

Special Topics Course Descriptions

Spring 2023

ADR Processes

Pre/Corequisite: None

Recommended Class(es): None

This course will introduce the concepts and practice of dispute resolution, focusing primarily on the particular processes of ADR – negotiation, mediation and arbitration – and then examine these forms in the context of different areas of the law and the judicial system. At the end of the course, students will be able to counsel a client about the use of all three processes of ADR; recognize effective negotiation skills; understand the role of mediation in and out of the court system; and be familiar with the variety of arbitration processes and the current Supreme Court rulings impacting arbitration.

Antitrust & Class Action Litigation

Pre/Corequisite: None. For students who have not taken the course in Antitrust Law, there will be background discussions and materials on the substantive antitrust law.

Recommended Class(es): None

This course will proceed through the various stages of civil antitrust litigation, focusing primarily on price-fixing and “pay-for-delay” (agreements to delay the entry of generic substitutes) class action litigation, and merger litigation. Using the prism of antitrust class actions, the course will also look more generally at the processes of class action litigation in federal court more generally. The course will look at various factual scenarios that can give rise to private antitrust claims and what it takes to plead and prove, and defend against, those claims. The course will examine strategies of both plaintiffs’ and defendants’ lawyer. The course materials will extensively use court filings, and expose the students to many tools of complex litigation.

Critical Perspectives on Procedure

Pre/Corequisite: None

Recommended Class(es): None

Many of our most famous—and infamous—cases implicate procedural rights. Because procedural rules regulate access to justice, procedure is a central pressure point in the struggle to eradicate structural inequality and oppression through the courts. This course will focus on aspects of civil procedure that implicate structural inequality for marginalized communities, especially those defined by factors such as race, sex, gender, disability, ethnicity, national origin, immigration status, sexual orientation, wealth, and religion. While we will closely examine areas of civil procedure that are covered in the 1L course -- such as pleading, discovery, summary judgment – our goal will be to explore how ostensibly neutral rules and doctrines might operate differently for litigants from particular communities.

Cryptocurrency and Digital Asset Regulation: Law, Policy, and the Future of Finance

Pre/Corequisite: None

Recommended Class(es): None

This course aims to give students a general understanding of digital assets, cryptocurrency, and blockchain, and the legal, regulatory, and policy issues surrounding them. We will discuss the basics of digital assets, and the current state of regulation in the US, with some discussion of other jurisdictions. We will explore cryptocurrency, tokens, initial coin offerings (ICOs), Decentralized Finance (DeFi), NFTs, and stablecoins. We will discuss compliance issues implicated in digital asset trading and custody. The regulation of trading and digital asset exchanges will be emphasized. Special attention will be paid to the question of which regulatory bodies are best suited to regulate this area, with particular emphasis on the role of the SEC. Current issues in the space also will be covered, such as the recent FTX collapse, BlockFi bankruptcy, and SEC actions including the Ripple litigation.

Environmental Justice

Pre/Corequisite: None

Recommended Class(es): None

Environmental justice seeks to remedy and prevent environmental harms by ensuring the equitable treatment and meaningful participation of historically impacted communities. The movement is deeply rooted in civil rights, human rights, and environmental law. In this course, we will explore the legal framework that advances environmental justice on the local, state, and federal levels. Students will take a hands-on approach to environmental justice and will learn to develop some of the advocacy tools that practitioners use for the communities that they serve.

Gender and the Law

Pre/Corequisite: None

Recommended Class(es): None

This course's aims are: to make students familiar with feminist and queer theories and critiques of liberalism and liberal legal systems to the extent that they incorporate biases relating to gender and sexual orientation; to show them how seemingly neutral legal norms are shaped by particular conceptualizations of gender, sexuality and sexual orientation; to introduce them to the debate concerning the partnership of feminism and multiculturalism and prompt them to reflect on what constitutes gender (in)equality in a culturally diverse world; to make them familiar with the ways in which the law has contended with sexual difference, sexual orientation, gender-based stereotypes and the meaning of sexuality in domestic, transnational and international contexts.

The course will tackle cutting-edge issues about gender, law and policy, including: gender and political representation, gender and cultural diversity, the constitution of the family, reproductive rights, domestic violence, gender violence in armed conflicts, sex work and pornography, sexual orientation, and intersections of gender with race, ethnicity, class, and sexual orientation.

Heyman Business Law Colloquium**Pre/Corequisite:** Corporations**Recommended Class(es):** None

This course will explore the unique legal issues facing the burgeoning legal cannabis market throughout the United States. Cannabis – which remains illegal federally but is currently legal in 37 states and Washington D.C. – presents interesting questions of federalism, constitutional law, administrative law and other disciplines. At the same time, the legal cannabis industry is seeking to promote equitable policies that promote social justice and criminal reform for those individuals and families that were adversely affected by the failed War on Drugs. As such, practitioners are often required to navigate complex legal and regulatory regimes while their clients have limited access to banking and capital resources. The course will review current caselaw, regulatory frameworks, policy and ethical considerations with an emphasis on their implications to businesses and entrepreneurs in the legal cannabis space. Students will participate in mock negotiations, lobbying exercises and will have an opportunity to contribute and/or participate in real-time discussions concerning New York's own efforts to legalize the recreational use of cannabis.

Intellectual Property (IP) Policymaking**Pre/Corequisite:** None**Recommended Class(es):** It is recommended that students have taken at least one of the following IP courses prior to taking this course: Patent Law; Copyright Law; Trademark Law; Creativity, Innovation, and IP; or Intellectual Property Enforcement.

This course explores institutions and practices of intellectual property policy making in the United States. The course examines the framing and development of policy proposals in the executive branch and some legislative process. It also considers the political economy of stakeholder engagement ranging from lobbyists and other sophisticated actors to individuals in the public. Readings and discussions emphasize domestic U.S. patent, trademark, and copyright issues and address government structure and legal policy argumentation.

Israeli Constitutional Law in Comparative Perspectives**Pre/Corequisite:****Recommended Class(es):** Constitutional Law

Contrary to popular belief, the State of Israel has a constitution that impacts the lives of its citizens on a daily basis. As a Jewish and Democratic state, Israel's constitution is posing implementation challenges. Alongside its religious complexity, Israel's Constitution must also deal with the Israeli-Palestinian dispute and the balance between national security interests and human rights.

Despite the strong ties between Israel and the United States, the differences in their legal tradition and constitutional law are significant. The course will explore the differences between the Israeli and U.S. constitutions, specifically discussing the separation of powers, protection of constitutional rights, and the war against terrorism.

The course will also review the constitutional history of Israel, analyzing the principles of Israel's constitution and comparing them to their U.S. counterparts. Each class will be dedicated to discussing one constitutional issue and comparing Israeli and American legislation and case law. At the end of the

seminar, the students will be familiar with the Israeli and American constitutions and will be able to distill the strengths and weaknesses of each system regarding a few major legal challenges.

Law, Business, and Technology

Pre/Corequisite: None

Recommended Class(es): None

In this seminar, we will explore key controversies and debates in the tech-enabled business landscape. Potential topics include platforms and their regulation, First Amendment and media law, corporate governance of startups, venture capital and innovation funding, equity and equality issues in the platform economy.

Mergers and Acquisitions for the Aspiring Corporate Lawyer

Pre/Corequisite: None

Recommended Class(es): Corporations

This seminar course will explore the nuts and bolts of a M&A transaction, including how to spot issues, apply facts and read, revise and negotiate a real M&A document.

This course will focus on walking through a M&A transaction using a sample transaction fact pattern to help bring the material to life. We will start with types of merger transactions and cover the various parts of a merger transaction and how they fit together. Students will be asked to consider how the counsel for buyer and seller would approach the various parts of the transaction. Students will also be asked to participate in role play negotiations and client counseling. This course will focus on the M&A lawyer's role and will not go into detail around specialty practices involved in a merger transaction, such as employment, intellectual property, tax, environmental law and others.

Pre-trial Criminal Procedure

Pre/Corequisite: None

Recommended Class(es): Criminal Law, Criminal Procedure, Evidence

This introductory course, a study of the principal elements relating to effective pre-trial criminal practice, will explore the practical aspects of New York State's criminal laws and procedure. The course will explore criminal and supreme court arraignments, accusatory instruments, bail and recognizance, grand jury practice, discovery, search warrants, timeliness of prosecution, plea bargaining, suppression motions, and pre-trial evidentiary issues. The course will familiarize students with pre-trial practices and processes and provide insight into pragmatic strategies for defending clients and prosecuting cases. Course participants will obtain enormous courtroom confidence and knowledge while significantly sharpening advocacy skills. Federal and State decisional law, applicable statutes and relevant scholarly articles will bolster classroom work.

Race, the Constitution, and American Empire

Pre/Corequisite:**Recommended Class(es):**

In this course we will explore the intersection of race, constitutional interpretation, and territorial expansion of the United States of America throughout the 19th, 20th and 21st centuries. Throughout this seminar, we will focus on the manner in which constitutional interpretation evolved to accommodate the acquisition of non-contiguous territories to be held in perpetuity without the promise of statehood. We will further examine how that constitutional doctrine sanctioned the disenfranchisement of people living in those acquired territories. We will also interrogate the manner in which the application of federal criminal statutes to the territories—often used as a vehicle to prosecute local activity within their borders—also evolved over time. This course will provide a forum for honest discussions about liberty, self-determination, decolonization, consent of the governed, race and prejudice, and what it means for a country to treat members of its polity differently without offending the federal constitution.

Rule of Law in Context**Pre/Corequisite:** None**Recommended Class(es):**

The course examines how the rule of law operates in the world of rapid social and technological changes, uncertainty, and conflicts. Students will explore how the rule of law interplays with democracy and how populist politicians around the world utilize democratic rhetoric and procedures to undermine the rule of law and subordinate legal institutions to political power. They will investigate why in some legal systems attempts to advance the rule of law may result in even more severe violations of human rights. The class will also explore why the rule of law is important for a free-market economy and whether secularity is a necessary characteristic or a precondition for the law-governed state. In addition, students will learn about the way the rule of law can be measured and why it is more of “a continuum, not a binary” (Paul Gowder). Then we will discuss new challenges to the rule of law both in the U.S. and in the global context. Finally, the class will assess the international advancement of the rule of law and understand why huge intellectual and organizational efforts not to mention billions of dollars spent by international organizations, the U.S. and other Western countries are often pointless and what should be done in order to make its advancement more successful.

Student grades will be based on a combination of the final paper (50% total), book review (25%) and class participation (25%).

Sovereignty, Rule of Law, and Fundamental Rights in an Era of National and International Turmoil**Pre/Corequisite:****Recommended Class(es):**

Sovereignty is a crucial element in the constitution, law, and political life of polities going back to the 17th century. The traditional Westphalian conception of sovereignty entails the absolute monopoly of power

residing in states, and the congruency of territory, state, people, and nation. Although this conception of sovereignty did evolve significantly, the premises of the Westphalian system remained fairly unchallenged for three centuries.

Momentous shifts took place in the international order starting in 1945, with the development of international human rights regimes, and the proliferation of transnational governance units, such as the European Union (EU). Do these supra-national legally binding power wielding institutions modify, readjust, or severely undermine nation-based sovereignty? Moreover, the dissolution of the USSR and of Yugoslavia further destabilized settled conceptions of sovereignty enshrined in international law and practice, which had assumed that post-World War Two state boundaries were permanently settled. Finally, recent reactions against globalization resulting in a rekindling of nationalism, protectionism, and populism have exacerbated both the theoretical and practical institutional controversies regarding sovereignty. Most dramatically, Russia's current war against Ukraine has thrust sovereignty to the forefront with unprecedented violence and in defiance of the post-Soviet international law regime meant to secure peace among sovereign nations.

Conceptual, constitutional, and institutional controversies surrounding sovereignty are hardly new. The juxtaposition of sovereignty and democracy has posed a vexing paradox. Contrary to the absolute monarchy where the sovereign was embodied by a single person, since the Enlightenment, the people were designated as the sovereign. But who are the people? If democracy proceeds largely by means of majority rule, how can the people as a whole exercise sovereignty? And what if we include fundamental rights and their judicial enforcement within our conception of democracy? Even if a constitution apportions powers and rights in specific ways, what legitimates the passage from constituent power to constituted power; apportionment of authority between law and politics; the binding nature of anti-majoritarian judicial review of constitutional issues; the seeming autonomy of the administrative bureaucracy? Is representative democracy less legitimate than direct democracy from the standpoint of popular sovereignty? Similarly, should judicial review of constitutional controversies be subject to overruling by parliament or pursuant to a popular referendum? What about a supranational entity such as the EU, is it partly sovereign? Does the EU have its own "people"? Can peoplehood be conceived independently from nationhood? Do humanitarian interventions and the international protection of human rights weaken state sovereignty? Or do these phenomena paradoxically provoke overreactions and foster instability?

Many have criticized the uses of sovereignty as a means to preserve hierarchies while suppressing or downplaying relevant differences. Others have argued that the formal equality that sovereignty endows on all states provides hypocritical cover for imperialism, colonialism, and incursions by powerful states within much weaker ones in the name of humanitarian intervention. Yet others, have focused on how uses of sovereignty within nation-states have been enlisted to generate or perpetuate inequities against certain groups, such as women, immigrants, and various kinds of minorities.

The Colloquium will explore the above listed questions focusing on international and constitutional law issues as well on relevant contributions to political theory. The Colloquium meetings will be divided into some that will feature presentations based on assigned readings by the Colloquium Conveners and other presentations by invited speakers who will have submitted papers in advance and that students will be required to read before the actual presentation so as to be able to participate in the paper's discussion. The Convener meetings will be designed to provide historical, theoretical, and legal/constitutional

background to the contemporary dilemmas surrounding sovereignty. The invited presenters will be leading scholars in law and political theory who will discuss current cutting-edge work on contemporary issues bearing on sovereignty. Classes will meet at both Columbia and Cardozo.

Technology Transactions

Pre/Corequisite: Contract Drafting or permission from the instructor

Recommended Class(es):

Technology Transactions is two-credit skills-based course that teaches students advanced drafting, negotiating, and counseling skills. These skills apply to any transactional law practice, but assignments and lessons will focus on technology transactions, intellectual property, and commercial legal concepts through the representation of a hypothetical start-up client whose business will grow in tandem with students' skills throughout the semester. Students will also hone skills related to effective client representation, including how to manage clients' expectations around billing and turnaround times and work through issues related to ethical obligations. Prior to each class session, students will receive an email from their "client" with information that will form the basis of that week's discussion. The course will meet once per week for two credit hours. In lieu of a final exam, students are expected to complete occasional written work and participate in oral, mock client counseling sessions throughout the semester.

Transgender and Reproductive Justice

Pre/Corequisite:

Recommended Class(es): Constitutional Law II

This course will examine the legal concepts of bodily privacy and autonomy as they relate to reproductive and transgender justice. The course will explore the ways in which the right to privacy developed as a tool for gender justice, as well as its gaps and failings. We will cover foundational cases on the right to privacy, including the right to contraception, abortion, and consensual sexual activity, as well as explore more recent developments in transgender rights litigation. The course will draw upon the work of scholars of critical race theory, feminist theory, and trans justice, with a focus on the ways in which reproduction and bodily autonomy are still controlled by the state along racial, economic, and gender lines.