

Natural Resources Law and Indigenous Peoples

Syllabus – Fall 2015

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This class will meet on Tuesdays and Thursdays from 4:30-5:45 p.m. The required textbooks are Royster, Blumm & Kronk Warner, *NATIVE AMERICAN NATURAL RESOURCES LAW* (3d ed. 2013) and Abate & Kronk Warner, *CLIMATE CHANGE AND INDIGENOUS PEOPLES: THE SEARCH FOR LEGAL REMEDIES* (2013). Periodic handouts will supplement the readings.

Course Description:

This course addresses the law governing the protection of natural resources owned or administered by Indian governments and their individual members. Students will learn the nature and scope of the tribal, federal, and state authority to regulate or otherwise affect the development of: (1) Indian-owned lands including statutory and treaty-established tribally and individually owned lands; (2) Indian-owned natural resources, including water and related resources; and (3) Indian-owned wildlife and fishery resources. The course also will include a significant component on climate change impacts to indigenous peoples and will address adaptation strategies to respond to those impacts.

Grading:

Course grades will be determined on the basis of a three-hour, in-class final exam (100%). The exam will be closed book (*i.e.*, no materials will be permitted in the exam room) and will include multiple-choice and short essay questions. Class participation also will be considered in determining course grades. Class participation includes attendance and the quality of students' contributions to class discussions and exercises. Exceptionally strong participation will raise your grade one "step" (*e.g.*, from a B to a B+) and below average participation will reduce your grade one step (*e.g.*, from a B to a B-).

Class Preparation Policy:

Most of the classes will be conducted in lecture/discussion format and will address the fundamentals of natural resources law, federal Indian Law, and international law governing indigenous peoples' rights. Discussion questions will be posted on TWEN in advance of class to help students focus on extracting the most relevant information from the readings and to form a framework for class discussion. Throughout the semester, students are expected to be well prepared and actively engaged in the class discussions. In some classes, students will be assigned roles to play in class exercises that address cutting-edge topics in the field.

Out of Class Consultation:

My office is # 342. I encourage you to contact me to address your questions or concerns by e-mail or in my office. I am available to meet with students before or after class on Tuesdays or Thursdays or at other mutually convenient times by appointment or drop-by visits. Please feel free to e-mail me at randall.abate@famuedu to set up an appointment or ask questions.

Attendance Policy:

Class attendance is required by ABA accreditation standards. An attendance sheet will be circulated in each class. In accordance with the College of Law’s accreditation requirements, students who miss more than 20% of the scheduled class meetings will not receive credit for the course. Attendance includes the obligation to appear for class on time and to satisfactorily complete reading assignments prior to class.

Reading Assignments:

<u>Week 1</u> 8/10	Tues.	Course Overview / Land, Religion, and Culture. <u>Assignment:</u> NANRL, pp. 3-10; CCIP, ch. 1.
	Thurs.	Land, Religion, and Culture (Pt. II). <u>Assignment:</u> NANRL, pp. 10-35.
<u>Week 2</u> 8/17	Tues.	Overview of Federal Indian Law. <u>Assignment:</u> NANRL, pp. 51-78.
	Thurs.	Tribal Sovereignty: U.S. and International Dimensions. <u>Assignment:</u> CCIP, chs. 3, 5; NANRL, pp. 549-556.
<u>Week 3</u> 8/24	Tues.	Federal Trust Responsibility and Climate Justice. <u>Assignment:</u> Materials on TWEN.
	Thurs.	Land Tenure Rights: Aboriginal Title. <u>Assignment:</u> NANRL, pp. 115-141.
<u>Week 4</u> 8/31	Tues.	Land Tenure Rights: Recognized Title and Executive Order Reservations. <u>Assignment:</u> NANRL, pp. 141-164.
.	Thurs.	Land Tenure Rights: Submerged Lands. <u>Assignment:</u> NANRL, pp. 164-176.
<u>Week 5</u> 9/7	Tues.	No Class.
	Thurs.	No Class.
<u>Week 6</u> 9/14	Tues.	Environmental Authority in Indian Country (Pt. I). <u>Assignment:</u> NANRL, pp. 218-239.
	Thurs.	Environmental Authority in Indian Country (Pt. II). <u>Assignment:</u> NANRL, pp. 239-260.

<u>Week 7</u> 9/21	Tues.	<i>Wisconsin v. EPA: Roleplay on TAS Status for Tribes.</i> <u>Assignment:</u> Materials on TWEN.
	Thurs.	Environmental Impacts of Development. <u>Assignment:</u> NANRL, pp. 260-275; EJ article on TWEN.
<u>Week 8</u> 9/28	Tues.	The Tribal Role in Resource Management. <u>Assignment:</u> NANRL, pp. 309-324; CCIP, ch. 10.
	Thurs.	No Class.
<u>Week 9</u> 10/5	Tues.	Mining and Environmental Justice in Indian Country Roleplay. <u>Assignment:</u> Materials on TWEN.
	Thurs.	Introduction to Water Law. <i>Guest Lecture: Prof. Robert Abrams.</i> <u>Assignment:</u> NANRL, pp. 367-379.
<u>Week 10</u> 10/12	Tues.	Scope of Reserved Water Rights. <u>Assignment:</u> NANRL, pp. 379-395.
	Thurs.	Federal Role in Determining Water Rights. <u>Assignment:</u> NANRL, pp. 426-444.
<u>Week 11</u> 10/19	Tues.	Climate Change Impacts to Water Rights. <u>Assignment:</u> CCIP, ch. 11.
	Thurs.	Hunting, Fishing, and Gathering (Pt. I). <u>Assignment:</u> NANRL, pp. 459-482.
<u>Week 12</u> 10/26	Tues.	Hunting, Fishing, and Gathering (Pt. II). <u>Assignment:</u> NANRL, pp. 482-496.
	Thurs.	Hunting, Fishing, and Gathering (Pt. III). <u>Assignment:</u> NANRL, pp. 496-516.
<u>Week 13</u> 11/2	Tues.	Hunting, Fishing, and Gathering (Pt. IV). <u>Assignment:</u> NANRL, pp. 516-525, 535-548.
	Thurs.	Climate Change Mitigation: REDD and Indigenous Peoples. <u>Assignment:</u> CCIP, ch. 8.

<u>Week 14</u> 11/9	Tues.	Climate Change Adaptation to Fisheries Impacts. <i>Guest Lecture: Jacque Bertelsen.</i> <u>Assignment:</u> CCIP, ch. 13 and materials on TWEN.
	Thurs.	Hydroelectric Power Development and Indigenous Peoples Roleplay. <u>Assignment:</u> Materials on TWEN.
<u>Week 15</u> 11/16	Tues.	Exam Review / Course Evaluations.

Guest Lectures as Make-up Classes (Nov. - TBA):

1. Nigara Abate: *Corporate Social Responsibility and Ethnographic Impact Assessments for Indigenous Peoples in the Russian Arctic*
2. Panel on Consultation Obligations with Indigenous Peoples
 - Cindy Campbell, Esq. – Panama
 - Diana Coronel David – Colombia and the U.S.