



**The Exeter College Summer Programme
at Exeter College in the University of Oxford**

English Law in the International Context

Course Description

The common law is one of the great glories of England, which she has exported across the world. As the law intrudes on every part of human life, it is important to reflect on the distinctive approach to law that originated in England, and the ways in which it seeks to keep up with changing circumstances. This course invites students to reflect on the institutions through which laws are made and changed. The first part of the course provides an introduction to aspects of legal reasoning through reading some famous judgments in the common law tradition, and considers how the common law approach differs from others influenced by Roman law. The second part of the course explores the enduring challenge that the law faces when dealing with indigenous peoples, in particular the Aboriginal peoples in Australia and the Maori in New Zealand, whose legal systems and ways of life were dramatically disrupted by British colonial forces that brought with them the blessings of English common law.

Through 12 lectures, 6 seminars, 4 tutorials and required reading students will gain a fuller understanding of the fundamental structures of English law, and the impact it has had throughout the world.

The course is designed to be multidisciplinary and is suitable for students of all disciplines who have a strong interest in law, politics, philosophy, ethics and governance. There are no prerequisites and no previous knowledge of law is required.

Teaching Methods and Assessment

- 12 x 1.25hr Lectures (15hrs)
- 6 x 1.25hr Seminars (7.5hrs)
- 4 x 1.25hr Tutorials (5hrs)

Twice weekly lectures will present the key phases of the topic under study in their specificity and their relationship to the central concerns of the course. A weekly seminar will focus in-depth study of lecture themes and provide opportunities for further discussion and to ask questions. Students will be expected to have completed the readings before the relevant seminar. In addition, students will be expected to give a short oral presentation on judgments in some famous cases, acts of parliament, and international treaties.

Final assessment: An essay of no more than 3,000 words (40%), a final three-hour written examination (40%), oral presentation (10%) and participation in seminar discussion (10%).

Lecture Schedule

1. Introduction
2. Two great legal traditions: common law and Roman law
3. Two bodies of English law: common law and equity
4. Public law and private law
5. Parliament and the law courts
6. Domestic law and international law
7. English land law and its application in her colonies
8. Land rights of indigenous peoples in New Zealand, Australia and Canada
9. The High Court of Australia's landmark decision in Mabo
10. Indigenous people, colonial constitutions and international obligations
11. The Australian Constitution—its achievement and its limitations
12. Indigenous Australians and their recognition in the Australian Constitution

Reading List

Required reading

Each of the six seminars will focus on reading, analysing and discussing some famous cases decided in English and Commonwealth courts, and other statutes and treaties:

- Seminar 1 *Carlill v Carbolic Smoke Ball Co* (1892)
 Donoghue v Stevenson (1932)
- Seminar 2 *The Earl of Oxford's Case* (1615)
 F W Maitland, *Equity: A Course of Lectures* (1909)
 Justinian, *Institutes*, translated with an introduction by P Birks and G McLeod (1987)
- Seminar 3 Magna Carta (1215)
 Bill of Rights (1688)
 A V Dicey, *Introduction to the Study of the Law of the Constitution* (1885)
- Seminar 4 Treaty of Waitangi (1840)
 New Zealand Maori Council v Attorney-General (1987)
 Haida Nation v British Columbia (Minister of Forests) (2004)
- Seminar 5 *Milirrpum v Nabalco Pty Ltd* (1971)
 Mabo v Queensland (No 2) (1992)
- Seminar 6 Commonwealth of Australia Constitution Act (1900)
 Uluru Statement from the Heart (2017)
 Shireen Morris (ed), *A Rightful Place: a road map to recognition*

Suggested reading

Each of the twelve lectures will focus on selected topics which can be followed up in the following readings:

- Lectures 1/2 **Common law – legal reasoning**
Sir Owen Dixon, *Jesting Pilate* (Law Book Company, 1965)
Sir Anthony Mason, “Future Directions in Australian Law”, *Monash University Law Review*, Vol 73, 1987, pp 149-163
Common law – legal history
Sir Victor Windeyer, *Lectures on Legal History*, 2nd edn (Law Book Company, 1957)
Roman law
Justinian, *Institutes*, translated with an introduction by P Birks and G McLeod (Duckworth, 1987)
H F Jolowicz, *Historical Introduction to the Study of Roman Law* (CUP, 1932)
E Metzger (ed), *A Companion to Justinian’s Institutes* ((Duckworth, 1998)
- Lecture 3 **Equity – principles and history of equity – relationship between equity and the common law**
F W Maitland, *Equity: A Course of Lectures* (1909)
Meagher, Heydon and Leeming, *Meagher, Gummow and Lehane’s Equity: doctrines and remedies*, 4th edn (LexisNexis Butterworths, 2002)
D Freeman, *Roddy’s Folly* (Connor Court, 2012)
P Birks, *An Introduction to the Law of Restitution* (Clarendon Press, 1985)
- Lectures 4/5 **English constitutional theory and history – sovereignty of parliament – the royal prerogative – rule of law – responsible government**
A V Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1885) – any recent edition is fine
W Bagehot, *The English Constitution* (1867) – any recent edition is fine
W I Jennings, *The Law and the Constitution* (University of London Press, 1959)
- Lecture 6 **International law – principles and history of public international law – impact of international law on domestic law**
Dixon, McCorquodale and Williams, *Cases and Materials on International Law*, 6th edition (OUP, 2016)
- Lecture 7 **Principles of English land law – reception of English law in Crown colonies – native title**
B Edgeworth, *Butt’s Land Law*, 7th edition (Thomson Reuter, 2017)

Lectures 8/9 **Indigenous land rights**

D Ivison, 'The Logic of Aboriginal Rights', *Ethnicities*, Vol 3(3), 2003, p 321
Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 (excerpt)

International law

Declaration on the Rights of Indigenous Peoples (2007), Arts 3, 4 and 46
Mayagna (Awas Tingi) v Nicaragua, Inter-American Court of Human Rights, 31 August 2001, paras 1-5, 142-155, 173 only

M Davies, 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples', *Melbourne Journal of International Law*, Vol 9, 2008, p 39

S J Anaya, 'Self-Determination: A Foundational Principle', in S James Anaya, *Indigenous Peoples in International Law*, 2nd edn (OUP, 2004), pp 97-117

Canadian law

Tsilhqot'in Nation v British Columbia [2014] SCC 44 (Canadian Supreme Court)
Government of Canada, *The Government of Canada's Approach to Implementation of the 12 Inherent Right and the Negotiation of Aboriginal Self-Government* (1995).

Available at: <https://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844>

Australian law

M Tehan, 'A Hope Disillusioned, An Opportunity Lost? Reflections on Common Law Native Title and Ten Years of the Native Title Act', *Melbourne University Law Review*, Vol 27, 2003, p 523

Lectures 10/11/12 **Constitutional law and indigenous peoples**

Australian constitutional law

J Stellios, *Zines' The High Court and the Constitution*, 6th edition (Federation Press, 2015)

Constitutional position of indigenous peoples in Australia

A Twomey, 'The Race Power — Its Replacement and Interpretation', *Federal Law Review*, Vol 40, 2012, p 413

Constitutional reform in Australia

F Brennan, *No Small Change* (MUP, 2015)

D Freeman and S Morris (ed), *The Forgotten People* (MUP, 2016)

M Davis and M Langton (ed), *It's Our Country* (MUP, 2016)

S Morris (ed), *A Rightful Place* (Black Inc, 2017)

K Windschuttle, *The Break-up of Australia* (Quadrant Books, 2016)