

730-391 Law and Indigenous Peoples

Credit Points:	12.50
Level:	4 (Undergraduate)
Dates & Locations:	Seminars, practical exercise, class presentation.
Time Commitment:	Contact Hours: One 3-hour seminar per week Total Time Commitment: 144 hours.
Prerequisites:	Legal Method and Reasoning; Principles of Public Law; Torts; Legal Theory or in each case their equivalents.
Corequisites:	-
Recommended Background Knowledge:	Obligations, Contracts, Property and Constitutional Law are desirable.
Non Allowed Subjects:	-
Core Participation Requirements:	-
Contact:	-
Subject Overview:	<p>Taking current legal and political controversies in Indigenous affairs as its starting point, the subject examines the legal relationship between Indigenous and non-Indigenous peoples in a range of countries including Australia and in International law. Students are encouraged to critically analyse the impact of western legal systems on indigenous peoples through the process of colonisation, and the nature of the legal and political relationships between indigenous and non-indigenous peoples whether through treaties or other legal forms. Issues for particular study may include the nature of indigenous societies both before and after colonisation and their interaction with colonising legal systems, the process of legal colonisation, including government policies, the legal forms for policy implementation and their impact on indigenous peoples, regimes governing title and providing access to land and resources, international law and its regimes for protection of indigenous peoples rights, the possibilities for recognition of customary law and indigenous jurisdiction in a pluralist legal system, and the role of the legal system in promoting social, cultural and economic sustainability of indigenous societies. Consistent themes throughout the subject will include the significance of land, the role of identity, the relevance of international human rights law, the concept of self-determination, indigenous governance, the significance of treaty and agreement making, the role of law in remedying disadvantage and comparative experiences in other jurisdictions particularly, but not limited to Canada and New Zealand.</p> <p>Note: The essay in this subject is regarded as a substantial piece of legal writing.</p>
Objectives:	<p>On completion of this subject Students should:</p> <ul style="list-style-type: none"> - have developed an understanding of: <ul style="list-style-type: none"> # a range of critical and theoretical analyses of the relationship between the western colonising legal system and Indigenous peoples; # both the historical and contemporary cultural traditions, including the centrality of land, for Indigenous peoples; # the social, legal and political consequences of colonisation and the subsequent impact upon the lives and identity of indigenous peoples; # the common law and/or legislative regimes that regulate land tenure, use and management, including resources development, on the land of Indigenous peoples; # the major human rights claims of Indigenous peoples including claims to sovereignty both domestically and at international law and the regimes for protecting indigenous peoples rights; # the ways law may contribute to a resolution of outstanding issues between indigenous and non-indigenous peoples including through negotiation, agreement and treaty making; # the ways in which the experiences of indigenous people across jurisdictions are relevant to and may inform legal and political debate on issues relating to Indigenous peoples generally - be able to draw on this understanding to:

	<ul style="list-style-type: none"> # describe and critically analyse elements of the legal relationship between indigenous peoples and settler institutions; # critically analyse at least two specific instances or examples of this relationship; # develop arguments as to the appropriate legal principles to apply in various circumstances that will advance the status of indigenous peoples at international law and in their domestic jurisdictions; # apply relevant legal principles to a range a fact situations including through negotiation exercises; # present these arguments, analyses and application of principles in the form of written arguments that are appropriately structured, developed, supported and referenced.
Assessment:	exercise and reflective essay of 1000 words, 20% (due week 10) *refer to NOTES and;research essay or project of 5000 words, 80% (due second week of the examination period) or a final open-book examination of three hours, 80%and;prescribed (Hurdle) Requirement: Attendance at 75% of the seminars and seminar presentationprescribed (Hurdle) Requirement: All students must participate in and complete the work associated with the exercise
Prescribed Texts:	Printed materials will be issued by Melbourne Law School.
Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Generic Skills:	<p>On completion of the subject, students should have developed the following generic skills:</p> <ul style="list-style-type: none"> # attitudes towards knowledge that include valuing truth, openness to new ideas and ethics associated with knowledge creation and usage # the capacity for close reading and analysis of a range of sources # the capacity for critical and independent thought and reflection # the capacity to solve problems, including through the collection and evaluation of information # the capacity to communicate, both orally and in writing # the capacity to plan and manage time # the capacity to participate as a member of a team # intercultural sensitivity and understanding <p>In addition, on completion of the subject, students should have developed the following skills specific to the discipline of law:</p> <ul style="list-style-type: none"> - Case reading and analysis <ul style="list-style-type: none"> # Read complex cases in a range of legal areas and jurisdiction # Extract the important features from judgments # Evaluate and reconcile judgments and legal principles - Statutory reading and interpretation <ul style="list-style-type: none"> # Extract important features from statues and use, interpret and apply them in a range of circumstances - Legal analysis and problem-solving <ul style="list-style-type: none"> # Critically analyse legal rules and their application to indigenous people # Develop and apply appropriately structured and supported legal argument in written and oral forms - Legal research skills <ul style="list-style-type: none"> # Find primary sources relevant to indigenous peoples # Find statutes and case law and non-legal sources relevant to indigenous legal issues in both Australia and in other jurisdictions - Legal writing skills including an ability to: <ul style="list-style-type: none"> # Use case law, statutes and secondary sources as part of legal analysis # Use material from other disciplines in interdisciplinary analysis # Identify and summarise legal principles

	<p># Present an appropriately structured and supported complex legal argument</p> <ul style="list-style-type: none">- Oral communication skills in participating in seminars and presenting research reports- Ability to work in groups to solve problems in a class room setting and negotiate settlements in hypothetical situations- Apply mediation and negotiation principles in a cross cultural setting
Notes:	The exercise and reflective essay will be in response to a class exercise based on a field trip to Sale, where the federal court is holding a native title hearing. The hearing is scheduled for the first two weeks of October. Students will travel with the lecturer to Sale for a day during the hearing on either Monday October 5 or Monday Oct 12.