

# LAWS90008 Law and Indigenous Peoples

<b>Credit Points:</b>	12.5																										
<b>Level:</b>	9 (Graduate/Postgraduate)																										
<b>Dates &amp; Locations:</b>	2015, Parkville This subject commences in the following study period/s: Semester 2, Parkville - Taught on campus.																										
<b>Time Commitment:</b>	Contact Hours: 36 hours. Total Time Commitment: 144 hours.																										
<b>Prerequisites:</b>	<table border="1"> <thead> <tr> <th>Subject</th> <th>Study Period Commencement:</th> <th>Credit Points:</th> </tr> </thead> <tbody> <tr> <td>LAWS50023 Legal Method and Reasoning</td> <td>February</td> <td>12.50</td> </tr> <tr> <td>LAWS50024 Principles of Public Law</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50025 Torts</td> <td>November, Semester 2</td> <td>12.50</td> </tr> <tr> <td>LAWS50026 Obligations</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50027 Dispute Resolution</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50028 Constitutional Law</td> <td>Semester 2</td> <td>12.50</td> </tr> <tr> <td>LAWS50029 Contracts</td> <td>Semester 2</td> <td>12.50</td> </tr> </tbody> </table>			Subject	Study Period Commencement:	Credit Points:	LAWS50023 Legal Method and Reasoning	February	12.50	LAWS50024 Principles of Public Law	Semester 1	12.50	LAWS50025 Torts	November, Semester 2	12.50	LAWS50026 Obligations	Semester 1	12.50	LAWS50027 Dispute Resolution	Semester 1	12.50	LAWS50028 Constitutional Law	Semester 2	12.50	LAWS50029 Contracts	Semester 2	12.50
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<b>Corequisites:</b>	None																										
<b>Recommended Background Knowledge:</b>	None																										
<b>Non Allowed Subjects:</b>	<ul style="list-style-type: none"> <li># MLM The Human Rights of Groups: Indigenous Peoples in International and Domestic law LAWS70114;</li> <li># MLM Human Rights and Indigenous Peoples.</li> </ul>																										
<b>Core Participation Requirements:</b>	<p>Melbourne Law School welcomes applications from students with disabilities. It is University and Law School policy to take all reasonable steps to enable the participation of students with disabilities, and reasonable adjustments will be made to enhance a student's participation in the School's programs. The inherent academic requirements for the study at Melbourne Law School are: The ability to attend classes and actively engage in the analysis of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students must possess behavioural and social attributes that enable them to participate in a complex learning environment. Students are required to take responsibility for their own participation and learning. They also contribute to the learning of other students in collaborative learning environments, demonstrating interpersonal skills and an understanding of the needs of other students. Assessment may include the outcomes of tasks completed in collaboration with other students. Students who feel their disability will prevent them from participating in tasks involving these inherent academic requirements are encouraged to contact the Disability Liaison Unit: <a href="http://www.services.unimelb.edu.au/disability/">www.services.unimelb.edu.au/disability/</a>.</p>																										
<b>Coordinator:</b>	Assoc Prof Kirsty Gover																										
<b>Contact:</b>	Melbourne Law School Student Centre Email: <a href="mailto:law-studentcentre@unimelb.edu.au">law-studentcentre@unimelb.edu.au</a> (mailto:law-studentcentre@unimelb.edu.au) Tel: +61 3 8344 4475																										

<b>Subject Overview:</b>	<p>The field of "law and indigenous peoples" is fast developing in Australia and elsewhere as a coherent body of law and theory in its own right, containing its own methodologies and specialities. It is a body of law that is a highly-specialised field of practice and scholarship, but also crosses and contributes to several major generalist areas of law, including property, constitutional law, legal theory, administrative law and international law. Accordingly justifications for indigenous claims have various overlapping bases, depending on the fields in which they are advanced, and include legal entitlements based on common law native title, customary law, special legislative regimes and institutions, equality and non-discrimination law, principles of self-determination and sovereignty, social and economic special measures, and cultural pluralism. In the settler states, indigenous claims and legal systems pose a challenge to standard theories of law and statehood, including some of the fundamental concepts underpinning liberal democratic governance, especially principles of human rights and non-discrimination. These issues underpin several major recent legal controversies in Australia, including the Northern Territory Emergency Response (2008), the Australian endorsement of the UN Declaration on the Rights of Indigenous Peoples (2009), and the proposed referendum on the constitutional recognition of indigenous peoples (2012).</p> <p><i>Law and Indigenous Peoples</i> brings together these debates and bodies of law to examine the legal and political status of indigenous peoples in Australia and the influence they have had on the development of Australian law, with reference to the law of other settler states and to international law. Students are encouraged to critically evaluate law and policy impacting on indigenous interests and the strategies used by states and indigenous communities to repair and manage their relationships. Subject materials emphasise case law and secondary materials from Australia, other settler states (particularly Canada, New Zealand and the United States) and the jurisprudence of international and regional human rights bodies. Substantive issues covered in the subject include the following:</p> <ul style="list-style-type: none"> <li># The ways in which indigenous peoples are defined and identified in law and policy;</li> <li># The processes and criteria by which indigenous communities are officially recognised by states and the significance of historic continuity tests;</li> <li># The experience of indigenous peoples as claimants using contemporary legislative or constitutional bills of rights and anti-discrimination law;</li> <li># The theory and practice of indigenous self-governance, including reference to indigenous constitutions and constitutional law and the governance of communal land;</li> <li># Processes and forums for hearing indigenous historic claims to land and resources and the difference between negotiated and litigated settlements;</li> <li># Legislative regimes governing indigenous property and institutions;</li> <li># International law and jurisprudence recognising the rights of indigenous peoples including rights to property;</li> <li># The participation of indigenous peoples in international institutions and dispute resolution fora.</li> </ul>
<b>Learning Outcomes:</b>	<p>On completion of this subject students should have developed:</p> <ul style="list-style-type: none"> <li># Extensive knowledge of the particular methodologies used to advance and understand indigenous peoples' claims;</li> <li># A sophisticated understanding of a range of critical and theoretical perspectives on the relationship between settler states and indigenous peoples;</li> <li># A sophisticated understanding of the distinctive common law doctrines and legislative regimes that are directed to indigenous peoples, including those related to regulate land use and management, political representation and social welfare;</li> <li># The capacity to critically analyse the ways in which Australian law is similar to, and differs from, other settler states in the regulation of state-indigenous relationships;</li> <li># The capacity to critically analyse ways in which international law has influenced or failed to influence the development of Australian domestic law and policy on indigenous peoples;</li> <li># Analytic and problem-solving skills necessary to engage with complex legal disputes involving indigenous peoples and their interests;</li> <li># The ability to express their views clearly in writing and orally and to contribute to constructive public and scholarly debates on these issues.</li> </ul>
<b>Assessment:</b>	Research essay (6,000 words) (100%)OR 3 hour examination (100%)
<b>Prescribed Texts:</b>	Specialised printed materials will be available. Supplementary materials will be provided via Readings Online.
<b>Breadth Options:</b>	This subject is not available as a breadth subject.

<b>Fees Information:</b>	Subject EFTSL, Level, Discipline & Census Date, <a href="http://enrolment.unimelb.edu.au/fees">http://enrolment.unimelb.edu.au/fees</a>
<b>Generic Skills:</b>	<p>On completion of the subject, students should have developed the skills necessary to:</p> <ul style="list-style-type: none"> <li># Develop arguments as to the appropriate legal principles to apply in various contexts by critically evaluating Australian law applying to indigenous peoples;</li> <li># Identify and resolve complex legal problems involving indigenous interests by developing creative solutions that demonstrate professional judgment;</li> <li># Apply the relevant legal principles to a range of fact situations and contexts in which indigenous legal arguments are debated by drawing on comparative and international legal materials;</li> <li># Conduct self-directed research on topics relevant to this complex field of law in written work showing evidence of critical thought, sophisticated analysis, self-reflection and rigorous argumentation;</li> <li># Present arguments in the form of written work that is clear, and in which arguments and claims are appropriately structured, developed, supported and referenced.</li> </ul>
<b>Notes:</b>	<p>This subject has a quota of 60 students. Details on <b>quota subject selection (<a href="http://www.law.unimelb.edu.au/jd/current-students/enrolments/quota-subject-selection/">http://www.law.unimelb.edu.au/jd/current-students/enrolments/quota-subject-selection/</a>)</b> are available on the JD website.</p>