convey important logistics updates, and connect students with real-world impacts of property law through media reports related to course topics, which often find their way onto exams. A package of audio, video and presentation aids from each class is webcast as "Echos" at [echo360.org.uk](#) and archived for later reference by students.



Our readings in this course come primarily from Canada's leading casebook: [A Property Law Reader: Cases, Questions and Commentary, 4th ed. \(Toronto: Carswell, 2016\)](#).

If you want to supplement your casebook readings, there's an excellent companion textbook written by Bruce Ziff, [Principles of Property Law, now in its 6th edition](#). I've put several copies on reserve in the library. We

won't reference this often during class, but some students find it quite useful.

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**\* Tuesday, September 24 (FTX 351) The Politics of Property:** When do public interests trump private rights? Can the government take your property away, and if so, how? Pages 137-166 address these questions.

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**Wednesday, September 25 Occupying Private Public Places:** The worldwide "occupy" movements that started in 2011 triggered political debate and legal challenges. The law is laid out on pages 19-29 and 783-791.

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**\* Friday, September 27**  
Class rescheduled.

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**Monday, September 30**  
***Push*:** A new documentary investigating why we can't afford to live in our own cities anymore. What are the factors that make housing one of today's most pressing world issues?

## Support

I'm available to respond to questions by email, direct message on twitter or, best of all, old-fashioned meetings—anytime of the week, by appointment—to deal with almost any issues that can't be sorted out during classes, tutorials or other support sessions available.

**Our course tutor**, Joshua Toews, [jtoew091@uottawa.ca](mailto:jtoew091@uottawa.ca), helps students who are struggling, or just searching for an advantage. Tutorials are Wednesdays from 10:00-11:30 in FTX 133. Tutorials on September 18, October 2 and 23, and November 6 and 20 are open to all students. Extra sessions for students pre-approved for additional support for access/equity take place on September 25, October 9 and 30, and November 13 and 27 require advance registration.

To sign up for access/equity tutorials, request an exam deferral, assignment extension, or other accommodation, you must contact the Common Law Student Centre (FTX 237, [clawaccess@uottawa.ca](mailto:clawaccess@uottawa.ca)). Circumstances that may warrant accommodation include but are not restricted to:

- a permanent state of affairs (a disability, a permanent medical condition),
- an ongoing situation (a personal crisis, pregnancy),
- reasons related to equity concerns (religious obligations, sole parenthood),
- a one-time circumstance (short illness, temporary injury, day surgery), or
- compassionate grounds (a death in the family, a sick child or dependant).

Students should consult the [Equity and Academic Success](#) portion of the Faculty website for complete details about accommodation.

Students who require accommodation or academic support because of a physical or learning disability, or any ongoing condition which affects their ability to learn, may contact:

SASS-Academic Accommodations | Office: Desmarais Building, 3172 (3<sup>rd</sup> floor)  
Telephone: 613.562.5976 | TTY: 613.562.5214  
E-mail: [adapt@uottawa.ca](mailto:adapt@uottawa.ca) | Web: [www.sass.uottawa.ca/access/](http://www.sass.uottawa.ca/access/)

As part of the registration process, students will meet with a Learning Specialist to identify their individual needs, discuss appropriate strategies, and establish adaptive measures. Access Service assesses, establishes, and implements appropriate academic accommodations for students who have a disability, while adhering to the University of Ottawa's policies, procedures, and administrative regulations, as well as Human Rights legislation. Access Service works collaboratively with our faculty to facilitate the process. The deadline to request accommodation for final exams is November 15.

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**Wednesday, October 2**  
**Poverty, the Opposite of Property:** What impact does property have on people who have none? Read *Victoria (City) v Adams* and other materials on pages 115-137 for answers.

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**Friday, October 4**  
**Get Off My Cloud:** How high up do a property owner's rights go? How low? The answers are in readings on pages 173-201.

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**\* Monday, October 7**  
**Blog Commentary Due:** Submit assignments via Brightspace by 16:00 sharp.

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**\* Wednesday, October 9**  
**Stuck in the Middle:** What is the law governing disputes among neighbours over property boundaries? Read pages 201-222 of the casebook for today's class, and you'll find out.

## Counselling and wellness resources

- Member Assistance Program: Law students are invited to use the free and confidential support and counselling services. This is a service funded by and fully independent of the Law Society of Ontario: 1-855-403-8922 | <http://www.myassistplan.com/>
- SASS – Counselling and Coaching: The University of Ottawa’s Counselling & Coaching Service provides free and confidential counselling support to Common Law students. For a consultation, call 613-562-5200 or visit <https://sass.uottawa.ca/en/personal>. The Counselling & Coaching Service is located at 100 Marie-Curie (Health Services building), 4th floor.
- University of Ottawa Health Services (UOHS): The Family Health Team of the UOHS offers mental health services. The Family Health Team Psychiatrists and Mental Health Counsellors are available to patients enrolled with a family physician with the UOHS Family Health Team. Services are free. To register, visit [www.uottawa.ca/health/register](http://www.uottawa.ca/health/register).
- Just Balance: A support site aimed at promoting the well-being of law students in Canada: [www.justbalance.ca](http://www.justbalance.ca)
- Emergency: <http://sass.uottawa.ca/en/personal/emergency>

## Prevention of sexual violence

The University of Ottawa does not tolerate any form of sexual violence. Sexual violence refers to any act of a sexual nature committed without consent, such as rape, sexual harassment or online harassment. To report an incident of sexual violence or to obtain confidential support in regard to an incident, the following resources are available to you.

**Emergencies:** In the case of an imminent threat of sexual violence or sexual violence in progress, a report can be made by calling 911 or by contacting [Protection Services](#).

Other reporting mechanisms: In non-emergency situations, incidences of sexual violence can be reported to:

- The Human Rights Office: (613) 562-5222 ([www.uottawa.ca/respect/en](http://www.uottawa.ca/respect/en))
- Protection Services: (613) 562-5411 ([www.uottawa.ca/protection/en](http://www.uottawa.ca/protection/en))
- Student Academic Success Service (SASS) – Counselling and Coaching Unit ([sass.uottawa.ca/en/personal](http://sass.uottawa.ca/en/personal))
- University of Ottawa Health Services ([www.uottawa.ca/health/](http://www.uottawa.ca/health/))

Other forms of support: Some survivors of sexual harassment or sexual violence may want to speak with someone about their

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### Friday, October 11

**One Piece at a Time:** When one person’s thing gets attached to another’s, who owns the new thing? That’s the law of chattels and fixtures, on pages 222-231.

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### \* Monday, October 21

**Fire in the Blood:** The collision of property and human rights: international patent law and access to medicines in sub-Saharan Africa.

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### Wednesday, October 23

**Blowing in the Wind:** How does the law distinguish ownership of things versus ideas, like paintings on canvass or genes in plants? Read pages 246-262.

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### Friday, October 25

**Marking Off Cyberspace:** How do trademarks compare to other kinds of IP, and do property concepts carry over into cyberspace? Readings for today’s class are pages 262-281.

experience prior to deciding whether to file a formal report. Others may choose not to report, but will still want support from professionals who specialize in the area of sexual violence prevention and supporting survivors. If this is the type of support you are looking for, you can contact one of the following organizations to receive confidential services without judgement. These organizations will listen to you, direct you to other services you may need, and support you throughout the process you choose to pursue:

On-campus:

- Student Academic Success Service (SASS) – Counselling and Coaching Unit ([sass.uottawa.ca/en/personal](http://sass.uottawa.ca/en/personal))

Off-campus:

- Ottawa Rape Crisis Center (ORCC) ([www.orcc.net](http://www.orcc.net)). This organization provides English-language support for women.
- Centre d'aide et de lutte contre les agressions à caractère sexuel (CALACS) ([www.calacs.ca](http://www.calacs.ca)). This organization provides French-language support for women.
- Law Society of Ontario Discrimination and Harassment Counsel ([www.lsuc.on.ca](http://www.lsuc.on.ca)). This is a free service available to the Ontario public, lawyers and paralegals. It provides confidential assistance to those who may have experienced discrimination or harassment by a lawyer or paralegal. The service is provided in both English and French.

## Evaluation

There are 4 opportunities for graded feedback: One blog commentary assignment due in October, an experiential site visit and team memorandum assignment due in November, a comprehensive exam in December, and a property-related dispute resolution quiz in January.

Both assignments are carefully designed to reinforce one or more of our course goals, and to prepare you well for the final exam, the content of which reflects all course goals. For each assignment and for the final exam you will be evaluated on the extent to which submissions are:

- *thorough & responsive* (do you analyze the key issues, and focus on relevant discussion?),
- *accurate & insightful* (do you apply the law correctly, and evaluate issues deeply?),
- *clear & organized* (is your answer well structured, articulate and properly referenced?) and
- *generally impressive* (do you demonstrate understanding of the subject or show creativity?).

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### Monday, October 28

**Up For Grabs:** Advance reading for this Monday movie session is required: pages 283-295. We'll watch a film about ownership of baseballs. And connect that to ownership of animals, from foxes to seals to monkeys.

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### Wednesday, October 30

**Still Haven't Found What I'm Looking For:** This class covers the law underlying the old adage about finding lost, hidden or abandoned property. The readings are on pages 316-332.

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### Friday, November 1

**Give it Away:** Giving isn't as easy as you think. What does it take to transfer ownership of property to someone else, for nothing in exchange? Read pages 332-351.

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### Wednesday, November 6

**Real estates:** These are among the most technical concepts to grasp in property law, mainly because of the jargon. Pages 353-382 have the materials.

An *exceptional* grade indicates coverage of all key issues (thoroughness), with no discussion of irrelevant points (responsiveness). There are no legal or factual errors (accuracy), and frequent astute observations (insightfulness). The writing is always simple and concise (clarity), and the structure is always logical (organized). There are always examples demonstrating understanding of the subject or instances of creativity (impression).

An *excellent* grade indicates coverage of almost all key issues (thoroughness), with negligible discussion of irrelevant points (responsiveness). There are almost no legal or factual errors (accuracy), and many astute observations (insightfulness). The writing is almost always simple and concise (clarity), and the structure is almost always logical (organized). There are often examples demonstrating understanding of the subject or instances of creativity (impression).

A *very good* grade indicates coverage of most key issues (thoroughness), with little discussion of irrelevant points (responsiveness). There are few legal or factual errors (accuracy), and some astute observations (insightfulness). The writing is in most parts simple and concise (clarity), and the structure is in most parts logical (organized). There are sometimes examples demonstrating understanding of the subject or instances of creativity (impression).

A *good* grade indicates coverage of some key issues (thoroughness), with some discussion of irrelevant points (responsiveness). There are some legal or factual errors (accuracy), and occasional astute observations (insightfulness). The writing is in some parts simple or concise (clarity), and the structure is in some parts logical (organized). There are sometimes examples demonstrating understanding of the subject or instances of creativity (impression).

A *passable* grade indicates coverage of few key issues (thoroughness), with much discussion of irrelevant points (responsiveness). There are many legal or factual errors (accuracy), and rare astute observations (insightfulness). The writing is in few parts simple and concise (clarity), and the structure is in few parts logical (organized). There are rarely examples demonstrating understanding of the subject or instances of creativity (impression).

A *failing* grade indicates coverage of almost no key issues (thoroughness), with most discussion of irrelevant points (responsiveness). There are frequent legal or factual errors (accuracy), and no astute observations (insightfulness). The writing is not simple and concise (clarity), and the structure is not logical (organized). There are never examples demonstrating understanding of the subject or instances of creativity (impression).

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### **Friday, November 8** **No Strings Attached:**

Today's lesson is about the strings someone might put on the future transfer of property. Readings are on pages 527-539 and, if you can, on 539-572.

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### **Monday, November 11** **Property in Practice:** This class time is allotted for site visits, legal research, and group work associated with your memo assignments.

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### **Wednesday, November 13** **State Limits on Private Power:** What kinds of limits and conditions are legally acceptable, and what kinds aren't? Read pages 539-572.

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### **Friday, November 15** **The RAP Trap:** It's been called a "technicality ridden legal nightmare." I'll help you get through it if you read pages 579-591 and 600-604.

Final grades will be calculated in accordance with Rule 18 of the Faculty of Law's Academic Regulations:

<https://commonlaw.uottawa.ca/en/students/student-centre/registration/registration-student-responsibilities/academic-regulations#a18>

Rule 18.3(2) of the Regulations states that the grade point average should be within +/- 0.4 points of the applicable guideline of 6.0. Because CML 1108 is a "sectioned" course, the grade point average may be within +/- 0.8 of the 6.0 guideline, as per Rule 18.3(3).

### **Blog commentary**

The first **10%** of your grade will be based on a short writing exercise that responds critically to the course topics and content. This is **due by 16:00 sharp, on Monday October 7, to be uploaded via our Brightspace page**. Late assignments will not be accepted.

Responses are short commentaries (~ 750 words) that capture your understanding of and personal reaction to the property topics that we're covering in the classroom and their connection to recent experiences or current events happening around the world. It should be an intelligent, substantive, engagement with the both the course materials and the experience or event.

A response can be: a well-argued opinion, a comparison with other materials in this course or another; a critique; a suggestion for social or legal reform. It can include: relevant references to current events, history, politics, art, media, or personal experience. A response cannot be: a description or a summary of the materials or event.

While your response must not merely describe the course materials and discussion, it should still engage with the course materials and discussion. It should not be a response to an issue in general or in contexts only tangentially related to course materials and discussion.

Because you have little time and space in which to convey your thoughts on important topics and complex issues, I suggest that you focus your responses. The materials themselves are wide-ranging. I strongly encourage you to choose one particular issue, rather than trying to cover everything that could be said in response.

The format of your response is less important than the substance. For example, you may use any style of referencing and citation that you wish. You should, however, take special care to edit and proofread your response as thoroughly as possible before submitting it.

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### **Monday, November 18**

**"Not a Nanny":** We welcome a panel of judges and lawyers who were involved in *Vanasse v Seguin* from the trial, through appeal, all the way to the Supreme Court.

**+ Group Memo Due:** Via Brightspace before 16:00.

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### **Wednesday, November 20**

#### **You Get What You Give:**

This class explains the origins of "equity", and introduces express, "resulting", and "constructive" trusts. Read pages 461-487 and 518-526.

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### **Friday, November 22**

**Constructing trust:** An important remedy for unjust enrichments following familial relationship breakdown, and a lesson in overcoming gender biases in law. We'll cover materials on pages 487-510.

## Site visit and memorandum

A further **20%** of your grade is determined by your performance on a group-based experiential learning activity. There are two components to the experiential learning activity: (1) experiential learning activity and (2) the written component. This is **due by 16:00 sharp, on Monday, November 18, to be uploaded via our Brightspace page**. Late assignments will not be accepted.

The assignments will be completed in **groups of four or five**. All members of the team will be assigned the same mark for this assignment. You will rarely work on a legal project in solitude; most often you will work with other lawyers, or with other professionals and experts such as accountants, real estate agents, engineers, social workers, police, Indigenous governments or business people. Collaboratively developing an argument or project, and dividing the labour of research and writing, and advocacy is an important skillset.

In the **experiential component**, you will visit one of three pre-selected sites in Ottawa. All of the sites have been chosen because they are easy to reach, and I hope accessible to everyone. Please inform me immediately if you face barriers to travelling to these venues. The pedagogical purpose of this component of the assignment is to help you see the real-world impacts of the property laws we are studying in the course. I encourage you to take observe the surroundings, investigate connections with legal issues, and communicate about your experiences with classmates or others.

In the **written component**, you will prepare a memorandum of law answering the questions as they appear in the package of information provided for your selected site. You will find all packages with questions on Brightspace. The questions test your legal skills, substantive knowledge, and ability for critical analysis.

The memorandum should be approximately 1500-2000 words and presented in a more formal tone and manner than your blog commentary. When conducting external or secondary research, please stay within the scope of the material covered in class and on your syllabus (including Brightspace). You may find supporting documentation as external or secondary research but as a group you are responsible to discern whether it is relevant. External or secondary research may include academic, legal or journalistic sources. The relevance, depth, and integrity of your research will impact your grade.

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### Monday, November 25

#### **Honour & Reconciliation:**

Mr. Scott Robertson, President of the Indigenous Bar Association, joins us to discuss the challenges of enforcing Indigenous rights. Read pages 75-96 and 391-395.

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### Wednesday, November 27

#### **Common Law Aboriginal**

**Title:** We start to unpack this oxymoron via *Delgamuukw* and *Tsilhqot'in*. Read pages 396-446 to prep for the next two classes.

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### Friday, November 29

#### **Proving Title and**

**Reconciling Rights:** Its one thing to claim Aboriginal title; it's another to prove it in court, and keep it from being infringed or extinguished. Readings from last class: 396-446.

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### Monday, December 2

**Reserving rights:** This class will feature a film, Honour of the Crown, that helps us to understand links amongst indigenous and Canadian laws. Read pages 446-459.

## Comprehensive Exam

Yes, this class requires the inevitable final exam. It is a take-home exam, which you will have six hours to complete. A word-count guideline will be imposed to reasonably limit the length of your answers.

It is worth **60%** of your grade for the course. Past exams will give you an excellent indication of what to expect, despite the fact that all previous exams were delivered in-class. You can download past exams, along with answers, from the course homepage at [www.JeremydeBeer.ca](http://www.JeremydeBeer.ca).

Because of the heavy weighting of the final exam, I won't let you write it unprepared. You will cover "rehearsal" exam questions throughout the term, during tutorials, that allow you to practice your take-home exam writing techniques. This is for practice, not for marks. We have model answers for you, and use an interactive process of self-evaluation and strategic discussion during tutorials to provide feedback and prepare for the real thing.

### Dispute resolution quiz

The remaining **10%** will be determined by a quiz on property-related subject matter, self-taught during the January term, integrated into your Dispute Resolution course. Direct questions to your Dispute Resolution instructors.

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### Wednesday, December 4 Exam Review & Prep

**Session:** Our last class together is a full recap of the course, and a final briefing on study strategy before the exam.

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### Thursday, December 5 (Room & time TBA)

**Drop-in Q&A Session:** This session is optional. But who wouldn't want to pick the prof's brain about the exam?

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### Friday, December 6 (09:00-15:00)

**The Final Exam:** The take-home final exam is released at 09h00. It's worth 60% of your final grade.