

Global Perspectives on Law
Fall 2024
Monday and Wednesday 10:30 – 12:00
Prof. Conley
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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. Other aims of this course are 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.

Learning Outcomes

- Develop conceptual framework for comparing legal rules and systems
- Develop a better understanding of the major legal traditions of the world
- Better contextualize our own legal rules, system and tradition in a global context
- Gain exposure to non-western concepts of law and legal systems

GRADING:

Your grade will be determined as follows:

20% Reading Question Responses: Reading questions will be posted to canvas for each class. Answers to reading questions must be submitted via canvas by 10:30 am on the day they are due.

20% Class participation: This includes contributions to class roundtables and 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 4-5 and each group will be assigned one case. Each group will provide a class presentation of their case, which will include:

- A brief overview of the legal system of the country from which the case comes
- A brief overview of the court system of the country from which the case comes
- An overview of the issues, rules, applications and conclusions of the opinion
- Observations relating to
 - Sources relied upon by the court
 - 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.

- Papers for which students seek AWRs must be between 5,000 and 5,100 words and comply with all AWR requirements set forth in the student and faculty handbooks and attached hereto.
- Non-AWR papers must be between 3,000 and 3,100 words.
All papers, whether AWR or non-AWR will be required to comply with all paper deadlines as set forth below.
- Failure to comply with all deadlines will negatively impact paper grades.
- The paper and presentation will be graded as provided in the grading rubric on canvas and attached hereto.
- AWR Paper Grade Breakdown
 - Draft paper – 10%
 - Final paper – 45%
 - Presentation – 5%
- Non-AWR Paper Grade Breakdown
 - Draft paper – 10%
 - Final paper – 50%

Reading

- All readings are posted on canvas.
- 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.

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. Use of generative AI is expressly prohibited in this course.

CLASS SCHEDULE

8/26 - 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. Bazylar, Michael Bryant, Kristen Nelson and Sermid AlSarref, Comparative Law: Global Legal Traditions (Carolina Academic Press 2021), pp. 4-6

8/28 - Class 2: Legal Traditions and Comparative law and methodology

- Siems, The Comparative Legal Method
- Excerpt from Conley, Comparing Essential Components of Transnational Jurisdiction: A proposed Comparative Methodology, Tulane Journal of International and Comparative Law

9/4 - Class 3: Legal Transplants

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

9/9 - Class 4: Research methods in comparative law – Paper Topic Workshop

9/11 - Class 5: Customary (a.k.a. chthonic) legal tradition

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

9/16 - Class 6: Customary legal tradition cont'd

- Kekek Jason Stark, *Anishinaabe Inaakonigewin: Principles for the Intergenerational Preservation of Mino-Bimaadiziwin*, 82 Mont. L. Rev. 293 (2021)

9/18 - Class 7: Customary legal tradition cont'd – African customary legal systems

- David Pimentel, Legal Pluralism in Post-Colonial Africa: Linking Statutory and Customary Adjudication in Mozambique, 14 Yale Human Rights & Development L.J. 59 (2011)

9//23 - Class 8: Customary Legal tradition cont'd

- *Bukar, et al. v. Saak, et al.*, Ghana Supreme Court 21 May 2014

9/25 - Class 9: Customary legal tradition cont'd – Roundtable on customary legal systems and gender (all sources on Canvas – 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)

9/30 - Class 10: 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

10/2 - Class 11: 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

10/7 - Class 12: Civil law tradition in the European Court of Justice

- European Court of Justice Ruling regarding Polish Judiciary

10/9 - Class 13: Civil law roundtable (all sources on Canvas – 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

10/15 - Class 14: Common law legal tradition – Introduction and history

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

10/16 - Class 15: 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

10/21 - Class 16: The Privy Council

- *Edwards v. AG (Canada)* (Privy Council 1929)

10/23 - Class 17: Common law in Hong Kong

- BBC News Article
- Speech at Ceremonial Opening of Legal Year 2023
- UK China Hong Kong Handover Agreement

10/28 - Class 18: Common Law Roundtable (all sources on Canvas – 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

10/30 - Class 19: Mixed Jurisdictions

- Eliezer Rivlin, *Israel as a Mixed Jurisdiction*, *McGill Law Journal* 2012
- Library of Congress Background on Amendment 3 to the Basic Law
- Translation of Israeli Supreme Court January 1, 2024 Judgment

11/4 - Class 20: 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)

11/6 - Class 21: 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

11/13 - Class 22: Islamic law cont'd – Crime and Punishment in Islamic law

- Mohammad Hashim Kamali, Shari'ah Law: An Introduction, pp. 179-196
- Aminimal Lawal Case Excerpt

11/18 - Class 23: Islamic law cont'd – Drinking

- Quran Excerpts
- Hadith Excerpts
- Pakistan Case Excerpt

11/20 - Class 24: Islamic Family Law Roundtable (all sources on Canvas – only one assigned per group)

- Hamoudi & Cammack, p. 136-154
- Hamoudi & Cammack, p. 167-186
- Hamoudi & Cammack, p. 229-249
- Hamoudi & Cammack, p. 249-269

12/2 - Class 25: 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)

12/4 - Class 26: Guest Lecture – Comparative Approaches to Juries

- Reading to be announced

Date	Deadline
9/23	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.
10/7	Date by which students are required to meet with me during office hours regarding their proposal. Sign up sheet will be posted outside my office in Room 207.
10/14	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.
10/21	I will provide written feedback by this date.
11/4	Draft papers are due. <ul style="list-style-type: none"> • First draft must include all required final paper sections set forth in grading rubric • First draft must identify and analyze primary sources relating to international law norm • First draft must identify and analyze secondary sources relating to research question
11/11	I will provide written feedback by this date.
11/18	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.
11/22	Student editors must provide written feedback on the three questions and additional comments that would be helpful.
12/4	Final drafts are due.
	AWR presentations will be scheduled outside of class time. Sign-up sheet will be circulated.