

Carleton University**Department of Law and Legal Studies****Course Outline**

COURSE: LAWS 4601A Transnational Law and Human Rights

PREREQUISITES: 1.0 credit from LAWS 3503, LAWS 3602, and LAWS 4604 (no longer offered)

TERM: Fall 2012

CLASS: **Day & Time:** Friday 11:35-2:25
Room: Students are advised to check Carleton Central for Room Assignment

INSTRUCTOR: Betina Kuzmarov

CONTACT: **Office:** C476 Loeb
Office Hrs: Friday 2:30-3:00 in person; 3:00-4:00 Virtual Office Hours or by appointment
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The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at **613-520-6608** or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable). For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION:

This course focuses on one specific transnational human rights problem, the issue of cultural rights and cultural property. Studying cultural rights and cultural property gives this course a framework within which to ask questions that arise in transnational human rights problems more generally. To explain, this course asks questions such as: Why should we protect the right to culture? How do we protect the right to culture? What is cultural property? What is transnational law? How does it relate to human rights? As a result, this course will provide a good understanding of the complexity of cultural property issues and through this study students will gain an appreciation of transnational human rights problems more broadly. Students will also gain an understanding of how these problems relate to real world events and institutions.

COURSE OBJECTIVES

By the end of the course students will have:

1. Knowledge of basic concepts of transnational protection of cultural rights/cultural property
2. Knowledge of the relationship between these basic principles and structures and the institutions of international law and domestic law
3. Ability to critically evaluate the principles and institutions of domestic law and international law as they apply to cultural property
4. Ability to apply understanding of transnational protection cultural property to current events
5. Ability to understand how researchers approach transnational cultural property problems

CLASS FORMAT:

This class is taught in seminar format so that there is almost no “lecturing” in my class. This means that the success of each class depends on both you and me preparing for class. I will prepare questions/exercises/case studies to help guide the discussion of the materials. I will also provide specific skills exercises to help you with the material. However, I will rely on your participation to make this class a wonderful learning experience for us both. I would urge you to think of this course as a learning community where we will each gain from the experience proportionally to the effort we put in. This style of class requires you to read all the readings for each class, and simply coming to class does not mean you will receive participation marks. I’ll discuss this further under evaluation but in this class participation includes: preparation, participation and contribution to the class environment.

TEXTS:

The readings for this course will be available online. I will provide links to these materials on CULearn where possible.

EVALUATION:

The evaluation for the course will be broken down as follows:

Evaluation	%	Due Date
Essay Topic	5%	September 28, 2012
Bibliography	10%	October 19, 2012
Presentation	20%	November 23, 2012/November 30, 2012
Final Paper	45%	December 3, 2012
Class Participation	20%	Ongoing
TOTAL	100%	

Essay Topic:

The essay topic is a 250 word (maximum) summary of the topic you propose to research for your final paper. It is due on September 28, 2012. The readings for this course will suggest many possible topics

for research. On top of this I am defining the scope of the essay for this seminar broadly so that you can focus on your own interests. To get you started I would consider any of the following general areas of research for your essay topic: 1. Transnational Law (conflict of laws, comparative law, pluralism, and implementation). 2. Cultural Rights (Including a focus on specific rights, specific rights problems -i.e. Children's rights, or theories of culture/cultural rights) and 3. Cultural property (theories of property/ownership, theories of culture, restitution, protection of cultural property, domestic/international law relating to cultural property). If you have any questions about a topic you are thinking about please just e-mail/ask.

Bibliography:

The bibliography in this course is a 3 page (maximum) outline of sources for your research paper. It is due October 19, 2012. While it does not have to be your "final bibliography" it should demonstrate progress towards your final paper. It must include at least 2 books and 3 academic journal articles. These sources should be annotated. Annotation of a source means that in a short paragraph about each source you should discuss: 1. What the source is about. 2. How the source relates to your research topic. 3. How you think the source will help you in your argument.

Presentation:

The presentation in this course is a 5 minute presentation of your research paper. It will take place on either November 23, 2012 or November 30, 2012. I hope to see some creative ways of presenting your papers, and this doesn't have to just be a classic "speech from the podium" summary.

Final Paper:

Your final paper is due on the last day of class, December 3, 2012. The easiest way to satisfy this evaluation requirement is by writing a research paper in which you propose a topic (see above), plan and research the topic, and then present to me in a paper the results of that research. It should be a maximum of 20 pages (double spaced). However, if you have a really creative idea that you'd like to explore – a writing or multimedia project, let me know. My only requirement is that the project conveys to me your research and that it should be a big enough project to be equivalent to a 20 page paper.

Participation:

As I mentioned above, this class is a seminar format so there is almost no "lecturing" in my class. Therefore, the success of each class depends on both you and me preparing for class. This means that you must read all the readings for each class, and simply coming to class does not mean you will receive participation marks. Generally speaking participation includes: preparation, participation and contribution to the class environment. Specifically, in addition to reading ALL the readings assigned for each class, I ask each student to be responsible for one reading for the next class. Being responsible for the reading means that beyond just reading the assignment you become familiar with the reading in detail and are prepared to discuss it with other members of the class. If you are not present at one class please e-mail me so you can pick a reading for the next class.

I'll provide more details on each of these evaluations, including grading rubrics, in an assignment package that will be available online after the first class.

ALL the assignments must be handed in to me in class on the day they are due unless prior arrangement has been made with me. Assignments that are submitted electronically or to the Law Department's "drop box" may be considered late at my discretion. Also please keep a copy of all assignments as a backup until your final grade is confirmed.

Please note that for written assignments marks may be deducted for spelling, grammar and style. Any late assignments will be penalized at a rate of 10% of your mark per day (including a weekend deduction)

Also, note that all written work must be yours alone, and any ideas you include in your work which are not original to you should be properly referenced, otherwise this is plagiarism. I will explain further in class about what plagiarism is and what academic integrity means at Carleton but as a good first step you should familiarize yourself with the Department's policies on proper referencing and citation. Also, you should take a look at the University's academic integrity policy and the Library's web page on plagiarism.

To create a consistent and fair policy I grant extensions only in the circumstances approved by the Registrar's Office, and only for the period up to the due date. If you think you may require an extension please see me BEFORE the assignment is due and I will be able to consider your request. Also, I cannot accept assignments AFTER the assignment has been returned to students (approved extensions aside). If you have not submitted your assignment by the time it is returned you will not receive a grade, and this is important because ALL assignments must be completed to receive a passing grade in this course.

You should also note that standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that ALL GRADES (on specific assignments/exams and/or final grades) submitted by me may be subject to revision. No grades are final until they have been approved by the Dean. This means your grades posted on CULearn and recorded on your assignments/exams can change at any time until your final grade is approved by the Dean.

COURSE HINTS:

My goal for this course is provide you with the knowledge, skills (and enthusiasm) to allow you to achieve your best. So here are some tips for how to achieve this...

1. Preparation: Attendance and preparation are the best ways to succeed in this class. This means that you should expect to do your readings BEFORE class. I also (see CULearn below) post any slides I'll be using before each class to help you come prepared.

2. CU Learn: I use CULearn regularly. This course outline will be posted on CULearn as will the assignment sheets after they have been discussed in class. Readings will be available through CULearn. So, CULearn should be your first stop if you have any administrative questions since all the documents for the class (outline and assignments etc.) are posted there. Also, as mentioned, I post my slides on CULearn before each class so please feel free to print those off and bring them with you to class. Lastly, the e-mail on CULearn is the e-mail address to use to get in touch with me for this course.

3. Questions: If you are unsure please ask. I am here to answer your questions. That's my job. Please don't hesitate to ask if something was unclear or if you have any questions about an assignment. Also, there are many great services available on campus that can also provide you with advice, for example there is the Writing Tutorial Service, the Student Academic Success Centre and the Learning Commons. Please ask if you have any questions about any of these services.

4. E-mail policy: I'm always happy to answer e-mails. I check my e-mail regularly during business hours (9 to 5) on work days (Monday to Friday). I do not check my e-mail after 5 pm during the week or on weekends (and holidays). If you send an e-mail during a weekday (9-5) I try to reply to it that same day, after 5 pm I'll try to reply the next day. If you send an e-mail on the weekend you can expect a reply on Monday.

5. How to address me: I am pretty flexible on this and I don't mind Betina. If you don't like using first names I am happy to answer to more formal titles, like Dr. Kuzmarov, in class and in e-mails.

7. Contesting a grade: If you think you have a reason to contest a grade on an assignment please follow this procedure. First, wait a week and think carefully about the reasons why you want to contest the grade – you have to make a case as to why you feel (based on the comments and marking grid) your grade should be changed. Grades can be changed only for valid reasons. Second, contact me with your concerns by e-mail (it helps to set them out in writing). Third, at this time we'll make arrangements for you to provide me with the graded paper. Fourth, once I have had a chance to review your paper we'll arrange to meet to discuss your concerns. You should know that I am always happy to change grades for valid reasons, but requesting to have your grade reviewed can mean that YOUR GRADE MAY GO DOWN, so please keep that in mind.

COURSE SYLLABUS:

September 7: Introduction

- A. To the Course
- B. Case Study: The Portrait of Wally

Readings:

1. *US v. Wally* 99 CV 9940 (US District CT SD NY, 2010).

September 14: Introduction to the Human Right to Cultural Life I: Or, What is culture and why should we protect the right to culture?

- A. Why do we protect culture?
- B. Why should there be a right to culture?
- C. Case Study: Shopping
- D. In Class Workshop – Picking A Research Topic

Readings:

1. I. Kant, *Critique of Judgment: Including the First Introduction*, Tr WS Pluhar (Indianapolis: Hackett, 1987), Preface to the First Edition (3-8), §8 (57-60), §22 (89-90).
2. H Arendt, "The Crisis in Culture: Its Social and Its Political Significance" in H Arendt, *Between Past and Future* (New York: Viking, 1966) 220-224.
3. P. Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (Cambridge, Harvard, 1987 1-3, 56-58, 60).

September 21: Introduction to the Human Right to Cultural Life II: Or, how do we protect the right to cultural life?

- A. How is the Right to Culture Protected Internationally?
- B. How is the Right to Culture Protected Domestically?
- C. How do these two types of protections Interact?
- D. Case Study: Canadian Heritage/Canada Council for the Arts

Readings:

1. J Symonides, "Cultural Rights: A Neglected Category of Human Rights" (1998) 50 *International Social Science Journal* 559.
2. C de Albuquerque, "Chronicle of an Announced Birth: The Coming Into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights – The Missing Piece of the International Bill of Human Rights" (2010) 32 *HRQ* 144.
3. R O'Keefe, "'The Right to Take Part in Cultural Life' Under Article 15 of the ICESCR" (1998) 47:4 *ICLQ* 904. (Parts A; B (1);C; D(1); and E)
4. Heritage Canada <<http://www.pch.gc.ca/>>
5. Canada Council for the Arts <<http://www.canadacouncil.ca/>>

September 28: Introduction to the Protection of Cultural Property I: Or, what is cultural property anyway?

- A. Can culture be property?
- B. Why is culture treated as property?
- C. Case study: Memory/History/Archaeology
- D. In Class Workshop: Effective Research

***ESSAY TOPICS ARE DUE TODAY**Readings:

1. JL Sax, *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures* (Ann Arbor: University of Michigan Press, 1999), Introduction (1-5).
2. M Busse, "Epilogue: Anxieties about Culture and Tradition – Property as Reification" (2009) 15 *International Journal of cultural Property* 357.
3. D Lowenthal, *The Past is a Foreign Country* (London: Cambridge, 1985), Chapter 5 (252-258)

October 5: University Day (No Class)

October 12: Introduction to the Protection of Cultural Property II: Or, why protect cultural property in times of war?

- A. Why does international law protect culture during times of War?
- B. How does international law protect culture protected in times of War?
- C. Case Study: Iraq (2003)

Readings:

1. JL Sax, "Heritage Preservation as a Public Duty: The Abbe Grégoire and the Origin of an Idea" (1990) 88 Michigan L Rev 1142.
2. R O'Keefe, *Protection of Cultural Property in Armed Conflict* (Cambridge: CUP, 2006) Prologue, Chapter 1 (to page 22)
3. C Phuong, "The Protection of Iraqi Cultural Property" (2004) 53 ICLQ 985.

October 19: Introduction to the Protection of Cultural Property III: Or, how is cultural property protected in times of peace? The International Law

- A. Why does international law protect culture in times of peace?
- B. How does international law you protect culture in times of peace?
- C. Case study: The Parthenon Sculptures
- D. In Class Workshop: Building an Argument

Readings:

1. JH Merryman, "Two Ways of Thinking about Cultural Property" (1986) 80 AJIL 831.
2. JP Fishman, "Locating the International Interest in Intranational Cultural Property Disputes" (2010) 35 Yale J Int'l L 347 (Sections: I., II. A. B. 1. 3. 4., III., IV).
3. D Rudenstine, "The Rightness and Utility of Voluntary Repatriation" (2001) 19 Cardozo Arts & Ent LJ 69.

*** BIBLIOGRAPHIES ARE DUE TODAY**

October 26: Introduction to the Protection of Cultural Property IV: Or, how is cultural property protected in times of peace? The Domestic Law

- A. Why do states protect their cultural property in times of peace?
- B. How does a state protect its cultural property in times of peace?
- C. Why do different countries take different approaches to the protection of their cultural property in times of peace?
- D. Case Study: Aboriginal Cultural Property-Canada

Readings:

1. C Bell, "Restructuring the Relationship: Domestic Repatriation and Canadian Law Reform" in C Bell & RK Patterson, eds, *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (Vancouver: UBC, 2009).
2. SA Williams, "Polish Art Treasures in Canada, 1940-1960" (1977) Canadian YB Int'l Law 146.
3. "Appendix" in C Bell & RK Patterson, eds, *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (Vancouver: UBC, 2009).

November 2: Introduction to the Protection of Cultural Property V: Or, how is cultural property protected in times of peace? The Players: The Market/ Museums/Dealers/Collectors

- A. How is cultural property bought and sold?
- B. Why is the buying and selling of cultural property restricted?
- C. Case Study: Auctions
- D. In Class Workshop: Planning and Organizing a Paper

Readings:

1. S Plattner, "A Most Ingenious Paradox: The Market for Contemporary Fine Art" (1998) 100 *American Anthropologist* 482.
2. P Gerstenblith, "Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past" (2007) 8 *Chicago J Int'l L* 169.
3. S Thornton, *Seven days in the Art World* (New York: WW Norton, 2009) 7 (8)-14.

November 9: The Illicit Trade in Cultural Property: Or, Why can't we control the trade in cultural property?

- A. What is the illicit trade in cultural property?
- B. How does the illicit trade in cultural property emerge?
- C. In Class Workshop: Understanding Both Sides of a Debate/Counterargument
- D. Case Study: Carleton University Art Gallery

Readings:

1. CC Coggins "A Proposal for Museum Acquisition Policies in the Future" (1998) 7 *International Journal of Cultural Property* 434.
2. AA Bauer, "New Ways of Thinking About Cultural Property: A Critical Appraisal of the Antiquities Trade Debates" (2007) 31 *Fordham Int'l LJ* 690.
3. PJ O'Keefe, "Codes of Ethics: Form and Function in Cultural Heritage Management" (1998) 7 *International Journal of Cultural Property* 32

November 16: Putting it all Together- Understanding Transnational Law: Or, where you start from all depends on where you stand

- A. What is Transnational Law?
- B. How Does Transnational Law Apply to Human Rights Problems?

Readings:

1. A de Mestral & E Fox Decent, "Rethinking the Relationship between International Law and Domestic Law" (2008) 53 *McGill LJ* 573.
2. R Goodman & D Jinks, "International Law and State Socialization: Conceptual Empirical and Normative Challenges" (2005) 54 *Duke U LJ* 983.
3. Please bring with you your copy of the Portrait of Wally Case from the First Class.

November 23:***PRESENTATIONS WILL TAKE PLACE TODAY****November 30:*****PRESENTATIONS WILL TAKE PLACE TODAY****December 3:*****FINAL PAPERS ARE DUE TODAY**