



SURVEY LAW 1 (ESSE 4660)

Cadastral Surveys and Land Registration Systems



Syllabus & Info for Fall, 2018

OVERALL GOALS AND PURPOSE

The overall purpose of the *Survey Law 1* course is to provide a foundation for professional surveyors to integrate legal principles, legislation and regulations within the overall framework of property boundary surveys in Ontario. The course exposes learners to concepts and processes underlying the performance of cadastral surveying such as:

- basic concepts of real property law;
- definition of a legal boundary;
- origins of boundary law and township survey systems in Ontario;
- application of early survey systems to the recording of interests in land through the *Registry Act* and the *Land Titles Act*;
- boundary law principles arising from special circumstances and their impact on the land registration system;
- complexities of the process of legal research and investigation;
- the principles established through legislation, the courts, and practices recognized as acceptable standards within the profession in evaluating evidence.

The learning and instruction methods used in this course – namely, reading, independent research, guided questioning, lectures, discussions, and assignments – are designed to prepare learners for competency in survey law issues, as they relate surveyors, by requiring them to:

- understand the nature of law and the legal system;
- wade through much material from various sources that contributes to and informs a surveyor's judgment as to the location of a retraced boundary;
- clearly communicate – verbally and in writing – the results of their research as well as the reasoning underlying their opinions;
- discover how survey law – and the application of legal principles to facts established through evidence – impacts a professional surveyor's work and responsibility.

INSTRUCTOR

This course is taught by Izaak de Rijcke – a practising lawyer and land surveyor. Izaak can be contacted by email at izaak@4pointlearning.ca. Occasional guest speakers will be announced during the semester.

CLASS TIMES AND LOCATION

Classes are scheduled for Monday and Wednesday evenings from 6 pm to 7:30 pm. The course is offered using a blended delivery system which allows remote participation and recording of classes for later viewing. The lectures will be conducted from 122-355 Elmira Rd North, Guelph. "Labs" are part of this course and involve self-study using resources available on the Four Point Learning site.

Please note that despite the scheduling of classes from 6 pm to 7:30 pm on Mondays and Wednesdays, there may be occasional classes which may not be possible due to the instructor's other commitments (e.g., an out of town trial or hearing). Accordingly, you should be prepared to occasionally see some of the classes turn into a single 6 pm to 9 pm event on either a Monday or a Wednesday. We will try to provide as much advance notice of such circumstances as possible. There will also be the occasional guest speaker.

COURSE REQUIREMENTS

This course meets the requirements for licensure as an Ontario Land Surveyor by the Association of Ontario Land Surveyors. *Survey Law 1* (ESSE 4660 at York University) has been accredited by CBEPS for purposes of meeting the requirements of the Cadastral Surveys section

of the CBEPS syllabus. Accordingly, it may also meet the requirements for a professional licence in many other jurisdictions of Canada through reciprocity and mobility recognition.

The course book: *Principles of Boundary Law in Canada* can be purchased directly through Four Point Learning: http://4pointlearning.ca/4PL/Principles_Boundary_Law.pdf or at York University Bookstore: <http://bookstore.yorku.ca>. In addition, selected readings will be posted on the Learning Management System (LMS) on the Four Point Learning site as the course progresses.

COURSE EVALUATION GUIDELINES

The criteria guiding the Instructor's evaluation of performance are as follows:

1. Quizzes (4 of them, weight: 10% each)

Each of the four sections of the course includes a quiz consisting of 3 randomized short-answer questions and 1 true/false question covering the key concepts explored in the annotated readings, lectures, and the course book, *Principles of Boundary Law in Canada*.

The short-answer questions are provided beforehand as *self-study* questions since:

- i. These questions are constructed to develop competency in the analytical thinking skills required of a cadastral surveyor, as per the overarching objective for the Survey Law courses: *to provide the analytical framework and the process or best practice to follow in working through evidence in order to reach conclusions of fact which serve as the foundation for the professional surveyor's opinion.*
- ii. Furthermore, preparing answers beforehand not only allows for the abstract concepts to be appreciated with all facets, nuances, and possible implications for the practical situations a surveyor will encounter on the ground, but there is not enough time allocated during the quiz to answer these questions at the expected proficiency level, as typified by the following evaluation criteria:
 - the key elements of the question are addressed;
 - the ideas are fully developed (e.g., both sides of the issue are described, rationale for position/opinion is presented, connections are made, applications are suggested);
 - the sources used to construct the arguments are referenced;
 - the content is organized in a clear and concise manner with few grammatical or stylistic errors.

The quizzes are accessed via the course's LMS. They can be taken any time **before** their closure date – i.e., the first Sunday following the end of that section (Section 1: Oct 7th, Section 2 Nov 4th, Section 3 Nov 18th, Section 4 Dec 9th).

2. Assignments (3 of them, weight: 20% each)

The assignments are evaluated in terms of competency in:

- demonstrating critical thinking in the application of theory to a solution of the problem;
- correctly interpreting the applicable regulations, statutes, and case law;
- explaining the legal principles used in arriving at the proposed solution/opinion;
- communicating effectively through professional presentation, grammar and referencing the sources used to construct the arguments and/or rationale.

SCHEDULE OF CLASSES AND TOPICS

The outline of topics is a general overview only. The nature of this material makes it difficult to learn in a linear fashion. Accordingly, we expect to occasionally jump ahead and to also loop back. *The outline below is only meant for your convenience – it is not meant to fetter the instructor's presentation or the range of topics to be discussed.* Since there are 2 classes scheduled for each week, the outline below is directed to a general weekly coverage. PLEASE BE PREPARED TO DISCUSS ALL TOPICS BELOW IN CLASS. [References] are to chapters in *Principles of Boundary Law in Canada*.

SECTION 1: *The Nature of Property and Estates in Land*

Sep 5 & 10	The nature of Property Rights; Common Ownership or Lack of Property Rights; The Tragedy of the Commons; a brief history of English Land Law. [Chapter 1 and Appx 1]
Sep 12 & 17	Title, Tenure and Land Holding in the New Confederation; Property Rights and Capitalism; Property Rights and the Charter of Rights and Freedoms; Freedom of Expression on Public Property; Relativity of Title and Types of Tenancy. [Appx 1]
Sep 19 & 24	Easements and Rights of Way; Easements and Proprietary Estoppel; Licences and <i>profits à prendre</i> ; Equity; Co-Ownership. [Chapter 5]
Sep 26 & Oct 1	Restrictive Covenants: Intention for the burden to run with Land and ascertainability. [Chapter 5]

SECTION 2: *The Nature of Boundaries*

- Oct 3 Introduction to topic; what is a boundary? - the often unasked question; Ownership of a Hedge and Legal Boundaries; Settlement Policies; Patterns of Settlement and Imposition of Survey Lines; Colonization and Settlement Schemes; The Development of Township Surveys in Ontario; Early Land Surveys in Southern Ontario. [Chapter 2]
- Oct 8 & 10 **Reading Week – No class**
- Oct 15 & 17 Understanding the Crown Land Granting Process; Applying for a Land Grant: Land Petitions; District Land Boards; Settlement companies; Sample List of Ontario Colonization Roads; Government Authorized Survey Lines; the Hierarchy of Evidence and when it does not apply; the Professional Surveyor's Duty; Township Land Records. [Chapter 1]
- Oct 22 & 24 Background History of the Land Tenure System in Ontario; History of the Land Registry Office; Registration of Deeds Versus Registration of Title; short History of Land Registration in England and Wales; Developing Land Registration Systems for Developing Countries; When is a Land Registration System necessary? [Chapter 7]

SECTION 3: *Issues in the Survey of Specific Boundaries*

- Oct 29 & 31 Introduction to topic; Adverse possession – Overview; Who can exercise a property right vs. Who is entitled to exercise that right; Case law; *animus possidendi*; Nature of Ordinary Use; Inconsistent Use; Inconsistent Use as a Test; Claims through non-exclusive use; Conversion of Title from LTCQ to LT+. [Chapter 4]
- Nov 5 & 7 Appeals under the *Land Titles Act*; the role of the land surveyor when appearing as a witness in a title related matter; Proof of Adverse Possession and Limitations; Case law; Legal Uncertainty of a Boundary Location, or Uncertainty of Remedies for the Resolution of Boundary Disputes? [Appx 3]

SECTION 4: *Special Boundaries – Public Roads and Highways*

- Nov 12 & 14 Introduction to topic; relocation of Original Road Allowance; Lack of Use; Property Owner's Intention; subdivider's Intention; establishing a Highway;

Land Dedication for Use as Public Highway; Intention to Dedicate; Dedication and Acceptance. [Chapter 6]

Nov 19 & 21 Highways as having a special status; public commons and parks; aboriginal title; community property and what results from the nature of this property insofar as boundaries are concerned. [Chapter 9]

Nov 26 & 28 Survey Evidence of Public Roads; *Surveys Act* provisions; case law; *Road Access Act* and implications for land surveyors. [Chapters 6 and 9]

Dec 3 Review of last assignment; tie-up of several threads and outcomes.

Looking forward to our learning journey together,

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Program Director



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