

## Comparative Legal Systems

FALL 2018

PROF. ANNA CONLEY

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**Class:** Thursdays, 5:00 pm – 7:20 pm, LA 337

**Office Hours:** Thursdays, 3:50-4:50 pm Corbin 332

### OVERVIEW OF COURSE

The purpose of this course is to expand students' views of legal systems 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 case will begin discussing comparative law methodology, and various approaches to methodology and conceptualizing the comparative process. 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 from various countries, 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:** Readings will be posted on Moodle. No course pack or textbook is necessary.

#### GRADING:

Your grade will be determined as follows:

**25% Reading Question Responses:** Each week reading questions will be posted to moodle.

- **Hard copy** answers to these questions must be turned in each week.
- Responses should be no more than 1 – 2 paragraphs per question.
- Please include your name and class number (i.e., class #1, #2) on each reading question response.
- **Do NOT email me your response.** If you miss a class, bring me your response the following week.

**5% Class participation and roundtable presentations:** This includes your contributions

in class, including roundtable presentations, case presentations, and contributions to 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.**

**Roundtable classes and presentations:** There are two Roundtable classes in this course. A small group of students will be assigned one of a number of sources for each roundtable class. Each student in the group will be expected to analyze the source, and the group will work together to present the source to the class during the roundtable class. Students are only responsible for analyzing and preparing a presentation for their assigned source, and are not responsible for analyzing other sources presented during roundtable classes.

All students are required to observe a court proceeding in the Missoula County courthouse or the Montana federal court house in Missoula by November 1 and be prepared to discuss the proceedings observed on November 1 in class.

**25% Mid-Term Take Home Essay Exam:** I will post the mid-term exam on Moodle on Wednesday, October 23. This is an open book exam, however, **students may only utilize their own notes, and may not discuss the questions or answers with anyone else or any other students. DO NOT UTILIZE SOURCES OTHER THAN COURSE MATERIALS TO ANSWER THE QUESTIONS ON THIS EXAM.**

All students must turn in a hard copy of their exam answers on Thursday, October 25. **Answers are limited to 500 words per question.** A good exam response will be well-organized, show that the student had read the materials, reflected on the reading, attended class and synthesized the concepts discussed in class.

**45% Final In Class Essay Exam:** The final exam will take place on December 13 from 5:30 – 7:30. This is an open book exam, however, **students may only utilize their own notes, and may not discuss the questions or answers with anyone else or any other students. DO NOT UTILIZE SOURCES OTHER THAN COURSE MATERIALS TO ANSWER THE QUESTIONS ON THIS EXAM. Answers are limited to 500 words per question.** A good exam response will be well-organized, show that the student had read the materials, reflected on the reading, attended class and synthesized the concepts discussed in class.

**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.

**CLASS SCHEDULE:** We will not have class on August 30. We will have a make up class at some point during the semester.

### **Class 1: September 6**

- Introduction to course, discussion of grading and expectations
- Introduction to Comparative Law
  - Map of Legal Traditions at [www.juriglobe.ca/eng/](http://www.juriglobe.ca/eng/)
- Comparative Law Methodology
  - Conley – Essential Components Dissertation Excerpt

### **Class 2: September 13**

- Anatomy of legal systems, elements of legal rules and law of subset of rules.
  - MacDonald
  - Fuller

### **Class 3: September 20**

- Customary (a.k.a. chthonic) legal tradition
  - Glenn, pp. 58-72
  - Table of Western and Indigenous Justice Concepts – Handout
- African customary legal systems
  - Emiola
  - Dr. Mohamed Fadlalla, Customary Laws in Southern Sudan: Customary Laws of Dinka and Nuer, pp. 28-34.

In class videos: Trial by oil: <http://www.youtube.com/watch?v=AgJXXo97D4c> and excerpts regarding witchcraft trials

### **Class 4: September 27 Roundtable** - Customary/chthonic legal tradition cont'd – interplay between customary systems and written systems

- Vines, The NSW Project on the Inheritance Needs of Aboriginal People: solving the problem by making culturally appropriate wills
- In re Estate of Big Spring, 360 Mont. 370 (2011) 255 P.3d 121, 2011 MT 109
- Kanun of Leke Dukagjini Customary Law of Northern Albania
- Judicial Recognition and Adoption of Customary Law in Nigeria, Derek Asiedu- Akrofi, Student presentation
- F.U. Okafor, Legal Positivism and the African Legal Tradition and Taiwo Olufemi, Legal Positivism and the African Legal Tradition: A Reply
- Legal Pluralism in Post-Colonial Africa: Linking Statutory and Customary Adjudication in Mozambique, David Pimentel
- The Repugnancy and Incompatibility Tests and Customary Law in Anglophone Cameroon, Mikano Kiye

In class video: Bush law: <http://freedocumentaryonline.org/culture/aboriginal-bush-law-my-country-australia-full-bbc-culture-documentary/>

### **Class 5: October 4**

- Civil law legal tradition – Codification and History - Roman law
  - Roman Law Glossary
  - 12 Tables

- Merryman & Perez-Perdomo, pp. 1-14

### **Class 6: October 11**

- Civil law legal tradition cont'd
  - Merryman & Perez-Perdomo, pp. 27-47
  - French Civil Code of 1804 Excerpts
  - French Civil Code Art. 4, 5 and 8
  - The Role of the Court of Cassation, p. 1 – 2, 15 – 17
  - Swiss Civil Code 1(2)

### **Class 7: October 18**

- Civil law tradition in Asian legal systems
  - H. Patrick Glenn, An Asian Legal Tradition: Make it New (with Marx), in Legal Traditions of the World, pp. 303-340
  - Guest Lecture by Quoc Hung Trong, Director – Department of General and Int'l Affairs, Institute for Legislative Studies, The National Assembly of Vietnam

### **Class 8: October 25**

- Common law legal tradition – Introduction and history
  - Zweigert & Kotz, pp. 180 – 204
  - Montana Code Annotated 1-1-109
- Formation of U.S. common law
  - Friedman

### **Class 9: November 1 No Reading - DEADLINE FOR STUDENTS TO HAVE OBSERVED COURT PROCEEDING AND BE PREPARED TO DISCUSSED OBSERVATIONS**

- Guest lecture by local judge
- Student discussion regarding common law court observations. When observing judicial proceeding, students should note and be prepared to discuss the following:
  - Type of proceeding, i.e., status conference, criminal sentencing, jury trial
  - Role, actions and powers of judge
  - Role, actions and powers of attorneys, if any
  - Sources of law relied upon, if any
  - Power dynamic between various parties and judge in courtroom
  - Non-legal factors in arguments

### **Class 10: November 8 – Roundtable Common law legal tradition cont'd –**

- Structure, legal sources and role of judges
  - Lord Goff, Future of the Common Law, I.C.L.Q. 1997, 46(4), 745-760 (All students)
  - Supreme Court of India decision
  - Uganda bride price case
  - High Court of Australia case
  - Philippines Supreme Court decision

- Ninth Circuit Travel Ban Case

### **Class 11: November 15**

- Religious law: Introduction to Islamic law
  - Haqq, Quran and Hadith
  - Glossary of Islamic Law Terms

### **Class 12: November 29**

- Islamic law – structure, legal sources and role of judges and scholars
  - Haqq 2 (pp. 11 – 29)

Watch in class video regarding Nigerian Islamic courts  
at [http://www.youtube.com/watch?v=H8futgZyQ\\_A](http://www.youtube.com/watch?v=H8futgZyQ_A)

In class video: <http://www.guardian.co.uk/law/video/2011/mar/09/islam-sharia-council-divorce>

### **Class 13: December 6**

- Islamic law cont'd – Women in Islam and Crime and Punishment
  - Kamali, pp. 179-196
  - Women in Islam Quran provisions
  - Excerpts from Amina Lawal case

### **Disability Services & Accommodations**

The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and Disability Services for Students. If you have a disability that adversely affects your academic performance, and you have not already registered with Disability Services, please contact Disability Services in Lommasson Center 154 or 406.243.2243. I will work with you and Disability Services to provide an appropriate modification.

### **Academic Honesty**

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the [Student Conduct Code](http://www.umt.edu/vpsa/policies/student_conduct.php): ([http://www.umt.edu/vpsa/policies/student\\_conduct.php](http://www.umt.edu/vpsa/policies/student_conduct.php)).

### **Attendance Policy**

The in class assessments that make up students' grades will include information in the reading and discussed in class. Students are responsible for all materials set forth in reading and discussed in class.

### **Withdrawing from Course**

**September 17, 2018:** Last day to withdraw from course without W and with refund.

**December 7, 2018:** last day to withdraw from course with W and without refund.