

UNIVERSITY OF CANTERBURY SCHOOL OF LAW

# LAWS101 LEGAL SYSTEM 2008

## AN INTRODUCTION TO THE COURSE

### WELCOME TO LEGAL SYSTEM 2008

For most people LAWS 101 is the first academic contact with legal study. It is an introductory course intended to lay the basic groundwork for your future scholarship in law and we hope you will find it stimulating and challenging.

The objectives of the course are:

- to introduce you to the framework of the law, the techniques of legal reasoning and the analysis of legal materials;
- to provide you with practice in case analysis and feedback on your progress through the tutorial programme;
- to familiarise you with New Zealand's contemporary legal institutions;
- to interest you in current issues of importance to the New Zealand Legal System;
- to introduce you to the historical development of New Zealand's legal institutions and constitution; and
- to introduce you to the legal issues relating to Maori rights and the Treaty of Waitangi.

### TEACHING IN LAWS 101

The lecturers for the course in 2008 are:

Associate Professor Scragg (Course Supervisor), Professor Webb, Associate Professor Boister, Associate Professor Hawes, Dr Hopkins, Dr Gallavin and Mr Round. Mr Dorset is Senior Tutor.

### SUPERVISION

The Course: Any general queries and concerns about the course should be directed in the first instance to the Course Supervisor, Mr R.J. Scragg.

Tutorials: Any general queries and concerns about the tutorial programme, other than timetable matters, should be directed in the first instance to Mr A.S. Dorset. Timetable matters should be directed to Mrs H Couch (Academic Administrator).

Lecture Topics: Questions about the content of lectures should be directed to the individual staff member who delivered the lecture.

## **LECTURES**

In this subject are given in two streams as follows:

Stream A: Monday, Wednesday, Thursday 10:00am-11:00am.

Stream B: Monday, Thursday 12:00pm-1:00pm; Wednesday 11:00am-12:00pm

Students are required to attend the lectures in the rooms allocated to their stream.

**The stipulated rooms have only sufficient seats for students allocated for each lecture stream at enrolment. Serious seating problems will arise if students arbitrarily shift streams.**

**STUDENTS ARE ADVISED TO ATTEND ALL LECTURES.**

## **TUTORIALS**

Tutorials in Legal Method will be held according to the timetable in the 'Legal Method Tutorial Book'. Tutorials will commence during the week beginning on Monday 10 March.

**STUDENTS MUST ENROL IN A TUTORIAL GROUP.**

**Note:** The School of Law system for enrolling in tutorials was changed in 2006. There will be on-line enrolment for **All** tutorials. Further information will be e-mailed to students and notices displayed in the School of Law to advise students on how to enrol in tutorials.

Tutorial discussion (other than in the first tutorial) will generally be based on written assignments which must be completed and handed in for marking. The material for these assignments is contained in the 2008 'Legal Method Tutorial Book' which will be available at a time and place to be announced in lectures. Each student must purchase a copy of this for his or her own use and bring it to all tutorials. Written assignments and tests must be completed to the satisfaction of the tutor or examiner as the case may be. Your tutor will set the due dates for tutorial assignments. Note that tutors are not obliged to mark late work.

The tutorial exercises provide a vital learning experience where the skills of legal method - case analysis, statutory interpretation and legal reasoning - are developed and practised. The term tests and final examinations will contain compulsory questions testing your skills. Tutorial performance itself is not normally part of the final assessment in law courses but in some borderline and aegrotat cases your tutorial attendance, performance and written assignment marks *may* be taken into account in reaching a final decision on your grade.

Students who are consistently obtaining tutorial grades of C or less or who are in any other way concerned about their tutorial performance should consult their tutors individually.

The tutorial programme offered by the School of Law gives every student of the course opportunities to practise and obtain feedback on the skills introduced in Laws 101. Students are encouraged to practise these skills further, outside the tutorial programme, but the School of Law plays no part in the provision of any other study programmes in connection with this course and is not responsible for any such programmes.

## **ASSESSMENT**

Each student's final mark is arrived at by a combination of marks for in-term assessment(s) and the final examinations.

### ***In-term assessments***

**It is compulsory to complete at least one of these four assessments.** The best (or only) assessment will contribute up to 10% of the final mark for the course.

Two **Term Tests** will be held as follows:

<b>TEST 1</b>	<b>Tuesday 3 June 6.00pm - 8.00pm.</b>
<b>TEST 2</b>	<b>Tuesday 19 August 6.00pm - 8.00pm.</b>

Students will also be expected to prepare two essays of not more than 1700 words each, including footnotes, on topics to be announced. The first will be due on **Wednesday 7 May at 4 p.m.** and the second will be due on **Wednesday 10 September at 4 p.m.**

Although three of these in-term assessments are optional, students are strongly recommended to do them.

Each of these in-term tests and essays will also contribute up to a further 10% of the total course assessment **if** the effect will be to **improve** a student's final mark, for example:

A student completes all four pieces of in-term assessment and sits both final examinations. Over the course of the year the student is awarded the following grades for the in-term assessments: C+, B, B & A. For the two final examinations the student is awarded a combined grade of a B-. The marks for the in-term "A" grade automatically contribute up to 10% of the student's final result. The two "B" results will count towards the final grade because they are higher than the examination grade. The "C+" does not count because it is lower than the examination grade. In the case of this student the final examinations count for 70% of the final result and the in-term assessments count for 30%.

In-term assessments may, therefore, contribute up to 40% of a student's final mark.

### ***Final examinations***

The final examinations will count for a maximum of 90% and a minimum of 60% of the final mark. At the end of the year students will be examined in **TWO** papers, each paper of three hours' duration.

Students will be advised of the dates of the two examinations after the commencement of the academic year.

***NOTE:*** *The division of the class into lecture streams is in no way related to the two examination papers - all students are required to sit **both** final examinations.*

The examinations will test students' skills and knowledge. Examination papers from previous years are held in the Law Library.

**NOTE:** Assignments, tests and examinations will be assessed only once. Resubmissions or resits are not permitted.

### **Grading**

All written work done during the year will be graded and returned to students. The grading system is as follows:

E	0 - 39%	B	65 - 69
D	40 - 49	B+	70 - 74
C	50 - 54	A-	75 - 79
C+	55 - 59	A	80 - 84
B-	60 - 64	A+	85 - 100

An explanation in descriptive terms of what the Law School expects for each of these grades can be found in the Law School Undergraduate Handbook.

A good standard of written expression is essential for legal analysis and for the communication of your understanding; you will be expected to show an above average level of competence in your written expression in your tutorial, in-term assessment and examination answers.

Students are warned that in *exceptional* circumstances they *may* be called for a short *viva voce* examination late in November if their examination performance is the subject of an aegrotat application (or, more rarely, is a marginal failure) and the Faculty Examiners do not consider they have a sufficient basis on which to make a recommendation. It is a student's responsibility to ensure that the Faculty has an up-to-date address in its records at which he or she can readily be contacted; non-appearance at the *viva voce* examination, for whatever reason, must almost certainly result in a failing grade or the declining of an aegrotat application.

### **WORKLOAD**

Attendance at lectures; attendance at tutorials; performance of tutorial assignments; in-term assessments; reading as directed by lecturers, completion of written final examinations.

### **UNDERGRADUATE HANDBOOK**

The School of Law publishes an Undergraduate Handbook and students are advised to familiarise themselves with its contents.

**NB: Legal System is a prerequisite for all LAWS courses other than LAWS 102; that is to say a student (other than a graduate entrant) may not enrol in LAWS courses numbered 202-399 unless he or she has the requisite pass in Legal System.**

## **READING LIST**

### **TEXT BOOKS:**

McDowell and Webb Scragg	The New Zealand Legal System, 4 <sup>th</sup> ed. New Zealand's Legal System: The Principles of Legal Method.
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### **SUPPLEMENTARY TEXTS:**

#### *Introduction:*

Smith	Glanville Williams: Learning the Law, 13 <sup>th</sup> ed.
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#### *General:*

Joseph	Constitutional & Administrative Law in New Zealand, 3 <sup>rd</sup> ed.
Spiller	Butterworths New Zealand Law Dictionary, 6 <sup>th</sup> ed.

#### *Study Skills:*

Greville, Davidson & Scragg Krever	Legal Research and Writing in New Zealand, 3 <sup>rd</sup> ed. Mastering Law Studies and Law Exam Techniques, 6 <sup>th</sup> ed.
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#### *Legal History:*

Spiller, Finn & Boast	A New Zealand Legal History, 2 <sup>nd</sup> ed.
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#### *Treaty of Waitangi:*

Orange	An Illustrated History of the Treaty of Waitangi.
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#### *The Interpretation of Statutes:*

Burrows	Statute Law In New Zealand, 3 <sup>rd</sup> ed.
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#### *Government under the Law:*

Miller	New Zealand Government and Politics, 4 <sup>th</sup> ed.
Mulgan	Politics in New Zealand, 3 <sup>rd</sup> ed.
Palmer & Palmer	Bridled Power, 4 <sup>th</sup> ed.

(Copies of these books are on reserve or are available for 3 day loan from the Law Library)

## **LECTURE OUTLINE**

(This is a guide only. Topics may be varied as circumstances require.)

(In addition to the following topics, throughout the year there will also be lectures on:  
Writing, Study and Exam Techniques for LAWS 101)

### **I. INTRODUCTION**

(R.J. SCRAGG)

#### **1. What is Law?**

- Legal rules and other rules: Law as a set of rules derived from the institutions of Parliament and the Courts

#### **2. The Sources of Our Law**

- historical and formal sources
- judicial decisions as a source of law
- an introduction to Stare Decisis (the Doctrine of Precedent)
- legislation (statutes) as a source of law

#### **3. Constitutional Doctrines**

#### **4. The traditional classification of the Law**

### **II. JUDICIAL DECISIONS AS LAW**

(R.J. SCRAGG)

#### **1. The Ratio Decidendi of a Case:**

- "finding" the ratio decidendi of a case
- complicating factors
- multiple issues
- alternative issues
- compound courts
- decisions without reasons or points of law
- obiter dicta

#### **2. The Doctrine of Stare Decisis**

- the hierarchy of authority and rules of precedent in New Zealand and England
- over-ruling and not following precedents
- distinguishing "binding" precedents
- persuasive precedents
- factors affecting the authority of non-binding precedents
- decisions from other jurisdictions
- the role of Appellate Courts in the legal system

#### **3. Legal Reasoning:**

- the purposes of legal reasoning: logic and rhetoric
- clear cases: deductive reasoning
- unclear cases: analogy, induction, lesser techniques
- classification: the problem of rules and meaning
- reasoning with cases and reasoning with statutes

### **III. LEGAL HISTORY**

(D.J. ROUND)

#### **1. The Development of the English Court System**

#### **2. The Development of the New Zealand Court System**

#### **3. The Evolution of the English & British Parliament**

#### **4. The New Zealand Parliament**

#### **5. The Evolution of International Law**

(N. BOISTER)

- IV. LEGAL SERVICES, PRIVATE AND PUBLIC** (D.A. WEBB)
1. The nature and regulation of the profession of law
  2. Providing justice to all—Legal Services Act 2000/contingency fees/pro bono work

**V. THE TREATY OF WAITANGI** (TO BE APPOINTED)

1. The National and International Context
2. The Legal Status of the Treaty of Waitangi
  - Status at International Law
  - Domestic status
  - “Constitutionalising” the Treaty
3. The Principles of the Treaty of Waitangi
  - Key concepts in the Treaty Exchange
    - (i) Tino Rangatiratanga
    - (ii) Kawanatanga
    - (iii) Taonga
  - The Principles of the Treaty of Waitangi
    - (i) Partnership
    - (ii) Active Protection
    - (iii) Redress

**VI. THE INTERPRETATION OF STATUTES** (C. GALLAVIN)

1. Introduction to Statute Law
  - What is a statute?
  - comparison of statute and common law
  - the drafting of statutes
2. The Interpretation of Statutes
  - causes of difficulty
  - the "intention of Parliament"
3. Context and Interpretation
  - the significance of context
  - internal context: scheme of the Act
    - parts of the Act
    - surrounding words
    - internal aids
  - external context: other Acts
    - history of the Act
    - international law
    - surrounding circumstances
    - Parliamentary materials
4. Judicial control: the "presumptions" of interpretation
5. The Interpretation Act 1999
  - illustrations of its application
  - limitations on its application

**VII. CASE LAW IN ACTION**

(R.J. SCRAGG)

**An example of the evolution of the law**

- *formation of contract*: the development of the "posting rules"

**VIII. THE MODERN NEW ZEALAND COURTS**

(C. HAWES)

1. **The Civil and Criminal jurisdiction of the New Zealand courts**
2. **Procedure in civil and criminal cases**
3. **Dispute Resolution Processes**

**IX. GOVERNMENT UNDER THE LAW**

(J. HOPKINS)

1. **The Institutions of Government**
2. **Constitutional Checks on Government**
3. **Parliament and Elections**
4. **The Courts and Judicial Review**
5. **Complaints Mechanisms**
6. **The Rule of Law**