POLITICS, LAW AND SOCIETY

Course Description: This course is designed to provide you with an introduction to the American legal system. We begin by exploring the sources of law, examining how legal norms emerge from each of our branches of government and what happens when these norms clash. We then turn to the key institutional components of our legal system, focusing on the structure of the US court system and the players within it. We will compare the federal and state courts, looking at the differences in how judges are selected and how cases proceed through the system. We will pay particular attention to the inherent conflict between the desire for independence and accountability within our judiciary and will assess how well we have done in balancing these goals. We will also look at the alternatives to courts and investigate why they emerged and how they are currently being used. We will put all of this knowledge to use by studying the disputing process in the civil (non-criminal) context. We will start by developing a framework for how disputes evolve and what tends to encourage and/or discourage people from pursuing grievances. After Thanksgiving, we will explore two case studies of civil disputes. The first is one of the most well-known “test” cases, namely the case that culminated with the landmark Supreme Court decision in Brown v. Board of Education that ended segregation based on race in US public schools (at least on paper). The second is the class action dispute memorialized in the bestseller, A Civil Action.

Course Requirements: Students are expected to attend class regularly and to take part in class discussion and group exercises. There will be mid-term and final examinations, as well as a quiz on A Civil Action. There will be two writing assignments. For the first, students will be required to write an essay (7-8 pages) analyzing a dispute with which they are familiar. More information is available on the course website. Papers are due in class on Nov. 26th. For the second, students will be required to write a short essay (3-4 pages) reflecting on the readings for one class meeting. A schedule for this assignment will be posted on the course website. Discussion questions for every class are posted on the website. Two cautionary notes: (1) these essays must be turned in during the class period for which the readings being discussed are assigned, and (2) students will be expected to participate actively in the class discussion on the day the essay is due (the portion of the final grade based on class participation will be determined largely on the basis of participation on this day).

Grades: Final grades will be calculated on the following basis: final exam (30%), mid-term exam (25%), Quiz (5%), Paper on Disputing (20%), Participation Paper (10%), class participation (10%).

Readings: The 2 books listed below are available at the University Bookstore. The remaining readings have been gathered for your convenience in a Course Reader that is posted on the course website. If desired, students can get a hard copy of this reader by going to the Law School Copy Shop, located on the ground floor of the law school, or ordering a copy on the Copy Shop’s website (https://law.wisc.edu/copyshop/course_packet_request.html). The cost is $33.

**Course Credit-Hour Expectation:** This is a 3-credit course. It meets for two 75-minute sessions each week over the fall semester and carries the expectation that students will work on course learning activities (reading, writing, assignments, studying, etc.) for about 3 hours out of the classroom for every class period.

**Learning Outcomes:**
1. Increase knowledge about the components of the U.S. legal system.
2. Understand how disputes evolve in the context of the U.S. legal system.
3. Improve ability to synthesize social science readings and formulate arguments in written and oral form.
4. Improve oral advocacy skills through active classroom discussion.

**Academic Integrity Statement:** By enrolling in this course, each student assumes the responsibilities of an active participant in UW Madison’s community of scholars in which all academic work and behavior are held to the highest standards. Cheating, fabrication, plagiarism, unauthorized collaboration, and helping others commit these acts are examples of academic misconduct, which can result in disciplinary action. This includes, but is not limited to, failure on the assignment/course, disciplinary probation, or suspension. Substantial or repeated cases of misconduct will be forwarded to the Office of Student Conduct & Community Standards for additional review. For more information, refer to https://conduct.students.wisc.edu/academic-integrity/

**Accommodations for Students with Disabilities:** The University of Wisconsin-Madison supports the right of all enrolled students to a full and equal educational opportunity. The Americans with Disabilities Act (ADA), Wisconsin State Statute (36.12), and UW-Madison policy (Faculty Document 1071) require that students with disabilities be reasonably accommodated in instruction and campus life. Reasonable accommodations for students with disabilities is a shared faculty and student responsibility. Students are expected to inform faculty of their need for instructional accommodations by the end of the third week of the semester or as soon as possible after a disability has been incurred or recognized. Faculty will work either directly with the student or in coordination with the McBurney Center to identify and provide reasonable instructional accommodations. Disability information, including instructional accommodations as part of a student’s educational record, is confidential and protected under FERPA. https://mcburney.wisc.edu/facstaff/other/faculty/syllabus.php

**Diversity & Inclusion:** Diversity is a source of strength, creativity, and innovation for UW-Madison. We value the contributions of each person and respect the profound ways their identity, culture, background, experience, status, abilities, and opinion enrich the university community. We commit ourselves to the pursuit of excellence in teaching, research, outreach, and diversity as inextricably linked goals.

The University of Wisconsin-Madison fulfills its public mission by creating a welcoming and inclusive community for people from every background – people who as students, faculty and staff serve Wisconsin and the world. https://diversity.wisc.edu/

Please notify the instructor within the first two weeks of class of any specific days that you will need to miss a class due to religious observances.
READING ASSIGNMENTS:

Part I: Sources of Law

Thursday, September 5: Introduction
Baum, American Courts, 2-4

Tuesday, September 10: Legal Culture & the Role of Informal Norms

Thursday, September 12: Judicial Opinions
Baum, American Courts, pp. 10-16
Li v. Yellow Cab Co. of California, 13 Cal.3d 804 (1975)
Riggs v. Palmer, 22 NE 188 (1889)

Optional but Interesting:

Tuesday, September 17: Judicial Review
Article III, US Constitution,
http://www.archives.gov/exhibits/charters/constitution_transcript.html
Justice, “The Two Faces of Judicial Activism,” Judges on Judging, pp. 225-34
Kivirist, et al. v. Wisconsin Department of Agriculture, May 31, 2017
Kivirst, “Wisconsin Hungry for a Cookie Bill that Loves Entrepreneurs,” Cap Times, February 13, 2018
Optional but Interesting:
“Kittens Kick the Giggly Blue Robot All Summer,” podcaset from Radiolab Presents: More Perfect: explores the role of the US Supreme Court, starting with Marbury v. Madison. Available at: http://www.wnyc.org/story/giggly-blue-robot [you could listen to this instead of reading the actual opinion in Marbury – link to podcast on website]

Thursday, September 19: Judicial Reasoning
Burnham, Introduction to the Law and Legal System of the United States, pp. 53-63
NLRB v. Canning, 134 S Ct 2550 (2014)
Review excerpts from article by Wald (in Sept. 12 readings)

Tuesday, September 24: Legislatures
Jacob, Law and Politics in the United States, pp. 241-54
Lilly Ledbetter Fair Pay Act of 2009
Thebault, “The Voters Approved It. Should Lawmakers Erase the Result? In DC, a Debate about Democracy,” Washington Post, July 31, 2018
Nirappil, “Battle Over Reviving Initiative 77 Tipping Measure in DC Heads to Appeals Court,” Washington Post, December 18, 2018

Thursday, September 26: Administrative Agencies
** Before class, please listen to 2 episodes of The Uncertain Hour [podcast]
• “The Peanut Butter Wars,” November 10, 2017
  https://www.marketplace.org/shows/the-uncertain-hour/s02-2-peanut-butter-wars/
• “The Peanut Butter Verdict,” November 22, 2017
  https://www.marketplace.org/shows/the-uncertain-hour/s02-3-peanut-butter-verdict/
Burnham, Introduction to the Law and Legal System of the United States, pp. 196-206
Chevron, USA, Inc. v. Natural Resources Defense Council, 467 U.S. 837, 1984
Barnes & Marinow, “Supreme Court Puts Census Citizenship Question on Hold,” Washington Post, June 27, 2019
“When Mercy Collides With the Law,” New York Times, January 10, 2018

Tuesday, October 1: Rule of Law
Fuller, The Morality of Law, pp. 33-41
Mirman, letter complaining about parking ticket, July 2015
Part II: Key Components of the U.S. Legal System

Thursday, October 3: An Overview of U.S. Courts
Baum, American Courts, pp. 5-10, 20-49
Federalist Papers, No. 78
“What is Judicial Independence?” 80 Judicature 73-83
Compare the structures of the Wisconsin and New York court systems:
http://www.wicourts.gov/courts/overview/moves.htm
http://www.courts.state.ny.us/courts/structure.shtml
Williams, “This Judge Has a Mission: Keep Defendants Alive,” New York Times, Jan. 3, 2018
Grant, “Inside NY Courts Where Sex Workers Are ‘Painted as Victims and Treated as Criminals’,” The Appeal, September 21, 2018

Optional, but interesting:
Heroin(e), documentary streaming on Netflix [deals with drug courts]

Tuesday, October 8: Judges
Baum, American Courts, pp. 124-46
Banks, The Judicial Process, pp. 121-4
Mihalopoulos, “Why Cook County Judge Quite After Just 142 Days,” Chicago Sun Times, May 5, 2017

Thursday, October 10: Selecting Judges for Federal Courts
Baum, American Courts, pp. 94-102
Banks, The Judicial Process, pp. 116-8
Zhou, “Senate Republicans Have Officially Gone ‘Nuclear’ in Order to Confirm More Trump Judges,” Vox, April 3, 2019
Maclaren, “The Supreme Court’s Baffling Tech Illiteracy is Becoming a Problem,” Salon, June 28, 2014

Optional but Interesting:
Embedded [podcast], Judges 1: ‘A Downward Death Spiral’ [deals with nomination of federal judges], July 25, 2019
Tuesday, October 15: Selecting Judges for State Courts
Baum, *American Courts*, pp. 101-118
Bannon, “Choosing State Judges: A Plan for Reform,” Brennan Center for Justice, 2018
Check out website with information about judicial selection rules for all 50 states:
http://judicialselectionmap.brennancenter.org/?court=Supreme

Optional but Interesting:
Embedded [podcast], Judges 2: ‘Worse Than Willie Horton’ [deals with nomination of state court judges], August 1, 2019
https://www.npr.org/2019/08/01/747427656/judges-2-worse-than-willie-horton

Thursday, October 17: Judicial Accountability
Baum, *American Courts*, pp. 142-45
Steinhauer, “Senate, for Just the 8th Time, Votes to Oust a Federal Judge,” *New York Times*, December 8, 2010
McKinley, “In a Rare Step, Commission Recommends Removal of Queens Judge,” *New York Times*, April 11, 2018
Del Real, “2 Views of the Judge Persky Recall,” *New York Times*, June 13, 2018
Wisconsin procedure for disciplining judges:
http://www.wicourts.gov/courts/committees/judicialcommission/index.htm

Tuesday, October 22: Lawyers – Part 1
Baum, *American Courts*, pp. 54-85
ABA Lawyer Demographics, 2015
Wisconsin “Diploma Privilege”: WI Supreme Court Rule 40.03:
UW version of “Diploma Privilege”: Rule 3.04 of the UW Law School Rules:
http://www.law.wisc.edu/current/rules/chap3.htm#3.04
Thursday, October 24: Lawyers – Part 2

*In re Goodell*, 39 Wis. 232, 1875

*In re Goodell*, 48 Wis. 693, 1879


Paul, “‘We Didn’t Let Girls Do it in the Old Days,’ a Judge Said. ‘Inappropriate,’ a Higher Court Ruled,” *Washington Post*, July 29, 2018

Williams et al., *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias*, ABA Commission on Women in the Profession, 2019, pp. 9-39 [full report on website]

Weiss, “Female Lawyers Describe ‘Fraternity Culture’ at Jones Day in $200M Sex-Bias Lawsuit,” *ABA Journal*, April 4, 2019

Tuesday, October 29: Building a Test Case – the Story of *Gill v. Whitford*

**Guest Speaker: Bill Whitford**, Emeritus Professor, UW Law School

Whitford, Outline of remarks

Savage & Barabak, “Supreme Court’s Approval of Partisan Gerrymandering Raises 2020 Election Stakes,” *Los Angeles Times*, June 27, 2019


Wang, “If the Supreme Court Won’t Prevent Gerrymandering, Who Will?” *New York Times*, July 13, 2019


*Optional but Interesting:*

Fresh Air [podcast], “Rulings on Gerrymandering and the Census Could Defile the Political Future,” July 9, 2019


Thursday, October 31: Alternative Dispute Resolution

Baum, *American Courts*, pp. 217-21


Cooper, “Caught in the Middle of #MeToo: Unions that Represent Accusers and Accused,” *New York Times*, May 17, 2019

Chart – Benefits of Different ADR Processes


Flitter, “JPMorgan Chase Seeks to Prohibit Card Customers from Suing,” *New York Times*, June 4, 2019


Zevtoonian, “Compliance More Likely if Cases Are Mediated,” *Dispute Resolution Counsel*, March 8, 2011


*Optional but Interesting:*

Fresh Air [podcast], “Have We Lost a Constitutional Right in the Fine Print?” Nov. 12, 2015

https://www.npr.org/2015/11/12/455749456/have-we-lost-a-constitutional-right-in-the-fine-print
Tuesday, November 5: Midterm Exam

Part III: Understanding the Disputing Process

Thursday, November 7: The Structure of Disputes
Baum, *American Courts*, pp. 72-79, 210-17, 222-30
Rabin, “In a Children’s Theater Program, Drama Over a Peanut Allergy,” *New York Times*, January 16, 2019
Pager, “She Helped Deliver Hundreds of Babies. Then She Was Arrested,” *New York Times*, March 5, 2019
Selsky, “Young People Suing US Government over Climate Change Get Their Day in Court,” *PBS Newshour*, June 4, 2019
Pennington, “Parents Behaving Badly: A Youth Sports Crisis Caught on Video,” *New York Times*, July 18, 2018

Tuesday, November 12: The Alleged “Litigation Explosion”
Garry, *A Nation of Adversaries*, pp. 15-23, 66-76
Goldstein & Silver-Greenberg, “How a Web of Slip-and-Fall Cases Puts a New Spin on an Old-Fashioned Scheme,” *New York Times*, May 11, 2018

Thursday, November 14: A View of Judging from the Front Lines
**Guest Speaker:** The Honorable Sidney Brooks
Background information on Judge Brooks

Tuesday, November 19: Formal Constraints on Disputing
Judicial distaste for issue: *Miller v. Miller*, 78 Iowa 177 (1889)
Zelon, “From Mom to Not in 7 Minutes: Inside Family Court,” *City Limits*, June 1, 2012
Class actions: [http://www.classactionlitigation.com/faq.html](http://www.classactionlitigation.com/faq.html)
Part IV: Constructing Disputes

Case Study 1: Putting Together a “Test” Case – *Brown v. Board of Education*

**Thursday, November 21: The Starting Point & the Struggle to Get to the Supreme Ct & the Decision-Making Process and the Decision**

Film: “Simple Justice”

*Plessy v. Ferguson* (1896)

“The Development of Segregation in the Public Schools,” from *Constitutional Law and Judicial Policy Making*, pp. 297-99

Kluger, *Simple Justice*, pp. 3-26, 315-21, 330-35


Optional but Interesting:

“The Imperfect Plaintiffs,” podcaset from Radiolab Presents: More Perfect: provides background information about *Lawrence v. Texas*, a 2003 Supreme Court case in which the Texas law outlawing sodomy was struck down. Like *Brown*, it was a test case and this podcast highlights some of the difficulties in finding “ideal” plaintiffs.


“The Road to Brown,” documentary that emphasizes the role of Charles Hamilton. This link will require you to log in with your netid & password.


“Mr. Civil Rights: Thurgood Marshall and the NAACP”


**Tuesday, November 26: The Aftermath of the Decision**


“The Response to *Brown*,” from *Constitutional Law and Judicial Policy Making*, pp. 304-6


Optional but Interesting:

“Separate and Unequal,” documentary about racial divisions in U.S. schools.


**Disputing Papers Are Due in Class on November 26, 2019**

**Thursday, November 28: THANKSGIVING – NO CLASS**
Case Study 2: An “Ordinary” Civil Case

Tuesday, December 3: How the Case Arose
Harr, A Civil Action, pp. 1-146

THERE WILL BE AN IN-CLASS QUIZ ON A CIVIL ACTION IN CLASS ON DEC 3rd. THE QUIZ WILL COVER THE ENTIRE BOOK.

Thursday, December 5: The Build-Up to the Trial & the Trial
Harr, A Civil Action, pp. 149-376
Complaint filed by Schlictman
Answer filed by W.R. Grace
Motion from W.R. Grace regarding Schlictman’s conduct
Voir Dire Questions
Special Interrogatories to the Jury

Tuesday, December 10: The Aftermath of the Trial
Harr, A Civil Action, pp. 379-492
Kix, “In the Shadow of Woburn,” Boston Magazine, October 2009

Friday, December 13: FINAL EXAM from 5:05pm to 7:05pm [room TBA]