

Federal Indian Law
Spring 2024
Professor Marcia Zug

Class hours: M,T,W 1:30-2:30

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Office Hours: 10:30-12:30 Monday and Tuesday or by appointment

Course Materials: The majority of class readings and assignments will be taken from David Getches, Charles Wilkinson and Robert Williams' Federal Indian Law casebook (7th ed). Any non-casebook materials are indicated of the syllabus below. The textbook supplement is available on Twen and includes additional assigned cases as indicated in the syllabus.

Course Description: This course explores the principles, doctrines and history underlying the legal relationship between the United States and Indian tribes; the powers of tribal government, economic development in Indian country, the role of tribal custom, the relevance of developing international indigenous law to Indian nations; and introduces some of the ongoing debates in Indian legal scholarship.

Course Mechanics: All students are expected to do all the assigned reading for every class, to attend class regularly and to be prepared to participate in class discussion. Take attendance during each class period. You can, but you do not need to inform me if you are missing. However, if you miss three classes or more, you will need to receive a waiver from Dean Kuo to sit for the exam.

Reading assignments are by week, and each bullet point is intended to correspond to one class periods. Some of these readings are quite lengthy. However, I have indicated where you may skim the materials and I have highlighted the cases that we will focus on, so make sure to read those cases carefully.

Learning Outcomes:

In this class, you will learn the foundations of Federal Indian Law. You will gain an understanding of how this body of law regulates the relationship between tribes and the United States. You will learn how this law developed as a tool to alternately protect and destroy tribes, and how this history continues to shape Indian law and policy today. You will also learn how this area of law has significant and growing implications for a wide array of other legal disciplines including, but not limited to, property law, family law, gaming law, criminal law and tax law. Finally, Federal Indian law raises some of the most difficult questions about American democracy. In this class you will be asked to reflect on how the treatment of native people in the United States comports with or defies our democratic and constitutional ideals.

Assessments: Your grade will be based on class participation and the final exam. Class participation will account for 30% of your grade, the exam will count for the remaining 70%. I will discuss the form and mechanics of the final exam later in the semester.

Readings

(The roman numerals correspond roughly with one class week and three class periods.)

- I. Introduction to Federal Indian law and Intro to Doctrine of Discovery Casebook,
 - Introduction 1-66
 - p.67-81 (McIntosh) and O'Brian v. Town of Huntington 2009 NY Slip Op 06169 (https://www.nycourts.gov/reporter/3dseries/2009/2009_06169.htm)
 - 1085-1100 (Mabo) , 1056-1065 (DelGamuukw v. British Columbia)

- II. Doctrine of Discovery Cont, Formative Years (1789-1871) (tribal Indian land claims)
 - 81-106 (skim), 116-153 (Cherokee Nation, Worcester v. Georgia)
 - 154-66 (Washington, Winans)

- III Cannons of Construction/Indian Law and Policy
 - P. 167-180 (skim) 180-194 (crow dog), Kagama (186-188)
 - Sandoval (188-194), Allotment (195-212)
 - Lone Wolf (212-216), notes (218-223, 227-30)

- IV Termination/Self determination
 - p.230-247(Menominee),
 - South Carolina v. Catawba Indian Tribe, 476 US 498 (1986) and the Settlement Act <https://www.scstatehouse.gov/code/t27c016.php>
 - p.247-256 (Skim), 256-273, Morton v. Mancari, 1030-1041 (and Rice v. Cayetano, Indian preference)

- V Federal-Tribal Relationship
 - p. 281-90 (Shoshone Tribe, Sioux,
 - p290-305 (Montana), 312-320(Tee Hit-ton, Dann),
 - 106-116 (Oneida),322-332 (Sherill),

- VII Trust Doctrine

- p. 344-66 (Dion, Seminole)
- P. 366- 380(Navajo nation), 402-413(Sioux nation)
- Catch up day

VIII Sovereignty

- p. 418-424 (Williams), 424-426 (Talton v. Mayes),
- 447-463 (Kiowa and Bay Mills),
- p. 497-501 (disenrollment) 513-521 (Solem)

IX Limits of Tribal Jurisdiction in Indian Country

- p. 427-430 (Wheeler), 433-447 (ICRA and Martinez)
- 531 -546 (Indian crimes and Antelope) ,
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X Criminal Jur. Cont.

- 546 -554 (Bryant), 554-563 (skim).
- McGirt v. Oklahoma (textbook supplement on Twen 77-98) Castro-Huerta (textbook supplement on westlaw p 98-115, Also:
<https://www.theatlantic.com/ideas/archive/2020/07/mcgirt-case-historic-win-tribes/614071/> and <https://www.scotusblog.com/2020/07/opinion-analysis-justices-toe-hard-line-in-affirming-reservation-status-for-eastern-oklahoma/>
- p.575-599 (Oliphant, Lara)

XI Regulatory. Jur.

- p. 601-606, 615-624 (Montana, National Farmers)
- p624-646 (A1, Nevada v. Hicks)
- p., 653-672) (Bracker, Preemption, Oklahoma Tax)

XII Indian Children (ICWA)

- p.686-718 (Holyfield), Adoptive Couple v. Baby Girl
- Brackeen (Twen under course materials)

XIII Gaming

- p.734-763 (Cabazon, Seminole, Bay Mills)

XIV Religion and Culture Protections

- p. 765-801 (Lyng, Smith)
- 802-811 (NAGPRA) Kennewick Man read:
<https://www.smithsonianmag.com/history/kennewick-man-finally-freed-share-his-secrets-180952462/>
<https://www.npr.org/sections/codeswitch/2016/05/05/476631934/a-long-complicated-battle-over-9-000-year-old-bones-is-finally-over>

