

COURSE DESCRIPTIONS – NATIVE HAWAIIAN LAW CERTIFICATE

CATEGORY 1 – MANDATORY

Native Hawaiian Rights: This course examines the evolution of the rights of Native Hawaiians to land and resources and the important statutes and laws affecting Native Hawaiians. Areas of study include the Hawaiian land tenure system, the conversion from a communal to fee-simple land system, traditional and customary rights, the public land trust (Government and Crown Lands), the Hawaiian Home Lands trust, and the charitable trusts established by ali'i to benefit Native Hawaiians. The course will particularly examine current cases and legislation relating to the political status of Native Hawaiians.

CATEGORY 2 – ONE OF THE FOLLOWING

Administrative Law: This course covers the legal regime applicable to federal, state and local agency decision-making and the role of the courts in reviewing agency decisions through study of the federal and Hawai'i Administrative Procedure Acts and the case law arising under them.

Federal Courts: An examination of the jurisdiction and law-making powers of the federal courts, including standing issues, the appellate jurisdiction of the Supreme Court, the federal-question and diversity-of-citizenship jurisdiction of the federal district courts, the immunities from suit in the federal courts possessed by governmental entities and officers, intervention by federal courts in state proceedings, and choice of law in the federal courts. Particular emphasis is placed on relevant Federal Rules of Civil Procedure.

Legislation and Statutory Interpretation: This course examines the design and interpretation of statutes. In addition to participating in traditional classroom dialogue, students working in groups will write their own bills and accompanying legislative reports.

CATEGORY 3 – ONE OF THE FOLLOWING

Environmental Law Clinic: Students work in teams on projects assisting clients in contested cases before state environmental, land use and natural resource agencies, and county planning commissions. Projects may involve preparation of public comments for community groups and assisting attorneys who represent public interest groups on environmental issues. Pre: Environmental Law, Environmental Litigation Seminar, or Administrative Law.

Native Hawaiian Rights Clinic: Students work under the direct supervision of a Native Hawaiian Rights attorney providing legal services to clients. Each semester, the clinic focuses on one or two major cases involving issues such as traditional and customary rights, the ceded lands trust, the Hawaiian Home Lands trust, or water rights. Students will aid attorneys in identifying and researching significant issues, gathering evidence, interviewing clients, and drafting pleadings.

Externship in Native Hawaiian Law: Under the supervision of an attorney, students perform research, drafting, investigation, and other lawyering tasks for attorneys, legislators, and public and private organizations on issues of Native Hawaiian law and policy. Approved externships include the Office of Hawaiian Affairs, Native Hawaiian Legal Corp., Dept. of Hawaiian Home Lands-Attorney General's Office, Senate or House Hawaiian Affairs Comm., Kamehameha Schools Legal Office.

Externship in Pacific: Students perform research, drafting, investigation, and other lawyering tasks for judges and attorney supervisors in Pacific Island jurisdictions.

CATEGORY 4 – 6 CREDITS

Advanced Legal Studies: Faculty members or visiting scholars present selected topics focusing upon subject areas in their area of specialty or expertise.

Domestic Ocean and Coastal Law: Examination of the history of the US and Hawai'i sea use law; comprehensive coverage of modern issues concerning the use of the sea including special Hawaiian problems.

Federal Indian Law: This course will educate students about the general principles of Federal Indian law, giving special attention to those aspects of Federal Indian Law that are analogous to current issues in Native Hawaiian law. The course examines the constitutional constraints on the federal government's recognition of Native groups, especially in relation to pending constitutional and statutory challenges to benefits for Native Hawaiians, and reviews recent developments and possible future trends in Federal Indian Law that may affect Native Hawaiian self-governance, lands and resources.

Historic Preservation Law: This course studies cultural and historic preservation laws and how they affect efforts to protect and preserve native cultural heritage. The course will examine state and federal laws including: the National Environmental Policy Act and its state equivalent; the section 106-review process under the Historic Preservation Act; Hawai'i law requiring cultural impact statements; the American Indian Religious Freedom Act; and case law and administrative processes established to ensure that native voices are heard in historical and cultural resource management.

Intellectual Property: A study of the law relating to property rights resulting from intellectual effort, including patents, copyright, trademarks, and trade secrets. While the course attempts to provide a unified background in theory and policy for

all fields of intellectual property, it emphasizes areas of importance to the general practitioner. Accordingly, the doctrines and policies of the patent system are studied primarily for the light they shed upon the nature of intellectual property protection as a whole and upon the interaction between federal and state law.

International Law: An examination of the evolving process of formulating rules to govern the transnational problems requiring global solutions. After looking at the United Nations and other international and regional organizations, students focus on: (a) the Law of the Sea negotiations, (b) the laws of war, (c) human rights, and (d) economic problems. Students examine both the substantive content of the current rules and the procedures by which they are being developed. Finally, the course examines the enforcement mechanisms and ways in which international law can be used in the courts of the U.S.

International Ocean Law: Examination of legal issues that affect ocean resources. This course focuses on governance of living and non-living resources, environmental protection, and boundary delimitation.

International Protection of Human Rights: The growing body of international human rights laws, including United Nations activities, regional human rights bodies, women's rights, children's rights, the rights of indigenous peoples, and enforcement of these rights in U.S. courts.

Jurisprudence: "Truth and Reconciliation and the Question of Native Hawaiian Sovereignty" – for the Fall of 2009 this course is specifically tailored to address "Native Hawaiian Sovereignty." First, this course will rely on a body of existing legal and moral analyses of such contemporary problems as 1) assisted suicide 2) the death penalty 3) animal rights 4) abortion and 5) ending world hunger, as providing models for resolution. Second, it will also explore the relevance of such concepts as international human rights, civil disobedience, natural law, innocence, vested rights and reliance. Third, the course will challenge existing concepts of sovereignty under international law [particularly as to the law of the sea] as "continent" based and ask whether Hawaiian sovereignty should be based on broader ocean based, or island-related concepts of dominion.

Land Use Management and Control: This is a survey course in public control of private use of land: how do state, local, and federal agencies regulate the land development process? Special emphasis is on constitutional issues (exclusionary zoning, regulations and exactions that may be "takings" of property under the federal Constitution), growth management, and innovative techniques such as impact fees, development agreements, and planned unit development. We will also cover zoning, subdivision and housing codes, state and regional land control statutes, together with those aspects of eminent domain, environmental, and public land management law affecting the use of private land.

Legal Aspects of Water Resources & Control: The course covers the legal aspects of water and water rights with primary focus on Hawai'i. Topics include: Native Hawaiian water rights, pre-McBryde case law, McBryde and post-McBryde developments, water pollution, ground water designation, institutional relationships, and various types of allocation systems.

Licensing Intellectual Property: This course covers the theory and practice of the law relating to the transfer of rights in information and other intangibles in the context that these transactions occur. In the information economy, society depends heavily on licensing models to get intellectual property into the hands of third parties. This course will give adequate attention to downstream licensing mechanisms such as end user license agreements; but the majority of the course will be spent examining the structure and negotiation of upstream licensing mechanisms in the context of, among other things, product development, multimedia, publicity rights, merchandising, information and databases, university technology transfer, government contracts, litigation, and antitrust.

Organizing for Change: Anti-Subordination Theory & Practice: This class starts from a central tenet of American Constitutionalism – a government by the people – asks under what conditions people become active, self-governing agents. This Course considers the relationship between jurisprudence and action. It incorporates the key questions of legal theory – what is justice, and what is the relationship between law and justice – with social change practice.

Pacific Islands Legal Systems: This course is intended for students who wish to: (1) increase their knowledge of the substantive rules of one or more Pacific Island jurisdictions; and, (2) study the development of legal systems to broaden their understanding of the basic requirements and general characteristics of legal systems. The course will also consider the relationship between the Pacific Island legal systems and custom and tradition, and will explore the various ways that Pacific jurisdictions have, or have not, been successful in reflecting the values of the people in the substantive and procedural law of the jurisdictions.

Race, Culture and Law: US cases and legal theory emphasizing law in the social construction of racial categories, shifts in race-based antidiscrimination law, and the interaction of culture and law in judicial decision-making.

Reconciliation and Reparations: Social Healing Through Justice: This course examines contemporary worldwide efforts to repair and heal present-day wounds of historic injustice. It pays specific attention to reconciliation efforts between the United States and Native Hawaiians, and looks to other international reconciliation efforts between governments, businesses, and Native Peoples, such as Canada's Aboriginal Peoples, Japan's Ainu, New Zealand's Maori, and Native Americans in the U.S. Focusing on law and interdisciplinary approaches to healing, the course offers analytical tools and social insights to help students assess and guide ongoing processes of apology and reconciliation.