

Global Perspectives on Law
Spring 2023
Monday and Wednesday 10:30 – 12:00
Prof. Conley
anna.conley@mso.umt.edu

OVERVIEW OF COURSE

The purpose of this course is to expand students' views of law around the world, and to provide students a context to understand our own legal tradition from a more global point of view. Another aim of this course is to explore the methodological issues with comparing legal rules, systems and traditions, and study the impact that history, philosophy, legal reasoning, and culture have on law, and law's interplay with non-legal norms.

This course will provide an overview of the various legal traditions of the world, including the customary legal tradition, civil law legal tradition, common law legal tradition, and religious legal traditions, including Islamic law. The course will begin discussing comparative law methodology – how we compare rules in different legal systems. We will then explore the history, philosophy and functioning of various legal systems within each tradition.

At the end of this course, students will have a better understanding of the major legal traditions of the world, and the legal systems and rules within each tradition. Students will have a global context in which to conceptualize our own legal rules, system and tradition. Through readings, guest speakers and lectures, students will come away with exposure to non-western concepts of law and a better understanding of other systems, traditions and rules.

READINGS: A course pack with all required readings will be available at the bookstore. The readings for each class are listed below.

GRADING:

Your grade will be determined as follows:

25% Reading Question Responses: Reading questions will be posted to moodle for each class. Hard copy answers to these questions must be turned in each class.

15% Class participation: This includes contributions to class roundtables, class discussions, including your own questions and your ability to answer questions regarding the reading. **All students are expected to come to class prepared to answer questions regarding the reading.**

Roundtables – There are four roundtable classes in this course. Each roundtable has four cases relating to the legal tradition we are studying. Students will be in groups of 5 and each group will be assigned one case. Each group will provide a class presentation of their case, which will include:

1. A brief overview of the legal system of the country from which the case comes
2. A brief overview of the court system of the country from which the case comes
3. An overview of the issues, rules, applications and conclusions of the opinion
4. Observations relating to
 - a. Sources relied upon by the court
 - b. Legal reasoning utilized by the court

60% Final Paper and Presentation

Students will write a paper comparing a U.S. legal rule or an aspect of the U.S. legal system with a non-U.S. legal rule or aspect of a non-U.S. legal system. AWR students must write a paper between 5000 and 5500 words. Non-AWR students must write a paper between 3000-5000 words. All students must comply with all deadlines and requirements set forth in Exhibit A hereto. AWR papers must comply with all requirements for AWRs as set forth in the ABIII Student Handbook regarding AWRs and as set forth in Exhibit A attached hereto.

READING: Each student is expected to come to each class having read the assigned reading for that class. Each student should be prepared to answer questions and engage in discussion regarding the reading materials.

If you are unable to complete an assigned reading, please let me know at the beginning of the class, and I will not call on you to discuss the reading. A student can have two “passes” for the semester without having their class participation grade affected.

The reading is a coursepack that will be available for students to purchase from the UM Bookstore in hardcopy or electronic format.

Accommodations: The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and the Office for Disability Equity (ODE). If you anticipate or experience barriers based on disability, please contact the ODE at: (406) 243-2243, ode@umontana.edu, or visit www.umt.edu/disability for more information. Retroactive accommodation requests will not be honored, so please, do not delay. As your instructor, I will work with you, the Assistant Dean of Students – Student Success, Student Services, and the ODE to implement an effective accommodation

Academic honesty: ABIII Honor Code and UM Conduct Code apply.

CLASS SCHEDULE

1/18 - Class 1: Introduction to course, discussion of grading and expectations, anatomy of legal systems and law of subset of rules

- Roderick Alexander MacDonald, Lessons of Everyday Law (School of Policy Studies Queens University 2002), pp. 1, 83-86
- Michael J. Bazzyler, Michael Bryant, Kristen Nelson and Sermid AlSarref, Comparative Law: Global Legal Traditions (Carolina Academic Press 2021), pp. 4-6

1/23 - Class 2: Comparative law and methodology

- Excerpt from Draft - Conley, Comparing Essential Components of Transnational Jurisdiction: A proposed Comparative Methodology, forthcoming, Tulane Journal of International and Comparative Law (on moodle)

1/25 - Class 3: Legal Transplants

- Toby S. Goldbach, Why Legal Transplants?, 15 Ann. Rev. L. & Soc. Sci. 583, 596 (2019)

1/30 - Class 4: Customary (a.k.a. chthonic) legal tradition

- H. Patrick Glenn, *Legal Traditions of the World*, Fifth Edition (Oxford University Press 2014), pp. 60-97

2/1 - Class 5: Customary legal tradition cont'd – African customary legal systems

- Adbulmumini A. Oba, *The Future of Customary Law in Africa*, in Jeanmarie Fenrich, Paolo Galizzi and Tracy E. Higgins, *The Future of African Customary Law* (Cambridge University Press 2011)

2/6 - Class 6: Customary legal tradition cont'd – African customary legal systems cont'd

- Wazha G. Morapedi, *Customary Law and Chieftainship in Twenty-First-Century Botswana*, in *The Future of Customary Law in Africa*, in Jeanmarie Fenrich, Paolo Galizzi and Tracy E. Higgins, *The Future of African Customary Law* (Cambridge University Press 2011)

2/8 - Class 7: Customary legal tradition cont'd – Roundtable on customary legal systems and gender (all sources on moodle – only one assigned per group)

- *Kailas, et al. v. State of Maharashtra, et al.* Supreme Court of India, 2011
- *Nonkulueko Letta Bhe, et al. v. Magistrate Khayelitsha, et al.* Constitutional Court of South Africa, Case CCT 69-/03 (15 Oct. 2004)
- *Mifumi et al v. Attorney General*, Supreme Court of Uganda, Appeal No 2 of 2014
- *Onyibor Anekwe, et al. v. Nweke*, Supreme Court of Nigeria, SC 129/2013 (11 April 2014)

2/13 - Class 8: Research methods in comparative law – Paper Topic Workshop

2/15 - Class 9: Civil Law tradition – Codification and History – Roman law

- Roman Law Glossary
- 12 Tables
- John Henry Merryman & Rogelio Perez-Perdomo, *The Civil Law Tradition and Introduction to the Legal Systems of Europe and Latin America*, pp. 1 - 14

2/22 - Class 10: Civil law legal tradition cont'd – the spread of roman law and the brantub of Europe

- John Henry Merryman & Rogelio Perez-Perdomo, *The Civil Law Tradition, and Introduction to the Legal Systems of Europe and Latin America*, pp 27-47

2/27 - Class 11: Civil law tradition in Latin American systems

- Rett R. Ludwikowski, *Latin American Hybrid Constitutionalism*, 21 B.U. Int'l L.J. 29 (2003)

3/1 - Class 12: Civil law roundtable (all sources on moodle – only one assigned per group)

- *Camaieu int'l societe v. Ms. X*, France Cour de Cassation case April 14 2021
- *Tsu City Shinto Groundbreaking Ceremony Case* – Japan Supreme Court July 13, 1977

- Jane Doe Amparo, Mexico Supreme Court – May 15, 2019
- Wabe v. MH Muller Handels GmbH – European Court of Justice, July 15, 2021

3/6 - Class 13: Common law legal tradition – Introduction and history

- K. Zweigert & H. Kötz, *An Introduction to Comparative Law*, pp. 180-204
- Lord Goff, *Future of the Common Law*, *I.C.L.Q.* 1997, 46(4), 745-760

3/8 - Class 14: Formation of U.S. common law

- Lawrence M. Friedman, *A History of American Law* (3d. Ed. 2005), pp. 65-104
- Mont. Code Ann. 1-1-109 (on moodle)

3/13 - Class 15: Common law in the Caribbean systems and the Privy Council

- Attorney General of Trinidad and Tobago v. Akili Charles, Privy Council Appeal No. 0034 of 2022 (downloaded from Privy Council website) (on moodle)

3/15 - Class 16: Common Law Roundtable (all sources on moodle – only one assigned per group)

- HKSAR v. Lai Chee Ying, Hong Kong Court of Final Appeal, February 9, 2021
- Ahmed Salim and Public Prosecutor, Singapore Court of Appeal – January 19, 2022
- Love and Thoms v. Commonwealth of Australia, Australia – High Court of Australia – February 11, 2020
- Bain, et al. v. Eadie, et al., Scotland, Supreme Court, November 23, 2022

3/27 - Class 17: Religious legal systems – when is it law, when is it religion, and when it is both?

- James Q. Whitman, *Comparative Law and Religion*, in Mathias Reimann & Reinhard Zimmermann, editors, *The Oxford Handbook of Comparative Law* (2d ed. Oxford University Press 2019)

3/29 - Class 18: Introduction to Islamic law

- Irshad Abdal-Haqq, *Islamic Law: An Overview of its Origins and Elements*, in *Understanding Islamic Law From Classical to Contemporary*, Edited by Hisham M. Hamadan (Rowman & Littlefield 2006), pp. 1-29
- Glossary of Islamic Law Terms

4/3 - Class 19: Islamic law cont'd - Qur'an and Hadith

- The Qur'an: 2:114-2:117, 2:273-2:276

4/5 - Class 20: Islamic law cont'd – Women in Islam and Crime and Punishment

- Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, pp. 179-196
- Philip Ostein, *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Spectrum Books Limited 2007), Chapter 6, Part III, *Proceedings and Judgments in the Amina Lawal Case*, pp. 52 –107, available at www.sharia-in-africa.net/pages/publications/shariaimplementation-in-northern-nigeria.php (moodle)

4/10 - Class 21: Religion and law – Islam manifested in secular legal systems

- 4:1 – 4:12, 42:39-42:43 (moodle)
- Tunisian Family Law Code (moodle)
- APDF & Anor v. Mali (moodle)

4/12 - Class 22: Comparative Law in the U.S. Legal System

- Stephen Breyer, America's Courts Can't Ignore the World, Atlantic October 2018
- Excerpt from Roper v. Simmons, 543 U.S. 551 (2005) (on moodle)

4/17 - Class 23: Student paper presentation

4/19 - Class 24: Student paper presentations

4/24 - Class 25: Student paper presentations

4/25 - TBD

Date	Deadline
2/17	Students will email paper proposals and bibliographies. Proposals should include the U.S. rule to be compared, the foreign country chosen, and a research plan on how the student intends to identify the source of the rule, the history of the rule, pertinent aspects of the rule and how it functions, and initial bibliography. AWR proposals should include the project's topic, working thesis, and the student's reasons for choosing the project.
2/24	Date by which students are required to meet with me during office hours regarding their proposal. Sign up sheet will be circulated
3/6	Students must provide a bibliographic essay that includes: <ul style="list-style-type: none"> • a report on the status of the student's research by summarizing articles read; • a formulation of the projects theses or major themes; • an indication of open or difficult questions which remain; • an indication of further research that needs to be done; and • a one or two-page outline of the paper.
3/13	I will provide written feedback by this date.
3/20	Draft papers are due. Draft papers must have a strong introduction that includes at least three parts: <ul style="list-style-type: none"> • a statement of your purpose, main point or focus; • a statement of the different sections of the paper and the organizing principle or procedures by which it will address the subject; and • a statement of the paper's major conclusions, findings, or theses. Draft papers must include detailed discussion of sources and a majority of substantive analysis completed.
3/27	I will provide written feedback by this date.
4/3	Students must exchange a revised draft of their paper with a classmate. Students should attach a list of three questions about the organization, analysis, or thesis of the draft to which they want their peer editor to respond. Student editors should also provide and additional comments that would be helpful.
4/10	Student editors must provide written feedback on the three questions and additional comments that would be helpful.
4/17	Final drafts are due.
April 19, 24 and 25	Paper presentations in class. Sign-up sheet will be circulated.