

MPA812 Law and Public Policy Syllabus

Course Description

It is essential for policy professionals (whether within government or in the broader public sector) to have a working knowledge of legal principles and legal reasoning. In this course, we will review the fundamental elements of the Canadian legal system, and then explore case law showing how legal instruments can be used to implement policy choices. We will also review examples where law can restrict available policy choices.

Course Objectives

By the end of the course, students will be expected to:

- Understand fundamental legal concepts and the process of legal reasoning;
- Articulate and apply the concept of the rule of law;
- Analyse and present their interpretation of statutes and case law;
- Advocate their interpretation of a legal issue; and
- Communicate effectively with lawyers and non-lawyers about legal issues.

Instructor Information

Name: Alison Fraser
Email: alison.fraser@queensu.ca
Office location: Room 312 Robert Sutherland Hall

If you want to meet with me (and I am happy to make myself available) please arrange a time in person or send me an email, because I am rarely in my office; I live in Toronto. I will do my best to respond to your email within 24 hours. If we cannot meet in person, we can set up a phone call or use Skype or FaceTime.

Course Structure

I intend to deliver the course, as much as possible, as a graduate seminar. My expectation is that you will carefully read and consider the assigned reading for each class, and then come prepared to discuss the material. My experience in teaching this class over the last eight years indicates that you will best develop your own understanding of legal institutions and issues through participating in debate and discussion.

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Readings

The required text for this course is Public Law: Cases, Materials and Commentary 3rd edition; General Editors: Craig Forcese and Adam Dodek, published by Emond in 2015. The Queen's Bookstore has ordered the text in hard copy. If you would prefer to use the eBook version, please go to this site: <http://www.emond.ca/public-law-analysis-cases-and-commentary-3rd-edition.html> Do NOT buy an earlier version of the text as the 3rd edition was almost completely rewritten and reorganized.

Any additional readings will be distributed by email.

Assignments

1. Short paper (no more than three pages; see section on Assignments on page 4 for details) on a law and public policy issue you have encountered or read about, setting out the facts, the issues raised, how the matter was resolved and your critique of the resolution. I recommend against writing about a court decision; you will have that opportunity in the other assignments. The main purpose of this assignment is to clarify my expectations of your critical thinking and written communication skills; see Appendices C (on critical thinking) and D (on writing and editing skills). Due by end of day Sunday January 20.
2. Short case note (no more than three pages) that summarizes one of several suggested cases, setting out the case name, the facts, the issues raised, the outcome, the legal reasoning of the court and critical comments or questions. See Appendix E for more information. Due at beginning of class February 14.
3. Case presentation; hard copy due at the beginning of class the day we agree you will do your presentation. The presentations will most likely take place on March 28 and April 4. I will provide more information during the course.
4. Ten-page paper due at end of day Sunday April 14 (TBC). I will provide more information during the course.

Your paper may cover any one of the following:

- Academic research and writing on an issue relating to law and public policy
- A critique of a certain court decision or line of cases
- A subject you propose and I approve

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Evaluation

Students' ability to analyse, recognize and understand the key issues covered in the course will be demonstrated and evaluated through the assignments described above as well as class participation.

In grading your work, I will consider not only the academic content but also evidence of strong critical thinking and communication skills, as I believe both these skills are expected of Queen's MPA grads and are critical to success in the public service of today.

Distribution of grades

Short paper	10%
Case Note:	15%
Case Presentation:	25%
Final Paper:	40%
Participation:	10%
Total	100%

Classroom Environment

My goal is a course in which we will all learn and grow as individuals and professionals. That requires courtesy, mutual respect, and an honest effort from every one of us to add value to the course material by understanding and discussing it. The course deals with the process and outcome of legal argument, sometimes about very sensitive issues. I expect courtesy and sensitivity from all of us.

Additional Information and Classroom Policies

Academic Integrity: Academic integrity is constituted by the six core fundamental values of honesty, trust, fairness, respect, responsibility and courage (see <https://academicintegrity.org/fundamental-values/>). These values are central to the building, nurturing and sustaining of an academic community in which all members of the community will thrive. Adherence to the values expressed through academic integrity forms a foundation for the "freedom of inquiry and exchange of ideas" essential to the intellectual life of the University.

Students are responsible for familiarizing themselves with the Academic Integrity Policy of the School of Graduate Studies, available at http://www.queensu.ca/calendars/sgsr/Academic_Integrity_Policy.html. Students are also responsible for ensuring that their assignments conform with the principles of academic integrity.

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Departures from academic integrity include plagiarism, use of unauthorized materials, facilitation, forgery and falsification, and are antithetical to the development of an academic community at Queen's. Given the seriousness of these matters, actions that contravene the regulation on academic integrity carry sanctions that can range from a warning or the loss of grades on an assignment to the failure of a course to a requirement to withdraw from the university.

Disability Accommodations Statement: Queen's University is committed to achieving full accessibility for persons with disabilities. Part of this commitment includes arranging academic accommodations for students with disabilities to ensure they have an equitable opportunity to participate in all of their academic activities. If you are a student with a disability and think you may need accommodations, you are strongly encouraged to contact Student Wellness Services (SWS) and register as early as possible. For more information, including important deadlines, please visit the Student Wellness website at: <http://www.queensu.ca/studentwellness/accessibility-services/>

Assignments: course assignments are due on the date specified in this syllabus. Papers should be double-spaced, with one-inch margins, in 12-point, Arial or Times New Roman font. Page limits refer to the text of the assignment not including title page or bibliography, and will be strictly enforced. Please email me your assignment by the due date; I will grade and return your assignments to you through email.

Please save the final version of your assignment according to the following syntax: [your first name] 1 [for first assignment].docx or .pages. For instance, if I were completing the assignment, I would save it as alison 1.docx. Substitute your first name for mine [and .pages for .docx, if you use Pages]. For later assignments, please follow the same syntax (for instance, alison 2.docx, alison 3.docx)

I will return your assignment to you in the format you provide (.docx or .pages) with my comments embedded in the text. Do NOT send your assignment as a pdf document, as I don't have the software required to edit that format.

With the exception of your case presentation, I do not require a paper copy.

Attendance Policy: Because debate and discussion of legal issues is critical to better understanding those issues, I expect students to make best efforts to attend each class. That said, I understand that "life happens" and situations may arise where you are unable to attend a class. If that is the case, please advise me by email BEFORE the class why you are unable to attend. Unauthorized absences will reduce your participation grade.

Late Work: no late assignments will be accepted unless accompanied by medical or other official documentation.

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Make-up Policy: make-up work will be permitted only where necessary for the purpose of accommodation, and only where a request is accompanied by medical or other official documentation.

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Appendix A: Course Outline

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#	Date	Title	Format	Readings
1	10.01	Introduction	S	Syllabus and related material; Quiz on Statute vs Case Law
2	17.01	Introduction (cont'd)	S	<i>Halpern</i> case (Text p. 102-107); Text p. 1-3, 7-16, 19-28
3	24.01	Indigenous Peoples and the Law Sources of Canadian Law	S	Text p. 53-79 Text p. 81-102
4	07.02	The Canadian Constitution Recurring Constitutional Principles Constitutional amendment	S	Links to the text of certain parts of the Constitution Text p. 113-174
5	14.02	Key Actors: the Executive and its Functions	S	Text p. 297-357 except Pt. III (p.305-311) and Pt. V (p.317-322)
6	28.02	Courts and Judiciary; Judicial Independence	S	Text p. 359-422
7	07.03	Statutory Interpretation	S	Text p. 426-480 and 523-525
8	14.03	Constitutional Judicial Review	S	Text p. 527-564
9	21.03	Judicial Review of Administrative Action	S	Text p. 564-593
10	28.03	Case Presentations	P	TBD
11	04.04	Case Presentations	P	TBD

Format: S means Seminar; please come prepared to discuss the material
P means presentation; input from non-presenters expected

Note: Please treat this as a work in progress. There may be too much reading for some of the classes and I will provide more detailed information on what can be skipped as we move through the course.

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Appendix B: Participation Grade

The syllabus indicates that class participation is important, as it is only through discussing legal issues that we can deepen our understanding of them. It also allocates 10% of the final grade to participation. This document clarifies my expectations about your participation in class. Unauthorized absences from class will reduce your participation grade.

Content:

- Evidence that you have read and thought about the assigned reading
- Evidence of critical analysis and questioning of the assigned reading
- Evidence of comparative analysis:
 - Today's material compared to something else we have covered in this course
 - Today's material compared to other academic or experiential learning

Format:

- Articulate and clear
- Of appropriate length
- Respectful
- Intellectual rather than emotional
- On point
- Furthers the learning of the group

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Appendix C: Critical Thinking

A Student's Guide to Critical Thinking and Critical Writing
With Thanks to Prof. George Perlin

The need for critical perspective

The study of law and public policy is inherently controversial. There are many different opinions about the questions it raises that may reflect different beliefs about values, disagreements about how best to achieve shared values, or differing interpretations of evidence used in advancing a particular opinion. Thus it is important that you bring critical perspective to what you read, write and say. You need to recognize the assumptions from which an argument proceeds and to evaluate the strengths and weaknesses both of the logic of the argument and of the evidence that is presented to support it.

Criteria for Critical Analysis

In taking a critical perspective on the things you read, here are some of the questions you should keep in mind.

Objectives

- What specific purposes does the author have?
- Do these purposes serve some broader purpose? For example, does the author wish to defend or attack a particular theory or value perspective?
- Are the purposes clearly stated?
- Does the author formulate the questions to be answered in a way that makes the conclusions inevitable?

Concepts and Assumptions

- What concepts are adopted in the analysis? Are they clearly defined? Are they specifically stipulated to suit the author's purpose or are they generally accepted?
- What basic assumptions and premises enter the analysis? Are they made explicit or are they hidden? Are they generally accepted or are they contestable?

Structure, Evidence, Logic

- What is the method of argument? Does the author propose hypotheses which are to be tested or does she or he develop a thesis?
- What kind of evidence is used? (For example, official documents, newspaper accounts, survey research, personal interviews, aggregate economic or social data.) What are the strengths and weaknesses of analysis with evidence of this kind? Has the author taken account of the weaknesses?
- Is the presentation of the evidence consistent with the method adopted? For example, if hypotheses are to be tested, is that what the author really attempts to do (within the limits of what can be done to test hypotheses in the social sciences)?

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- Is the argument internally consistent? Does it follow logically?
- Is the interpretation of evidence reasonable?
- What, if any, are the alternative interpretations and/or explanations for the findings the author presents? Does the author anticipate and effectively respond to alternative interpretations and/or explanations?

Conclusions

- What are the author's conclusions? Are they reasonable? Or does one of the questions suggested above serve to call them into question?
- What implications do the conclusions have for the general subject you are dealing with? What implications do they have for the broader subjects of the course?

Application to your written work

You should apply the same criteria in your own written work. Of course, assignments cannot be based on the kind of original research expected, say, of a Ph.D. candidate. But neither are they meant to be just a summary of what you have read. Take a position and make the best case you can for it -- taking into account the strengths and weaknesses of your sources.

The first paragraph of the essay should present a clear and concise statement of the purpose of the paper: What is the question or the issue that the paper addresses? Why is it of interest? What thesis will the paper develop?

Each subsequent paragraph should have a clear function in the development of the argument. In presenting your case ensure that you substantiate each point. To assert something is not to demonstrate it. The test is whether you have supporting evidence and whether that evidence is credible. Therefore, it is important that you cite the source or sources for each piece of evidence you present.

To be convincing you must be able to deal with counter-arguments. What are the alternative interpretations of the evidence you present? Why do you think your interpretation is more convincing?

Are there counter-arguments based on other evidence? What are they? What is the evidence adduced to support them? Why do you not agree with them?

The conclusion should be brief and be clearly linked to the question raised and the thesis proposed in the first paragraph. What is the significance of your argument for the larger issues in the course to which the essay topic is addressed?

Seminar Presentations

Seminar discussions should be organized to present and evaluate different points of view. In your presentation you may take a position as you would in an essay, using the same approach, (that is dealing with counter-arguments) or you may simply identify the positions on the issue you raise and lay out the arguments and counter-arguments for the class to work through. Seminar presentations should begin by identifying how the topic is related to the course as a whole, explaining why it is being discussed.

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Appendix D: Alison's Guide to Writing and Editing Skills

1. Why it matters:

- Writing is a key skill in public service
 - Point of clear writing is to provide information in the most accessible way to the reader, and to persuade; and
 - Good writing skills are transferable to oral communication;
- Employers will (and should) expect someone with an MPA from Queen's to be able to communicate well

2. Different Styles for Different Types of Communication

- Different styles are required for different types of communications
 - A quick email is very different from an academic paper, or a Cabinet Submission/Memorandum to Cabinet;
 - But:
 - Be careful about emails: they are very easy to misread, because they're casual and the sender can't read your face;
 - For important emails, draft and then save and review, even a few minutes later; consider how your text might be misconstrued; and
 - Remember that (with certain exceptions) email is a permanent record

3. Structure

- A good structure makes it easier for the reader to follow your thoughts (which is the goal)
- My preference:
 - Introductory paragraph which sets out your thesis and your "road map" or structure of the paper
 - Paragraphs which flow logically
 - A conclusion which wraps up your paper
- You may find some variant of this approach works best for you
- Remember that you're telling a story

4. Process

- Mine:
 - Start w rough thesis
 - Modify and refine thesis as I research
 - Once research is done, sketch outline of paper
 - Write a draft
 - Ignore the draft for at least a day
 - Edit (of which more later)

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- Finalize
- Again, some variant may work best for you

5. Editing

- Editing is your responsibility
- I read my draft three times:
 - Once for logic, clarity and flow;
 - Once as a proofread (Spellcheck is not enough!); and
 - Once to determine if there is anything that could be removed without loss of meaning
- Some people read the paper out loud, particularly for logic, clarity and flow
- Of course there are other ways to achieve the goal of a well-written paper

6. Matters of Style

- Active sentences over passive
- Shorter sentences over longer
- Keep your paragraph length in check: 4-5 sentences?
- Keep your structure parallel, or, as Strunk and White put it, “express co-ordinate ideas in similar form”
- If your sentence contains three or more thoughts, consider using a list rather than full sentences
- Use gender neutral language
 - If the subject of the sentence is plural rather than singular, you can use “they” rather than “he or she”
 - Do NOT use a singular subject and “they”
 - If you are referring to a known male or female, then use “he” or “she” as appropriate
- Use a simple word rather than a fancy one: (e.g. “use” rather than “utilize”)
- Newly coined words such as “incent”, “incentivize” and “impact” used as a verb should be used with caution in academic writing, even if they appear in the Oxford English Dictionary

7. Proper Usage, Spelling and Punctuation

- Use a good dictionary (Canadian or British; not American), thesaurus and style book (Fowler’s English Usage, Strunk and White)
- Make sure the word means what you think it does; if in doubt, look it up
- Grammar
 - Who vs whom
 - “who” is the subject of a sentence: who stole my cheese? It may also be used to identify an actor; see below

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- “whom” is the object of the verb: by whom was my cheese stolen?
[note this is a passive sentence, and therefore less direct and clear]
- Who vs that
 - “who” used in a phrase refers back to a sentient being: the nurse who took my blood pressure
 - “that” used in a phrase refers back to a thing: the car that broke down
- Phrases
 - Whether or not
 - Further (conceptual) vs farther (physical distance)
 - Less (can’t count it) vs fewer (can count it)
- Punctuation
 - Apostrophe
 - Generally (w one exception) possessive
 - If noun is singular, the apostrophe goes before the “s”: the doctor’s opinion
 - If noun is plural, the apostrophe goes after the “s”: the doctors’ opinion (assuming they all agree)
 - The exception: it’s and its
 - “it’s” is a contraction of “it is”
 - “its” is the possessive used for a thing (as opposed to a person): the car lost its shine
 - Semicolon (;) vs colon (:)
 - The semicolon is used to separate two complete sentences, each of which could stand on its own.
 - Generally used when the two sentences are closely connected
 - The colon is used when what follows it is a sentence fragment, clarifying or expanding on the sentence before the semicolon
 - In a bulleted list, I use the following structure:
 - _____;
 - _____;
 - _____; and/or [pick one; do not use both]
 - _____.

Note that some would use commas, and some would have no punctuation after the first three indented bullets with a period after the last.

- The great comma debate:
 - Some like the Oxford comma:
 - Elms, maples, and oaks
 - Others, including me, do not like it:
 - Elms, maples and oaks
 - Choose one, and be consistent

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- If you're really curious about this, read Eats, Shoots and Leaves by Lynn Truss. It won't take long, and you'll laugh. Here's how it starts:
 - A panda walks into a café and orders lunch. When he's through eating, he takes out a gun and fires it into the air. The waiter asks him, "What was that all about?"
"It's all in the book," he says, tossing the waiter a typo-ridden wildlife manual. The waiter finds the section on pandas, where sure enough under diet, it states, "Eats, shoots and leaves."

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Appendix E: Assignment 2

The goal of this assignment is twofold: to get you started reading, thinking and writing about law, and to further clarify for you my expectations about written work. I will give each element (legal analysis and written work) equal weight in marking your assignment (out of **15**) and will provide comments on both elements. The assignment is due by beginning of class on Thursday Feb. 14.

In law school, students write case notes so they keep track of and ensure they understand the hundreds if not thousands of cases they read. This is critical for two reasons: to write about a case is to understand it, and to understand a series of cases on a particular topic gives life to the concept of stare decisis (literally, stand by things decided).

Pick one of the cases listed at the end of this document. Read it carefully (I recommend several readings) to determine the following:

- the parties
- the facts
- the legal issue or issues
- the decision
- the reasons for the court's decision (including cases relied upon)
- critical comments or questions about the decision (remember that it is through questioning that lawyers differentiate among similar situations)

Then, using those six headings as a template, complete each portion of the case note. As described in the syllabus, the note will not exceed three pages, double-spaced in 12-point font. I have attached a draft template for your use.

For this assignment I do not want you to use anything other than the text of the case in the Public Law text. Do not spend time reading the entire text of the case or commentary on it.

Please take time to think before you write and edit after you've written; my own practice is to complete a draft and then come back to it a day or more later to edit.

The cases are set out below, followed by the template. Work hard and have fun!

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Case Name	Page in Public Law text
Edwards v A.G. Canada (the "Persons" case)	29
R. v Morgentaler	34
Figueroa v Canada	210

Case Note

Case Name:

Parties:

Facts:

Legal Issues:

Decision:

Reasons:

Critical Comments or Questions: