

Special Topics Course Descriptions

Spring 2024

Artificial Intelligence (AI) and the Law

Pre/Corequisite: None

Recommended Class(es): None

Rapid advances in artificial intelligence over the last several years have led to AI technologies being deployed in many new settings, raising novel and difficult questions about how those technologies should be treated under existing law and whether new laws are needed to appropriately regulate those technologies. This course will explore some of these technologies, settings, and questions. Settings covered include both the use of predictive algorithms to make consumer, employment, or criminal justice decisions and the rise of generative AI, such as ChatGPT or DALL-E. Some of the relevant legal doctrines include anti-discrimination law, due process, copyright, defamation law, and the First Amendment. Readings will be drawn primarily from law review articles and similar materials, and a final paper is required.

Colloquium on Global and Constitutional Theory

Pre/Corequisite: None

Recommended Class(es): None

The US Supreme Court is currently confronting a crisis in legitimacy as are several courts in many other parts of the world, such as the Israel Supreme Court and top courts in various Eastern European countries. At the same time, in certain other parts of the world, such as Western Europe, constitutional courts persist as well integrated and are widely perceived as trustworthy guarantors of workable checks and balances. The Colloquium will explore what accounts for these differences and whether the various crises concerning judicial review arise from similar or different types of circumstances. To what extent are judicial appointment and length of highest court judges' terms in office a significant factor in the exacerbation or avoidance of contemporary crises? What role do controversies in judicial interpretation, disputes concerning the nature and scope of fundamental rights protection, increased political polarization, the hardening of divides among proponents of religious lifestyles and those committed to secularism, the finality of judicial decisions, and the levels of difficulty in amending the relevant constitution play in the context of the proliferation and containment of the aforementioned crises? What options may be available to mitigate or resolve these crises?

Turning to specifics, public trust in the US Supreme Court has recently reached a historic low. This is due in part to what many perceive as undue political manipulation of nominations to Court vacancies and to reversals of jurisprudence characterized by dissenting justices and various commentators as unprincipled and purely political. The most notorious case in point is the Court's 2022 decision in the Dobbs case which overruled a half century of precedents dating back to the 1973 decision in *Roe v. Wade*, which first recognized a constitutional right to an abortion. Was the overruling in question a constitutionally sound correction regarding a most divisive right? And if so, the Court's decision though politically divisive would represent a prime example of judicial independence and integrity. Or was the Dobbs decision an exercise in raw political power by a recently consolidated anti-abortion Court majority? And if the latter, what remedy may be appropriate? Court packing? Judicial term limits? Also, is the reversal of *Roe* politically and constitutionally different in kind than that of *Lochner* in the 1930's when President Roosevelt instituted the New Deal to overcome the evils of the Great Depression?

The parliamentary initiative in Israel to greatly limit that country's Supreme Court's constitutional review jurisdiction has profoundly divided the citizenry and appears to have politically entrenched overtones that bear some degree of similarity with the recent polarization in the US. On the other hand, however, the Israeli controversy markedly differs from its US counterpart. Israel does not have a written constitution and its political fault lines are to an important extent sui generis. Still further afield, at least as a matter of first impression, are the dismantling of liberal courts in Hungary and Poland and their replacement by reconstituted tribunals populated by close allies to the populist and illiberal dominant parliamentary majorities. Are these experiences in Eastern Europe in any way comparable to the US and Israeli experiences? What are the prospects for change in Poland where the dominant illiberal political party has been defeated by a liberal coalition in the most recent parliamentary election? How do all the above instances stack up against much less conflictual judiciaries in Western Europe? And what further insights can be drawn from judicial review systems in place in other parts of the world?

The Colloquium will address and present a wide variety of perspectives on the above issues and others related to them through a combination of classes led by the co-conveners and presentations of original papers by a number of judges and scholars from the US, Israel, Eastern and Western Europe, Africa, and Latin America. These papers will be circulated in advance, and each outside presenter will discuss his/her contribution with the conveners and student and other participants at the Colloquium. Colloquium students will be required to write short responses to the papers presented by the invited speakers. The readings assigned by the co-conveners will be posted on Canvas. Finally, each student will have to write a paper on a pertinent topic approved by the co-conveners.

Crimmigration & Race: Intersection of Criminal Law, Immigration Law & Race

Pre/Corequisite: None

Recommended Class(es): Immigration Law

This course explores the unique historical and contemporary interplay between the nation's criminal legal system, deportation apparatus, and race. Students will investigate how structural racism has impacted law and policy regarding who is allowed to enter and remain in the United States, as well as how the War on Drugs, the War on Terror, and the growth of the carceral state have expanded beyond our criminal legal system and into the nation's immigration enforcement regime. In addition, students will explore the core constitutional doctrine that do, and do not, constrain immigration enforcement policy. Finally, students in this course will learn the doctrinal mechanics of how to evaluate the immigration consequences of criminal convictions in the context of both criminal and immigration proceedings.

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.

Dispute Systems Design

Pre/Corequisite: The course will only be open to students who have taken the Mediation Clinic or another skills-based class in mediation, negotiation, or conflict management. Students who have completed equivalent experience-based training in negotiation, mediation or conflict management may seek faculty approval for enrollment in the course on a case-by-case basis.

Recommended Class(es): None

This course focuses on the study and practice of dispute systems design - understanding the structure and design choices made by, and the challenges presented to organizations. This includes examination of court processes and other government or private systems for managing conflict. Dispute systems designers also develop and improve upon mediation and other alternative dispute resolution (ADR) service programs, as well as provide assessments of their appropriateness in various contexts. The knowledge and skills developed in this course are transferable to the emerging needs of practicing attorneys who are more and more frequently called upon as systems designers. Many lawyers, even if they never take the design initiative to lead a project, often serve as stakeholders and representatives of bar or professional associations recruited by systems designers to participate in the design process. This course also enhances the basic mediation and conflict management skills learned in other ADR related courses by application to the dispute system design framework.

Students will be expected to read, write, discuss, critique and participate in simulated exercises. After an overview of dispute systems design theory and principles, students will, through readings, discussions and exercises, study seven actual systems that reflect dispute systems design principles. Then through a series of additional hands-on role plays and simulations, students will have the opportunity to develop systems design skills and work on a mock consulting team during class. Simulations will lead students through the various stages or architecture of systems design, from taking design initiative through assessment, creating processes and systems and implementation. This course also focuses on advanced mediation and dispute systems design topics, including recent developments in neuroscience and their potential impact on dispute resolution, choice architecture and “nudge” principles, the impact of mediator orientations on program design, restorative justice practices, and transformative mediation. The practical and ethical implications of systems design work will also be explored, as well as opportunities for synthesis of systems design skills into legal practice.

The course meets on Wednesday evenings from 6:00pm to 8:00pm. Due to the intensive and interactive nature of the seminar, attendance at all class sessions is mandatory. Grades will be based on class participation including teamwork, discussions and simulations, journal writing assignments analyzing class consulting team simulations and applying dispute systems design principles (50%) and a 10-20 page paper a topic of the student’s choice (i.e. proposing a new or revising an existing system) incorporating the structure and skills of dispute system design learned throughout the course. (50%).

Environmental Justice

Pre/Corequisite: None

Recommended Class(es): None

Environmental justice seeks to remedy and prevent environmental harm 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:** Students must have completed at least one other IP-related course beforehand (e.g. Patent Law; Copyright; Trademark Law; Creativity, Innovation, and Intellectual Property; or Intellectual Property Enforcement)**Recommended Class(es):** None

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 processes. 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.

International Peacemaking**Pre/Corequisite:** None**Recommended Class(es):** None

The purpose of this course is to understand the different tools of conflict resolution as applied to external as well as internal disputes and conflicts. The case study of Israel will be used for the course focusing on the Israeli-Palestinian conflict, coexistence projects, Israeli Arab relations, and the integration of dispute resolution into the Israeli legal system.

The class will meet over the course of the entire year and will potentially travel to Israel to study these issues in person during the second week of the January Winter session.

International Investment Arbitration**Pre/Corequisite:** None**Recommended Class(es):** None

Cross-border investments have become a critical aspect of the global business landscape and economic development. Historically, disputes between foreign investors and host States remained unresolved or were otherwise resolved through national courts or coercive means. However, in the mid-20th century, international investment protection emerged to provide a neutral forum to solve investor-State disputes in the form of international investment arbitration.

This course on investment arbitration delves into the substantive protections afforded by bilateral and multilateral agreements to foreign investors, the jurisdictional requirements for those investors to access such protections, and how jurisdictional requirements and substantive protections have been addressed by tribunals in an increasing amount of investor-State cases throughout the past two decades. The course also offers a comprehensive overview into the challenges that the system is currently confronting, as well as reforms to the investor-State arbitration system that are already underway or contemplated for the future. By combining both theoretical and practical elements, this course will equip future lawyers with the knowledge and skills necessary to deal with investment protection issues, either in international corporate transactions or disputes.

This course will count towards the Certificate in Dispute Resolution offered by the Kukin Program for Conflict Resolution.

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.

Jewish Law Jurisprudence: From the Bible through the Rabbis to the Israeli Supreme Court

Pre/Corequisite:

Recommended Class(es):

Jewish law is among the most, if not the most, ancient legal systems in the world, which remains active in contemporary times. Moreover, doctrines and principles of Jewish Law jurisprudence have had a lasting influence on the Western legal tradition. While some of its innovations have been incorporated into general legal thought to a degree that they seem obvious to most, other conceptions of Jewish Law remain unique, and are fundamentally diverge from prevailing legal theories. Thus, the contribution of Jewish Law jurisprudence is not merely historical; it retains the power to challenge our legal world by exposing new directions in legal thought.

In this course, we will focus on two of the formative periods of Jewish law – biblical law and rabbinic law – as well as the transition between these periods. We will highlight some of the main legal themes which were formed and crystallized during these periods, and which still possess the power to provoke creative legal thought even today.

The purpose of the course is to analyze Jewish law jurisprudence on these topics, while comparing it to contemporary jurisprudential theories. In this manner, we shall attempt to provoke new directions of thought on familiar legal issues.

Law and War: Contemporary Issues

Pre/Corequisite: None

Recommended Class(es): International Law

Does law continue to operate in times of war? This seminar will examine the knotty legal questions underlying current wartime debates, with a primary focus on modern conflicts facing the United States in the post-9/11 era. A complex architecture of international and domestic law governs states and state actors during wartime. Evolving threats, new technologies, and domestic politics have tested these legal frameworks, and the domestic and international laws of war continue to adapt to challenges to their relevance and viability. Topics for discussion may include, among others: Cyber operations, Guantanamo detention, targeted killing and drones, interrogation and torture, humanitarian intervention in conflicts like those in Libya and Syria, and the scope of the U.S. President's constitutional and statutory authority to wage war. This seminar will require writing regular reaction papers as well as a government decision-making simulation at the end of the semester.

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 an 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 an 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: None

Recommended Class(es): None

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): None

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 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%).

Transgender and Reproductive Justice

Pre/Corequisite: None

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.