

RD F675 Federal Indian Law in Alaska: Land, Water and Subsistence

Fall 201X Course Outline

Course meets TBA 5.10 to 8.10pm

Note: Students must have graduate standing or instructor permission to enroll in RD F675

Instructor: Jenny Bell-Jones

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Office Hours: By appointment

Course Description: Examination of the history of federal Indian law and its implementation in Alaska. Key laws including the Indian Reorganization Act (IRA) Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA) are examined in terms of how they have altered the political landscape in Alaska. Indian legislation is explored with special consideration for how different laws have affected the subsistence rights of Alaska Natives, and how they affect management of waters in the state. Students consider the future of subsistence, water rights and how these laws affect natural resource access. Prerequisites: graduate standing or instructor permission.

Course Goals & Objectives: Students will complete the course with a working knowledge of key Indian legislation and how it applies to lands and waters in Alaska. They will be able to interpret the relevant content of the laws and explain to others the connections between the mandates of each and the ways in which these mandates govern the lives of Alaska Natives and their communities today. They will make effective recommendations for changes to law and policy as regards Native community needs in Alaska.

Student Learning Outcomes:

- Examine how key pieces of Indian legislation have affected the rights of Alaska Natives to self-govern and control subsistence resources.
- Examine how rights to use waters throughout the state affect subsistence now and will continue to do so in the future.
- Examine how tribal jurisdiction works and how it has been affected by the land tenure system created by ANCSA, using applicable case law and legal decisions to support their opinions.
- Evaluate and critique case law and key legal decisions broadly and in relation to their specific project.

Required Readings:

Alaska Natives and American Laws, third edition. David S. Case & David A Voluck. University of Alaska Press

Native Land Law 2015 edition. Thomson West publishing

Indian Reorganization Act https://www.iltf.org/sites/default/files/IRA_2-all_amendatory_changes.pdf

43 USC Chapter 33 – Alaska Native Claims Settlement Act online at <http://www.law.cornell.edu/uscode/text/43/chapter-33>

USC Chapter 51 – Alaska National Interest Lands Conservation Act online at <http://www.law.cornell.edu/uscode/text/16/chapter-51>

http://www.nps.gov/legal/parklaws/Supp_V/laws1-volume1-anilca.pdf

Alaska State Constitution <http://ltgov.alaska.gov/treadwell/services/alaska-constitution.html>

Additional required readings will be provided on the Blackboard site for the course (see the attached reading list)

Suggested Texts for Supplemental Reading:

Dunber-Ortiz, Roxanne. Indigenous Peoples History of the United States. Beacon Press, 2014.

Fletcher, Matthew. Fletcher's Hornbook on Federal Indian Law. West Academic Publishing, 2016

Course Guide: This course uses audio conference participation and the Blackboard learning system.

Course Methodology: Course methodology includes reading, participation in lectures, discussion, written and oral presentation involving problem solving and interpretation of the targeted legislation.

Grading/Evaluation Policy will be based upon the following:

Attendance and participation at weekly three hour audio conferences (10%): Students will be expected to attend these audio conferences having prepared all assigned readings in advance. They may be asked to lead discussions of case law and legislation, and failing to be prepared to do so will result in a reduced grade for participation.

Quizzes 20%: There will be four open book timed online Blackboard quizzes.

Journal Entry 20%: Students must submit a journal entry into the Blackboard journal forum providing their thoughts and ideas on assigned topics at four due dates throughout the semester. Assigned topics will be designed to help students with their final written assignment and oral presentation. Journal entries each require a minimum of 1000 words. Citations are additional to the 1000 word minimum.

Written Exam (1) 30%: Comprehensive online exam covering interpretation of legislation and specific case law examined in class. Students will use the texts of the different laws and the assigned cases during this open book exam. The three hour exam will include some short essay questions.

Problem Solving Assignment (1) 10%: Each student will be given a legal problem involving a possible real life scenario in a village or villages. Students may choose which law they work with but no two students will be given the same problem. A minimum of twelve pages is required. These twelve pages will be divided 70/30 between a formal legal paper for professionals and a paper for village residents. Both papers will explain how the student solved the problem. Students will be required to use accepted legal writing style using footnotes for the “70%” but may choose a style they think will best suit their village audience for the “30%” paper.

Final Oral Presentation (1) 10%: Students will give a fifteen minute oral presentation explaining how they solved their problem during the final class meeting. The remainder of the class will participate with questions for the presenter.

Grading: Grading is based on guidelines in the 2015/16 UAF catalog. The catalog can be accessed online at: <http://www.uaf.edu/catalog/>

A plus (+) and minus (-) grading system will be utilized for this class.

Letter grades for the course will be determined as follows and will reflect the Grading System and Grade Point Average Computation policy stated in the current UAF Catalog.

A+	100–97%	A.....	96–93%	A-.....	92–90%
B+.....	89–87%	B.....	86–83%	B-.....	82–80%
C+.....	79–77%	C.....	76–73%	C-.....	72–70%
D+	69–67%	D.....	66–63%	D-.....	62–60%
F.....	less than 60%				

Criteria for grading: (UAF Catalog)

A (90-100%) =Excellent work that exhibits insight into the issues. Demonstrates critical thought. Written work is exempt of errors in grammar, spelling and content. Above minimum requirements. Indicates originality and independent work, a thorough mastery of the subject and the satisfactory completion of more than is regularly required.

B (80-89%) =Above average. Speaks and writes well. Above minimum requirements. Demonstrates good understanding of topics.

C (70-79%) =Speaks and writes in an acceptable manner. Works is satisfactory, average. Meets minimum requirements.

D (60-69%) =Below average work. Minimally acceptable. Lowest possible passing grade.

F (59% or lower) =Unacceptable work. Does not meet minimum requirements. Indicates failure. Included in GPA calculations

Student Expectations: All submitted assignments must show reflection and scholarship. Students are expected to use legal writing style with footnotes incorporating proper legal citations.

Students should contact the instructor(s) if they have questions about the course overview, objectives, and organization, grading or student expectations. The contact information is included with this syllabus.

Instructor Policy on Late Submissions, Incomplete Grades and No Basis Grades: There will be no “NB” grades awarded in this course. Students must obtain instructor permission in advance if an unexpected event will result in late submission of the written assignment. Late assignments will not be accepted without prior arrangement. Incomplete grades will only be awarded in extreme circumstances and students should contact the instructor immediately if life events lead them to believe they might need to request an “I” grade.

Plagiarism: Plagiarism is quoting from, paraphrasing, or using specific material contained in any published work, e.g., books, periodicals, public documents, internet, or another person’s ideas without providing appropriate citations or recognitions. Self-plagiarism is using all or part of a paper that was written previously for a different class or assignment and failing to indicate that it is earlier work. NOTE: Material copied from a course lecture or web link but not appropriately cited is considered to be plagiarism. Plagiarism can result in an “F” grade in this course. Students should contact the instructor if they have questions on this topic.

Students with Disabilities: Students with a documented disability requiring accommodation should notify the instructor at the beginning of the semester. The Office of Disability Services implements the Americans with Disabilities Act (ADA) and ensures that UAF students have equal access to the campus and course materials. The instructor will work with the Office of Disabilities Services to provide reasonable accommodations to students with disabilities. (907-474-5655).

uaf-disabilityservices@alaska.edu

Other UAF Student Support Services include:

- Office of Information Technology 907-450 8300 (1-800-478-8226) www.alaska.edu/oit/index.xml or email helpdesk@alaska.edu
- Off-campus library 907-474-7482 (1-800-478-5348) <http://library.uaf.edu/offcampus>
- UAF Writing Center 907 474 5314 or email for an appointment at fywrc@uaf.edu Their website can be found at <http://www.uaf.edu/english/writing-center/>
- CRCD Bookstore 907 474 7711 (1-877-651-4002) or email at CRCD-gotbooks@alaska.edu Their website can be found at <http://www.uaf.edu/rural/bookstore-services/>

Title IX : University of Alaska Board of Regents have clearly stated in BOR Policy that discrimination, harassment and violence will not be tolerated on any campus of the University of Alaska. If you believe you are experiencing discrimination or any form of harassment including sexual harassment/misconduct/assault, you are encouraged to report that behavior. If you report to a faculty member or any university employee, they must notify the UAF Title IX Coordinator about the basic facts of the incident. Your choices for reporting include:

- 1) You may access confidential counseling by contacting the UAF Health & Counseling Center at 474-7043;
- 2) You may access support and file a Title IX report by contacting the UAF Title IX Coordinator at 474-6600;
- 3) You may file a criminal complaint by contacting the University Police Department at 474-7721.

RD 675 COURSE FALL SCHEDULE

WEEK ONE: Introductions and review of materials. Use of legal vocabulary and writing format. Reading and briefing court cases. Locating and citing law and regulations. Canons of Indian law construction.

***** Practice Brief of Talton v Mayes in class *****

WEEK TWO SEPTEMBER: The different eras of Federal Indian policy. Aboriginal Title, the Doctrine of Discovery, and the Plenary Power of Congress. The landmark historical Indian law cases.

WEEK THREE SEPTEMBER: The Marshall Trilogy and *In re Sah Quah*. Why did Alaska Natives move down a different legal path than tribes in the Lower 48?

WEEK FOUR SEPTEMBER: Highlights of the Alaska Native Claims Settlement Act. Why does Alaska have ANCSA rather than a system of reservations similar to the Lower 48?

Hypothetical for problem solving paper will be distributed! (Students must meet individually with instructor during week three to decide on topic for this paper)

QUIZ ONE ON BLACKBOARD

JOURNAL ENTRY DUE ON BLACKBOARD BY MIDNIGHT ON SATURDAY

WEEK FIVE OCTOBER: Explanation of “Indian Country.” Indian Country and reservations in Alaska. Legal status of Indian land ownership. Land owned in fee simple status versus land held in trust by the US government. How does the land ownership model provided by ANCSA affect the ability of Alaska Tribes to govern and exercise jurisdiction over land and members? How has ANCSA diminished tribal powers?

WEEK SIX OCTOBER: Indian trust lands. What are trust lands and where are they? How do trust lands contribute to or detract from tribal sovereignty? What is the process for placing Indian owned fee lands into trust? What is a mandatory trust land acquisition and would this be appropriate for Alaska tribes?

WEEK SEVEN OCTOBER: Alaska National Interest Lands Conservation Act (ANILCA). What does ANILCA provide for subsistence and for other important Alaska Native rights?

QUIZ TWO ON BLACKBOARD

JOURNAL ENTRY DUE ON BLACKBOARD BY MIDNIGHT ON SATURDAY

WEEK EIGHT OCTOBER Subsistence laws in Alaska; the legislation

WEEK NINE OCTOBER: The subsistence court cases: State and Federal

WEEK TEN NOVEMBER: Tribal Courts and tribal jurisdiction over fish and game

QUIZ THREE ON BLACKBOARD

JOURNAL ENTRY DUE ON BLACKBOARD BY MIDNIGHT ON SATURDAY

WEEK ELEVEN NOVEMBER: Water law in Alaska. The Winters Doctrine. How is water allocated in Alaska? Navigable waters, federal versus state

WEEK TWELVE NOVEMBER: Navigable waters and the Katie John cases.

WEEK THIRTEEN: NO MEETING THIS WEEK, ENJOY THE THANKSGIVING HOLIDAY

QUIZ FOUR ON BLACKBOARD

JOURNAL ENTRY DUE ON BLACKBOARD BY MIDNIGHT ON SATURDAY

WEEK FOURTEEN DECEMBER: Cultural preservation and religious freedom.

WEEK FIFTEEN DECEMBER: Final presentations

ORAL PRESENTATION OF FINAL PAPER

WRITTEN PROBLEM SOLVING ASSIGNMENT DUE BY MIDNIGHT ON DECEMBER 10TH

WEEK SIXTEEN

FINAL EXAM DECEMBER FINALS WEEK TBA

Department of Alaska Native Studies & Rural Development Mission Statement

“Our mission is to strengthen leadership capacity for rural and indigenous communities in Alaska and the circumpolar North through degree programs that promote academic excellence, personal development, professional skills, global awareness, respect for indigenous cultures and commitment to community. We seek to include a keen awareness of the scope, richness, and variety of Alaska Native cultural heritages, and a series of critical perspectives on the historical and the contemporary indigenous experience for all our students.”

RD 675 WEEK BY WEEK READING LIST

There is a lot of reading in this class and it is incumbent on the student to stay current with all required readings. Weekly readings from the texts are found in the lecture notes for that week, but students are expected to have read both the entire texts by the completion of the course. The texts are intended to provide background for our weekly subjects but we will not be “going over” the text in class; as graduate students you are expected to bring any questions you have about content in the text to the instructor for guidance. You should also be referring to the texts in your writing.

The lecture notes may include links to legislations or other readings which are required. In addition, the following required materials will be provided in the Blackboard “Course Documents” for each week. The instructor may add other materials for cases in progress, newly published law review, or legislation that has changed. Students will have regular assignments to present readings in class but should always read the other readings additional to those assignments. Most of the assigned cases have been highlighted to assist you in focusing on the parts most pertinent to your study. You should not however ignore the remainder of the decision. Do not spend time on dissents and concurring opinions unless these have been assigned.

WEEK ONE

Lecture notes and assigned reading from texts

Case Brief Format and Example

Deciphering Citations: Congressional Administrative Court Handout

How to Brief a Case

Reading, Understanding & Briefing Court Cases

Blurton law review article on Canons of Construction

Federal Indian Law Canons of Construction

Talton v Mayes

NARF Annual Report

WEEK TWO

Lecture notes and assigned reading from texts.

Cherokee Nation v Georgia

Johnson v McIntosh

Worcester v Georgia

In re Sah Quah

Tlingit and Haida Jurisdictional Act

WEEK THREE

Lecture Notes and assigned reading from texts.

Alaska Pacific Fisheries Co. v United States

Ex Parte Crow Dog

United States v Winans

United States v Kagama

United States v Sandoval

Tee Hit Ton Indians v United States

WEEK FOUR

Lecture notes and assigned reading from texts.
"ANCSA Highlights" (provided with lecture notes)
Alaska Native Allotment Act
District Organic Act 1884
Treaty of Cession 15 Stat. 539
United States v Berrigan
United States v Cadzow
ANCSA text

WEEK FIVE

Lecture notes and assigned reading from texts.
Indian Reorganization Act 1934
Indian Reorganization Act Alaska amendment 1936
USC Title 18 Indian Country
25 CFR 151 New Final Rule
1993 Solicitors Opinion on Tribal Jurisdiction in Alaska
Definition of Indian Country
Indian Country and the Nature of Tribal Self Government in Alaska (Strommer and Osborne)
Optional for extra credit: Interpreting Indian Country in *State of Alaska v. Native Village of Venetie* (Carpenter)
Venetie v State of Alaska
Senate Hearing 112 on IRA 2011 (optional)

WEEK SIX

Lecture notes and assigned reading from texts.
Akiachak v Interior decision
Traditional Cultural Districts: An Opportunity for Alaska Tribes (Ristroph, Elizaveta B.)
Whatever Happened to the Seveloff Fix? (Harrington, Andrew)
25 USC 2801
Testimony of David Case 3/23/2004
Senate Hearing 112 on IRA 2011

WEEK SEVEN

Lecture notes and assigned reading from texts.
ANILCA text
Subsistence, Inholdings, and ANILCA (Tanner, Randy J)

WEEK EIGHT

Lecture notes and assigned reading from texts.

When Values Conflict: Accommodating Alaska Native Subsistence (Morehouse and Holleman)
Toward a Group Rights Theory for Remedying Harm to the Subsistence Culture of Alaska Natives (Bryner)

Uncooperative Federalism: The Struggle over Subsistence and Sovereignty in Alaska Continues (Bridges)

McDowell v State of Alaska

Madison v State of Alaska

WEEK NINE

Lecture notes and assigned reading from texts.

Native Village of Quinhagak v United States

Bobby v State of Alaska

Kwethluk IRA Council v State of Alaska

State of Alaska v Kenaitze Indian Tribe

Chitina Dipnetters v State of Alaska

AK Fish and Wildlife Conservation Fund v State of Alaska and Ahtna Tene Nene'. AK Supreme Court ruling

WEEK TEN

Lecture notes and assigned reading from texts.

Subsistence and Self-Determination: The Reasons for a Native Preference (Case)

Muckleshoot Tribe v Moses

Bowen v Upper Skagit Tribe

Stillaquamish Tribal Hunting and Fishing Ordinance

Stockbridge-Munsee Community Fish and Wildlife Ordinance

WEEK ELEVEN

Lecture notes and assigned reading from texts

Winters v United States

Federal Reserved Water Rights

State of Alaska Water Rights

State of Alaska Submerged Lands information

Water Appropriation Systems

Chugach Natives v Doyon

Tulkisarmute Native Community Council v Heinze & Davidge

Tyonek v Cook Inlet Regional Incorporated

State of Alaska v Nondalton Tribal Council et al. AK Supreme Court decision

Optional for extra credits: Reserved Indian Water Rights in Riparian Jurisdictions: Water, Water Everywhere, Perhaps some Drops for Us. (Babcock)

WEEK TWELVE

Lecture notes and assigned reading from texts.

State of Alaska v Jewell (the final Katie John case)

Native Village of Eyak v Blank

State of Alaska petition for cert in *Alaska v Jewell*

State of Alaska Amicus Briefs for petition for Cert.

Sturgeon v Frost

WEEK THIRTEEN use Thanksgiving week to catch up on readings and review!

WEEK FOURTEEN

Lecture notes and assigned reading from texts.

Indian Religious Freedom Act

Native American Graves Repatriation Act

Frank v State of Alaska

State of Alaska v Brian Ivan et al

People v Woody

AVCP and AFN Amicus Brief for SOA v Ivan appeal

Native Americans in Prison: The Struggle for Religious Freedom (Beran)

WEEK FIFTEEN: NO MORE READINGS.