

<http://pryan2.kingsfaculty.ca/course-sites/history-ac-3851f-g/>

HIS 3851F – Capitalism & the Law
 Fall 2018
 Wednesdays 6:30-9:30 PM
 W 176

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 Tues 12:30-2p; Th 11:30-1p

Academic Program Advisor
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COURSE DESCRIPTION:

An exploration of legal culture and institutions that structured the rise of capitalism. Students will examine the fundamentals of law that arose within market society.

Prerequisite(s): 1.0 course at 2200 level or above.

Unless you have either the requisites for this course or written permission from your Dean to enroll in it, you may be removed from this course and it will be deleted from your record. This decision may not be appealed. You will receive no adjustment to your fees in the event that you are dropped from a course for failing to have the necessary prerequisites.

READINGS: (available at The Bookstore at Western, through other book sellers, and or in the library)

1) Tamar Herzog, *A Short History of European Law - the last two and a half millennia* (Cambridge, MA: Harvard University Press, 2018).

2) One of these three books available in the library or through online book dealers; see [critical review instructions](#):

Option A	Ian Baucom, <i>Specters of the Atlantic: finance capital, slavery, and the philosophy of history</i> (Duke UP, 2005).
Option B	Geoffrey Samuel, <i>A Short Introduction to the Common Law</i> (Edward Elgar, 2013).
Option C	James D. Schmidt, <i>Industrial Violence and the Legal Origins of Child Labor</i> (Cambridge UP, 2010).

3) Eight other article length works and a number of primary sources; see the [course schedule](#) and the [case analysis paper instructions](#).

MARKING SYSTEM:

Discussion Participation	15% weekly
Very Short Paper (300-400 words)	15% October 3
Critical Review Paper (1,000-1,200 words)	30% November 7
Case Analysis Paper (1,200-1,500 words)	40% December 12

ABSENCE, ACCOMMODATION, & PENALTIES:

Students are expected to schedule appointments and other responsibilities around class time. To be excused from discussion participation due to temporary illness or one-time unavoidable scheduling conflict, contact me directly via email.

Please do not use email to engage me in substantive conversation, to review course material, or to pose open-ended questions. I am happy to speak with students face-to-face or immediately after class.

If health issues are prolonged, or to request more extensive academic accommodation, you must meet with me in person and provide documentation to the Dean's Office. If you seek more extensive forms of accommodation, I ask that you deal directly with me in-person as is appropriate. I am available almost every working day on campus and will make an appointment to meet with you.

Penalties for late papers may be avoided if extensions are requested in advance. Otherwise, a two-mark deduction will be taken for each of the first three days late, and a 5-mark deduction for each day thereafter. One-month after the due date a zero will be assigned for the paper.

COURSE CALENDAR

SEPT. 12 - INTRODUCTION: CAPITALISM & THE LAW

SEPT. 19 - LAW & GRAND HISTORICAL NARRATIVES

Reading: Herzog, chapters 1-4, pages 1-72.

Key Statutes, Cases, and Resources: [15C Lecture on Wager of Law](#); [L12/E13C Cases of Assize Courts reviewing Manorial Courts](#); The Earl of Oxford's Case (1615)

SEPT. 26 - MEDIEVAL ENGLAND & MASTER-SERVANT RELATIONS

Reading: Herzog, chapters 5-6, pages 75-115;

Key Statutes, Cases, and Resources: [Case of Prohibitions \(1607\)](#)

OCT. 3 - FEUDALISM & REAL PROPERTY

Reading: John Hamilton Baker, "Real Property: Feudal Tenure," chapter 13 in *An Introduction to English Legal History* 4th edition, (Butterworths, 2010): 223-247. On reserve in the library; pdf copy will be made available.

Key Statutes, Cases, and Resources: [Statute Quia Emptores \(1290\)](#); [Manor Size and Tenurial Relationships](#) (1279); [Banks v. Whetston \(1596\)](#); [Land Registration](#)

Very Short Paper Due by the end of the week

THANKSGIVING BREAK

OCT. 17 - SERVITUDE, SLAVERY & THE ATLANTIC WORLD

Reading: Robbie Shilliam, "Forget English Freedom, Remember Atlantic Slavery: Common Law, Commercial Law and the Significance of Slavery for Classical Political Economy," *New Political Economy* vol. 17, no. 5 (Nov 2012): 591-609. **AND** Herzog, chapters 7-9, pages 119-164.

Key Statutes, Cases, and Resources: Statute of Artificers (1563); [Elizabethan Poor Law \(1601\)](#); [African Slavery figures](#); [Atlantic Trade Routes](#); [Video of centuries of transatlantic African slave passage](#); [Barbados Slave Code \(1688*\)](#); Butts v. Penny (UK 1677); Chamberlaine v. Harvey (UK, 1696); [The Somerset Case \(UK, 1772\)](#); [U.S. v. The Amistad \(US, 1841\)](#)

OCT. 24 - EARLY-MODERN TRANSFORMATIONS: PROPERTY, DEBT, AND LAW

Reading: Herzog, chapters 10-11, pages 167-203. *Start [critical review reading](#).

Key Statutes, Cases, and Resources: [Excellent Guide to Deeds and Property Law](#); [Statute de Donis Conditionalibus \(1285\)](#); [Statutes of Use, Wills, and Enrolments \(1536\)](#); [Armory v. Delamirie \(1722\)](#) and the case [report](#); [Debt Recovery Act \(1732\)](#); [Millar v. Taylor \(1769\)](#); [Munn v. Illinois \(1877\)](#)

OCT. 31 - DISCUSSION SESSIONS ON BAUCOM, (OR) SAMUEL, (OR) SCHMIDT

Reading: Baucom, Samuel, or Schmidt (depending on the review option you selected; [see critical review instructions](#)).

Baucom Group will meet 6:30-7:30 pm.

Samuel Group will meet 7:30-8:30 pm.

Schmidt Group will meet 8:30-9:30 pm.

NOV. 7 - CONTRACTS, LIABILITY, & LIBERAL REVOLUTIONS

Reading: Baucom, Samuel, or Schmidt (depending on the review option you selected; [see critical review instructions](#)).

[Critical Review Paper Due](#)

No preparatory homework beyond the papers; I will lecture on contracts, liability, and [introduce the case analysis paper](#).

Key Statutes, Cases, and Resources: [Da Costa v. Jones \(1788\)](#); Seixas v. Woods (1804); Printing and Numerical Registering Co. v. Sampson (1875); [Slade v. Morley \(1602\)](#); [Pillans v. Van Mierop \(1765\)](#); Fletcher v. Peck (1810); Laidlaw v. Organ (1817); [Foakes v. Beer \(1884\)](#); Carlill v. Carbolic Smoke Ball Co. (1892); Tuberville v. Stampe (1697); Jones v. Hart (1698); [Coggs v. Bernard \(1703\)](#); [Carter v. Boehm \(1766\)](#); [Hochster v. De La Tour \(1853\)](#); [Taylor v Caldwell \(1863\)](#);

NOV. 14 - MONOPOLIES, PATENTS, & ECONOMIC DEVELOPMENT

Reading: [Oren Bracha](#), "The Commodification of Patents 1600-1836: How Patents Became Rights and Why We Should Care," *Loyola of Los Angeles Law Review*, vol. 38 no. 1 (Fall 2004): 177-244. **AND** Herzog, chapters 12-13 and Epilogue, pages 207-243.

Key Statutes, Cases, and Resources: Tyler v. Tuel (1810); Wheaton v. Peters (1834); [Statute of Monopolies \(1624\)](#); [Patent Law \(US, 1836\)](#); The Case of Monopolies (Darcy v. Allein, 1599); [Liardet v. Johnson \(1778\)](#); [Lowell v. Lewis \(1817\)](#); Charles River Bridge Co (1837); Hotchkiss v. Greenwood (1850); Slaughterhouse Cases (1873).

NOV. 21 - INDIVIDUAL MEETINGS ON FINAL PAPER November 19 and 20 - NO CLASS on Wednesday night

Reading: Prepare for the meeting by completing first three steps of final paper: 1 - choose a case; 2 - obtain and read the primary documents associated with it; 3 - construct a 3-source bibliography, and read as much of it as you can.

[Instructions for the case analysis paper.](#)

NOV. 28 - TRUSTS & CORPORATIONS

Reading: [John Morley](#), "The Common Law Corporation: The Power of Trust in Anglo-American Business History," *Columbia Law Review* vol. 116, no. 8 (Dec 2016): [2145-2197](#).

Key Statutes, Cases, and Resources: Case of Sutton's Hospital (1612); Salmon v. The Hamborough Company (1671); Bubble Act (UK, 1720); Sherman Anti-Trust Act (1890); Trustees of Dartmouth College v Woodward (1819); Limited Liability Act (UK, 1855); Paul v. Virginia (1869); [Santa Clara County v. So. Pacific Railroad Company \(1889\)](#); Salomon v A Salomon & Co. Ltd (1896).

DEC. 5 - INDUSTRIALISM & CLASS POLITICS

Reading: [William E. Forbath](#), "Courts, Constitutions, and Labor Politics in England and America: a study of the constitutive power of law," *Law & Social Inquiry* vol. 16, no. 1 (Winter 1991): 1-34.

Key Statutes, Cases, and Resources: Hobbes v. Young (1689); [decline in productive householding \(1790-1990\)](#); Factory Acts (UK, 1833); Fair Labor Standards Act (1938); [The Combination Acts \(1799, 1800\)*](#); Trades Disputes Act (1906); Trade Union and Criminal Law Amendment Act (1875); [Taff Vale \(1901\)](#); The Combination Acts (1799, 1800); Commonwealth v. Pullis (1806); Commonwealth v. Hunt (MA, 1842); *Vegeahn v. Guntner* (1896); *Lochner v. New York* (1902); Trades Disputes Act (1906); *Loewe v. Lawlor* (1908).