UNITED STATES LEGAL RESEARCH ANALYSIS & WRITING

PURPOSE AND OBJECTIVES:
This course functions as a survey of the United States legal system and introduces the foreign-trained lawyer to the conventions and central texts of United States legal discourse. The United States legal system is distinguished by its unique federal structure and its method of common law argumentation. We will use the signature U.S. legal text – the judicial opinion – as a prism to think about the U.S. court system, sources of legal authority and forming legal argument. The student will develop intentional learning strategies to help them design, craft and evaluate their own legal documents. The main assignment will be to construct an objective legal memorandum in the context of a law firm. We will also review rhetorical theory and techniques of persuasive writing. As a skills-based class, the student should acquire some fluency in U.S. legal research and citation. First principles of good writing will be emphasized, with special focus on the writing process and writing for a legal audience.

MEETINGS AND OFFICE HOURS:
Our seminar will meet each Thursday morning (9:00am sharp!) in Hotung 6005. Please drop in whenever my door is open. I will maintain regular office hours on Thursday afternoons, 1:00-3:00pm.

GRADING AND CLASS EXPECTATIONS:
Class is more educative (and fun) when everyone is well prepared to discuss the assigned readings. The quality of class participation should help to distinguish High Pass candidates. Consistent attendance and satisfactory completion of all written assignments is required to receive a grade of Pass. You are to let me know in advance if you have a legitimate excuse as to why you cannot attend a class meeting. I also expect students to regularly check email & TWEN for updates to our class syllabus.

REQUIRED TEXT:

I also strongly encourage you to purchase our iconic U.S. legal citation manual:

PLAGIARISM:
Common law lawyers cite to legal authority to provide credibility and prestige to their argument, to reference broader conversation on a point of law and – most importantly – to give credit to the original author of a thought or idea. Proper attribution is a core value and formative to the ethical code of the lawyer.

Please be aware that your work in this course is subject to the Georgetown Plagiarism Policy. See 109-10 of the GEORGETOWN LAW STUDENT HANDBOOK OF ACADEMIC POLICIES (Conduct Policies) for more instructive guidance. Feel welcome to approach me about any questions on this topic.
SYLLABUS

Pre-Reading: Chief Justice John Roberts’ introduction to *Sebelius*
*Erie v. Tompkins*
Hoffman & Tyler 1-2, 7-9

WEEK ONE: Introducing the U.S. Legal System (January 19)

Welcome to USLRAW! This week we will review the course design and expectations of the seminar. Our legal writing pedagogy is contextualized within the process and structures of the U.S. legal system. We will discuss the constitutional history of the United States, American Federalism & Empire and the U.S. Court System, as well as the discursive and institutional factors that inform the construction of the Common Law Judicial Opinion. Who is Chief Justice Roberts writing for in his *Sebelius* introduction? Why does audience matter in legal writing? *Erie v. Tompkins* is representative of the delicate federalist concerns that are “perpetually arising” in our politics. The Brandeis’ majority opinion is also a paradigm example of common law analysis. We will deconstruct his use of precedential reasoning, citation to public policy as well as his method of Constitutional argument. Are you surprised by his reference to the academic work of an historian?

Assignment: *Exit Consents in Sovereign Bond Exchanges* (Buchheit & Gulati)
*Van Gemert*
Hoffman & Tyler 15-17, 23-37

WEEK TWO: Federalism in Context; Deconstructing a Case; Sources of Legal Authority (January 26)

This week we will continue our discussion of the Common Law Judicial Opinion, and canvass the unique sources of legal authority in the U.S. Legal System. Academic legal writing represents a special kind of legal writing. It can be erudite, normative, responsive to a practical problem, or all of these things. What is the problem identified in the Buchheit & Gulati article? Why is their proposed solution novel, and why is it a better option than possible alternatives? Today we will also review a case from our first unit on sovereign bonds and negotiation ethics. Is *Van Gemert* explicitly about our doctrinal test of Good Faith & Fair Dealing?

Assignment: *Geren* and *Metropolitan*
Hoffman & Tyler 38-49

WEEK THREE: Oral Presentation Skills; Tracking the Evolution of Common Law Doctrine (February 2)

This week each of you will report your case research in groups. Focus on locating and characterizing the holding, and identifying the essential dispositive facts that motivate how each case “turns.” What policy reasons seem to inform judicial reasoning here? Can you form a “rationale” (Step 2 of the Common Law Rubric) that both explains Good Faith & Fair Dealing and frames how this common law language will likely apply to the Urbania bond exchange? We will also discuss the discourse factors that inform a substantive email.

Assignment: Craft a Substantive Email
WEEK FOUR: Evaluating a Substantive Email; the Common Law Rubric in Action (February 9)

This week we review your Email assignment – what is the etiquette and discursive expectation of a professional email? How do we craft a legal document for a lawyer who is perhaps unfamiliar with the doctrine or facts of our client’s case? How can we create synthetic paragraphs that are organized around a topic or theme, rather than by a list of cases? We will build on our Urbania assignment to further increase our sophistication with the Common Law Rubric. Today we will preview, read and review a case – Kimes v. Grosser – that reflects the broad, thematic approach of common law judicial analysis involving issues of “first impression.” We will then introduce THE BLUEBOOK and citation practice in U.S. Legal Discourse.

Assignment: Supplementary reading on Citation & the Bluebook

WEEK FIVE: Citation, U.S. Legal Research and Westlaw (February 16)

This week we will continue our conversation on citation, BLUEBOOK mechanics and the form of precedent-based argument. Electronic research has fundamentally changed the nature of legal practice, and technological literacy is now requisite to becoming a successful transnational lawyer. Today we will review the ecology of Westlaw (one of several electronic legal research platforms). Special emphasis will be placed on the fact that common law lawyers must “update” their search to confirm whether a case is “good law,” as well as on using an annotated code to locate case law that interprets relevant operative statutory language. In the U.S. Common Law System lawyers look to see how judges have interpreted and applied the word of legislatures. Today’s class will reflect this dynamic of legal research to legal authority & the evolution of the common law.

Assignment: Alberto Gonzales Geneva Convention Memo
Writing a Memo (Bruno Meta-Document)

WEEK SIX: Introducing the Objective Memo (March 2)

This week we will preview an archetype text type in legal practice – the objective memo. We will build on our discussions of Common Law Argument, the Common Law Rubric, and the Email Assignment to posit the discourse factors that inform the design of this document. An interesting question for us is how the strategic purpose of the memo relates to the availability of “models.” Indeed, this fundamental tension points to our overarching pedagogic goal – that the student becomes an intentional lawyer-linguist able to effectively design and construct any kind of common law document. We will review the historic/notorious Geneva Convention memo authored by former Attorney General Gonzales in order to deconstruct the discursive ambitions of objective legal writing. We will also track a “meta-document” that supplies important questions to consider when organizing & outlining your document, and connect the posture of predictive writing to technical and strategic aspects of the memo-writing process (word choice, headers etc.).

Assignment: HOFFMAN & TYLER 50-64

WEEK SEVEN: Independent In-Class Objective Memo Assignment (March 9)

This week the student will (in-class) design, research and craft an objective memo in response to a hypothetical fact pattern.

Assignment: Introduction to the Problem; Text & History of Montreal Convention; Independent Research & Case Selection
**WEEK EIGHT – TWELVE: Researching, Presenting and Crafting your Objective Memo on the Montreal Convention**

Each week students will report their independent research, and as a class we will home in on essential cases and locate fundamental common law themes in the case law that apply to our factual context.

**WEEK EIGHT:**  Review of In-Class Independent Memo; Strategizing a Research & Writing Plan; Introduction to the Problem and Presentation of Independent Research (March 23)

**Assignment:**  Continue Independent Research
- Olympic Airways v. Husain
- *In Defense of Dissents* (Brennan)
- *Korematsu v. U.S.* (Jackson Dissent)

**WEEK NINE:** Review & Presentation of Independent Research; the Jurisprudence, Discourse & Rhetoric of the Judicial Dissent (March 30)

**Assignment:**  Continue (and focus) Independent Research
- *The Value of a Comparative Perspective in Constitutional Adjudication* (Ginsburg)
- *Roper v. Simmons* (Scalia Dissent)

**WEEK TEN:** Review & Presentation of Independent Research; the Role of Foreign Authority in U.S. Courts (April 6)

**Assignment:**  Continue (and focus) Independent Research
- *The Strategic Content Model of Supreme Court Opinion Writing* (Fowler & Lupu)
- *Assessing the Supreme Court's Current Caseload* (Levinson)

First Draft due November 14

**WEEK ELEVEN:** Supreme Court Conference Room Simulation (April 13)

**Assignment:**  First Draft due November 14

**WEEK TWELVE:** Individual Conferences on First Draft (April 18-21)

**Assignment:**  Final Draft due November 24

**WEEK THIRTEEN:** Evaluating the Objective Memo; Transferring your Lawyer-Linguist Skill Set to Future Contexts; Course Review (April 27)

**Class Readings:**  “Law Like Love” (Auden)
- Excerpted passages from *Walker & Shuttlesworth* (inspired by *Teaching First-Semester Students that Objective Analysis Persuades* (Spanbauer))