

American Legal Systems

Government 302 Fall 2017

Location Hepburn 112

Time 1:00pm-4:00pm R

Final Exam December 21 R, 1:30-4:30pm

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Drop-in Office Hours 1:00pm-5:00pm M, 1:00-4:00pm T, 9:00am-1:00pm W, and by appointment

Overview

This course takes an interdisciplinary, intellectually ecumenical approach to the study of law and legal institutions. It takes insights from traditional legal analysis, political science, economics, sociology, history, and related disciplines in the humanities and social sciences in order to develop a rich understanding of the legal system and judicial process. The purpose of this course is to introduce students to important studies of the law and the legal system, as well as the processes by which various disciplines produce knowledge of the law and courts. There is a key difference between these processes and how the mass public acquires knowledge of the legal system: While news reports focus on the important (e.g., landmark Supreme Court decisions), divisive (e.g., 5-to-4 votes), and sensational (e.g., Zimmermann trial) cases, the academic approaches in the legal studies tradition are systematic. In other words, they account for more behavior and outcomes than just what appears on the front page of the *New York Times* or *Wall Street Journal*. While front-page legal news is interesting and can be important, it accounts for -- within rounding error -- zero percent of how judges, lawyers, and laypersons interact with each other and society at large.

Scholars take broad, varied approaches to studying the law and legal system. This class will introduce you primarily to two specific approaches within those traditions: 1) the traditional legal approach and 2) the political science approach. The traditional legal approach focuses on case law, formal relationships between courts, and the procedure a case must go through in order to be properly decided. A key component of this approach is the casebook method, in which law is revealed through the close study and accurate comprehension of precedential cases, often from the US Supreme Court. The legal approach also weighs heavily normative considerations: Is the law as it *should* be?

The political science approach is less concerned with such normative questions, though they do exist implicitly in all good political science work on the courts. The explicit orientation of the political science study of the courts, however, is usually an interest-based approach. Judges and other legal actors are assumed to have interests, and they use law instrumentally to advance, to the maximum possible point, those interests. Existing precedents, court structure, and formal procedures may constrain these interests, but the interests nevertheless remain for the actor to maximize in the constrained context.

We will look at questions from both perspectives, as well as some other perspectives in a more limited context.

Textbook and course readings

A textbook is necessary in a class like this one, but it is not sufficient. The required textbook for this class is

Baum, Lawrence. 2012. *American Courts: Process and Policy, Seventh Edition*. Boston: Houghton Mifflin.

Additionally, you will need to purchase

Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring about Social Change?, Second Edition*. Chicago: University of Chicago Press.

I will provide additional readings electronically via the course Sakai site. Cases and academic articles can be found through the library's electronic resources. Becoming familiar with the library's resources will prove invaluable to you over your academic career here, so there is no time like the present to learn how to use them. Note that course readings are not evenly distributed throughout the course, so you may wish to do some of them in advance to space them out more evenly.

Course format

Part of the course will be a lecture for the “nuts and bolts” aspects of the legal system, but I will spend as little time as possible talking at you. I encourage you to ask questions and participate at any time. Classroom discussions will take the readings as their jumping off point, consequently **you are responsible for all material covered in lecture as well as in the readings**. Some material I will present in lecture will not be in the readings. I will keep you up-to-date about what to expect in class via e-mail, so be sure to check it regularly, i.e., *at least* once a day, even on weekends.

Attendance and participation are mandatory. Note: It is not possible to do well on the latter if you do not do well on the former. **The workload in this class is heavy**. I have laid out the reading and assignment schedule in the “Topics and readings” section below to help you plan your semester.

Course requirements and grading

Midterm 1 (September 28):	15%
Midterm 2 (November 9):	15%
Assignments (due throughout):	30% (8 @ roughly 4% each)
Final (December 21):	25%
Attendance and participation (throughout):	15%
Total:	100%

Let me know before class if you must miss. There is no acceptable number of unexcused absences. Regardless of the reason for your absence, you are responsible for the material covered during the class meeting. After one unexcused absence, each subsequent unexcused absence will lower your final letter grade by a half-point (e.g., a 3.5 becomes a 3.0 at two unexcused absences, a 2.5 at three, etc.). Any unexcused absence on a presentation day (September 28 or November 30) will automatically reduce your final grade by a quarter-step.

Written assignments are noted below in the course schedule. Some will be collaborative. You will be graded on the strength of your work both individually and as a group. You will write memos, case analyses, reviews of research, and some creative pieces. All written work will be turned in typed in hard copy. No e-mails; I *will* lose them. (The one exception is Assignment #7.) Please feel free to be creative with them.

Barring clerical error (e.g., I added up the points incorrectly), all grades are final. I am always willing to talk with you about exam and written assignment grades and suggest ways to improve. But, I will not bargain over grades or points, nor will there be extra credit opportunities.

I will employ a standard grading scale:

4.0 (100-97)	3.25 (90-87)	2.5 (80-77)	1.75 (70-67)	1.0 (61-60)
3.75 (97-93)	3.0 (87-83)	2.25 (77-73)	1.5 (67-63)	0.0 (below 60)
3.5 (93-90)	2.75 (83-80)	2.0 (73-70)	1.25 (63-61)	

I will not round grades as a matter of course; however, your *exceptional* effort in one or more elements of the final grade may be considered a plus factor if your grade is on the borderline. There is no curve in this course, though I reserve the right to adjust grade cutoffs if necessary. The adjustments will only work neutrally or in your favor, if applied.

There is no pass/fail option for this course. There are no exceptions to this policy.

Exams

We will have two midterm exams, one roughly one-third of the way through the semester and another at about the two-thirds mark. The **final will be comprehensive** with an emphasis on the last third of the course. The exams will have a combination of multiple choice, identification, and essay questions.

The exams make up 55 percent of your final grade. The exam proportion is likely higher than in other GOVT classes you have taken; however, I have weighted them more heavily for a purpose: Many students who take this class may be interested in going to law school. In most law school classes, a student's midterm and final (and sometimes just final) exam grades constitute their grade for the course. You're not there yet, but this will give you an idea of the strong emphasis placed on exam performance in law school.



That was some heavy stuff. Here's a puppy and a kitty to take the edge off.

Expectations and technology policy

I expect this class, the readings, making an argument, and getting involved to be the thing you care about most in the world during the 180 minutes we meet each week. I expect you to come to class at least having read the material for the week, even if you haven't fully understood it or have an opinion on it yet. That's why we have class - to work through those issues. But, understanding and evaluation of the material will be difficult if you have not done the first part: reading them yourself.

I expect you to bring assigned reading material to class with you. Many of the readings are on the course Sakai site or accessible through the library's databases. For this reason, if you do not print out the readings, you should bring a laptop with which you can access them. Accessing readings and note-taking are the only regularly authorized uses of an electronic device during class. As someone (the internet claims Thomas Jefferson, but I'm dubious) once said, "If you're here, be here."

Disability accommodations

Please inform me during the first two weeks of classes if you need any accommodations in the curriculum, instruction, or assessments of this course to enable you to participate fully. Confidentiality of the shared information will be strictly maintained. We will work with Disability and Accessibility Services (<http://www.stlawu.edu/disability-and-accessibility-services>) if accommodations require such assistance.

Academic honesty

I expect everyone to conduct themselves with integrity and honesty in this class. There are two facets to this expectation.

First, all of the work you do in this class will be your own. Don't cheat. Don't plagiarize. Don't take short cuts. If you commit an act of academic dishonesty, I am bound to follow the procedures outlined in the St. Lawrence University Student Handbook (available at <http://www.stlawu.edu/sites/default/files/resource/Student%20Handbook%202016-2017%20update%20feb17.pdf>) The Handbook describes what constitutes academic honesty and penalties for violation on pages 94 through 100. Again, don't cheat.

As the semester goes on, you may find yourself in a situation where, due to multiple pressures on your time, you may consider taking a short cut in order to turn in an assignment or paper by the deadline. If this is the case, the thing to do is to drop everything and contact me via email immediately regarding your situation. I can help relieve some of the pressure related to my class in a way that is equitable for the other students in the class as well. But, I can't do anything for you once you commit an act (knowingly or negligently) of academic dishonesty.

Second, I expect everyone to be intellectually honest. This means listening attentively to other's comments and questions and responding appropriately. Some of the material in the class is controversial, and an intellectually vibrant community like St. Lawrence ought to entertain opinions on most any side of a controversy. Moreover, a liberally-educated person ought to be able to articulate fearlessly the "best case" for any legitimate proposition. So, we will not resort to *ad hominem* attacks, shut-down-by-slogan, or straw person arguments. (Ok, I might do the straw person argument sometimes, but only for effect.) Believe in the rightness of your argument; be prepared to challenge both yourself and others; and be open to changing your mind.

Topics and readings

Please note that the **readings are subject to change**. I will let you know throughout the semester where we are in the schedule and where we are going.

- I. Introduction to the legal approach (August 31)
Baum, Chapter 1
Stevens, “The Common Law Origins of the Infield Fly Rule”
Kerr, “How to Read a Legal Opinion”
- II. History, the law, and court structure (September 7)
Baum, Chapter 2
Calvi & Coleman, “Limitations”
Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)
Crowe, *Building the Judiciary*, Chapters 1 & 4

Assignment #1 (due September 7) After reading the *Erie* case, do the following: In no more than two pages (single-spaced, with 1-inch margins and 12-point font, hard limit), you should first report the information from *Erie* that Kerr suggests you should know after reading an opinion (e.g., the facts in the *Erie* case, etc.). In other words, you should report the information from the case that would fit under the six subheadings in section III of the Kerr reading. After that, develop a hypothetical situation that the *Erie* doctrine would have an effect on. Describe how the situation would be resolved (that is, which rules/laws would apply) in both the pre-*Erie* and post-*Erie* eras. (2%)

- III. Introduction to the political science approach (September 14)
Posner, “Nine Theories of Judicial Behavior”
Segal, Jeffrey. 1984. “Predicting Supreme Court Decisions Probabilistically: The Search and Seizure Cases, 1962-1981.” *American Political Science Review* 78(4): 891-900.
Segal, Jeffrey, and Harold Spaeth. 1996. “The Influence of Stare Decisis on the Votes of United States Supreme Court Justices.” *American Journal of Political Science* 40(4): 971-1003.
Maltzman, Spriggs, and Wahlbeck, “Strategy and Judicial Choice: New Institutional Approaches to Supreme Court Decision-Making,” in *Supreme Court Decision-Making: New Institutional Approaches*
- IV. Judicial selection (September 21-28)
Baum, Chapter 4 (9/21)
Yalof, *Pursuit of Justices*, Chapter 7 (9/21)
Binder, Sarah, and Forrest Maltzman. 2009. “Advice and Consent during the Bush Years: The Politics of Confirming Federal Judges.” *Judicature* 92(6): 320-329. (9/21-9/26)
Holmes, Lisa. 2014. “‘Going Nuclear’ over Appointments: The Causes and Consequences of Filibuster Reform.” Paper prepared for presentation at the Annual Convention of the American Political Science Association, Washington, D.C. (9/26)
Bonneau and Hall, *In Defense of Judicial Elections*, Chapters 1 & 6 (9/26)

Assignment #2 (due September 28) Group 1 will design a non-partisan campaign, and Group 2 will design a partisan campaign. You should make up a few ads (storyboarded or you can produce your

own on video). You will also write up a campaign plan (where/when to run ads, where/when to make public appearances, whether or not to engage in debates, where money for the campaign will come from, etc.). You should also explain why you made the choices you made. In general think of yourselves as advisers to a candidate who is running for state supreme court. (Note that I haven't picked a state for either group. You may choose any state that has your assigned type of election.) Write up a short (about one paragraph) separate document to indicate who contributed what to the project. All members of the group must sign under the paragraph to indicate it is an accurate reflection of their contributions.

Group 3 will perform a mock federal judicial confirmation hearing. We will do a circuit court of appeals judge. Circuit court confirmation hearings are less well-covered by the media, but they are arguably more important, given that the vast majority of federal cases end in the courts of appeal. One group member will volunteer to be the nominee, and the other folks will be senators who will ask questions. I will send along transcripts of a few hearings (some contentious, some not) so that you can get a flavor of how they go. I will also give you a constructed biography for the nominee. (5%)

Midterm Exam 1: Evening of September 28

V. Criminal justice (October 5-19)

Baum, Chapter 6

Calvi & Coleman, "Criminal Law"

Three of the following cases:

Robinson v. California, 370 U.S. 660 (1962)

Pennsylvania v. Konz, 498 Pa. 639 (1982)

Pennsylvania v. Mochan, 110 A.2d 788 (1955)

California v. Armitage, 239 Cal. Rptr. 515 (1987)

Smallwood v. Maryland, 343 Md. 97 (1996)

Martin v. Alabama 17 So. 2d. 427 (1944)

Young v. Maryland, 303 Md. 298 (1985)

Assignment #3 (due October 19) Take one of the above cases and write a short scene that dramatizes 1) a courtroom scene, 2) a meeting in the judge's chambers, or 3) jury deliberation in that case. You could also write up a conversation between the judge and law clerks at the appellate level. There is no maximum length for this assignment, but the minimum is two pages. (2%)

VI. Civil litigation, law, and procedure (October 19-26 & November 2)

Baum, Chapter 7 & p. 76 "The Contingent Fee"

Calvi & Coleman, "Civil Procedure"

Assignment #4 (due October 26) 1) Write a short (1-2 pages, double-spaced, no tighter than 1" margins) memo based on the following scenario:

You have been hired as a junior associate, specializing in civil litigation, by a senior partner in the North Carolina law firm of Dewey, Cheatem, and Howe. Because this is your first job out of law school, your boss doesn't entirely trust you, so he wants you to write him a memo about any cases you might take.

After reviewing potential clients for a few days, you think you finally have a good case. Draft a memo that explains clearly to your boss why this is a good case for you to take on. Of course, your boss can smell manure from a mile away, so don't oversell it. Be sure to note any problems that might come up in the course of litigation and negotiation. Describe what a successful outcome for your client in

this case would look like. This should be a little more complex than “we win,” because lots of different things can happen depending on how/why/what you win. Outline your *strategy* for achieving that outcome, indicating potential strategic obstacles or pitfalls that might come up.

Note that I haven't defined what type of civil action you're considering. We are tackling three, and you may choose contracts, property, or torts (see the Calvi & Coleman readings below). I also haven't said whether you're representing a plaintiff or defendant, or a firm or an individual. Those are up to you. It should be clear relatively early, like the first sentence or two, in your memo what's going on, who your client is, and who the opposition is. The focus of this memo should be on your litigation and negotiation strategy. (4%)

Calvi & Coleman, “Contracts,” “Torts,” and “Property” (focus most closely on the chapter pertinent to your Assignment #4 topic)

Three of the following cases:

Vosburg v. Putney, 80 Wis. 523 (1891)

U.S. v. Carroll Towing Co., 159 F.2d 169 (1947)

Leonard v. PepsiCo Inc., 88 F.Supp.2d 116 (1999)

Udseth v. United States, 530 F.2d 860 (1976)

Hawkins v. McGee, 84 N.H. 114 (1929)

Peevyhouse v. Garland Coal & Mining Co., 382 P.2d 109 (1962)

Assignment #5 (due November 2) Write a memo back to yourself as the “senior partner” to whom you wrote assignment 4. Instead of strategy, you will talk about the legal elements of the case that need to be addressed in the case.

So, for example, if you have a negligence case, you'll talk about things like a duty of care, breach of that duty, etc., and what specific evidence in your case fits under each of those elements. Look to respective Calvi & Coleman reading for the things you should discuss. This is a 1-2 page memo, with the same formatting requirements as Assignment 4. (4%)

VII. Legal analysis and reasoning (November 2-9)

Murphy, Pritchett, Epstein, and Knight, “Precedents and Legal Reasoning” (11/2-11/4)

Sunstein, *One Case at a Time*, Chapter 2 (11/7)

Marshall, “The Constitution: A Living Document” (11/7)

Scalia, “Originalism: The Lesser Evil” (11/7)

Assignment #6 (due November 9) In a page (no more, not much less), describe your preferred approach to constitutional interpretation and why you prefer it. The debate is wider than living constitutionalism v. originalism, though those are two positions you can adopt. We'll yell at each other (in a respectful, intellectually-stimulating manner) about constitutional interpretation for some time in class. The assignment should give you an opportunity to clarify your thoughts on the topic before discussing them. Who knows? Maybe you'll end up at the bottom of the page someplace you didn't know you'd go. (3.5%)

Midterm 2: Evening of November 9 (covering material only from October 5 to November 9)

VIII. Supreme Court case selection (November 9-16)

Baum, 263-267

Segal, Spaeth, and Benesh, “Getting Into Court”

Tanenhaus, Schick, Muraskin, and Rosen, “The Supreme Court’s Certiorari Jurisdiction: Cue Theory,” in *Judicial Decision-Making*

Optional certiorari readings (we will talk about concepts from these readings, so see them “in action” here):

Perry, *Deciding to Decide*, Appendix, Chapters 2 & 9

Hammond, Bonneau, and Sheehan, *Strategic Behavior and Policy Choice on the U.S. Supreme Court*, Chapter 9

Cameron, Charles, Jeffrey Segal, and Donald Songer. 2000. “Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court’s Certiorari Decisions.” *American Political Science Review* 94(1): 101-116.

Assignment #7 (due November 15 [this is a Wednesday]) Do the following **BEFORE YOU READ** Tanenhaus, Schick, Muraskin, and Rosen: Write up a short synopsis of a case (a case you make up) that you think the Supreme Court should grant certiorari to. (It might help to give the case a caption, too.) It should be about a paragraph. In the second paragraph, write out why you think the Court should take the case. Write the second paragraph as if you were writing to the Court itself. Because the Court grants certiorari to questions of law in cases, be sure to include what the precise question(s) of law are that you want the justices to resolve.

AFTER YOU READ Tanenhaus, Schick, Muraskin, and Rosen, use their analysis to determine the approximate percentage chance your case would be granted certiorari. Write a short summary explaining how you arrived at the percentage. After the summary, explain some *minimal* changes you could make to your hypothetical case/presentation of the case to increase the chance it would be granted certiorari, and determine how much the changes would increase the probability.

HERE'S WHAT'S DIFFERENT ABOUT THIS ASSIGNMENT:

You need to **email it to me the day before class by 8pm**. Put the **BEFORE** part on the first page and the **AFTER** part on a second page. And it is highly likely that other students will see your assignment. (4.5%)

IX. Decision-making and opinions (November 16-30)

Murphy, Pritchett, Epstein, and Knight, “The Process of Judicial Decision Making: The U.S. Supreme Court”

1. Farhang, Sean, and Gregory Wawro. 2004. “Institutional Dynamics on the U.S. Court of Appeals: Minority Representation under Panel Decision Making.” *Journal of Law, Economics, and Organization* 20(2): 299-330.

2. Carrubba, Cliff, Barry Friedman, Andrew Martin, and Georg Vanberg. 2011. “Who Controls the Content of Supreme Court Opinions?” *American Journal of Political Science* 56(2): 400-412.

3. Black, Johnson, and Wedeking, *Oral Arguments and Coalition Formation on the U.S. Supreme Court*, Chapter 3

4. Richards, Mark, and Herbert Kritzer. 2002. “Jurisprudential Regimes in Supreme Court Decision Making.” *American Political Science Review* 96: 305-320.

Assignment #8 (due November 30) We will split the class into four groups. Your group only needs to read the selection above that corresponds with its group number. The group’s job is to 1) read the selection, 2) write up a short summary of it, and 3) create a presentation to share the selection with the rest of the class. Even with PowerPoint available, you might consider creating handouts if you want to talk about particular tables or numbers from the article (which you likely will). If you email me your handouts the day before class meets, I can print one out and make copies for the class. The presentation should last about 10 minutes, with five minutes reserved for questions (15 minutes total).

The written portion of the assignment is a summary of the selection. Your presentation should go into more detail than the summary. In your written portion, you should describe the theory behind the article, the data used to test the theory, the methods employed, and the conclusions that the author(s) draw from their analysis. Finally, you should discuss the wider implications of the research and how this research could be expanded (e.g., what other areas of law might be useful to test it on). As with the other group assignment, please include a signed paragraph detailing the division of labor within your group. (5%)

- X. Policy and Impact (November 30 & December 7) 3 meetings last year
Baum, Chapter 9 (11/30)
Rosenberg, Chapter 1 & 14 (12/7)
Pickerill, *Constitutional Deliberation in Congress*, Chapters 1 & 4 (12/7)
McCann, Michael. 1992. "Reform Litigation on Trial." *Law and Social Inquiry* 17(4): 715-743. (12/7)
One of the following sets of readings (12/7):
Rosenberg, Chapters 2-5
Rosenberg, Chapters 6-9
Rosenberg, Chapters 12-13, *Obergefell v. Hodges*, 135 S. Ct. 2584
- XI. The legal profession (December 7-14)
Baum, Chapter 3
Kritzer, Herbert, and Jayanth K. Krishnan. 1999. "Lawyers Seeking Clients, Clients Seeking Lawyers: Sources of Contingency Fee Cases And Their Implications for Case Handling." *Law and Policy* 21(4): 347-375.
Casper, "Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender."
Swartzwelder, "Bart Gets Hit by a Car," *The Simpsons* (1991) (in class)
- Optional legal profession readings:*
McGuire, *The Supreme Court Bar*, Chapters 2 & 3
Peppers and Ward, *In Chambers*, Chapter 1 and Appendix A

Final Exam: December 21, 1:30pm-4:30pm R (comprehensive, with emphasis on the last third of the course)