Learning during a Pandemic. Although this course does have assignment deadlines that should be followed, if you are sick or become sick, please work with your professor to develop a plan for successful completion in this course. Our Department will follow federal, state, local, university and CDC guidelines for COVID-19. If a student, a member of their family or immediate social group becomes symptomatic, please follow federal, state, local, university, and CDC guidance and work with me to complete required coursework. Review our Department’s COVIDSafe FAQ guide.

Course Description. This is a 6-week, 3 credit intensive learning experience. The course introduces the basic legal methods applied in law school to graduate and professional students studying legal issues with a focus on public law and the regulatory process. It begins with normative accounts of the source of law in jurisprudence and a descriptive account of the source of law in the structural provisions of the United States Constitution, as well as comparisons with state and tribal legal systems. The course then considers the legal process in legislative, executive, administrative, and judicial spheres, including basic legal research into the products of those processes (statutes, rules, and cases). Next, the course turns to the two dominant forms of legal reasoning, common law adjudication and statutory interpretation, conventional differences in these forms, and broader contemporary critiques of these conventions. The course ends with observation of legal methods in practice in administrative and judicial processes, and an opportunity to demonstrate these methods through a short briefing exercise.

What will you learn in this course? By the end of this class, you should be well-versed in our following course learning objectives.

<table>
<thead>
<tr>
<th>Learning Objective 1</th>
<th>Identify and cite the basic sources of state and federal case and statutory law using public domain sources.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning Objective 2</td>
<td>Explain and interpret basic constitutional, statutory, and administrative materials.</td>
</tr>
<tr>
<td>Learning Objective 3</td>
<td>Engage in basic legal research, writing, analysis, counseling, and argumentation with cultural awareness of the roles of actors in the law and policy system.</td>
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<tr>
<td>Learning Objective 4</td>
<td>Discuss and critique the basic relationships between law and justice in the United States.</td>
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<tr>
<td>Learning Objective 5</td>
<td>Navigate basic elements of legislative, administrative, and judicial processes with a focus on public regulation.</td>
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</table>
Required course materials

- Additional readings posted on Moodle as indicated (*) and classmates’ discussion responses.

MPA Portfolio. If you are taking this course as an MPA elective and using any assignments from this course for your final MPA portfolio, it is your responsibility to keep track of individual grades and professor feedback. Use your computer’s “snipping tool” or screenshot to capture graded feedback to save with your files. We ask that you very carefully read the MPA Portfolio requirements listed on our website (e.g. no you cannot use outlines or case write ups). We ask that you be mindful of individual and group projects you participate in each semester so you stay on track—we appreciate you doing so. Each DPAP professor will always offer an option to complete projects on your own. If you have questions, contact me.

Required discussion and practice exercises. Your work in this course will follow a law through the legal and policy process from legislation to implementation to litigation according to the rubric below.

- 30% Class discussion
- 10% Introductory response to legal methods readings
- 10% Legislative history (finding and summarizing the enactment of a statute)
- 10% Case “brief” (finding and summarizing a case about that statute or rule)
- 10% Client counseling (advising a client about to respond to a legal development according to the client’s interests with respect to that statute or rule)
- 20% Legal brief (researching, structuring, and arguing a legal position in a 1000-word brief)
- 10% Oral argument (delivering a 7-minute oral argument with questions before classmates)

Grading policy
See the rubric for details. Grades will awarded as follows: Exceeds Expectations (A), Meets Expectations (B), Below Expectations (C), Poor (D), and No Credit.
## Course Calendar

<table>
<thead>
<tr>
<th>Class</th>
<th>Assignment</th>
<th>Class Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Week 1</strong></td>
<td></td>
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</tbody>
</table>
| **Tuesday**   | Read: *Fuller, The Case of the Speluncean Explorers*, 62 Harv. L. Rev. 616 (1948) [30]  
Foster, J. (first ground)  
Foster, J. (second ground)  
Tatting, J.  
Keen, J.  
Handy, J.  
Read: *Speluncean Explorers: Revisited*, 112 Harv. L. Rev. 1876 (sels.) [26]  
Sunstein, J. (1883-91)  
West, J. (1891-99)  
Easterbrook, J. (1913-17)  
Stupidest Housemaid (Butler), J. (1917-23)  
Post: Which opinion best explains what law is? Ought to be? Which opinion seems most wrong to you? Why?  
[≤ 500 wds., 5 pts]  
Prepare to discuss your post. | I. Introduction to the course  
A. Introductions  
B. Syllabus  
C. Assignments / Projects  
D. Questions  
II. Discussion: diversity of legal methods  
A. How to read legal materials  
B. Introducing the question(s)  
C. Conventional approaches (1948)  
D. Critical approaches (1999)  
E. Conclusion  
III. Preparing for next week  
A. Choosing a law & policy issue for course  
B. Finding a case (basic legal research)  
Resources:  
Solum, *Legal Theory Lexicon*  
Georgetown, *Transitioning to Legal Writing* |
| **Week 2**    | Read: G&L I.A (Case Law) [38]  
1. Origins, Nature and Authority  
2. The Judicial Hierarchy  
3. The Structure of a Civil Action  
Post a case brief: Pick a case (not in the book) related to your law and policy issue, find the opinion, and “brief” it. That is:  
(1) identify (a) the parties, (b) the court, and (c) the author of the opinion for the court;  
(2) summarize the facts of the case, including its procedural posture (three sentences or less);  
(3) identify the legal issue (there may be several, pick only one) (one sentence);  
(4) state each the parties’ arguments on either side of the selected issue (one sentence each);  
(5) explain, as to the selected issue, the court’s (a) judgment (one sentence), (b) rule (one sentence), and (c) reasoning (three sentences or less), and (d) the reasoning of any concurrences or dissents (three sentences or less, each).  
[≤ 500 wds., 10 pts]  
Read: G&L II.A.2 (Common Law & Constitutional Decision-Making) [26]  
The Effect of Precedent on a Subsequent Case  
[5] *Stare decisis* in operation  
Prepare to discuss how precedent does and does not constrain future cases and why. | I. Introduction to the legal system  
A. State, Tribal, and Federal Sovereigns  
B. Legislatures  
C. Executives  
D. Courts  
II. The judicial process: decisions  
A. Judicial hierarchy  
B. Structure of a civil action (a “case”)  
C. Studying outcomes: briefing cases  
III. The judicial process: dynamics  
A. Precedent: cases on cases  
B. When/why precedent constrains  
C. When/why precedent does not constrain  
IV. Preparing for next week  
A. Check-in and focus case brief  
B. Identifying the applicable law  
C. Finding a statute or rule on your issue  
Resources:  
https://scholar.google.com, “case law”  
Georgetown, *Which Court is Binding?*  
Georgetown, *Strategic Legal Research* |
### Week 3

**Tuesday April 12 [75 pp]**

**Read**: G&L I.B (Legislation) [33]
1. Legislation: Attributes and Types
2. Legislation: The Legislative Process
3. Legislation: Agency Interpretations of Statutes

*a Post a legislative history*: Summarize the legislative history of your chosen statute or rule. That is:
1. **Identify**: (a) the type of legislation, (b) the title of the act (if any), (c) the legislative (or administrative) body that enacted the statute (or promulgated the rule), (d) the dates of the legislative (or administrative) act(s) that enacted and amended the statute (or promulgated the rule);
2. **Explain**: (a) the subject of the bill (one sentence), (b) the basic provisions of the statute (or rule) (three sentences or less), including any key definitions, and (c) any penalty or other consequence for violating the statute (or rule) (one sentence);
3. **Consider**: (a) a real or hypothetical interest group on both sides of the statute (or rule) and (b) why the groups would support / oppose the law (one sentence each).

500 wds, 10 pts

**Read**: G&L III.A&B (Stating and Resolving Statutory Issues, Prevaling Approaches) [36]
1. Finding and Stating Issues of Statutory Law (exclude Problem Cases)
   2a. Legal Methods for Statutory Interpretation (exclude Application)
   3. Canons of Statutory Construction
2. Two Approaches: Purposivism and Textualism
   - United States v. Church of the Holy Trinity (1892)
   - United States v. Marshall (7th Cir. 1990)

**Prepare to discuss**: the advantages and disadvantages of purposivism and textualism.

### Week 4

**Tuesday April 19 [80]**

**Read**: G&L III.D.3 (Interpreting a Statute in Light of Its Audiences) [34]
- Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415
  1. The Legislator
  2. A Beneficiary
  3. A State Official

*a Post a client counseling memo*: As a lawyer advising a client, legislator, government official, or private individual or organization, write a short memo explaining the relevant policy consequences of your chosen statute or rule.

500 wds, 10 pts

**Read**: G&L I.C (Administrative Law) & III.F (Agency Interpretations of Statutes) [46]
1. Administrative Law
2. Agency Interpretations of Statutes
3. How to find and read rules

**Prepare to discuss**: the advantages and disadvantages of various methods of making administrative law.

### I. The legislative process: making law
- A. The varieties of legislative bodies
- B. The dynamics of lawmaking
- C. The anatomy of a statute

### II. The legislative process: reading law
- A. The audiences for laws
- B. What textualism can and cannot do
- C. What purposivism can and cannot do
- D. Canons and other interpretive tools

### III. Preparing for next week
- A. Check-in, focus on client memo
- B. Preview: the role of rules
- C. Client counseling


### Resources:
- Jameson Library, Montana Legal Research
- Georgetown, Legislative History Research
  - U.S.: https://www.law.cornell.edu/uscode/text
  - Tribes: https://indianlaw.mt.gov
  - Missoula: www.ci.missoula.mt.us/268/City-Laws-Regulations

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**I. Client counseling**
- A. Reflections on exercise
- B. Importance of audience
- C. Cultural and role awareness

**II. Introduction to Administrative Law**
- A. The sources of administrative law
- B. The forms of administrative law
- C. The processes of administrative law
- D. Legislative oversight
- E. Judicial interpretation and issues

**III. Preparing for the final week**
- A. Check-in, focus on brief
- B. Preview: the role of rules
- C. Resources for writing a “mini-brief”

### Resources:
- Georgetown, From Memo to Appellate Brief
- Georgetown, Client Memo Checklist
- Georgetown, Guiding Legal Readers
- Georgetown, Using Cases in Legal Analysis
- Georgetown, Research Administrative Law
### Week 5

**5. Making Law Work I: Policy Implementation**

**Tuesday**

**April 26**

[131]

**Guest Instructor Dr. Sara Rinfret**

**Read:**
- *Chapters 1-5 from Rinfret, Sara, *Who Really Makes Environmental Policy* (Temple University)
  1. Rinfret, *Rulemaking and Regulation Defined* [20]
  2. Rinfret & Cook, *Creating an Environmental Rule* [24]
  4. Crow, Lawhon, Guenther, *Rule Finalization* [40]

**I. Process vs. Compliance**
- A. Defining Rulemaking
- B. Examining Public Comments
- C. Bots
- D. Inspectors
- E. Women and Regulations

*Please bring a laptop to class or smart device for an applied learning activity (in-class)*

### Week 6

**6. Making Law Work II: Litigation**

**Tuesday**

**May 3**

8. **Legal methods in practice: Briefs**

**Watch:** Justice Ginsburg, *Interview with Brian Garner on Legal Writing I & II* (2007) [0:30 mins.]

**Read:** Classmates’ briefs posted on Moodle

**Prepare:** A question for each brief to ask at argument

**Mini-Brief:** Consider a new question (“case”) arising under your chosen statute or rule, and write a mini-brief appealing that case to a higher court, real or imagined (it must be outside the assigned readings, but may be one of the cases or review problems from the book, from the news, or from your own work). The brief should:

1. State the issue (only one issue) in the form of a question (one sentence).
2. Briefly state the factual and procedural background of the case (three to five sentences).
3. Argue your position with (a) a point-by-point summary (three to five sentences) of your argument, (b) a heading stating your position on the issue followed by one or more paragraphs explaining the applicable law, and (c) subheadings stating your supporting reasons, each followed by one or more paragraphs applying the law to the facts of the case.
4. Conclude with a short sentence describing the relief you seek.

[≤ 1000 wds, 20 pts]

9. **Legal methods in practice: Oral Arguments**

**Read:** *Supreme Court of the United States, Guide for Counsel in Cases to Be Argued* (2019)

**Listen:** A recording of an appellate oral argument [60 mins.]

**Post:** A short critique (≤ 500 wds) of the advocates according to the principles from the Guide for Counsel

**Mini-Moot:** A moot-court style oral argument in class.

[7 mins., 10 pts.]
### Introduction to Legal Methods: Course Rubric

|----------------------|--------------------|---------------------|-------------------------------------------|---------------------------------------------|

#### Discussion (30 pts = 5 pts x 6 classes)

|---|---|---|

#### Legal methods response (10 pts.)

|---|---|---|---|---|

#### Case briefing (10 pts.)

<table>
<thead>
<tr>
<th>9-10. Covers all elements with no inaccuracies.</th>
<th>7-8. Covers all elements with few inaccuracies.</th>
<th>5-6. Covers nearly all elements with some inaccuracies.</th>
<th>3-4. Covers some elements, many inaccuracies.</th>
<th>0-2. Covers few elements, incomplete.</th>
</tr>
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</table>

#### Legislative history (10 pts.)

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</tr>
</thead>
</table>

#### Client Counseling (10 pts.)

<table>
<thead>
<tr>
<th>9-10. Fully assumes role, specifies client interests, articulates persuasive strategy based on materials.</th>
<th>7-8. Plays part, understands client interests, proposal advances them, clear and few typos.</th>
<th>5-6. Basic sense of role and client interests, plausible response, memo unclear, typos.</th>
<th>3-4. Does not reflect role or client interest, unrealistic response, confusing with many typos.</th>
<th>0-2. Does not demonstrate basic engagement with materials, incomplete.</th>
</tr>
</thead>
</table>

#### Mini-Brief (20 pts.)

<table>
<thead>
<tr>
<th>8. Deep research. Original issue; concise background; cites on-point sources beyond leading cases.</th>
<th>6-7. Good research. Applies current law relevant to issue; covers background; cites leading cases.</th>
<th>4-5. Basic research. Applies basic law to case; covers basic background; cites relevant cases.</th>
<th>2-3. Poor research. Obvious case without apparent research; few cites; no significant effort.</th>
<th>0-1. No research. Reiterates existing case; no original case citations; no indication of research.</th>
</tr>
</thead>
</table>

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<thead>
<tr>
<th>8. Compelling analysis. Synthesizes law persuasively; headings caption each step; engages best arguments.</th>
<th>6-7. Good analysis. Applies law accurately; clearly structured with headings; addresses strong arguments.</th>
<th>4-5. Basic analysis. States law accurately; basically structured argument section; covers argument but missing points.</th>
<th>2-3. Poor analysis. Misstates law; lacks structure or basic headings; misses argument or makes irrelevant argument.</th>
<th>0-1. No analysis. Conclusory or adopts underlying case analysis without comprehension of applicable law.</th>
</tr>
</thead>
</table>

|---|---|---|---|---|

#### Mini-Moot (10 max.: 5 pts. plus 1 pt / question as judge)

| 5. Punchy delivery; opening roadmap; conversational. | 4. Confident; well-paced, reads little; draws questions. | 3. Tentative; too fast; basic responses. | 2. Halting delivery; reading from brief; missed responses. | 0-1. Unprepared; nonresponsive or distracting. |
Classroom Policies

- **Extra Credit:** Not available for this course.
- **Make-up Exams:** This course has a final exam. There is no make-up time.
- **Classroom Etiquette:** A driving component of our MPA program is professionalism and your ability to work well with others. Thus, the expectation is that you will maintain a high level of professionalism in your classroom conduct with me, and with your fellow students. This means being respectful during class discussions, and in all communications with the professor and others. Failure to do so will result in removal from class discussions.
- **E-mail Etiquette:** E-mail is a wonderful tool for you to contact me with questions, but it does not replace office hours. If you have involved questions about course material, you should set up a time to come see me or set up a Moodle collaboration.
- **Incomplete or Withdrawals “W” for the Course:** If for some reason the course is not working out for you please adhere to the University’s policies for the last day to drop a class. Since this is a 6- https://www.umt.edu/disability/week course, incompletes will not be an option.
- **Late Assignments:** Students are expected to submit all work on the date specified in the course calendar. Any exceptions to this must be approved by the instructor 72 hours before the date in question. Students must complete all assignments to receive a grade for the course.
- **University Attendance Policy:** (please make sure to follow the participation course policies listed above too) Students who are registered for a course but do not attend the first two class meetings may be required by the instructor to drop the course. This rule allows for early identification of class vacancies and to permit other students to add classes. **Students not allowed to remain must complete a drop form or drop the course on the Internet (http://cyberbear.umt.edu) to avoid receiving a failing grade.** Students who know they will be absent should contact the instructor in advance.
- **Wikipedia:** This online source is not reliable and should not be cited in any course assignment. The goal is to become accustomed to using scholarly sources for all work in any of your courses at the University of Montana.
- **Academic Dishonesty (Plagiarism):** Students must follow the University’s policies for academic dishonesty. For detailed information, please view. As such, all work submitted must be your own; no duplicate work (work completed for another class) will not be accepted. Acts of cheating or plagiarism will result in a grade of zero (0) for the assignment. Moreover, acts of plagiarism will also be reported to the Academic Court. To avoid acts of plagiarism, cite each reference or source you use and give proper credit for the ideas, opinions, and findings of others. When you are using the exact words of others, you must use quotation marks and include the page number where you found the quote in your citation.
- **Moodle:** This class is supported by Moodle. Please refer to this site regularly for additional readings, announcements, grades, submitting assignments, or updates to the schedule. When submitting assignments on Moodle, students should attach Microsoft Word doc or docx files.
- **Sensitive Course Materials:** College education aims to expand student understanding and awareness. Thus, it involves engagement with a wide range of information, ideas, and creative representations. In college courses, students can expect to encounter—and critically appraise—materials that may differ from and perhaps challenge familiar understandings, ideas, and beliefs. Students are encouraged to discuss these matters with the professor.
- **Disability Assistance:** The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors. If you think you may have a disability adversely affecting your academic performance, and you have not already registered with the Office of Disability Equity, please contact ODE. I will work with you and Disability Services to provide an appropriate modification.
- **Cultural Leave Policy:** UM has a Cultural and Ceremonial Leave Policy; “Cultural or ceremonial leave allows excused absences for cultural, religious, and ceremonial purposes to meet the student’s customs and traditions or to participate in related activities. To receive an authorized absence for a cultural, religious or ceremonial event the student or their advisor (proxy) must submit a formal written request to the instructor. This must include a brief description (with inclusive dates) of the cultural event or ceremony and the importance of the student’s attendance or participation. Authorization for the absence is subject to approval by the instructor. Appeals may be made to the Chair, Dean or Provost. The excused absence or leave may not exceed five academic calendar days (not including weekends or holidays). Students remain responsible for completion or make-up of assignments as defined in the syllabus, at the discretion of the instructor.”