

# The American Judicial System

**Political Science 417** Spring 2020

**Location** Science Hall, Room 360

**Time** Tuesdays & Thursdays 11am–12:15pm

**Instructional model** classroom instruction

**Credits** 4 credits

**Instructor** Alexander Tahk

**Email** atahk@wisc.edu

**Office** 212 North Hall

**Office Hours** Mondays, 10am–noon

**Teaching Assistant** Patrick Courteau

**Email** pcourteau@wisc.edu

**Office** North Hall

**Office Hours** Tuesdays, 12:30–1:30pm, and Wednesdays, noon–1pm

## Course description

This is a course on the functioning of the American judicial system. While courts and lawyers are central to our political system, our understanding of the legal system often comes from news reporting of unusual and important cases (e.g., landmark Supreme Court cases), sensational cases (e.g., the Zimmerman trial), and popular media (e.g., *Law & Order*, *Suits*). What do courts and lawyers do in a typical case? How do judges reach their decisions? How do courts interact with each other and with other branches of government? Our study will include the structure and function of the American court system and its historical development, several approaches to understanding judicial decision-making, and the impact of court decisions.

This is not simply a course about formal or procedural parts of the legal system or about the law itself, although we will discuss both of those. Rather, we will also attempt to understand how outcomes are reached, what factors influence them, and how we might go about answering these sorts of questions.

Several different perspectives for understanding the courts and the judicial system. Lawyers and law professors are often concerned with what the law is or should be, viewing judges as more-or-less seeking outcomes of a case through legal reasoning. Political scientists, on the other hand, often view judges as actors attempting to advance their own interests or views over those of other political actors. We will look at questions from both perspectives.

## How the credit hours are met

This class meets for two 75-minute lectures and one 50-minute section each week over the semester and carries the expectation that students will work on course learning activities (reading, studying for exams, and working on assignments) for about 3 hours out of classroom for every class period.

## Prerequisites

Sophomore standing and Political Science 104, 184 or Political Science/Legal Studies 217.

## Learning outcomes

Students will be able to:

- explain the structure of the American court system and the processes through which judges are selected at the state and federal levels
- describe how courts interact with other branches of government and with society
- explain legal and social-scientific perspectives on judicial decision-making and case selection
- demonstrate a basic understanding of major areas of criminal and civil law and procedures courts follow in criminal and civil cases in the common law system

## Textbooks

The only required textbook is:

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

It is available from the University Bookstore.

All other readings will be posted on Canvas.

Three other useful—but not required—books are:

Calvi, James V., and Susan Coleman. *American Law and Legal Systems, Seventh Edition*. Boston: Longman (2012).

Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight. *Courts, Judges, & Politics: An Introduction to the Judicial Process, Sixth Edition*. Boston: McGraw-Hill (2006).

Segal, Jeffrey A., Harold Spaeth, and Sara C. Benesh. *The Supreme Court in the American Legal System*. Cambridge: Cambridge University Press (2005).

## Course format

This course will primarily be a lecture class, but I encourage you to ask questions and participate. I do not take attendance in lecture, but **you are responsible for all material and information covered in lecture as well as in the readings**. Some material presented in lecture will not be in the readings.

Attendance at section is mandatory. Participation in section forms part of your grade. Students can volunteer to read and report on optional readings in section for bonus points.

## Course requirements and grading

Two midterm exam (22.5% each), Final exam (40%), Section attendance and participation (15%).

## Wisconsin Supreme Court oral arguments

Students will be required to attend oral arguments held by the Wisconsin Supreme Court in the state capitol at one point during the course.

***Midterm exam***

We will have two in-class midterm exams on **March 3** and **April 9**. A review session for each will be held outside of class. They will consist of multiple choice, identification, and an essay.

***Final exam***

A final exam is scheduled for **May 7** at 2:45pm. The exam will be comprehensive but will have added focus on material from the final three weeks (that is, material from after the second midterm). A review session will be held during the final class or scheduled for another time if necessary. The final will consist of multiple choice, identification, and two essays.

**Academic integrity**

By enrolling in this course, each student assumes the responsibilities of an active participant in UW–Madison’s community of scholars in which everyone’s academic work and behavior are held to the highest academic integrity standards. Academic misconduct compromises the integrity of the university. 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 [studentconduct.wiscweb.wisc.edu/academic-integrity](http://studentconduct.wiscweb.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 me 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. I will work either directly with the student you 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.

**Diversity and inclusion*****Institutional statement on diversity***

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.

## Topics and readings

Readings are broken down by week. All readings aside from those in the Baum textbook will be made available on Canvas.

Note that topics from one week may sometimes spill over into the beginning of the next week or may sometimes begin during the last part of the week before. Sometimes readings from one week are also central to the lecture the following week. The quantity of reading is not always evenly distributed between weeks, so it may be helpful to do some readings in advance in order to space them out more evenly.

Finally, please note that the **readings are subject to change**. Please check Canvas for an up-to-date version of the syllabus. Should any changes be made, an email will be sent to the class mailing list.

### ***Week 1 (Jan. 21 & 23) – Introduction***

Baum 1–18

### ***Week 2 (Jan. 28 & 30) – Common law***

Calvi & Coleman, “History and the Law”

Stevens, “The Common Law Origins of the Infield Fly Rule”

### ***Week 3 (Feb. 4 & 6) – Law and court structure***

Baum 19–51

Calvi & Coleman, “Limitations”

Kerr, “How to Read a Legal Opinion”

*Optional:*

*Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938)

### ***Week 4 (Feb. 11 & 13) – Judicial selection***

Baum 92–121

Segal, Spaeth, & Benesh, “Staffing the Court”

Binder and Maltzman, “Advice and Consent During the Bush Years: The Politics of Confirming Federal Judges”

Holmes, “‘Going Nuclear’ over Appointments: The Causes and Consequences of Filibuster Reform”

**Week 5 (Feb. 18 & 20) – Criminal justice**

Baum 150–199

Calvi & Coleman, “Criminal law”

Casper, “ ‘Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender’ ”

*Optional:*

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

*Martin v. State*, 17 So.2d 427 (1944)

*Gardner v. People*, 62 N.Y. 299 (1875)

*Cheek v. United States*, 498 U.S. 192 (1991)

*People v. Olsen*, 685 P.2d 52 (1984)

*People v. Campbell*, 335 N.W.2d 27 (1983)

**Week 6 (Feb. 25 & 27) – Civil litigation**

Baum 201–243

**Week 7, part I (Mar. 3) – First midterm**

First midterm in class (Monday)

**Week 7, part II, and week 8, part I (Mar. 5 & 10) – Civil procedure**

Calvi & Coleman, “Civil procedure”

Baum 76 (“The Contingent Fee”)

Kritzer & Krishnan, “Lawyers Seeking Clients, Clients Seeking Lawyers: Sources of Contingency Fee Cases And Their Implications for Case Handling”

*Optional:*

*Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978)

**Week 8, part II, and week 9 (Mar. 12, 24 & 26) – Civil law**

Calvi & Coleman, *excerpts*

*Optional:*

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

*United States v. Carroll Towing Co.*, 159 F.2d 169 (1947)

*Raffles v. Wichelhaus*, 2 H. & C. 906 (1864)

*Byrne v. Boadle*, 159 Eng. Rep. 299 (1863)

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

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

***Week 10 (Mar. 31 & Apr. 2) – Legal analysis and reasoning***

Murphy, Pritchett, Epstein, & Knight, “Precedents and Legal Reasoning”

Carter, “Reason in Law”

Marshall, “The Constitution: A Living Document”

Scalia, “Originalism: The Lesser Evil”

Sunstein, “Minimal Appeal”

***Week 11, part I (Apr. 7) – Appellate courts***

Baum 245–262

Hall, “Constituent Influence in State Supreme Courts”

***Week 11, part II (Apr. 9) – Second midterm***

Second midterm in class (Wednesday)

***Week 12 (Apr. 14 & 16) – Supreme Court case selection***

Baum 263–267

Segal, Spaeth, & Benesh, “Getting into Court”

*Optional:*

Tanenhaus, Schick, Muraskin, and Rosen, “The Supreme Court’s Certiorari Jurisdiction: Cue Theory”

***Week 13 (Apr. 21 & 23) – Decision-making and opinions***

Baum 268–281

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

Posner, “Nine Theories of Judicial Behavior”

***Week 14 (Apr. 28 & 30) – Policy and impact / The legal profession***

Baum 288–321

Baum 54–92

Final review (in class if time permits)

***Final exam (May 7)***

Final from 2:45 to 4:45pm