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NOTE: All of the 3 First-Year Electives are offered for 3 credits but several of the upper-year courses are offered for 4 credits.
CRITICAL LEGAL THOUGHT (L6173)

Professor Katherine Franke

Oliver Wendell Holmes wrote in 1871 that "torts is not a proper subject for a law book." One would be hard pressed to show that any of the courses in the first year foundational curriculum contain a coherent body of doctrine that can be logically deduced from fundamental principles, instead their content is best defined by reference to the boundaries of adjacent areas of law. Is nuisance a problem of torts or of property? What frame of analysis - torts or contract - should be brought to bear on the tortious interference with contract? The concepts "public law" and "private law," as well the notions of "canon," "field" and "foundational curriculum," all rest on a set of unstated premises for their integrity. Certain legal concepts, forms of reasoning, and values are privileged, while others are marginalized and devalued, if not ignored.

Critical Legal Thought will retrace and re-examine the courses that make up the foundational curriculum with a critical eye toward uncovering their hidden assumptions, unstated premises, and leaps of faith that give much of the law we teach and learn a "taken for grantedness". This course will introduce second-semester, first-year law students to a range of critical approaches to law with the goal of giving them tools for testing legal arguments, assertions of legal pedigree, and the underlying normative premises that often make legal outcomes seem both just and inevitable.

In the first year of law school we teach you to “think like a lawyer” – thinking of law as rules and judges as umpires is part of what that means. This “official story” of law includes the following notions:

- Law is a system of rules, as distinct from morality, that are applied to a set of facts that come before judges, so as to produce results that are predictable, consistent, and don’t, ex ante, favor one party or team over the other.
- Judges are like an umpire who calls a runner out a first based not because he likes the runner, thinks he deserves to be safe, or thinks his team needs a break, but instead applies a rule: safe if he got there before the throw, out if he was too late.
- Law and rules are the best alternative to violence and vigilantism; indeed law itself is not violent.
- Emotion, empathy, compassion, or forgiveness should not move judges in deciding how to apply a legal rule to a particular factual circumstance.
- There are “right answers” to every legal dispute.
- Optimally, considerations of race or gender should be banished from a modern notion of law.
In Critical Legal Thought we’ll explore readings that explain the official story law tells about itself, and what we’re teaching you about what it means to be a lawyer. Then we’ll read critiques of that story, drawing from readings in:

- Legal realism
- Law & Society
- Empirical Legal Studies
- Critical Legal Studies
- Feminist Theory
- Critical Race Theory
- Queer Theory

We’ll do this through readings in each of your first year foundational courses, thus giving you the critical tools to evaluate what it means to get a “legal education,” and what it means to be governed by a system of “rules not men.”

Students will be evaluated based on class participation, short papers, and a final take-home examination.

The syllabus for the class is available here: http://web.law.columbia.edu/gender-sexuality/faculty/katherine-franke/critical-legal-thought-2013 (to be updated shortly)
LAW AND CONTEMPORARY SOCIETY (L6177)

Professor Eben Moglen

For most of the last thousand years English-speaking lawyers have completed their educations, gotten a license to practice, and set out to acquire clients. For the last few decades, graduates of a few “elite” law schools have traded their licenses for jobs in large law firms, where young lawyers earned large salaries doing socially unproductive work on behalf of a few wealthy corporations and individuals, often to the explicit disadvantage of the rest of society.

Now that system is breaking down. The availability of socially parasitic, highly remunerated employment not making justice can no longer be taken for granted. Many people are frightened and upset by this fact. You shouldn’t be. The early 21st century is a wonderful time to be getting a law license and building a law practice, if you’ve been well trained to take advantage of your opportunities.

The problem is that you’re paying a great deal of money but you’re not certain to be well-trained. People can’t teach what they do not know. You require teachers who understand how to build law practices under 21st-century conditions, and who can help you overcome the fear of non-conformity, to find a path for yourself in a school where the majority of your classmates, and a majority of their teachers, are still living in the past.

In this course, I attempt to offer you what a first-year student who wants to have her own practice, steer his own boat, do well by doing good, ought to be taught. Our focus is on two questions: how to think creatively in law school, and how to think creatively about your future as a lawyer. The two topics are directly related: understanding how to create in the medium of the law is essential if you are to create agile, socially beneficial, economically prosperous law practices, in partnership with others or on your own. We don’t study doctrine, we study lawyering: what it’s about, how it is changing, how to find your own voice in the profession you are joining, rather than signing up as a cog in a failing machine.

The course wiki is at http://moglen.law.columbia.edu/wiki/LawContempSoc

There you can read the writing of past students, see what we read and discuss, judge whether it might be helpful to you. I’m happy to answer your questions; email moglen@columbia.edu.
LAW AND NEOLIBERALISM (L6184)

Professor Thomas Kendall

This interdisciplinary course will examine the impact of neoliberalism on contemporary legal thought and practice. Neoliberalism refers to a body of ideas regarding the relationship between capitalism and democracy. Neoliberal theory holds that in a capitalist democracy markets rather than the state should serve as the preferred medium for resolving problems of political economy. Some of its proponents maintain more broadly that neoliberal market rationality provides a model and a mode of governance which can and ought to be extended beyond the economy into non-economic and non-market domains of public and private life. Focusing on cases, statutes, regulations and other materials, class discussions will explore the neoliberalization of contemporary law across a number of fields. These include, inter alia, contracts, torts, civil procedure, administrative law, criminal law and criminology, constitutional law, health law, anti-discrimination law, intellectual property and family law. In addition to issues of substantive law, the course will consider the uses of neoliberal theory as an organizing framework for understanding and addressing contemporary problems in legal sociology, legal education, law and the professions.

By the end of the semester, students enrolled in the course can expect to acquire (1) a working knowledge of the history and core ideas of neoliberal theory in the U.S. and abroad; (2) a solid understanding of the influence neoliberal concepts and categories have had in contemporary U.S. law and legal theory; (3) the ability to identify and engage critically with the enabling assumptions, modes of analysis and strategies of argument that characterize neoliberal legal method in several areas of public and private law; and (4) a values-based experiential perspective on the study and practice of law in the age of legal neoliberalism.
LAWYERING FOR CHANGE (L6369)

Professor Susan Sturm

This course will explore how lawyers advance social and institutional change both using the traditional model of litigation and moving beyond it. By linking theory and practice, the class will explore innovative roles and strategies for addressing pressing social problems and advancing social justice in challenging times. Over the course of the semester, we will explore a variety of theories of change currently in use, and link theory to practice by (1) systematically pairing ideas and research with concrete decisions, actions, and strategies; (2) forming working groups organized around issue or problem areas to collaboratively assess and apply the theories of change explored, (3) meeting with thoughtful practitioners involved in advancing change and (4) conducting several workshops designed to build knowledge and skills needed to put that theory of change into practice.

The class will cultivate the strategic capacity lawyers need to effectively collaborate and address difficult and complex problems. The course will introduce a systems approach to addressing complex problems, and a variety of cutting edge change frameworks and strategies for advancing change through law. It will address strategies for collaborative change as well for addressing intractable change and the backlash that predictably accompanies transformational change. We will consider the role of judicial intervention in producing mobilization and counter-mobilization. By developing practical tools informed by theory, students will be enabled to produce their own theories of change and plans for their roles as change agents.

The class is a first year elective. One-third of the class will include upper level students, and LLM students, to build a “cross-generational” learning community and allow for different perspectives reflecting students at different points in their professional development.

The Lawyering for Change Class Website
The hub of communication for the class will be the class website. The syllabus, assignments (other than the books), readings, and announcements will all be posted on the website. The website will also provide the space for ongoing dialogue and commentary. Each class member has a page. In addition, the Assignments and Reflections blog provides a space for dialogue before and after each class. We will also be inviting interactive commentary in class, using MoPads that will then be linked to the course website.

Syllabus, Speakers, Assignments, and Class Materials
Last year’s syllabus is posted on the course website, which you can access at http://lawyeringchange2015.weebly.com/syllabus.html. The blog posts by class members are not publicly accessible (they are password protected) but you will be able to see the course overview, the syllabus and the set-up of the website. The syllabus will be revised slightly this coming year to reflect lessons learned from last year’s experience, but the overall structure and content of the class will remain in place.

You will see that a variety of outside guests will be coming to class. Each has been invited because they are engaged in change work, creative, thoughtful about their strategies and goals, and knowledgeable about lawyers' roles in advancing change.

This year I plan to schedule two workshops that will be 4 hours and will take the place of the regularly scheduled sessions, which will be used as times for students to do collaborative work preparing for the workshop.

Collaboratories
Students will be assigned to a collaboratory, which will assigned at the end of the first week of class based on
the survey students will fill out for the first day of class. These collaboratories will be asked to write reflection pieces and comment on each others' reflection pieces at the same time, and will periodically do group work together in and out of class.

**Class participation, reflections, writing assignments and assessment**

Students are encouraged to participate actively, both in-class and through communications on line with the class and their collaboratories.

**Reflection pieces:** Students will write reflection pieces once weekly. Responsibility for writing reflection pieces will rotate by collaboratory. The schedule will be posted over the weekend, and play a pivotal role in building an intellectual community in the Lawyering for Change classroom. Students will be expected to read the reflections of everyone in their collaboratory, and to comment on at least two other reflection pieces either before or after class.

**Survey** Students will be asked to complete a survey that will provide a baseline for their thinking and also provide me a basis for identifying shared interests as the basis for forming the collaboratories. The survey is repeated at the end of the semester so students can get a sense of how their thinking evolves.

**Political autobiography:** Students will be asked to write a political autobiography. This writing exercise, assigned toward the middle of the semester, invites students to reflect on theories of change and roles shared with the class up to that point, and on the knowledge and skills you hope to cultivate so that you can be effective as a change agent.

**Final paper:** For the final project, students may either (1) write a 10 page overview reflection about the themes of the class, and how they relate to their own theory of change and conception of their role as a change agent OR (2) pick a lawyer or change agent either that came to class or that they know, research that person’s work, and write a 10 page paper critically analyzing their theory of change, drawing on the readings, class discussion and reflections. Those who pick option 2 are eligible for minor writing credit.

**Lawyering for Change Blog**

The Lawyering for Change class is part of a Lawyering for Change Podcast series, just launched by the Center for Institutional and Social Change (which I direct), in close collaboration with students from last year’s Lawyering for Change. If you want to hear the interviews of two speakers who came to class last year, the first two podcasts are now available on the Center’s website, www.changecenter.org.
# A Note to First Year Students

The Faculty has approved opening a limited number of seats to 1L students in the nine (9) upper-level courses listed below. These courses were selected because they present alternative perspectives or methodologies of the sort the First Year Electives are intended to offer. When pre-registering you must rank all 13 elective offerings (the 4 1L Electives and the 9 upper-level courses listed below). If you are interested in any one of these upper-level offerings, you should give them very high priority as only a limited number of seats will be available for 1L’s. If you are not interested in the upper-level courses, assign them low priority.

<table>
<thead>
<tr>
<th>Course ID</th>
<th>Course Title</th>
<th>Pts</th>
<th>Instructor</th>
<th>Days Offered</th>
<th>Start-End Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAW- L6204 -001</td>
<td>Administrative Law</td>
<td>4</td>
<td>STRAUSS, PETER</td>
<td>MTW</td>
<td>1:20 PM-2:40 PM</td>
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<tr>
<td>LAW- L6213 -001</td>
<td>American Legal History</td>
<td>3</td>
<td>PONSA, CHRISTINA</td>
<td>TR</td>
<td>1:20 PM-2:40 PM</td>
</tr>
<tr>
<td>LAW- L6410 -001</td>
<td>Constitution and Foreign</td>
<td>3</td>
<td>DAMROSCH, LORI</td>
<td>TR</td>
<td>1:20 PM-2:40 PM</td>
</tr>
<tr>
<td>LAW- L6231 -002</td>
<td>Corporations, Sec 2</td>
<td>4</td>
<td>JACKSON, ROBERT</td>
<td>TWR</td>
<td>1:20 PM-2:40 PM</td>
</tr>
<tr>
<td>LAW- L6241 -001</td>
<td>Evidence</td>
<td>4</td>
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<td>MTW</td>
<td>1:20 PM-2:40 PM</td>
</tr>
<tr>
<td>LAW- L6256 -001</td>
<td>Federal Income Tax</td>
<td>4</td>
<td>RASKOLNIKOV, ALEX</td>
<td>TWR</td>
<td>1:20 PM-2:40 PM</td>
</tr>
<tr>
<td>LAW- L6273 -001</td>
<td>Japanese Law &amp; Legal Institutions</td>
<td>3</td>
<td>MILHAUP, CURTIS</td>
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<td>1:20 PM-2:40 PM</td>
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<td>Law and Development</td>
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<td>LAW- L6912 -001</td>
<td>Transnational Litigation</td>
<td>3</td>
<td>BERMANN, GEORGE</td>
<td>TR</td>
<td>1:20 PM-2:40 PM</td>
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</tbody>
</table>
ADMINISTRATIVE LAW (L6204)

Professor Peter Strauss

Administrative Law is the Civil Procedure of the regulatory state, and relates to courses on regulation in roughly the same way as Civil Procedure relates to Contracts, Property, and Torts. Regulation is a major source of legal obligation and enforcement in American society, whether conducted by the Environmental Protection Agency, the Securities and Exchange Commission, or the New York City Board of Health. The course is concerned with the procedures by which official bodies other than legislatures, courts and prosecutors are governed and reach conclusions in their dealings with the public. We study both the procedures agencies themselves employ, and their oversight relationships with the legislature, the chief executive, and the courts. As government assumes greater control over human activity, lawyers need to know the options available for dealing with them as client, as adversary, or as a fact of public life. The constitutional framework for government is as important in this respect as statutory provisions, and students should expect considerable attention to both.

Experience has shown that first year students interested in government functioning can expect to do well in the course, which addresses major elements of the legal order otherwise missing from the first year curriculum. Its principal emphasis is on the major federal agencies, the procedures they employ, and the opportunities available for members of the public (regulated industry or interested citizen) to understand, influence, or control their actions. The course attempts to place agencies in their full operating environment, and stresses relatively unfamiliar institutions (investigations, rulemaking, internal functioning and political controllers) over familiar (adjudications and judicial controls) ones. Thus, we give greater attention to agency rulemaking and information handling, which involve unfamiliar procedures, than to agency adjudication, which approximates the familiar judicial model. These are contexts in which political controls have considerable importance, and contemporary reshapings of those controls will be important in the course. Overall, students should expect the course to stress the view from inside and outside agencies, and not judicial litigation as such.

As we live in an information age, we will give considerable attention to agency uses of electronic media, their increasing importance for agency action, and public awareness of and participation in agency processes. As in past years, I will ask each student to choose an agency of interest to her, and to follow it (and its executive branch overseer, the OMB Office of Information and Regulatory Analysis) on the Internet throughout the term. This serves both as a means of "grounding" the course and as a basis for considering the likely impact of the Internet on governmental functioning. I expect to encourage collaborative development of class notes posted to Courseworks (freeing you on most days to listen more and transcribe less) and to encourage you as well to earn partial credit in the course by following a live agency rulemaking on the government website devoted to that activity and submitting comments in it, as our study of rulemaking concludes at about the time of spring break.

The course materials are Strauss, Rakoff, Farina, and Metzger, Administrative Law: Cases and Comments (11th. Ed., 2011) and supplementary materials to be supplied.
This course will take up selected topics in the history of American law, from the colonial era to the latter twentieth century, though with a primary focus on the nineteenth century. We will examine the role of law and legal institutions in their historical context, rather than focusing on the development of legal doctrines. Topics will include major legal debates of the Founding era; the roles of slavery, territorial expansion, immigration, and white supremacy in nationbuilding; the emergence of the modern legal profession; the rise of the U.S. Supreme Court; and more. Throughout, we will ask a series of broad thematic questions concerning the relationship between law and society, and the significance of studying the history of law.

Grades will be based on a series of short papers, a final essay, and class participation
CORPORATIONS (L6231)

Professor Robert Jackson

This is the basic course in U.S. corporate law. The course considers the role of law in structuring the relationships among shareholders, management, and other stakeholders in modern business corporations. It also considers alternatives to the corporate form and the reasons entrepreneurs may prefer a particular form. The course accordingly starts by covering the principles of agency law and partnerships. These concepts serve as the foundation upon which the rest of the course builds.

A major part of the course is examines the fiduciary obligations of directors and controlling shareholders, with an emphasis on the law of Delaware. The course addresses general fiduciary obligations in addition to considering the role of management and directors in particular contexts, such changes in corporate control. The course also provides an introduction to the laws governing the proxy process, securities fraud, and insider trading. The materials include state corporate codes, judicial decisions, and federal regulations.

In addition to introducing students to the relevant bodies of law, the course addresses the business and policy considerations at stake in various contexts. Throughout, there is an emphasis on the role of transactional attorneys in advising clients facing particular challenges and decisions.

NOTE: First-years are welcome to take Corporations as their elective. However, Professor Jackson wishes to note that the experience of previous first-years who have done so indicates that the class, as a four-credit alternative, involves substantially more work than many other electives. We caution students considering this option to weigh their commitments carefully before choosing this approach. Professor Jackson would be delighted to meet with any students weighing these alternatives.
CONSTITUTION AND FOREIGN AFFAIRS (L6410)

Professor Lori Damrosch

In this course we address the division of executive and legislative powers in foreign affairs, the different checks and balances applicable, and the relevance of federalism. We cover both the particular applications in foreign affairs of general issues (such as executive privilege) and special foreign affairs issues, including: the scope of the treaty power and the role of the Senate; the power of the President to make executive agreements on his own authority and their status as law in the United States; the authority of the President to deploy the armed forces of the United States and Congressional efforts to control such Presidential deployment. We also consider the special role of the courts, as reflected in applying international law and in the development of doctrines like "Act-of-State" and the political question doctrine. Issues of individual rights in foreign affairs include the application of the Bill of Rights when the national security is implicated, applicability of the Constitution abroad, and the rights of aliens.

Take-home examination, or, upon consultation with the instructor, a research paper in lieu of an examination.

Concerning the availability of this upperclass course as a 1L elective in Spring 2016: Students will obtain perspectives on the foreign relations of the United States, U.S. engagement with international law and international institutions, and national security law. The readings and class discussion will include foreign and comparative perspectives to enrich the understanding of U.S. constitutional approaches. The course regularly draws foreign LLM students who have not had the opportunity to study U.S. constitutional law, as well as graduate students from outside the law school; thus, 1Ls who will be concurrently studying Constitutional Law in the foundation curriculum are not at a disadvantage.
EVIDENCE (L6241)

Professor Dan Richman

This course explores how facts get proved in court in civil and criminal actions (with a slight bias toward the criminal side). The focus will be on the Federal Rules of Evidence. Considerable time will be spent on the central concepts of "relevance" and "prejudice," and an extended treatment of the hearsay rule and its many exceptions will give the class practice in refining theories of evidentiary use and misuse. The interplay between the hearsay rule and the Constitution will also be examined. In addition, we will consider character evidence, the impeachment of witnesses, and the introduction of physical and expert evidence. The course uses a mix of problems and cases, and requires a degree of class participation. I will call on students.


Recommended Study Aid: Arthur Best, Evidence: Examples and Explanations (Aspen, 8th ed. 2012). Note: There is virtually an industry of study aids associated with this course, and my only claim is that I’ve looked at this one and think it’s good. But you certainly don’t have to get it.

You can also keep up with breaking Evidence Law developments via two blogs:
http://lawprofessors.typepad.com/evidenceprof/
http://www.confrontationright.blogspot.com/

You are required to have a set of the Federal Rules of Evidence (FREs) and to bring it to every class. There are at least 2 ways you can get these: You can buy the edition of the FREs published by Aspen or a variety of other legal publishers, and pay a lot of money. Or you can get a copy of these public documents for free. Either way, make sure you have a copy of the latest version of the Rules – the version effective December 1, 2013. This version reflects a significant “restyling” program and differs in a number of non-trivial ways from older versions. (Keep the fact of this “restyling” in mind as you read cases involving prior versions.)

A complete set of the current rules, without the Advisory Committee notes, is available at http://federalevidence.com/downloads/rules.of.evidence.pdf

As we cover a rule, you must also read the corresponding Advisory Committee Notes. (The casebook sometimes has excerpts from these Notes but often does not). A complete set of Advisory Committee Notes can be found at http://elangdell.cali.org/content/federal-rules-evidence-2014

The CALI site (available to CLS students) also has a number of exercise you can do once we get to topics like hearsay.
Unit: page references (unless otherwise noted) are to Sklansky (3d ed); FRE cites are to the Federal Rules of Evidence. Note: Additional materials will be assigned, including any Confrontation Clause Cases the Supreme Court sees fit to decide during the semester.

1. Introduction to Evidence Law
   pp. 1-16; FRE 101, 102, 103, 104(a); 611

2. Relevance
   A. Relevance and Irrelevance
      pp. 17-24; FRE 401, 402
   B. Probative Value and Prejudice; Conditional Relevance
      pp. 24-42; FRE 104(b), 105, 403

3. Hearsay
   A. Introduction to Hearsay; Nonhearsay Uses of Out-of-Court Statements
      pp. 43-62; FRE 801(a)-(c), 802
   B. Implied Assertions
      pp. 62-71
   C. Hearsay and Confrontation
      pp. 72-98
   D. Hearsay Exemptions: Prior Statements by Witnesses
      pp. 98-106; FRE 801(d)(1)
   E. Direct, Adoptive, and Authorized Admissions
      pp. 106-20; FRE 801(d)(2)(A)-(C), 106
   F. Agent, Employee, and Co-conspirator Admissions; the Bruton Rule
      pp. 120-45; FRE 801(d)(2)(D) & (E)
   G. Hearsay Exceptions: Spontaneous and Contemporaneous Statements
      pp. 145-54; FRE 803(1) & (2)
   H. State of Mind
      pp. 154-67; FRE 803(3)
   I. Injury Reports; Recorded Recollection
      pp. 167-82; FRE 803(4), 612, 803(5)
   J. Business Records
      pp. 182-95; FRE 803(6) & (7)
   K. Public Records
      pp. 195-218; FRE 803(8) - (10)
   L. Former Testimony
      pp. 218-29; FRE 804(a) & (b)(1)
   M. Dying Declarations; Declarations Against Interest
      pp. 229-42; FRE 804(b)(2) & (3)
   N. Forfeiture by Wrongdoing; Residual Exception; Review
      pp. 243-57; FRE 804(b)(6); 807
   O. Hearsay and Due Process
      pp. 257-68
4. Character Evidence
   A. Rule and Exceptions; Methods of Proving Character
      pp. 269-87; FRE 404(a); 405; 803(21)
   B. Other Uses of Specific Conduct; Character and Habit
      pp. 287-313; FRE 404(b); 406
   C. Sexual Assault and Child Molestation
      pp. 314-40; FRE 412, 413-415

5. Other Forbidden Inferences
   pp. 341-68; FRE 407, 408, 410, 409, 411

6. Impeachment and Rehabilitation
   A. Introduction; Character for Untruthfulness; Prior Convictions
      pp. 395-415; FRE 607-610, 806
   B. Prior Inconsistent Statements
      pp. 415-24; FRE 613, 801(d)(1)
   C. Bias and Incapacity; Specific Contradiction
      pp. 424-39
   D. Rehabilitation
      pp. 439-60; FRE 608; 801(d)(1)

7. Competence
   pp. 461-75, 477-84; FRE 601, 602, 603

8. Opinions, Experts, and Scientific Evidence
   A. Lay Opinions; Expert Testimony
      pp. 503-21; FRE 701, 702, 703, 704, 705, 706
   B. Judicial Screening of Party-Approved Experts
      pp. 521-43
   C. DNA Testing; Traditional Forensic Science
      pp. 597-615; 615-624
      Williams v. Illinois (US)

9. Physical Evidence
   A. Authentication; Best Evidence Rule
      pp. 703-24; FRE 901-903; 1001-1008
   B. Demonstrative Evidence
      pp. 724-35
FEDERAL INCOME TAXATION (L6473)

Professor Alex Raskolnikov

This course introduces students to key concepts, rules, and policy tools used in designing, interpreting, and reforming the federal income tax. The concepts include time value or money, arbitrage, incidence, and public choice considerations. The rules cover determination of gross income, deductions, and capital gains and losses. The policy analysis focuses on efficiency, fairness, and administrability of the tax system. The course also introduces the students to some moderately complex statutory provisions with an aim of helping the students to develop technical skills necessary in many areas of legal practice.

The exam is half essay, half multiple choice.

JAPANESE LAW & LEGAL INSTITUTIONS (L6273)

Professor Curtis Milhaupt

This course provides a critical introduction to the institutions and actors that comprise the Japanese legal system. Throughout the course, law is examined within the larger context of Japanese social, political, and economic institutions.

The casebook, The Japanese Legal System: Cases, Codes and Commentary (Milhaupt, Ramseyer & West, 2d ed. 2012), and instruction are in English; Japanese language ability and knowledge of Japan are not prerequisites. Students with no prior exposure to Japan frequently enroll in the course and are at no disadvantage in terms of evaluation. The final grade for the course is based on an examination, two short reflection papers, and class performance.

All references below are to the aforementioned casebook. The syllabus is organized by subject matter rather than by class period. Reading assignments for each class will be posted in advance. A small amount of additional reading will be posted to Courseworks from time to time. A special feature of this course is the CLS-University of Tokyo faculty exchange program. Under this program, two professors from U-Tokyo Law School guest lecture in the course for four sessions each. This semester, we will host Prof. Yoshimasa Furuta (dispute resolution) and Prof. Kentaro Matsubara (Asian legal history). The order and content of our regular sessions may be adjusted in light of the topics addressed by the visitors.
I. Introduction
A. The Civil Law Tradition pp. 30-42
B. The Historical Context pp. 1-30; Meiji Constitution pp. 825-831

II. The Legal Profession
A. Structure, Education, Training pp. 43-80
B. Domestic Law Firms and Foreign Competition pp. 100-107
C. Lawyer Scarcity: Comparative Approaches pp. 107-129
D. The Judiciary pp. 129-165

III. Dispute Resolution
A. Disputes in Modern Japan pp. 166-176; 432-440
B. Competing Explanations pp. 176-200
C. Institutional Factors pp. 200-213

IV. Constitutional Law
A. Origins pp. 214-228; Constitution of Japan pp. 832-844 2
B. The Military pp. 228-248
C. Freedom of Religion and Thought pp. 249-273
D. Minority Groups pp. 274-291; 296-322

V. Contracts
A. Contract Practice pp. 323-334
B. Contract Law pp. 334-345
C. Comparative Perspectives pp. 345-354

VI. Torts
A. Core Concepts pp. 355-368; Civil Code arts. 709, 715, p. 845
B. Medical Malpractice pp. 378-416
C. Environmental Law pp. 417-440

VII. Criminal Law
A. Crime in Japan pp. 474-503
B. Law Enforcement Institutions pp. 510-526
D. Citizen Participation pp. 541-555
E. Death Penalty pp. 555-559

VIII. Family Law
A. The Traditional Family pp. 560-576
B. Defining the Modern Family pp. 587-600
C. Divorce pp. 600-611

IX. Employment Law
A. Hiring, Work Conditions, Firing pp. 619-652; Civil Code arts. 1, 1-2, 90 p. 845
This course will examine the various roles that law and legal institutions play in economic, social, and political development in both theory and practice. Its goal is to introduce students to some of the canonical writings on the subject and to critically examine ongoing debates in policy circles and academia by questioning their theoretical foundations and practical implications. While much of the law and development literature focuses exclusively on developing countries, this course seeks to place the debate about the role of law in development into a broader context and serves as an introduction to comparative legal institutional analysis. The course will discuss the meaning of “development”, specifically the institutional prerequisites for “development as freedom” (Sen) on one hand, and development as “economic growth” on the other and use examples from developed economies, emerging markets, and developing countries for illustration. Materials will be drawn from law and the social sciences and will be selected to give students a comprehensive overview of different perspectives. This is not a class in “how to do” development, but to deepen our understanding of development and how law relates to it.
Summary: This course essentially takes the course in U.S. civil procedure and projects it onto the international plane. This is appropriate for two main reasons.

First, an ever-larger segment of litigation in U.S. courts has a transnational dimension, whether because

- one or more parties are non-domiciliaries,
- the personal and subject matter jurisdiction of a U.S. court may readily be called into question,
- significantly different issues arise on motions to stay or dismiss on forum non conveniens grounds,
- the cause of action arises under foreign as distinct from domestic law,
- the applicable law is foreign or international rather than domestic law,
- underlying dispute may arguably be subject to an international arbitration agreement,
- the applicable law is apt to be an international treaty,
- a foreign State has a compelling interest in the outcome of U.S. litigation,
- transnational litigation is apt to raise questions relating to sovereign immunity to suit, to liability, or to the execution of judgments,
- the evidence needed to litigate a case properly is situated on the territory of a foreign state that is measurably less hospitable than our courts are to U.S.-style discovery,
- the only effective interim or provisional relief in connection with a U.S. action can be had from a foreign court,
- a foreign court or a litigant before it may be seeking assistance in the form of interim relief from a U.S. court,
- a U.S. judgment will require recognition or enforcement in the courts of another country,
- the U.S. action is one to recognize or enforce a foreign country judgment rendered under circumstances foreign – and possibly antagonistic – to U.S. procedural usage,
- there will commonly be actual or potential parallel litigation in the courts of another country,
- a U.S. court may be tempted to issue an anti-suit injunction to prevent the maintenance of seemingly abusive litigation in a foreign court, or
- other reasons

Second, the ground rules covering each of the above-mentioned issues is apt to be very different from those governing the analogous issue in domestic litigation.
Third, the sources of applicable law and practice far transcend the Federal Rules of Civil Procedure. Indeed there are whole bodies of applicable law that simply never make their way into a domestic Civil Procedure course: foreign law, comparative law, international law, treaties, federal legislation, and conflict of law rules, among others.

Fourth, obviously not all transnational litigation takes place in U.S. courts. Even apart from international arbitration, transnational disputes commonly make their way to the courts of foreign jurisdictions. It is necessary to pay some attention to the distinctive ways in which foreign courts deal with litigation of a transnational character. The U.S. litigation practitioner will often find his or her cases coming before a judge whose treatment of transnational disputes is measurably different from the manner to which he or she is accustomed. The European Union in particular has a very advanced transnational litigation regime that bears examination from both an academic and a practical point of view.

Fifth, the course typically attracts a significant number of students from abroad (notably foreign LL.M. students), who bring valuable and unaccustomed comparative law insights to bear on the course.

For all these reasons, the course equips litigation-minded students for the interconnected world in which litigation increasingly finds its place. It is part of a litigation lawyer’s professional responsibility to become familiar with the issues that arise in this course and the manner in which those issues are approached.

The course is a 3-credit course, meeting twice a week. There is a 3-hour open-book proctored exam at the end of the course. Students’ grades are based on those examinations, graded anonymously, with the possibility of an enhancement of grades due to quantity and quality of class participation.
Dear First Year Students:

Pre-registration for the Spring 2016 First-Year Electives will open at 10 am EST on Monday, November 2, and will close promptly at 5 pm EST on Friday, November 6. During this period you will be able to select from a list of 13 courses: 4 First-Year Electives and 9 upper-level courses.

The upper-level courses present alternative perspectives or methodologies of the sort the 1L electives are intended to offer. A limited number of seats for 1L’s in the upper-level courses was approved by the Faculty, so students interested in any of the 9 upper-level courses should give them high priority in their rankings. The 1L electives and the 9 upper-level classes are scheduled so that they will not conflict with any of your other 1L foundation courses (Constitutional Law, Contracts, Criminal Law, Property, Legal Practice Workshop II).

**TO PRE-REGISTER FOR SPRING 2016 ELECTIVES:** To access the 1L Elective pre-registration application, log in to Lawnet at [http://lawnetportal.law.columbia.edu/web/registrar/1l_electives](http://lawnetportal.law.columbia.edu/web/registrar/1l_electives).

You must rank all thirteen (13) elective offerings in order for your pre-registration to be completed. If you are interested in being considered for one of the upper-level electives, you should give them very high priority since seats will be limited (between 5-15 seats in each class). If you are not interested in the upper-level courses, assign them low priority. A course lottery will be run and the results will be available by the end of the December exam period, when Spring 2016 schedules for all students will be posted in Lawnet.

**NOTE for students who do not make their selections by the close of the 1L elective pre-registration period:** First-year students who do not finalize their elective pre-registration before 5 pm on Friday, November 6, will not be included in the lottery and thus will not receive any priority for an elective. They will be registered for an elective that has available seats after all students who pre-registered are placed. You are advised not to leave your elective pre-registration for late in the afternoon on Friday, November 6, since technical or connectivity issues may prevent you from completing your pre-registration before the 5 pm deadline.

Please let us know if you have any questions.

The Staff of

Registration Services
William and June Warren Hall
Room 500
(212) 854-2668