### Course Description:

This course is designed to provide you with an introduction to the American legal system. We begin by exploring the sources of law, examining how legal norms emerge from each of our branches of government and what happens when these norms clash. We then turn to the key institutional components of our legal system, focusing on the structure of the US court system and the players within it. We will compare the federal and state courts, looking at the differences in how judges are selected and how cases proceed through the system. We will pay particular attention to the inherent conflict between the desire for independence and accountability within our judiciary and will assess how well we have done in balancing these goals. We will also look at the alternatives to courts and investigate why they emerged and how they are currently being used. We will put all of this knowledge to use by studying the disputing process in the civil (non-criminal) context. We will start by developing a framework for how disputes evolve and what tends to encourage and/or discourage people from pursuing grievances. After Thanksgiving, we will explore two case studies of civil disputes. The first is one of the most well-known “test” cases, namely the case that culminated with the landmark Supreme Court decision in *Brown v. Board of Education*. The second is the class action dispute memorialized in the bestseller, *A Civil Action*.

### Course Requirements:

Students are expected to attend class regularly and to take part in class discussion and group exercises. There will be mid-term and final examinations, as well as a quiz on *A Civil Action*. There will be two writing assignments. For the first, students will be required to write an essay (7-8 pages) analyzing a dispute with which they are familiar. More information is available on the course website. Papers are due in class on **Dec. 2nd**. For the second, students will be required to write a short essay (3-4 pages) reflecting on the readings for one class meeting. A schedule for this assignment will be posted on the course website. Discussion questions for every class are posted on the website. Two cautionary notes: (1) these essays must be turned in during the class period for which the readings being discussed are assigned, and (2) students will be expected to participate actively in the class discussion on the day the essay is due (the portion of the final grade based on class participation will be determined largely on the basis of participation on this day).

### Grades:

Final grades will be calculated on the following basis: final exam (30%), mid-term exam (25%), Quiz (5%), Paper on Disputing (20%), Participation Paper (10%), class participation (10%).

### Readings:

The 2 books listed below are available at the University Bookstore. The remaining readings have been gathered for your convenience in a Course Reader that is available for purchase from the Copy Center at the Law School (located on the ground floor of the law school).

READING ASSIGNMENTS:

Part I: Sources of Law

Tuesday, September 2: Introduction
Baum, American Courts, 2-4

Thursday, September 4: Legal Culture & the Role of Informal Norms

Tuesday, September 9: Judicial Opinions
Baum, American Courts, pp. 10-16
Li v. Yellow Cab Co. of California, 13 Cal.3d 804 (1975)
Riggs v. Palmer, 22 NE 188 (1889)

Thursday, September 11: Judicial Review
Article III, US Constitution,
http://www.archives.gov/exhibits/charters/constitution_transcript.html
Frank v. Walker, (ED WI 2014)
Justice, “The Two Faces of Judicial Activism,” Judges on Judging, pp. 225-34
Chemerinsky & Fisk, “Judges Do Make Law – It’s Their Job,” USA Today, August 23, 2005

Tuesday, September 16: Judicial Reasoning
Burnham, Introduction to the Law and Legal System of the United States, pp. 53-63
NLRB v. Canning, US SCt 2014
Thursday, September 18: Legislatures
Jacob, *Law and Politics in the United States*, pp. 241-54
Lilly Ledbetter Fair Pay Act of 2009

Tuesday, September 23: Administrative Agencies
Guest Speaker: Professor Carin Clauss, UW Law Professor (Emeritus)
Burnham, *Introduction to the Law and Legal System of the United States*, pp. 196-206
[Additional readings will be posted on the course website]

Thursday, September 25: Rule of Law
Fuller, *The Morality of Law*, pp. 33-41

Part II: Key Components of the U.S. Legal System
Tuesday, September 30: An Overview of U.S. Courts
Baum, *American Courts*, pp. 5-10, 20-49
*Federalist Papers*, No. 78
“The What is Judicial Independence?” 80 *Judicature* 73-83
Compare the structures of the Wisconsin and New York court systems:
http://www.wicourts.gov/courts/overview/moves.htm
http://www.courts.state.ny.us/courts/structure.shtml

Thursday, October 2: Judges
Baum, *American Courts*, pp. 124-46
Tuesday, October 7: Selecting Judges for Federal Courts
Baum, *American Courts*, pp. 94-102
Maclaren, “The Supreme Court’s Baffling Tech Illiteracy is Becoming a Problem,” *Salon*, June 28, 2014

Thursday, October 9: Selecting Judges for State Courts
Baum, *American Courts*, pp. 101-118
Siefert v. Alexander, 608 F.3d 974 (7th Cir, 2010)
Check out website with information about judicial selection rules for all 50 states:
http://www.judicialselection.us/
http://www.americanprogress.org/issues/civil-liberties/news/2013/06/21/67224/voters-overwhel mingly-support-judicial-election-reforms/

Tuesday, October 14: Judicial Accountability
Baum, *American Courts*, pp. 142-45
Steinhauer, “Senate, for Just the 8th Time, Votes to Oust a Federal Judge,” *New York Times*, December 8, 2010
“Judicial Disqualification After Caperton,” *Judicature*, vol. 93, pp. 4-5, 2009
Wisconsin procedure for disciplining judges:
http://www.wicourts.gov/courts/committees/judicialcommission/index.htm
Thursday, October 16: Lawyers
Baum, *American Courts*, pp. 54-85
Wisconsin “Diploma Privilege”: WI Supreme Court Rule 40.03:
UW version of “Diploma Privilege”: Rule 3.04 of the UW Law School Rules:
http://www.law.wisc.edu/current/rules/chap3.htm#3.04
Filisko, “Disbarred Lawyers Who Seek Reinstatement Have a Rough Road to Redemption,” *ABA Journal*, August 2013
Weiss, “Famed Tort Lawyer Chesley is Disbarred,” *ABA Journal* website, March 2013

Tuesday, October 21: Juries: Myths and Realities
http://www.usconstitution.net/xconst_Am7.html
Supplementary comments on *Sullivan* from Danzig, *The Capability Problem in Contract Law*, pp. 16-44

Thursday, October 23: Alternative Dispute Resolution
Baum, *American Courts*, pp. 217-21
Chart – Benefits of Different ADR Processes
Zevtoonian, “Compliance More Likely if Cases Are Mediated,” *Dispute Resolution Counsel*, March 8, 2011
Tuesday, October 28: Institutional Choices in Solving Problems

Case 1 – BP Oil Spill

Case 2 – Childhood Obesity

Case 3 – Concussions in Football
Fainaru & Fainaru-Wada, “Youth Football Participation Drops,” ESPN Outside the Lines, November 14, 2013
Fainaru & Fainaru-Wada, “Players Sought $2 Billion from NFL,” ESPN Outside the Lines, September 1, 2013

Thursday, October 30: Midterm Exam

Tuesday, November 4: The Structure of Disputes
Baum, American Courts, pp. 72-79, 210-17, 222-30

Thursday, November 6: The Alleged “Litigation Explosion”
Baum, American Courts, pp. 224-32
Garry, A Nation of Adversaries, pp. 15-23, 66-76
Tuesday, November 11: Formal Constraints on Disputing
Political questions: *Mora v. McNamara* (U.S. 1967)
  *Griswold v. Connecticut*, 381 U.S. 479 (1965)
Judicial distaste for issue: *Miller v. Miller*, 78 Iowa 177 (1889)
  Zelon, “From Mom to Not in 7 Minutes: Inside Family Court,” *City Limits*, June 1, 2012
Class actions: [http://www.classactionlitigation.com/faq.html](http://www.classactionlitigation.com/faq.html)

Thursday, November 13: Informal Constraints on Disputing
Merry, *Getting Justice and Getting Even*, pp. 37-63
Blumenthal, “In Texas, Hire a Lawyer, Forget about a Doctor?” *New York Times*, March 5, 2004

Part IV: Constructing Disputes

**Case Study 1: Putting Together a “Test” Case – Brown v. Board of Education**

Tuesday, November 18: The Starting Point & the Struggle to Get to the Supreme Ct
Film: “Simple Justice”
  *Plessy v. Ferguson* (1896)
  “The Development of Segregation in the Public Schools,” from *Constitutional Law and Judicial Policy Making*, pp. 297-99
  Kluger, *Simple Justice*, pp. 3-26, 315-21, 330-35

Thursday, November 20: A View of Judging from the Front Lines
Guest Speaker: Lewis Butler, Justice (Retired), Wisconsin Supreme Court

Tuesday, November 25: The Decision-Making Process and the Decision

Thursday, November 27: Thanksgiving – no class

Tuesday, December 2: The Aftermath of the Decision

**Disputing Papers Are Due in Class on December 2**

NOTE: YOU SHOULD HAVE COMPLETED READING *A CIVIL ACTION* BY THIS POINT IN THE SEMESTER. THERE WILL BE AN IN-CLASS QUIZ ON THE BOOK ON DECEMBER 4TH.

**Case Study 2: An “Ordinary” Civil Case**

**Thursday, December 4: How the Case Arose**
Harr, *A Civil Action*, pp. 1-146

**Tuesday, December 9: The Build-Up to the Trial & the Trial**
Harr, *A Civil Action*, pp. 149-376
Complaint filed by Schlictman
Answer filed by W.R. Grace
Motion from W.R. Grace regarding Schlictman’s conduct
Voir Dire Questions
Special Interrogatories to the Jury

**Thursday, December 11: The Aftermath of the Trial**
Harr, *A Civil Action*, pp. 379-492

**Thursday, December 18: FINAL EXAM from 10:05am to 12:05pm [room TBA]**