

Foundations of Canadian Law – Practice Question and Answer

Session: Indigenous People and The Law

Topic: Aboriginal Rights and Title – How to Establish Aboriginal Title to Land

Recommended time: 60 Minutes

Score: 75 Marks

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Question

It has become established as a body of Canadian jurisprudence that Aboriginal title to ancestral lands is an independent legal interest, and that the crown's radical or underlying title is burdened by this pre-existing legal right of the Aboriginal people.

Briefly trace the historical development of the law on Aboriginal title in Canada to the present. How may Aboriginal title to land be established?

Your answer must include references to statutory and judicial authorities.

Note:

This question tests your constitutional law knowledge of Aboriginal rights and titles, as it relates to Aboriginal claim to land. It is as straightforward as it is simple. You may expect to see such 'straightforward' questions in your Foundations exam, if luck shines on you.

Take important note of the principles laid down by the SCC on how to establish aboriginal title to land. It is settled that to establish title to a land, the Aboriginal group must prove occupation that is sufficient, continuous and exclusive. This principle is broken down in the second part of the answer.

Please take note of this principle as it is a very important point that is regular in many Foundations exam questions on Aboriginal title.