

**Two World Views in Law: Historical and Contemporary Legal Decisions Surrounding
Aboriginal Title and Rights**

ASSESSMENT EXERCISE

Answer the following and include both Indigenous and non-Indigenous perspectives.

1) How are laws transferred and upheld?

Indigenous Perspective

Non-Indigenous Perspective

2) What does sovereignty mean?

3) How has sovereignty over land been asserted through law?

4) How is land/property ownership viewed and understood?

Answer the following in short answer.

5) Identify and describe two arguments in law that the Canadian Government-Crown has used to declare ownership of Indigenous traditional territory and land.

6) Which governing body passed the legislation, *Indian Act, 1876*?

7) Explain why the *Indian Act, 1876* is of significance to **both** Indigenous and non-Indigenous people.

8) Why was Section 35 of the *Constitution Act, 1982*, added?

9) How have Indigenous People used Section 35 of the *Constitution Act, 1982* in the Supreme Court of Canada?

10) Why is oral tradition given equal weight in court as written documentation?

ASSESSMENT GUIDE

The following answers reflect only some of the ideas that have been raised in these materials. The questions are broadly based and can be interpreted in many different ways.

1) How are laws transferred and upheld?

Indigenous Perspective

Indigenous laws are transferred through oral tradition; including but not limited to, story, song, dance, carving and local custom. Indigenous laws are upheld through oral tradition; including but not limited to, feasts, Potlatches, Longhouse gatherings, Big House gatherings, ceremony and local custom.

Non-Indigenous Perspective

Non-Indigenous laws are transferred through legislation, statutes, regulations, and policy. Non-Indigenous laws are upheld through policing, and the legal-court system.

2) What does sovereignty mean?

Indigenous Perspective

Sovereignty is the inherent rights from the Creator/Great Spirit, to have jurisdictional rule over traditional territories. It is not granted or given by any other Nation or leadership body.

Non-Indigenous Perspective

Sovereignty is the unified Nation of Canada. Canada was granted Nationhood and sovereignty from the British Crown with the *Constitution Act, 1982*.

3) How has sovereignty over land been asserted through law?

Indigenous Perspective

Sovereignty over land was traditionally asserted through Indigenous laws. Now Indigenous sovereignty is asserted by Section 35 of the *Constitution Act, 1982*, which acknowledges Aboriginal Title and Rights.

Non-Indigenous Perspective

Sovereignty over land has been asserted through the *Royal Proclamation, 1763*, *Indian Act, 1876*, the *Constitution Act, 1867*, and the *Constitution Act, 1982*.

4) How is land and property viewed in terms of ownership?

Indigenous Perspective

Indigenous People do not view land in terms of “property ownership.” Land/property is understood as the culture, identity and spirit of Indigenous People and must be maintained with respect.

Non-Indigenous Perspective

Land is viewed as property, which is to be owned and/or leased. Land is viewed as a commodity, where resources are extracted from land for economic benefit.

Answer the following in short answer.

5) Identify and describe two arguments in law that the Canadian Government-Crown has used to extinguish Aboriginal Title and declare ownership over land.

[Any two of four answers below]

a) Terra Nullius – That Aboriginal Title did not exist because the land was empty or vacant. That Indigenous Nations were primitive and uncivilized, therefore not capable of owning or governing their own land.

b) Doctrine of Discovery – That Aboriginal Title was simply extinguished when newcomers came upon the land lived on and governed by Indigenous people, because it had been discovered.

c) Doctrine of Adverse Possession – The Province extinguished Aboriginal Title by declaring other interests in the land and resources.

d) Passage of Time – That Aboriginal Title died of old age. It did not exist anymore because too much time had passed for Aboriginal Title to be valid.

6) Which governing body passed the legislation, *Indian Act, 1876*?

The Federal Government.

7) Explain why the *Indian Act, 1876* is significant to Indigenous and non-Indigenous forms of law.

[Variety of possible answers]

a) The Indian Act is significant to all Indigenous people in Canada as they became controlled by the Government, and legally restricted from their land, culture, and customs.

b) The Indian Act controlled Indigenous people so that they no longer could assert their Aboriginal Title and Rights to their traditional territory.

c) The Indian Act restricted Indigenous people to reserve lands, which they do not legally own.

d) The Indian Act asserted that Indigenous territorial laws and ways to govern were not valid.

e) The Indian Act is significant to the Canadian Government because it became the authority to make decisions on all Indigenous people. It validated non-Indigenous forms of law making.

8) Why was Section 35 of the *Constitution Act, 1982*, added?

Section 35 of the Constitution, 1982 was added in order to recognize that Indigenous people are the Original People of the territory and have the Right to survive as unique Nations. It also addressed the fact that historically, Aboriginal Title and Rights had never been extinguished and that Indigenous people remain the Original owners of their traditional territory.

9) How have Indigenous People used Section 35 of the *Constitution Act, 1982* in the Supreme Court of Canada?

The Gitksan and Wet'suwet'en Nations in Delgaamu'ukw vs. British Columbia used Section 35 of the Constitution Act to defend that Aboriginal Title and Rights exists and had never been extinguished. The Indigenous People defended that Section 35 protected their Aboriginal Title and Rights.

10) Why is oral tradition given equal weight in court as written documentation?

Oral tradition is given equal weight in court as written documentation because it has been used by Indigenous people in the same fashion; to declare territorial/jurisdictional boundaries, and community rights to resources from the land.