

Indian Law Research Syllabus Summer 2017

Professor

Stacey L. Gordon

Office: LAW 167 (in the Law Library)

Phone: 243-6808 (office), 239-9024 (cell)

Email: stacey.gordon@umontana.edu

Course Information

Dates: Monday, June 5 – Friday, June 9

Time: 9:00am-11:30pm

Location: LAW 215

Credits: 1

Course Description

Because tribes are sovereign governments, the field of Indian Law encompasses distinct legal issues and legal sources. Researching both federal Indian law (the law of the relationship between tribal governments and the U.S. government) and tribal law (the law of individual tribes) requires a different set of tools and research skills than those students are introduced to in a basic legal research course. In this course, students will learn the skills and sources necessary to research general Indian law issues as well as the very specialized skills and sources used in researching the legal history of a tribe, including reserved treaty rights. The course will cover researching treaties, Indian land claims, statutory and case law, and tribal law. Students will actively participate in a research assignment throughout the course.

GOALS. Upon completion of this course students should:

1. Be aware of the important resources for Indian and Tribal law research.
2. Have some practice with basic and advanced research techniques.

METHODS.

1. Background reading.
2. Lecture/demonstration.
3. In-class research exercises.
4. Tribal legal history project.

Required Texts & Reading

There are no required textbooks for this course. All required readings are available via the internet, Lexis, Westlaw, or HeinOnline. There is a copy of *Cohen's Handbook of Federal Indian Law* in the Reference section in the Law Library. The course Moodle page contains links to additional sources discussed in class. The course Moodle page is an extension of the classroom and you are responsible for material posted there. Announcements will be made in class and via email through the Moodle page to students' official UM email addresses.

Assignments & Grading

1. Professionalism (Attendance & Class Participation) (25% of grade)

Attendance at all classes is required. Students who miss more than 2.5 hours must withdraw from the course as per the law faculty attendance policy. Students who come to class late or leave class early will receive a reduction on their Participation grades as follows:

| Absences | Grade |
|-----------------------------------|-----------|
| 0 Unexcused Absences | A |
| .5 Hour-1 Hour Unexcused Absence | A- |
| 1.5 Hour-2 Hour Unexcused Absence | B+ |
| 2 Hour-2.5 Hour Unexcused Absence | B |
| >2.5 Hours Unexcused Absence | Must drop |

The class participation portion of the Participation grade will be based on active engagement in in-class exercises daily discussions of the tribal legal history assignment and in-class exercises.

Many of the research tools used in this course are online and students may want to bring laptops to class to follow along with in-class demonstrations. I expect that your class participation will reflect the type of professionalism expected of law practitioners. This includes limiting your use of laptops and other technologies in the classroom to class and law firm related activities. Repeated failure to adhere to this standard may result in the lowering of your professionalism grade.

2. Tribal Legal History (75% of grade)

Each student will compile a tribal history similar to the one discussed in Nancy Carol Carter, [Indian Nation Archives: How to Build a Tribal Legal History](#). The instructions for this assignment are included at the end of this syllabus. Students will have in-class time to work on this project but will be expected to also spend out-of-class time to complete the assignment. This assignment is due Sunday, June 11 at 5:00pm. Late assignments will be penalized unless students receive prior permission from me. Assignments will be submitted through Moodle.

3. Grading Scale

Final grades will be calculated using the grading scale in the Student Handbook:

| Grade | Grade Points |
|-------|--------------|
| A+, A | 4.0 |
| A- | 3.7 |
| B+ | 3.3 |
| B | 3.0 |
| B- | 2.7 |
| C+ | 2.3 |
| C | 2.0 |
| C- | 1.7 |
| D | 1.0 |
| F | 0 |

Disability Services

The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students (DSS). If you think you may have a disability adversely affecting your academic performance, and you have not already registered with DSS, please contact Dean of Students, Elaine Gagliardi (Law 205, 243-5094), and [DSS](#) (Lommasson 154, 243-2243). Dean Gagliardi and DSS will work with you to provide an appropriate accommodation.

Academic Honesty

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the [University of Montana Student Conduct Code](#) and the Law School Honor Code, which is available on the UM Law Student Information Moodle page.

Course Schedule

Class #1, Monday, June 5

Course introduction, Basic sources in Indian law research, Introduction to treaties

Learning Outcomes:

- *Students will demonstrate knowledge of specific Indian law research sources.*
- *Students will demonstrate understanding of the history and process of Indian treaties and treaty-making.*

• **Assignment**

- Nancy Carol Carter, *Indian Nation Archives: How to Build a Tribal Legal History*, Native Am. R. Fund (2006), <http://www.narf.org/nill/legalhistory/archives.html>. Just skim through this website; you will use it to complete your tribal legal history research project.
- Stacey L. Gordon, *Indian and Tribal Law Research Guide*, William J. Jameson L. Library, <http://law.umt.libguides.com/content.php?pid=377901> (last updated June 8, 2016). Scan this guide to get an idea of what it covers.
- Jill E. Martin, "A Year and a Spring of my Existence": *Felix S. Cohen and the Handbook of Federal Indian Law*, 8 W. Legal Hist. 35 (1995) (available on HeinOnline).
- *The Treaty Process & The End of Treaty Making in Cohen's Handbook of Federal Indian Law* § 1.03[1], [9] (Nell Jessup Newton et al., eds. 2012) (available on Lexis).

Class #2, Tuesday, June 6

Researching treaties, executive orders

Learning Outcomes:

- *Students will demonstrate knowledge of the sources of Indian treaties.*
- *Students will demonstrate knowledge of the sources of treaty interpretation.*
- *Students will demonstrate proficiency researching Indian treaties and treaty interpretation.*
- *Students will demonstrate understanding of the role of executive orders in Indian law and how to research them.*

• **Assignment**

- Beth DiFelice, *Indian Treaties: A Bibliography*, 107 Law Libr. J. 241 (2015).

- *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229 (E.D. Wash. 1997).
- [Exec. Or. No. 13,175](#), 3 C.F.R. 304 (2001).

Class #3, Wednesday, June 7

Researching federal Indian law, Researching Alaska Natives and Native Hawai'ians law

Learning Outcomes:

- *Students will demonstrate understanding of the sources of federal Indian law.*
- *Students will demonstrate understanding of the sources of law regarding Alaska Natives and Native Hawai'ians.*
- *Students will demonstrate proficiency with federal Indian law research methods.*

- **Assignment**

- David Selden & Monica Martens, [Basic Indian Law Research Tips – Part I: Federal Indian Law](#), Native Am. R. Fund (2008), <http://www.narf.org/nill/documents/coloradoLawyerArticle-fed.pdf>.
- *Indian Tribal Governments: Alaska Natives and Native Hawaiians in Cohen's Handbook of Federal Indian Law* § 4.07[3]-4.07[4] (Nell Jessup Newton et al., eds., 2012).
- Nancy Oestreich Lurie, [The Indian Claims Commission](#), 436 Annals of the Am. Acad. Pol. & Soc. Sci. 97 (Mar. 1978).

Class #4, Thursday, June 8

Researching Indian claims, Researching tribal law

Learning Outcomes:

- *Students will demonstrate understanding of the Indian claims process.*
- *Students will demonstrate proficiency researching Indian claims.*
- *Students will demonstrate understanding of the differences between federal Indian law and tribal law.*
- *Students will demonstrate knowledge of the sources of tribal law and effective research methods.*

- **Assignment**

- *Indian Claims Against the United States in Cohen's Handbook of Federal Indian Law* § 5.06 (Nell Jessup Newton et al., eds., 2012).

- Bonnie J. Shucha, [Engaging the Third Sovereign: The Nature, Reach and Sources of Tribal Law](#), 88 Wisc. Law., May 2015, at 47.
- Bonnie Shucha, "Whatever Tribal Precedent There May Be": The (Un)availability of Tribal Law, 106 Law Lib. J. 199 (2014).
- David Selden, [Basic Indian Law Research Tips: Tribal Law](#), 43 Colo. Law., Feb. 2014, at 51.
- *Tribal Governments in Cohen's Handbook of Federal Indian Law* § 4.04 (Nell Jessup Newton et al., eds. 2012).

Class #5, Friday, June 9

Researching special subjects in Indian law, Researching international indigenous law

Learning Outcomes:

- *Students will demonstrate proficiency locating and using research guides to research special subjects.*
- *Students will demonstrate basic understanding of the sources of international law and effective research methods.*

- **Assignment**

- [Indian Law Research Guide: Resources by Topic](#), Nat'l Indian L. Lib., <http://www.narf.org/nill/resources/index.html> (last visited May 31, 2016). Look at a few guides to get a general idea of what is available on this webpage.
- M. Christian Clark, *Analytical Guide to Federal Indian Tax Law*, 105 Law Lib. J. 505 (2013).
- Christopher C. Dykes, [Research Guide on Indigenous Peoples International Law](#), Hauser Global L. Sch. Program (July 2015), http://www.nyulawglobal.org/globalex/Researching_Indigenous_Peoples_International_Law1.htm.
- [EISIL: Ethnic Groups, Minorities and Indigenous Peoples](#), Am. Soc'y Int'l L., http://www.eisil.org/index.php?sid=772342060&cat=49&t=sub_pages (last visited May 31, 2016). Scan this website to see what types of resources are available.

Indian Law Research Tribal Legal History Project

Instructions: Each student will select a tribe* and compile a legal history for that tribe similar to the one outlined in Nancy Carol Carter, [Indian Nation Archives: How to Build a Tribal Legal History](#).

Your compiled legal history will be an abbreviated version of the one discussed in Carter's article. While Carter's legal histories include statutes, cases and administrative materials of general application to all tribes, yours should only include those that are specific to the tribe you have selected. Your legal history must at least identify the documents listed below (you do not have to locate the documents themselves)—you may include additional relevant documents if you want to. For each document you identify, you should include a brief (1-2 sentences) summary of the document. If you cannot find documents for your selected tribe in one of the categories, you should briefly describe your research method. In other words, you should somehow address each of the following types of documents:

- Treaties
- Treaty Negotiating Documents
- Federal & State Statutes
- Federal & State Court Cases
- Federal & State Administrative Regulations and Cases
- Compacts
- Executive Orders, Presidential Proclamations
- Claims Decisions
- Tribal Constitution
- Tribal Code
- Tribal Cases

If you have more than 10 documents under a category, you may list the 10 that you deem most important then make a note that there are additional documents available and summarize their nature.

All sources must be cited in correct ALWD format.

We will compile a tribal legal history for the Makah tribe in class that you will be able to use as a guide for your assignment.

Due: Sunday, June 11 at 5:00pm. Submit your assignment through the Moodle course page. Late assignments will be penalized unless you speak with me before the due date.

* You will find the current list of federally recognized tribes at Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, [82 Fed. Reg. 4915](#) (Jan. 17, 2017). There is also a list federally recognized tribes organized by state at [Federal and State Recognized Tribes](#), Nat'l Conf. St. Legislatures,

<http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#federal>
(updated Oct. 2016).