

# POSC 380

## Introduction to Law

Spring 2003

### Course Syllabus

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**Class Location: SMI 218**

**Time: MW 2:30-3:45**

#### I. Description and Objectives

This course has three major objectives. The first is to provide an introduction to the fundamental elements of the American legal system – (1.) the federal and various state court systems; (2.) attorneys, judges, and juries; (3.) the processes surrounding civil and criminal trial litigation, as well as alternative forms of dispute resolution; and (4.) courts' impact.

The second goal is to provide a more theoretical examination of the relationship between law and politics. Is legal reasoning different than political reasoning? What constrains judges from relying solely upon their personal political preferences? In responding to these questions, political scientists have offered very different answers than law professors and members of the legal community. In this course, we will devote a considerable amount of time to an evaluation of these “insider”/legalist and “outsider”/political science perspectives on judicial decision-making. After reviewing the best arguments for each position, we will ask: Why does the distinction between law and politics matter? What is it about legal reasoning that deserves the special legitimacy so often assigned to it?

The third and final goal is to provide a normative appraisal of these legal institutions and practices. We will be asking big and difficult questions concerning such

issues as (1.) the efficiency of litigation as a means of changing behavior; (2.) the efficacy of litigation as a means to achieve social justice; and (3.) the ability of poor and middle-income Americans to have access to legal representation and the courts.

The course is organized so as to pursue each of these goals in turn. During the first part of the course, you will become familiar with the organizational structure of the American legal system, focusing in particular upon the differences between the federal court system and the varied court systems at the state level. In addition, we will explore the roles played by the key participants in the legal community, lawyer and judges, and we will study in depth the nature of legal reasoning and the credibility of the law-politics distinction.

Following the midterm examination, we will turn to an examination of the civil trial litigation and its alternatives, followed by an evaluation of the criminal justice system. During these weeks, we will divide our energies between (1.) learning about various trends and practices within the legal system, and (2.) evaluating leading efforts to reform these practices.

In the final weeks of the course, we will consider whether and under what conditions courts as institutions can bring about social and political change. This is a big question, one that remains much debated, and to help us tackle it I have assigned a set of readings by some of the best political scientists writing on this topic today. At this point in the course, you will be able to evaluate their arguments regarding the benefits and limits of litigation as an instrument of reform.

## **II. Course Texts**

The following required texts are available for purchase at the UDel Bookstore:

- Lawrence Baum, *American Courts* 5<sup>th</sup> ed. (2001) (“Baum”)
- Lief H. Carter and Thomas F. Burke, *Reason in Law* 6<sup>th</sup> ed. (2002) (“Carter and Burke”)
- Assigned readings are available in a course packet at Copy Maven
- If you are interested in learning more about current legal news stories, you may wish to subscribe to the legal newswire at <http://www.law.com/newswire/>. You will receive a daily summary and links to articles from leading legal newspapers and weeklies.

## **III. Course Requirements and Grading**

- There is a midterm examination, covering both assigned readings and lectures, which is worth 30% of your course grade. The midterm examination is closed book, and includes

short answer identification questions, and 1-2 essay questions. I will provide you with a study guide to help you prepare for the exam.

- You are also required to complete two 5-7 page critical response essays, worth a total of 30% of your course grade. Three essay due dates are listed on the schedule below. I will submit the essay questions/topics one week in advance. You are required to turn in two out of the three essay assignments. You have the option of submitting all three essays, and the two for which you receive the highest grades will count towards your final grade in the course. Please note that on the date that an essay is due, they must be turned in to me (via email attachment, in the department, or to me personally in class) before the start of the class session.

- The closed book, final examination is worth 30% of your course grade. The short identification and essay questions are designed to test primarily the assigned readings and lectures following the midterm examination. However, in your final examination, you will be expected to apply and make use of the issues and material discussed throughout the course. I will provide you with a study guide to help you prepare for the exam.

- Class participation is worth 10% of your course grade. Although many of the course sessions will include lectures, there will be ample opportunity for questions and student comments regarding the assigned readings and lectures. Some class sessions at the end of a unit will be devoted to student feedback and discussion. To help you prepare for these sessions, I will provide you with a “discussion memo” with a series of questions to consider when preparing for an upcoming discussion session.

## **IV. Schedule of Readings and Assignments**

### **A. *DEFINING OUR TERMS***

#### **Introduction and Perspectives**

**Feb. 17:**

- Baum, Ch. 1, pp. 1-19
- Carter and Burke, Ch. 1, pp.1-19

#### **The Structure of the American Legal System**

- Baum, Ch. 2, pp. 20-54

### **B. *THE LEGAL PROFESSION***

#### **Lawyers and the Practice of Law**

**Feb. 19:**

- Baum, Ch. 3, pp. 55-94

#### **The Selection, Tenure, and Oversight of Judges**

**Feb. 24-26:**

- Baum, Chs. 4-5, pp. 95-155
- Should Ideology Matter?: Judicial Nominations 2001: Hearings Before the Subcommittee on Administrative Oversight and the Courts, of the Senate Committee of the Judiciary, 107th Cong., 1st Sess. (2001)  
<http://judiciary.senate.gov/oldsite/hr062601sc.htm>
- Glaberson, "States Taking Steps to Rein in Excesses of Judicial Politicking," *New York Times*, June 15, 2001. (WebCT)
- State Judicial Selection Methods Map  
<http://www.ajs.org/select11.html>

### ***C. THE NATURE OF JUDGING***

#### **Judicial Decision-Making**

**March 3:     \*\*\* Response Essay #1 Due \*\*\***

- Carter and Burke, Ch. 2, pp. 21-34

#### **Statutory versus Common-Law Reasoning**

**March 5:**

- Carter and Burke, Ch. 3, pp. 35-67

**March 10:**

- Carter and Burke, Ch. 4, pp. 68-103

#### **Constitutional Interpretation and the Law-Politics Distinction**

**March 17:**

- Carter and Burke, Ch. 5, pp. 104-126

**March 19:**

- Carter and Burke, Ch. 6, pp. 127-157

<p><b>Midterm examination: Monday, March 24, in-class exam, closed book (covers readings and lectures through March 19)</b></p>
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### ***D. THE SETTLEMENT OF DISPUTES***

#### **The Civil Justice System: Impact, Access, and Reform**

**March 26:     Introduction**

- Baum, Ch. 7, pp. 204-248

**April 7: Access to Justice & the Tort Reform Debate**

- Deborah Rhode, “Too Much Law, Too Little Justice”
- tort reform reading packet (Web CT)

**April 9: Evaluating the “ADR” Revolution**

- mandatory arbitration reading packet (Web CT)

**The Criminal Justice System**

**April 14: Introduction**

- Baum, Ch. 6, pp. 156-203

**April 16: Prosecutorial Discretion and the Death Penalty**

- Alan Berlow, “The Wrong Man,” *The Atlantic Monthly* (Nov. 1999)

**April 21: Sentencing Reform & “Three Strikes” Laws**

- Ryan S. King and Marc Mauer, “Aging Behind Bars: Three Strikes Seven Years Later,” Sentencing Project Policy Report (2001) <http://www.sentencingproject.org/pubs/3strikesnew.pdf>

**The Jury System in American Courts**

**April 23-30:**

- In-class video: Inside the Jury Room
- Munsterman and Hannaford, “Reshaping the Bedrock of Democracy: American Jury Reform during the Last Thirty Years”
- Myers and Griller, “Educating Jurors Means Better Trials: Jury Reform in Arizona”
- Kaye, “A Judge’s Perspective in Jury Reform”

- Schneider, "Jury Deliberations and the Need for Jury Reform: An Outsider's View"

- Fallahay, "A Survey of Jury Reforms: Initiatives, Innovations Abound"

## **E. APPELLATE COURTS AND THEIR IMPACT**

### **Appellate Courts**

**May 5:       \*\*\* Response Essay #2 Due \*\*\***

- Baum, Ch. 8, pp. 249-294

- Carter and Burke Chs. 5 & 6 (review)

### **Courts and Social Change**

**May 12:**

- Baum, Ch. 9, pp. 295-328

- Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991), selections

**May 14:**

- Mather, "Theorizing About Trial Courts: Lawyers, Policymaking, and Tobacco Litigation"

- Reed, "Twenty-Five Years After *Rodriguez*: School Finance Litigation and the Impact of the New Judicial Federalism"

### **Conclusion: "Legigation" and its Limits**

**May 19:       \*\*\* Response Essay #3 Due \*\*\***

- Schuck, "Benched: The Pros and Cons of Having Judges Make Law," *Washington Monthly* (December 2000)