Lakehead University
Freedom and the Law (2016)
POLI-4150-WA
Tuesdays 11:30-2:30
ATAC 2005

Instructor: Dr. Patrick Cain (Political Science)
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Office hours: T 2:30-3:30 pm (or by appointment)

COURSE DESCRIPTION

This course studies important constitutional law cases, with a focus on those freedoms protected by the Canadian Charter of Rights of Freedoms (especially expression, privacy, and security of the person). These freedoms will be examined by comparing the legal opinions issued by the Canadian Supreme Court with those issued by other high courts, especially the U.S. Supreme Court. Particular attention will be paid to how the courts balance individual freedoms and governmental power, and the relationship between individual rights and the common good. Students will also develop a better understanding of the power and purpose of the Canadian Supreme Court, especially the various means used by the Court in interpreting and applying the Constitution, including its use of precedent, history, textual analysis, reason, and prudence.

COURSE REQUIREMENTS

Required Texts:

1. Mill, *On Liberty* (Oxford)
2. All readings are excerpts from Supreme Court opinions. Some will be posted on the course website. Others will need to be retrieved by students themselves. For full versions of Supreme Court Cases, see http://scc.lexum.org/decisia-scc-csc/scc-csc/en/nav.do (Supreme Court of Canada), and http://www.law.cornell.edu/supct/search/ (U.S. Supreme Court)

Grading:

Quiz: 4%
4 Papers: 4 X 9% = 36% (Note: These papers will not be accepted late)
In-Class Oral Argument: 10%
Participation: 20%
Final Exam: 30%

Papers
Students must select and complete 4 papers from a list to be distributed. Papers will 1250-1500 words. For each paper, students are required to formulate an essay in response to a prompt that will be related to a portion of a class day's readings. No more than one paper can be completed a week. Students will submit hard copy AND an electronic copy (through the course website) of their papers at the beginning of class time on the prescribed date. Papers *will not be accepted late for any reason,* as one of their purposes is to measure and develop student's ability to independently read and analyze difficult texts without the benefit of a direct lecture from the instructor. Missing and late assignments will be given a grade of zero. If a paper cannot be completed on time, then students should select a different topic to complete.

In-Class Oral Argument (with handout)
Students are required to prepare a 5-minute oral argument in response to one of the assigned cases. A sign up sheet will be provided. Students will argue in favor of one side of the legal issue identified in the case, and will provide a one-page handout to each member of the class that outlines the legal argument they intend to pursue. Students are expected to field questions from the class in response to their argument.

Class Participation
Although the instructor will occasionally lecture, the majority of class will be spent discussing the assigned readings. Students are expected to fully participate in this discussion. To do so, students should: 1. Read assigned material carefully; 2. Bring the readings to class; 3. Be prepared to discuss the readings; 4. Avoid being inattentive and/or appearing inattentive.

Although the instructor will facilitate discussion in a number of ways (such as playing "devil's advocate"), students should be prepared enough to drive the discussion themselves.

In order to facilitate discussion, and in order to allow the lectures to be executed in the most effective manner, students are required to follow the seating direction of the instructor.

Class Readings
The readings from this course can involve complicated ideas and difficult arguments. Moreover, the presentation of these ideas and arguments sometimes take forms that may not be familiar to students. Students should therefore read the assigned readings carefully, slowly, and several times in order to grasp their content.

Other Policies:
Communication
The instructor will regularly communicate with students about a variety of matters, both through in-class announcements and via email (using students' Lakehead email account). Students are encouraged to contact the instructor with any questions that arise during the course of the year. While course administrative questions are appropriate, students are also encouraged to meet with the instructor to discuss questions related to the course's field of study. Students are reminded that while email is useful for basic factual inquiries, more complex matters are best handled in person.

Electronic Devices
No laptops are allowed. Cell phones should be left at the front of the class, or should not be visible to the instructor (e.g. placed in a bag or purse). If a cell phone is visible, the instructor will assume that it is being used. No audio or video recording of the class is allowed without the permission of the instructor, and any permitted recording is for private use only. Regular use of electronic devices without permission will significantly diminish a student's participation mark.

Academic Honesty
Academic honesty is expected of all Lakehead University students. Cheating, collusion, and plagiarism will not be tolerated. Students are expected to make themselves fully familiar with Lakehead's policy in this area. Although all these policies will be enforced in full, it is worth emphasizing the following:

Plagiarism involves presenting another's work, ideas, theories, or interpretation as one's own.

To avoid plagiarism, writers should always:

1. Put quotation marks around any words from sources
2. Paraphrase material completely; changing (with the help of a thesaurus) or rearranging a few words or the tense of a verb is not paraphrasing.
3. Give accurate and complete citations for all material *including paraphrased material*.
4. Avoid borrowing entire arguments or approaches to a subject from another writer. Make it 'original' while staying faithful to the assignment parameters.

COURSE SCHEDULE
All Readings will be posted on the Course Website

Note: At the instructor's discretion, readings may be added, and the schedule altered

Approaches to Interpreting Governmental Power and Legal Rights

9/6 Course Outline
Opening Lecture—Approaches to Constitutional Interpretation: Theories and Practices and the Political Order
Canadian Charter of Rights and Freedoms
U.S. Bill of Rights and Subsequent Amendments
Oakes Test Handout

9/13 John Stuart Mill, *On Liberty*, chapters 1-3
R v. Oakes (1986)
Quiz on Oakes Test

9/20 Persons Case--Edward v. Canada (1929)
Schenk v. U.S. (1919)
Brandenburg v. Ohio (1969)

9/27 Virginia v. Black (2003)
U.S. v. Stevens (2010)
Synder v. Phelps (2011)

10/4 Alberta Press Case (1938)
Irwin Toy v. Quebec (1989)
R v. Keegstra (1990)
R v. Zundle (1992)

10/11 **FALL BREAK**

10/18 Little Sisters Art Emporium v. Canada (2000)
R v. Sharpe (2001)
R v. Labaye (2005)
Saskatchewan Human Rights Commission v. Whatcott (2013)

10/25 Jacobson v. MA (1905)
Buck v. Bell (1927)
Griswold v. Connecticut (1965)
Eisenstadt v. Baird (1972)

11/1 E. (Mrs.) v. Eve (1986)
R. v. Hess; R. v. Nguyen (1990)
R v. J.A. (2011)
R v. Latimore (2001)

11/8 Roe v. Wade (1973)
Planned Parenthood v. Danforth (1976)

11/15 Gonzales v. Carhart (2007)
Whole Woman's Health v. Hellerstedt (2016)
R. v. Morgentaler (1989)

11/22 Washington v. Glucksburg (1997)
Gonzales v. Oregon (2006)
Rodriguez v. BC (1993)
Carter v. Canada (2015)

11/29 Bowers v. Hardwick (1986)
Obergerfell v. Hodges (2015)
Reference Re Same Sex Marriage (2004)

FINAL EXAM