CONFLICT OF LAWS

Course Policies & Syllabus – Part I

Welcome to the Conflict of Laws course. Below you will find a description of the course and course expectations.

LEARNING OUTCOMES

By the end of this course, the successful student will be able to:

a. To learn about various approaches to choice of law, the role of the federal government in both domestic and international conflict of laws problems, and the recognition and enforcement of judgments from other states and countries

b. To learn to identify and analyze conflict of laws issues in real life problems you may face in practice

c. To be able to construct and critique arguments involving this field of law

d. To understand and analyze the theories that underlie this field of law and their implications

e. To continue building on skills including close reading of complex cases and distilling legal doctrines

f. To perform well on the midterm and final exam involving this field of law.

TEXTBOOK & READING ASSIGNMENTS

The assigned textbook for this course is Laura Little, Conflict of Laws (Aspen Publishers, 2d ed., 2018) (sometimes referred to below as “the casebook” or as “Little”). There will also be additional materials that I will post on TWEN. Make sure you sign up for the course’s TWEN page.

I have attempted to assign one major topic per each class, and I will try to cover one assignment each class day. However, the syllabus is somewhat tentative and subject to changes announced in class and/or by email notice. This is because of the inherently fluid nature of coverage a law class where the discussion is somewhat unpredictable, and the fact that this is my very first time teaching the subject matter, meaning that I am not yet fully confident how much time each topic might take.

If we depart from rigid adherence to this syllabus – which is likely– you should stay at least one full assignment ahead of wherever we may be. On the other hand, please do not read too far ahead. You will get far more out of the class discussion if the cases are fresh in your mind when we take them up in class. There is no profit in reading material a week in advance if you only have a vague memory of it when we finally get to it in class. As a rule of thumb, expect us to get, on average through 15–20 pages per hour. (This is just an estimate, and we may end up going a little slower, especially in the beginning, if circumstances warrant).
Please note that while we may not discuss every case or topic in class, you are responsible for all assigned material on the examination, unless I specifically state otherwise.

In addition to cases and statutes, the Little casebook has problems and "reflections" on various topics. These readings are not optional when they appear on the syllabus. The entire subject matter of Conflict of Laws is based on competing policy considerations, and interests. Therefore, the best way to understand these issues is not to only read cases, but apply what you have read to contemporaneous problems. I expect you to read and be prepared to discuss these problems when you come to class.

I will do my best to get to know you relatively quickly; however, I am not particularly good with names. (Luckily, this appears to be a small class). So please bear with me if I don’t recall your names right away. (In order to help me learn your names quickly, I will ask you to adhere to the seating chart. See below.)

Don’t hesitate to stop by my office and introduce yourself during the first few weeks of class, or anytime thereafter, not just with questions about the course, but to talk about law school, the job market, the stock market, sports, politics, travelling, horseback riding, or just to vent.

A NOTE ON RESTATEMENTS

Throughout the book, you will see references to the Restatement (First) of Conflict of Laws as well as Restatement (Second) and the not–yet–completed Restatement (Third). Some of the sections of the Restatements are assigned reading. The Restatements are the work of a group of legal commentators who attempt to summarize the prevailing law on a certain subject, given the decisions issued by courts throughout the country. Occasionally, a Restatement will describe the minority position on a particular topic because the commentators believe that position to be the better reasoned one or, perhaps, because they believe it to be an indication of a trend in the courts that has not yet been fully adopted. You may find the Restatements to be a helpful guide to learning basic legal principles, but you should be careful to understand the position the Restatement takes. You should not assume the Restatements definitively express “the law,” and you should never assume that it accurately represents the state of the law in a particular jurisdiction. This is especially true with Conflict of Laws, where some courts adhere to Restatement (First), others to more modern versions, and still others adhere to one Restatement on one topic, but another on another topic. With these caveats, I expect you to read the assigned portions of the Restatements, and to know them for the final exam.

LAPTOPS

Students may use computers or other electronic devices for taking notes. However, there is no reason for any student to connect to the school’s network or to surf the web during class. The same applies to playing games or using computers for any purpose other than note–taking, such as, but not limited to, instant messaging, updating your Facebook profile, posting to your blog, checking scores, etc. Such extraneous computer activities ensure that you will do worse in this course than you expect, and they are also unprofessional because they are disruptive to your fellow classmates sitting next to and behind you. Furthermore, it might surprise some of you, but (despite the fact that I cannot see your computer screens) I can tell when you are taking notes and when you are engaging in extraneous activities. If this becomes a problem, I reserve the right to ban laptops altogether, or to mark those individuals who
are engaged in extraneous activities as absent. Ultimately though, you all are adults and can make your own rational choices. Choosing to browse the web instead of engaging in class discussion will most likely be detrimental to your grade.

CLASS ATTENDANCE

I consider regular attendance, preparation and participation part of your obligation in taking this course. Because I expect students to attend class, I do not formally excuse absences and there is no need to inform me in advance that you will be absent. I presume that students who miss class must be doing so for good reason. Attendance will be taken as per the Law School rules. If, however, any kind of personal emergency arises that will cause you to miss multiple classes, please inform either me or the Dean of Students so that we can make the arrangements necessary to minimize the adverse impact on your studies.

Please also note that I reserve the right to bar students from taking the final examination if attendance, participation or preparation have been inadequate. In this regard, please also see the information on “Attendance” in the 2018–19 Law School Bulletin.

CLASS PREPARATION & PARTICIPATION

Law school policy permits me to raise grades by one “step” (e.g., from “B” to “B+”) for superior class participation. I expect to make use of that policy. Conversely, the policy permits me to lower grades one “step” for poor participation. While I don’t expect to grades based on non–participation, I may (and will) lower grades for lack of preparation, or for unprofessional conduct in class (e.g., booing, hissing, or insulting your classmates). Please keep in mind that the purpose of law school is to explore ideas, even if those ideas seem outrageous at first blush. To that end, I require that you give due respect to your classmates and the thoughts they express in class. On the other hand, when speaking in class please attempt to make your comments thoughtful and keep them on–point.

This class, like every class, works best with widespread student participation. I hope much of that participation will come voluntarily, but I will regularly call on students to ensure broad participation. I do this for two reasons.

First, many of the issues we will talk about this semester are contested ones, and they often are the subject of current debate in courts, legislatures, and academic publications. We may not be able to resolve these issues in class, but all of us will understand them much better after in–class debate. Second, the ability to think and speak on your feet is an essential skill in virtually all forms of legal practice. You are much better off learning that skill in law school than when you are in practice. You should therefore treat our classroom time as an opportunity to practice your advocacy skills.

If you have not been able to prepare for class on a particular day, please let me know before class begins and I will not call on you that day. You will, however, receive only ONE (1) such pass this semester. If you are present and have not taken a pass for the day, I will assume you are prepared to participate fully. If you are called on and are not prepared, I will mark you as absent for that day, because in my view being “present” involves more than just being physically in your seat; it also involves being mentally present.

Because this is likely to be a rather small class, I expect everyone to participate. Unlike your larger 1L classes, it will be very easy for me to tell who is engaged and who has “checked out.” Similarly,
it will be boring for your classmates (and for me) to hear from the same 2–3 people for the entire semester. So I urge all of you to participate in equal measure. If that doesn’t happen organically, I will resort to cold calling and will treat the revealed lack of preparation accordingly.

**SEATING CHART**

Early in the semester I will circulate a seating chart. As I mentioned, it will greatly help me learn your names. To that end, **you must sit in your assigned seat for EVERY SESSION.** Even if you have not done the reading assignment you must sit in your assigned seat. Even if you arrive late (and please do your best to be on time as late arrivals are highly disruptive) you must sit in your assigned seat — and that is so even if it requires you to walk in front of other students to take your seat. If you are not sitting in your assigned I will interrupt the class and ask you to move.

**TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY**

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

**OFFICE HOURS; COMMENTS & SUGGESTIONS**

I don’t have formal “office hours,” because it implies that those are the only times I am willing to see students, and because my schedule, is somewhat unpredictable. Rather, I welcome students to stop by my office whenever I am there. If I am unable to talk with you on the spot we can set aside another time. If you stop by and I am not at my desk, you can send me an e–mail or leave a voicemail. If you prefer to set up an appointment time in advance (rather than just showing up) that is perfectly fine.

I also welcome any comments or suggestions that you may have regarding the class. These can be made at anytime during the semester by whatever medium you find most convenient. Feel free to send me an email, give me a call, or drop by my office. Rest assured I won’t take offense at any constructive criticism, but if you wish to remain anonymous, feel free to just slide a note under my door.

**TAPING POLICY**

You may not make your own tape recordings of the class, either for yourself, for a classmate, or for any other person or purpose. I will only authorize taping by the Law School Media Center in two circumstances:

1. I will arrange taping on days when it is likely that a large number of students will likely be absent because of religious, professional, or political commitments or because of logistical difficulties. Examples falling into this category would include class sessions that fall on major Religious Holidays, those that coincide with major public or political
demonstrations taking place in Baltimore/Washington area, or those that occur on days where weather conditions or transportation disruptions make it difficult to get to campus even though the law school remains open.

(2) I will permit taping if any given student is likely to miss 2 or more sessions because of a documented medical or family emergency. Examples falling into this category involve serious illnesses such as the flu, protracted hospitalizations after surgery or an accident, or the need to travel out of town for extended period to attend to the needs of a seriously ill loved one.

Please do not approach the Media Center or the Dean of Students Office with requests to tape my class. They have been instructed not to do so unless I authorize the taping. Please do not request me to tape if you will need to miss only one session for reasons such as a family wedding or funeral, a business trip, a minor illness, or a job interview. In that case, you should get notes from a classmate and then (if you so desire) see me in my office if you have any questions. Please do not request me to tape a class if the reason for you missing it is insufficiently serious (e.g., day at the beach).

**GRADES, MIDTERM, & FINAL EXAMINATION**

Your grade in the course will be based on your performance on the combination of midterm* and final examinations with possible upward adjustment for class participation as indicated above. The final examination will be conducted according to the schedule set by the Records Office. **Please note, that information in the published exam schedule and/or promulgated by the Records Office supercedes any information to the contrary that I may mention in class or elsewhere, and you are responsible for keeping apprised of the date, time and location of the exam.**

I will not prohibit you from using commercially prepared outlines for either exam, but I strongly discourage you from doing so because those materials are not always correct. It should go without saying that, to the extent there is a conflict between a commercial outline and course materials, the course materials govern.

I will provide further detailed information about the format of the exams later in the semester.

*I am not yet confident that there will be a midterm. Part of the reason is, as I explained above, this is my first time teaching the course, and I am not sure how quickly we will move making it difficult to project the appropriate time to schedule such an exam. The issue of the midterm will be decided collaboratively between myself and you — the students in this course.

**CLASS CANCELLATIONS & MAKE-UPS**

There is a high likelihood of some classes being cancelled due to religious holidays or other conflicts (such as conferences that I am expected to attend). I will schedule make up classes to substitute for the cancelled ones. I will do my best to schedule the make-up classes at such times as is convenient for the vast majority of the students.
**OTHER POLICES**

All law school policies that appear in the 2018–2019 Bulletin are applicable to this class and are fully incorporated by reference. If you are in doubt about the propriety of certain action or inaction, ask first. It is always easier to receive permission than forgiveness.
**Class 1:**
**Introduction to the Course:**
Syllabus & Policies
**Introduction to Conflict of Laws:**
Casebook: xxv–xxxiv
TWEN: Arabella Yip, “Stolen Art” (January 2010)

**CHOICE OF LAW**

**Territorial Approach**

**Restatement (First) of Conflicts of Laws**

**Class 2:**
**Methodology**
Casebook: 163–67

**Torts (Unintentional):**
Casebook: 168–82

**Class 3:**
**Torts (Intentional):**
Casebook: 182–87

**Proof of Foreign Law:**
Casebook: 188–93


**Class 4:**
**Contracts:**
Casebook: 193–214

**Class 5:**
**Property:**
Casebook: 214–22

**Marriage:**
Casebook: 223–40
Structural Mechanics and Escape Valves

Class 6:
Substance and Procedure (Which is it?):
Casebook: 240–54

Renvoi:
Casebook: 254–60

Class 7:
Public Policy:
Casebook: 261–91

[More] Modern Approaches

Class 8:
NEGLIGENCE
Critique of Restatement (First):
Casebook: 291–303

Government Interest Analysis (False Conflict):
Casebook: 303–16

Class 9:
Government Interest Analysis (Apparent or True Conflict):
Casebook: 313–26

No Interest or Unprovided-for Cases:
Casebook: 326–30

Class 10:
Experimenting with Balancing Interests:
Casebook: 330–40

Comparative Impairment:
Casebook: 340–65

Class 11:
Better Rule of Law:
Casebook 365–380

Restatement (Second) of Conflict of Laws

Class 12:
Introduction to Restatement (Second):
Casebook 381–86

Torts:
Casebook: 386–411
Class 13:
Contracts:
Casebook: 412–42

Class 14:
Contracts Con’t:
Casebook 442–69

Class 15:
Property:
Casebook: 469–76

Marriage:
Casebook: 477–85

Structural Mechanics and Escape Valves

Class 16:
Substance and Procedure (Which is it?):
Casebook: 485–501

Renvoi:
Casebook: 501–02

Public Policy & Domicile:
Casebook: 502–14

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Second Part of the Syllabus and Second Part of the Handout to be Distributed Mid–Semester