

LWB201 Indigenous Peoples and the Legal System

Credit points:	10	Mode:	Internal & External
Assumed knowledge:	LWZ100A Introduction to Legal Studies; LWZ100B Legal Interpretation	Location:	Casuarina
Pre-requisite(s):	N/A	Learning method:	Lectures and tutorials
Year:	2012		
Semester:	One	Unit coordinator:	Mr Danial Kelly
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Unit Description

This Unit considers the response of the Australian legal system to the presence, needs and aspirations of the Indigenous peoples of Australia. It will examine past and present treatment of Australian indigenous people by the law. The unit will also include aspects of Aboriginal customary law, particularly that of the Yolngu of Arnhem Land (NT) and examine how the Australian legal system has responded to customary law.

Current legal and policy issues with respect to Indigenous peoples such as the Commonwealth Intervention into Aboriginal communities in the Northern Territory - Northern Territory Emergency Response (NTER, aka 'The Intervention') will also be examined.

Topics concerning property law (such as native title and land rights) will only be covered in a very minor way. Those topics are covered in-depth in the unit LWB013 Indigenous Peoples and Property Law.

Learning Outcomes

On successful completion of this unit, students should *inter alia* be able to:

1. Critically evaluate the historical development of the law and government practice relating to indigenous peoples in the Australian context;
2. Discuss the contemporary indigenous relationship with Australian and Territory legal systems; and
3. Examine and discuss Indigenous customary law and its alignment/non-alignment to Australian law.

Teaching and Learning Strategies

Students should be mindful of the following points:

- **This unit is based on a self-learning approach. Students are responsible for their own learning.** The lectures are all available to assist, but ultimately the student is responsible for obtaining mastery of this unit. Students who succeed at this unit are those who are self-starters and make best use of the resources available to them.

- The lectures are not designed to teach students all aspects of the unit. They will provide the skeleton only, which the students must 'flesh out' themselves.
- It will be assumed that students will have read the prescribed material prior to the topics being covered in the lectures. This reading is most important, as it will enable the student to comprehend the issues covered in the lectures and then to complete the review elements.
- The key issue to success is preparation. The student must be prepared to devote at least seven hours study per week (in addition to attending lectures and tutorials) in order to achieve the required level of understanding and competence.

Participation

It is recommended that students undertake at least seven hours per week of private study for this unit, in addition to the lectures and tutorials.

The unit LWB201 Indigenous Peoples and the Legal System is conducted as a topical and exploratory unit. It is organized around various topics and we explore various resources to gain an understanding of the issues. Those resources may be readings in various formats, lectures, other audio sources, DVDs. In addition to the resource materials we also have weekly tutorials in which you get an opportunity to express your learning to date and indeed learn further by listening to other students.

Assessment is made up from tutorial attendance, essay and final exam. The essay topic you choose yourself and the final assignment will cover all topics but you will have choices in some of the questions. This does not mean you should totally ignore any particular topic in the unit but you can see that it provides scope to focus more on the particular areas that you personally find more interesting.

When I direct you to resource materials you will find that some of them are extremely big. For example I would never expect a student to read the whole of the report by the Royal Commission into Aboriginal Deaths in Custody, rather you would read the summary plus the particular sections that you find interesting and that are relevant to your essay or exam preparation.

So do not be overwhelmed by the amount of material but also do not be less than diligent with your reading and wider learning for this unit.

Specific details of individual class times can be obtained by accessing the class timetable at: <http://skua.cdu.edu.au/swsodd/>

Overview of Assessment

Item	Description/Focus	Value	Relates to learning outcomes
1.	Tutorial participation	10 %	1, 2, 3
2.	Essay	40 %	1, 2, 3
3.	Assignment	50 %	1, 2, 3

Special Requirements

None

Resources

Required textbook(s)

H. McRae, G. Nettheim, L. Beacroft and L. McNamara, *Indigenous Legal Issues*, 4th edition, Law Book Company, Sydney, 2009. This text provides a good introduction to most topics.

Required textbooks can be ordered from the CDU Bookshop through their website at <http://www.cdu.edu.au/bookshop>

Learnline (Online Learning System)

Learnline is Charles Darwin University's on-line learning system.

In this unit, Learnline will be used to:

- provide important announcements about the unit
- distribute lecture files and other study materials
- complete online tutorials
- access feedback from tasks and grades for assessable work
- provide a communication point where you contribute to discussions as part of your course and to interact with other students in the unit

You will need to connect to the Internet to access it, at <http://learnline.cdu.edu.au/>

Access to Learnline may not be available until Day 1 of Semester.

If this is your first time using Learnline, click on 'Student Support' in the left-hand navigation panel BEFORE logging in.

It is recommended that all students have access to regular and reliable broadband access to complete unit requirements.

e-Reserve

e-Reserve allows electronic copies of journal articles, book chapters and lecturer notes that have been recommended by a lecturer as part of their course reading requirements. You can access e-Reserve at <http://ereserve.cdu.edu.au.ezproxy.cdu.edu.au>.

This site is password protected. Your CDU student login will provide you access. You can then search for items by Lecturer, Unit Code, Title, Author, keyword, Year or Date if you have that information.

Additional Resources

Further materials also available on the unit's Learnline site.

Learning Schedule

Duration / Module	Topics	Required readings from set text	Assessments Due
Week 1	Introduction, Background and History to the "relationship" between the Indigenous peoples of Australia and the settlers post 1788. This section will also traverse the history of government policy towards Indigenous people until the present. We will also cover briefly the constitutional law setting in Australia.	Chapter 1	No tutorial

Week 2	Australian law responses to Indigenous Customary Law. Key cases and legislation dealing with the recognition and rejection of customary law will be examined.	Chapter 2	Tutorial: Discuss Cunneen article
Week 3	Indigenous Governance. Customary Law of the Yolngu. The Yolngu are an Aboriginal people group living in Arnhem Land, NT. An introduction to their legal system will be provided. This topic will include direct input from Yolngu law men.		Tutorial: Mutual Respect Agreement
Week 4	Guest lecture by Raymond 'Speedy' McGinness, ' <i>Indigenous language and human rights issues in the NT</i> '. Speedy will discuss critical issues faced by Aboriginal Interpreters working in legal contexts as well as provide a brief history of Indigenous activism in the NT.		Tutorial: discuss individual essay topics
Week 5	Indigenous peoples and Criminal Justice Issues		Tutorial: Anunga
Week 6	Child Welfare	Chapter 11	Tutorial: <i>R v Wunungmurra</i>
Week 7	An Introduction to Land Rights and Native Title. This section will focus upon the source and nature of native title and the background to land rights legislation.	Chapter 4	Tutorial: Stolen Generation
Week 8	Indigenous People and International Law. In particular the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Elimination of all Forms of Racial Discrimination and the domestic Racial Discrimination Act, 1975; and the International Covenant on Civil and Political Rights. The concept of 'discrimination' and equality will be analysed in this topic.	Chapter 12	Tutorial: Native Title
Week 9	In lieu of lecture read UN Human Rights Council Report A/HRC/15 4 March 2010 in preparation for next week's tutorial	Readings posted on Learnline	Essay due date: 11:55 pm CST, Sunday 6 May 2012. Tutorial: RDA Special Measures
Week 10	The Commonwealth Intervention (NTER) into Aboriginal Communities in the Northern Territory. This will include an analysis of the key legislation and major issues being the <i>Northern Territory Emergency Response Act, 2007</i> and	Chapter 9	Tutorial: UN Report

welfare quarantining, suspension of the *Racial Discrimination Act, 1975* and the broad sweep of NTER measures to address child abuse as reported upon in the Little Children are Sacred Report.

Week 11	Revision	Tutorial: NTER
Week 12	The NTER redesign process	Assignment due date: 11:55pm CST, Sunday 3 June 2012.

Assessment Item 1

Description/Focus: Tutorial participation

Value: 10 %

Due date: Each week

Length: N/A

Task: See tutorial questions

Preparation: Lectures and readings.

Presentation: **Oral.** Students should attend either the on-campus tutorial held each week at the Casuarina campus or one of the online tutorials using the online classrooms (accessible via the Learnline site for this unit). It is your responsibility to arrange your schedule and personal affairs so that you can attend tutorials. You will receive marks for active tutorial participation. **External students must have a working microphone and speaker in order to participate in tutorials.** Students who do not have a working microphone from will be marked absent.

When you cannot attend a tutorial

In circumstances that prevent you from participating in the live tutorial (whether on campus or online), you may submit by email to the lecturer your written answers to the tutorial questions no later than 7 days after the tutorial was held. You should view this as a 'last resort' option as you will learn more in the live tutorial than you will by this method. If you do submit tutorial answers by email remember to include your full name, student number and the unit that your answers refer to. Normally tutorials run for 90 minutes and I expect you to spend at least an hour preparing for the tutorial. If emailed answers do not reflect at least 2 hours of work they will not be accepted for the purpose of awarding the participation mark.

Assessment criteria: Students are awarded 1 mark for every tutorial they participate in (unless advised otherwise) to a maximum of 10 marks.

Assessment Item 2

Description/Focus: Essay

Value: 40 %

Due date: 11:55 pm CST, Sunday 6 May 2012.

Length: 3500 words (not including footnotes or bibliography). A range of 10% either side of 3500 words will be acceptable. Essays that do not comply with this requirement will incur a penalty.

Task: Students are to choose a topic and draft a precise question which in turn will be answered in the essay. This will enable exploration in depth of one of the topics studied. The question will need to be submitted by email for prior approval by the lecturer **prior to Sunday 1 April 2012**.

Preparation: Lectures and readings.

Presentation: Use an Assignment Cover Sheet.

The essay should be typed (double spaced). Margins should allow sufficient space for marker to comment on the text. It must be properly footnoted at the bottom of each page. Do not use a bibliography. The essay **must** comply with the Australian Guide to Legal Citation.

Assessment criteria: See below

Assessment Item 3

Description/Focus: Assignment

Value: 50 %

Due date: 11:55pm CST, Sunday 3 June 2012

Length: 2500 words (not including footnotes or bibliography). A range of 10% either side of 2500 words will be acceptable. Assignments that do not comply with this requirement will incur a penalty.

Task: The Assignment will cover all of the topics covered in the course. Students will be asked essay-type and/or problem-type questions.

Preparation: Lectures and readings.

Presentation: Use an Assignment Cover Sheet.

The assignment should be typed (double spaced). Margins should allow sufficient space for marker to comment on the text. It must be properly footnoted at the bottom of each page. Do not use a bibliography. The assignment **must** comply with the Australian Guide to Legal Citation.

Assessment criteria: See below.

Assessment Criteria

The essay and assignment assessment items in this unit will be assessed according to the following criteria:

Criteria	Criteria description	Proportion of marks	To gain high marks for this section the essay will:
1: Content	Describe and demonstrate understanding of the relevant law	50%	Demonstrate a highly accurate and comprehensive knowledge of the relevant law, and a high ability to analyse and apply the law and other relevant material to answer the question asked; demonstrate imagination, originality or flair; work is interesting or surprisingly exciting, challenging, well read or scholarly.
2: Persuasion	Formulate an argument to support a	40%	Clearly and elegantly establish a central argument (and supporting arguments if appropriate) that is continued throughout

	proposition		the essay in a persuasive manner (although the examiner does not need to personally be persuaded by the argument); demonstrate imagination, originality or flair; work is interesting or surprisingly exciting, challenging, well read or scholarly.
3: Citation	Citations in accordance with AGLC	5%	Every piece of information that does not come from the problem, or from the student's own life experience, is footnoted, regardless of whether the information is paraphrased or quoted directly. The footnotes contain appropriate legal authorities. The formatting of the footnotes follow the Australian Guide to Legal Citation (2nd ed) <i>exactly</i> . Pinpoint citations are used whenever possible.
4: Language	Style and structure	5%	Writing is logically structured using subheadings. Sentence and paragraph length assist readability. Language is clear, concise and precise. Assignment is free of spelling errors and grammatical mistakes.

Please download Assignment Cover Sheet here:

<http://learnline.cdu.edu.au/support/ess/FDT101%20-%20Assignment%20Cover%20sheet%20.....doc>

University Plagiarism policy

Plagiarism is the unacknowledged use of material written or produced by others or a rework of your own material. All sources of information and ideas used in assignments must be referenced. This applies whether the information is from a book, journal article, the internet, or a previous essay you wrote or the assignment of a friend.

Plagiarism policy is available at:

http://www.cdu.edu.au/governance/documents/StudentPlagiarismManagementProcess_SPMP_.pdf

WARNING: Plagiarism, if proved, may have very serious consequences for those wishing to be admitted to practice as a legal practitioner, as proven dishonesty may lead to refusal of admission by the relevant Legal Practitioners Admission Board.

CDU Graduate attributes

CDU graduate attributes refer to those skills, qualities and understandings that should be acquired by students during their time at the University regardless of their discipline of study. (See <http://www.cdu.edu.au/teachingandlearning/gradattributes.html>).

In this unit, the following graduate attributes are developed:

Attribute	Description	Learning outcomes
Acquisition	Can identify, retrieve, evaluate and use relevant information and current technologies to advance learning and execute work tasks.	1, 2, 3
Application	Is an efficient and innovative project planner and problem solver, capable of applying logical and critical thinking to problems across a range of disciplinary settings and has self-management skills that contribute to personal satisfaction and growth.	2, 3
Creativity	Can conceive of imaginative and innovative responses to future orientated challenges and research.	1, 2, 3
Knowledge base	Has an understanding of the broad theoretical and technical concepts related to their discipline area, with relevant connections to industry, professional, and regional and indigenous knowledge.	1, 2, 3
Communication	Demonstrates oral, written, and effective listening skills as well as numerical, technical and graphic communication skills in a cross generational environment.	1, 2, 3
Social responsibility	Is able to apply equity values, and has a sense of social responsibility, sustainability, and sensitivity to other peoples, cultures and the environment.	1, 2, 3
Flexibility	Can function effectively and constructively in an inter-cultural or global environment and in a variety of complex situations.	1, 2, 3
Leadership	Can exercise initiative and responsibility, taking action and engaging others to make a positive difference for the common good.	2