

**ADVANCED TOPICS IN PRIVATE LAW**

Prof.: Dr. Julian Hermida

Course number: JURI3906AE - Special Topics in Law & Justice I  
JURI 4816 Selected Topics in Law and Justice I

Teaching hours: Mondays 7 pm

Term: Fall

Office: NW 206B

Tel.: 949-2301 ext. 4317

Office hours: Given the Covid-19 situation, office hours are by appointment only. Email me for an appointment.

Website: [www.julianhermida.com](http://www.julianhermida.com)

Email address: [julian.hermida@algonau.ca](mailto:julian.hermida@algonau.ca)

**EXCEPTIONAL CIRCUMSTANCES. COVID-19**

Given the current situation, this course is delivered online. You need to check your official AU email regularly and the course website: [www.julianhermida.com](http://www.julianhermida.com) to be in contact with me. Classes will be delivered via Zoom. I will email you the link and post it on the course website. I will also post notes with a summary of the lectures on the course website ([www.julianhermida.com](http://www.julianhermida.com)) for those of you who cannot connect to Zoom. The test and the final take-home will be take-home exams, which you will have to email me according to the schedule below. The course will NOT be delivered in the Algoma University Moodle. The notes, class activities, links, and assignments will be posted on the course website ([www.julianhermida.com](http://www.julianhermida.com)), which all those of you who took courses with me before are very familiar with. In the event of any discrepancies or contradictions between a provision on the course website ([www.julianhermida.com](http://www.julianhermida.com)) and AU Moodle, the former shall prevail. The decision not to teach this course face-to-face was made by the University. I would have preferred to teach it face-to-face. These are unprecedented circumstances,



so things may not be as smooth as they usually are. Please be patient and understanding. I will be, too.

## **JOURNEY OF DISCOVERY**

(Formerly known as course description)

This is an exploratory journey of discovery into the fascinating world of Private Law. In this journey, we will deepen most of the Private Law topics discussed throughout the Law and Justice programme. We will discuss extracontractual responsibility, contracts, successions, and Private Law international issues, among others. We will venture into the fertile contributions of Social Sciences to Private Law and into the rich theoretical jurisprudential debates. As if this weren't exciting enough, this voyage will also take you to walk through diverse contemporary and historical world legal traditions.



## **LEARNING OUTCOMES**

(formerly known as learning objectives (goals) of the course)

If you actively engage in this journey, upon its successful completion you will be able to:

- critically analyze virtually any complex Private Law issue from diverse legal traditions, theoretical perspectives, and Social Science disciplines related to Law;
- generate your own solutions to complex Private Law problems, identify and evaluate the political and social implications of your proposed solutions, and compare these solutions to those offered in other legal traditions and cultures;
- critically reflect on media and cultural products dealing with Private Law issues;



- read complex academic texts on Private Law deeply; and communicate complex arguments on Private Law effectively both orally and in writing; and
- make connections to theories, readings, class discussions, and class activities when analyzing Private Law issues; and theorize, generalize, and hypothesize on these issues.

These will be the learning outcomes –what you will take out of this voyage of high adventure, if you actively engage in it.

## WHAT WE WILL DO IN OUR JOURNEY OF DISCOVERY

We will resort to a myriad of exciting activities, which will include group discussions, Socratic dialogues, cooperative group problem solving, games, analysis of video segments depicting scenes relevant to Private Law issues, debates, construction of web sites, interpretation and production of audiovisual materials, group presentations, and analysis of legal and sociolegal texts on Private Law from all over the world.



You will need to assume a very active role and a proactive attitude in your learning process.

I am fully committed to maintaining an environment which fosters free speech, open discussion, and debate of ideas, including those which may be considered controversial or unpopular. I encourage everyone to listen sincerely to others' arguments and to express disagreement or dissent in ways that do not restrict the ability of individuals to express or to hear the ideas being presented. I expect robust discussions in which everyone feels free to express their ideas and to disagree with each other (and with me). I also expect discussions to be conducted with utmost civility and respect.

## ITINERARY

(formerly known as course outline by week)



Class	Topic	Readings
Class 1 Sep. 14	Introduction and orientation	Course syllabus.
Class 2 Sep. 21	Private vs. Public Law Private Law principles	The Moral Foundations of Private Law, by James Gordley 47 Am. J. Juris. 1 (2002) (available from HeinOnline)
Classes 3 & 4 Sep. 28 & Oct. 5	The theories of extracontractual responsibility.	Coleman, Jules, Hershovitz, Scott and Mendlow, Gabriel, "Theories of the Common Law of Torts", <i>The Stanford Encyclopedia of Philosophy</i> (Winter 2015 Edition), Edward N. Zalta (ed.), URL = < <a href="https://plato.stanford.edu/archives/win2015/entries/tort-theories/">https://plato.stanford.edu/archives/win2015/entries/tort-theories/</a> >.
Class 5 Oct. 19	The theories of contractual responsibility.	Markovits, Daniel, "Theories of the Common Law of Contracts", <i>The Stanford Encyclopedia of Philosophy</i> (Winter 2019 Edition), Edward N. Zalta (ed.), URL = < <a href="https://plato.stanford.edu/archives/win2019/entries/contracts-theories/">https://plato.stanford.edu/archives/win2019/entries/contracts-theories/</a> >.
Class 6 Oct. 26	<b>Distribution of take-home test</b>	
Class 7 Nov. 2	<b>Test</b> Private International Law.	Private International Law; Rogers, Patricia B. 23 Int'l L. 207 (1989) (Available from HeinOnLine)
Class 8 Nov. 9	Successions	Class notes
Class 9	International contracts	Convergence of Common Law and Civil Law Contracts by

Nov. 16	Incoterms UN international sales	Julian Hermida <i>Hong Kong Law Journal</i> , Vol. 34, Issue 2 (2004), pp. 339-376 (available from HeinOnline)
Class 10 Nov. 23	Distribution of final take-home The Law of Obligations in the Civil Law tradition	Class notes
Class 11 Nov. 30	<b>Submission of final take-home</b> <b>Submission of course portfolio</b>	
Class 12 Dec. 7	Feedback	

This is a tentative calendar of what we will do. If class activities take longer than originally estimated, I will not cut them short to follow this schedule. I will simply put them off for the following class or I will reschedule them. Additionally, I may substitute new topics for some of the ones included here, particularly if most of you show an interest for some topics not planned to be covered. Changes will be announced on the course website.

**A CONVERSATION ABOUT YOUR LEARNING AND DISCOVERIES**  
(Formerly known as method of evaluation)

Throughout our journey of discovery, we will stop several times so that we can talk about your learning. I will be providing you with formative feedback along the way. There will be plenty of opportunities to experiment, try, fail, and receive formative feedback in advance of and separate from summative evaluation. I will also help you develop the metacognitive tools and strategies so that you can assess your own learning progress.



By the end of this journey, you will have showed me what you have taken out of it, what you have learned, and how your thinking has changed. I will be particularly interested in seeing how well you have achieved the journey outcomes. I will want to see if you can perform the learning outcomes in a way which shows creativity, originality, and critical thinking skills, ideally beyond information given in the course.

I will assess the evidence you will show me holistically and synoptically, and I will make a judgment about whether you have attained the intended journey outcomes,



and if so –to what level. I will assess your evidence qualitatively and in its entirety –not by adding marks to its various parts. I will be interested in knowing how well you have learned and not how much. My judgement –like any judgement or assessment- will be subjective, but let me assure you that it will not be arbitrary. It will be based on my expertise as both a legal scholar and a teacher, not unlike a juror at a film festival judges films, or a curator judges pictures for a museum exhibition. . For this purpose, I will judge the quality of your learning against criteria based on John Bigg’s Solo Taxonomy, which I have posted on the course website, and which I will explain extensively in class. As you can see from the chart below, the SOLO Taxonomy is consistent with the University grading scheme. To communicate my judgment in a clear way, I will resort to several means, including rubrics.

According to University policy requirements, which prescribe a final global examination and some kind of partition of the summative assessment, I have divided the assessment in five parts. So, I will be assessing how well you have achieved the intended learning outcomes through your active class participation evidenced through the course portfolio, which is worth 40% of your final grade, an take-home test worth 30% of the final grade, and the final global-take home evaluation, which is worth 30%.

**The questions, problems, and activities for students registered in JURI 4816 will be more complex and lengthier than for those students registered in JURI 3906.**

This syllabus includes a chart that translates the SOLO taxonomy levels into grades according to University policy. For further clarification, there is no conflict between University policy and the SOLO taxonomy. University policy is a general framework; and the SOLO taxonomy is a specific instrument, which I use to implement the general University framework.

### Summary of the assessment

Evaluation tool	Grade weight	Deadline
Course portfolio	40%	November 30, 2020 by email. Partial submissions on demand.
Take-home test	30%	November 2, 2020 by email
Final Global take-home evaluation	30%	November 30, 2020 by email.

### Class participation evidenced through a course portfolio

You are expected to get actively involved with the class activities, to critically analyze the proposed problems and situations, and to complete all reading and written assignments. Each of you is expected to write down your answers to the class activities, even if you work in small groups, and to keep all activities in a portfolio. You have to keep all your class activities in a portfolio. On several occasions throughout the course, I will ask you to hand in the class activities or the entire portfolio for me to give you formative feedback.

### Evaluation criteria for class participation (course portfolio)

### **Pre-structural**

The student does not participate actively in most classes. The student does not show that he/she has read the assigned texts. The student does not participate in an appropriate manner that contributes to class discussions and does not show a positive attitude toward his or her classmates, the instructor, and the activities. The student does not work in small groups and does not volunteer to lead activities, debates, and debriefs. The student seldom asks questions in class.

The student responses to the class activities contain irrelevant information and they miss the point. The responses have no logical relationship to the question. The student gives bits of unconnected information, which have no organization, and make no sense. The student does not make connections to the theoretical issues, readings, class discussions, and class activities done throughout the course. The response to the class activities does not show an understanding of the issues dealt with.

### **Unistructural**

The student participates actively in most classes. In most classes, the student shows that he/she has read the assigned texts. The student generally participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works in small groups, but does not always volunteer to lead activities, debates, and debriefs. The student sometimes asks useful questions that contribute to the development of the class and fosters collective understanding or usually asks simple questions that do not contribute to the development of the class.

The student responses to the class activities contain one relevant item, but they miss others that might modify or contradict the response. There is a rapid closure that oversimplifies the legal issue or problem. The student makes simple and obvious connections to some of the theoretical issues, readings, class discussions, and class activities done throughout the course, but the significance of the connections is not demonstrated. In most class activities, the student can identify and list the legal issues or questions presented in class. The response to the class activities does not show an understanding of the issues dealt with or it demonstrates only a very superficial understanding.

### **Multi-structural**

The student participates actively and meaningfully in most classes. In most classes, the student shows that he/she has read the assigned texts and that he/she has reflected about the required readings. The student participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works productively in small groups and volunteers to lead activities, debates, and debriefs on most classes. The student generally asks useful questions that contribute to the development of the class and fosters collective understanding.

The student responses to the class activities contain several relevant items, but only those that are consistent with the chosen conclusion are stated, and the significance of the relationship between connections is not always demonstrated. Closure in the class activities is generally selective and premature. The student makes a number of connections to theoretical issues, readings, class discussions, and class activities done throughout the course, but the meta-connections between them

are missed, as is their significance for the whole. In most class activities, the student can enumerate, describe, combine, and list the legal issues or questions presented in class. The student uses some of the relevant data.

### **Relational**

The student participates actively and meaningfully in every class. The student shows every class that he/she has read the assigned texts quite deeply and that he/she has critically reflected about the required readings. The student participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works productively in small groups and volunteers to lead activities, debates, and debriefs every class or most classes. The student asks useful questions that contribute to the development of the class and fosters collective understanding.

The student makes connections to theoretical issues, readings, class discussions, and class activities done throughout the course. In general, students demonstrate the relationship between connections and the whole. In every class activity, the student can focus on several relevant aspects, but these aspects are generally considered independently. Response to the class activities is a collection of multiple items that are not always related within the context of the exercise. In all class activities, the student is able to classify, compare, contrast, combine, enumerate, explain causes, and analyze the legal issues or questions presented in class. The student uses most or all of the relevant data, and he/she resolves conflicts by the use of a relating concept that applies to the given context of the question or problem.

### **Extended abstract**

The student participates actively and meaningfully in every class. The student shows every class that he/she has read the assigned texts deeply and that he/she has critically reflected about the required readings. The student participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works productively in small groups and volunteers to lead activities, debates, and debriefs every class. The student asks useful questions that contribute to the development of the class and fosters collective understanding.

The student makes connections not only to theoretical issues, readings, class discussions, and class activities done throughout the course but also to issues, theories, and problems beyond information arising from class. In every class activity, the student shows the capacity to theorize, generalize, hypothesize, and reflect beyond the information given. The student even produces new relevant hypotheses or theories. In every class, the student can link and integrate several parts, such as class activities, readings, class discussions, and theories, into a coherent whole. The student links details to conclusions and shows that he/she understands deeply the meaning of issues and problems under analysis. The student questions basic assumptions, and gives counter examples and new data that did not form part of the original question or problem.

## **CLASS-ROOM TEST**

The class-room test will aim at testing functional knowledge of the problems and issues discussed in class.

## TAKE-HOME TEST

The take-home test will aim to test functional knowledge of the problems and issues discussed in class. You will have to submit it by email on **November 2, 2020 by 7 pm EST.**

## FINAL GLOBAL TAKE-HOME EVALUATION

The purpose of the global take-home evaluation is to assess whether and how well you have achieved the intended learning outcomes. The global take-home examination will be distributed as determined in the class schedule above; and you will have to submit it in class on **November 30, 2020 by 10 pm EST.**

### Evaluation criteria for the final take home evaluation and for the in-class test

I will resort to the Solo taxonomy to judge how well you have achieved the learning outcomes in the final take-home evaluation and the in-class test.

#### **Pre-structural**

The student responses to questions and problems contain irrelevant information and they miss the point. The responses have no logical relationship to the question. The student gives bits of unconnected information, which have no organization, and make no sense. The student does not make connections to the theoretical issues, readings, class discussions, and class activities done throughout the course. The response to the questions and problems does not show an understanding of the issues dealt with.

#### **Unistructural**

The student responses to the questions and problems contain one relevant item, but they miss others that might modify or contradict the response. There is a rapid closure that oversimplifies the legal issue or problem. The student makes simple and obvious connections to some of the theoretical issues, readings, class discussions, and class activities done throughout the course, but the significance of the connections is not demonstrated. The student can identify and list the legal issues or questions discussed in class. The responses do not show an understanding of the issues dealt with or it demonstrates only a very superficial understanding.

#### **Multi-structural**

The student responses to questions and problems contain several relevant items, but only those that are consistent with the chosen conclusion are stated, and the significance of the relationship between connections is not always demonstrated. Closure is generally selective and premature. The student makes a number of connections to theoretical issues, readings, class discussions, and class activities done throughout the course, but the meta-connections between them are missed, as is their significance for the whole. The student can enumerate, describe, combine, and list the legal issues or questions presented in class. The student uses some of the relevant data.

### **Relational**

Response to the questions or problems is a collection of multiple items that are not always related within the context of the exercise. The student is able to classify, compare, contrast, combine, enumerate, explain causes, and analyze the legal issues or questions presented. The student uses most or all of the relevant data, and he/she resolves conflicts by the use of a relating concept that applies to the given context of the question or problem. The student makes connections to theoretical issues, readings, class discussions, and class activities done throughout the course. In general, students demonstrate the relationship between connections and the whole. The student can focus on several relevant aspects, but these aspects are generally considered independently.

### **Extended abstract**

The student makes connections not only to theoretical issues, readings, class discussions, and class activities done throughout the course but also to issues, theories, and problems beyond information arising from class. The student shows the capacity to theorize, generalize, hypothesize, and reflect beyond the information given. The student even produces new relevant hypotheses or theories. The student can link and integrate several parts, such as class activities, readings, and theories, into a coherent whole. The student links details to conclusions and shows that he/she understands deeply the meaning of issues and problems under analysis. The student questions basic assumptions, and gives counter examples and new data that did not form part of the original question or problem.

## **CONVERSION OF GRADING SYSTEM**

In order to comply with University policy, which we will all abide by, and in order to facilitate the reading of the SOLO taxonomy, the following chart translates the SOLO taxonomy's five levels into the University grading scheme. As you can see, the descriptions of the levels of the SOLO taxonomy and the University grading scheme mean the same, even if they are expressed in different terms.

<b>SOLO Taxonomy</b>	<b>Grade</b>	<b>Percentage of Grade Value</b>	<b>Definition</b>	
Extended abstract	A	80-100	Exceptional Performance	Comprehensive knowledge in depth of the principles and materials treated in the course, fluency in communicating that knowledge and originality and independence in applying material and principles.
Relational	B	70-79	Good Performance	Thorough understanding of the breadth of materials and principles treated in the course and ability to apply and communicate that understanding effectively.
Multistructural	C	60-69	Satisfactory Performance	Basic understanding of the breadth of principles and material treated in the course and an ability to apply and communicate that understanding competently.

Unistructural	D	50-59	Minimally Competent Performance	Adequate understanding of most principles and material treated in the course, but significant weakness in some areas and in the ability to apply and communicate that understanding.
Pre-structural	F	0-49	Inadequate Performance	Inadequate or fragmentary knowledge of the principles and material treated in the course, or failure to complete the work required in the course.

Please note that in many cases, you may perform at a level in some aspects of a certain evaluation component of the course and at a different level in other aspects. In those cases, for the purpose of the summative assessment, I will determine which level is most representative of your learning. Strategic answers and interventions will be considered at the surface level, i.e., unistructural or multistructural.

## RESOURCES

You will need to read all the articles listed above deeply. You are responsible to get them from the Library databases. You must read these texts and any other text which you may find it necessary to prepare to participate in class.

A web site is available at <http://www.julianhermida.com>. You will be able to explore and consult the reading guides, class activities, and other useful information.

**You must regularly check both the course website and your Algoma University email account.**



I am here to guide you all throughout this journey of discovery. Think of me as your expedition experienced companion, i.e., someone who has travelled this route several times before, but is still amazed at the wonders discovered along the route.

## RULES AND POLICIES

The journey may only be successful if you engage in it; and if you work honestly and enthusiastically. Since this is a collective journey, you also need to follow certain rules and policies so that the journey will be fair and fruitful for all. Here are the rules and policies. They may sound strict. They are. But, trust me, they have been conceived so that the journey is as smooth and productive as possible.

## **OFFICE HOURS POLICY**

Given the COVID-19 restrictions, please email me if you need to discuss anything with me.

## **EARLY FEEDBACK POLICY**

Due to the nature of the course, traditional written examinations may not necessarily be evaluated prior to the withdrawal date. Feel free to ask me by email to provide you with a written statement of your standing in the course at any time, including prior to the withdrawal date.

## **PRIVILEGES: EXTENSIONS, WAIVERS, AND OTHER AUTHORIZATIONS**

Extensions, waivers, reschedules, rewrites, make-ups, and extra-credit activities are considered privileges, given on a case by case basis and as a matter of courtesy. For further clarification, I may or may not grant them or I may grant them to some students and not to others, depending on a number of factors. In general, I will only grant privileges in exceptional circumstances.

## **STUDENTS WITH DISABILITIES**

Students with disabilities who would like to discuss classroom and/or exam accommodations should contact me as soon as possible.

## **NO RECORDING**

No photography, sound-recording, or videorecording will be permitted during class without permission. Reproduction of class presentations, activities, course notes, or other similar materials are not permitted without prior written consent. Similarly, screen recording and screenshots of class materials, including without limitation, notes, class activities, and lectures, not allowed, either without prior written permission. In the case of private use by students with accessibility needs, consent will not be unreasonably withheld.

## **ACADEMIC DISHONESTY**

The University takes a very serious view of such offences as plagiarism, cheating, and impersonation. Penalties for dealing with such offences will be strictly enforced. Please

read the Student Code of Conduct (Academic) on plagiarism and other offences against academic honesty. Please note that any self-misrepresentation in order to avoid attendance, meeting of assignment deadlines, writing of tests or examinations and/or completion of assignments, constitutes academic dishonesty. The following web site contains a complete policy statement on academic dishonesty and attendance. You are encouraged to read it for further clarification: [http://www.algomau.ca/uploads/file/pdf/chapter\\_3.pdf](http://www.algomau.ca/uploads/file/pdf/chapter_3.pdf).

### **TEACHING EVALUATIONS**

Please remember to complete the electronic teaching evaluations towards the end of the course. The University considers the evaluation instrumental in assessing teaching. The University will announce the period and instructions for completing the evaluations.

### **RESEARCH ETHICS**

None of the class activities include research involving human beings. However, if you decide that you want to do research involving human beings, such as interviewing or observing, you will need to obtain authorization from the Research Ethics Board BEFORE you start dealing with people. In this case, let me know as soon as possible. I can help you with this process.

### **TRIGGER WARNINGS**

Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content. Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course are those of the authors and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to state or reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.

### **DISCLAIMERS**

Trademarks and registered trademarks mentioned in connection with class activities, readings, and assignments are the property of their respective owners. References to

trademarks, registered trademarks, commercial products, services by trade name, or real people, living or dead, in the course are for educational purposes only. No claim is made that any such reference constitutes any sponsorship, endorsement, or association of those products, services, or individuals with this course.

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