

## **Federal Indian Law**

Spring 2025

Professor Marcia Zug

Class hours: T,Th 2:30-4:05

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Office Hours: 12:30-2 Wednesday, Thursday 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 (8<sup>th</sup> ed). Any non-casebook materials are indicated of the syllabus below.

**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. I take attendance during each class period. You can, but you do not need to inform me if you are missing class. 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 grouped by topic week, and then broken up into 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. I have left the last two classes without assignments expecting that we will no always be able to finish our discussions in the assigned class period.

### **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 two class periods.)

### I. Introduction to Federal Indian law and Intro to Doctrine of Discovery

#### Class 1

- 1-13 (skim), 13- 26, 30-36, 51-63 (skim)
- Johnson v. Mc'Intosh p.63-81

#### Class 2

- O'Brian v. Town of Huntington 2009 NY Slip Op 06169 ([https://www.nycourts.gov/reporter/3dseries/2009/2009\\_06169.htm](https://www.nycourts.gov/reporter/3dseries/2009/2009_06169.htm))
- Notes p72-76, Delgamuukw case (1186-1195) Mabo case(1215-1230)
- <https://www.france24.com/en/live-news/20240328-new-zealand-s-maori-king-calls-for-whales-to-be-given-personhood>

### II. Doctrine of Discovery Cont, & Cannons of Construction

#### Class 3

- P. 84-92 (skim),
- Cherokee Nation v. Georgia & Worcester v. Georgia, p. 92-113
- notes 152-156 (skim)

#### Class 4

- p.113-122 (US v. Winans, US v. Washington),
- 808-822 (US v. Washington)

### III. Cannons of Construction/Indian Law and Policy

#### Class 5

- P. 137-147 (skim),
- Ex party Crow Dog & US v. Kagama, p 161- 171

#### Class 6

- Allotment (171-172),
- Lone Wolf (p.176-179),
- Sandoval (p.190-193),

### IV. Termination/Self determination

#### Class 7

- p202-207 (Skim), Menominee (122-128),
- SC v. Catawba Tribe 476 US 498 (1986)
- Catawba Settlement Act  
<https://www.scstatehouse.gov/code/t27c016.php>

Class 8

- Notes p.193-202, 207-208 (Skim), 256-273,
- Morton v. Mancari, 126-135 ,
- Rice v. Cayetano,1157-1172

V. Federal-Tribal Relationship

Class 9

- p. 244- 267(Shoshone Tribe, Tee-hit-ton, Sioux)
- Alaska v Native Village, p1085-1099

Class 10

- Dann Sisters, 583-594
- Montana P.524-532

Class 11

- p. 537-541
- p583-618 (Oneida, Sherill),

VI. Trust Doctrine

Class 12

- p. 274-277 (Seminole),
- p. 281-285
- p 364 -372 (Dion)

Class 13

- 297-308 (Navajo Nation),
- 402-413(Sioux Nation)

VII. Sovereignty

Class 14

- Williams v. Lee, p. 429-434
- Talton v. Mayes, p. 314- 318
- Kiowa Tribe , 392 - 400

Class 15

- Michigan v. Bay Mills, p 400-408
- ICRA and Santa Clara Pueblo v. Martinez, p. 318-331

VIII. Criminal Jurisdiction

Class 16

- Solem 545-553,
- US v. Wheeler, US v. Antelope p. 619-639,

Class 17

- Bryant, p.639-649
- McGirt v. Oklahoma p.560-579
- <https://www.theatlantic.com/ideas/archive/2020/07/mcgirt-case-historic-win-tribes/614071/>

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VIII Criminal/Reg. Jur. Cont.

Class 18

- Oliphant, Lara, Castro-Huerta p.649-698

Class 19

- Montana pp. 372-380,
- National Farmers 386-392

Class 20

- p., 450-452
- White Mountain Apache v. Bracker p. 454-462
- Oklahoma Tax Comm. p 473-480
- New Mexico v. Mesclero Apache p. 473-480

IX. Indian Children

Class 21

- Mississippi Band v. Holyfield p.480-497
- Adoptive Couple v. Baby Girl, 497-507
- Haaland v. Brackeen, 507-522
- <https://www.nytimes.com/interactive/2023/08/30/us/native-american-boarding-schools.html>

X. Hunting/Gaming

Class 22

- Mill Lacs 829-839
- Tuscarora 860-870

Class 23

- Cabazon p.1000-1022
- Bay Mills, p267-273

XI. Religion and Culture Protections

Class 24

- Lyng v. NW Indian Cemetery, 1033-1051
- Employment Div. V Smith 1051-1070
- NAGPRA 1070-1078
- <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>

Class 25-26 (extra class periods because we will get behind)





