**COMPARATIVE FAMILY LAW**

**Washington College of Law**

**Professor Macarena Saez**

**Spring 2016**

Tuesdays 10:00 – 11:50 AM

Email: [msaez@wcl.american.edu](mailto:msaez@wcl.american.edu)

Office Hours: Mondays 9:30 to 11:00 am, Thursdays 3:30 to 5:00 pm. Available at other times by appointment.

Office: Y349

#### Seminar Description

This seminar will explore the differences and commonalities in the conceptualization and legal treatment of families in different legal traditions. It will focus on the relationship between blood and family, and sex and family, analyzing how different countries shape family law using those two concepts. In addition to comparing how different countries or systems deal with different issues on family law, the seminar will also explore the role of international courts and international law in the shaping of family law in areas such as marriage and cohabitation, parenting, violence, and property, among others.

#### Reading Materials

Reading materials will be posted in MyWCL each week. Reading materials listed with the syllabus are referential only and may be replaced with other materials or more materials may be included during the semester. Please carefully review each week’s folder in MyWCL class’ site.

**Evaluation**

Assessment is based on the following criteria:

1. 25% Reaction Papers: Each student should turn in 5 one to two-page reaction papers during the course of the semester. Reactions papers should discuss one or more readings assigned for the following class. These must be uploaded to MyWCL anytime up to the day of class at 7:00 am, but only one per week.
2. 75% Final Paper. Final papers should be no less than 25 and no more than 30 pages (including footnotes), typed in 12-point Times New Roman font, double-spaced, and with 1-inch margin. Final papers may be on any topic covered during the class or other topics pertinent to comparative family law. Topics must be approved by instructor in advance.
3. Class participation (both in class and in the discussion forum) may be used to “bump” your final grade up one iteration (e.g.: B to B+, A- to A). Students must come to class having read all assigned materials. Class discussion is expected and encouraged.

**Syllabus**

| **Session** | **Date** | **Assignments & Readings** |
| --- | --- | --- |
| Class  One | 1/12 | **What is a family?**  We all have our own understanding of what a family is. Everyone has a family or had a family or was considered a family member at some point of her/his life. We think that family law must have some connection or relationship with the families as we understand them. Legal families, however, may be different than social families or families created outside or despite legal regulations. When reading the three stories posted in MyWCL, think of how many different family connections you identify from these stories and how they are linked to culture. Could any of these stories have happened in a different cultural setting? Read the stories first and then read the other documents assigned for the class.  Reading materials:   1. Three stories on families (Franklin Scales through Chile; We found our son in the Subway; Muslim mother v. Hindu Guardian). 2. ALISON DIDUCK, LAW’S FAMILIES (2003), Chapter 2: Two families, 20-30, first par. |
|  | 1/19 | **CANCELLED** |
| Class  Two | 1/26 | **What is Comparative Law?**   1. Blair, Weiner, Stark and Maldonado, FAMILY LAW IN THE WORLD COMMUNITY: CASES, MATERIALS, AND PROBLEMS IN COMPARATIVE AND INTERNATIONAL FAMILY LAW 2009, 3-28 2. GRAZIADEI, MICHELE, The Functionalist Heritage. |
| Class  Three | 2/2 | **What is a legal family?**   1. PEARLS AND MENSKI, MUSLIM FAMILY LAW (1998), p. 139-149, 176-201 (first par.) 2. BRUCE W. FRIER AND THOMAS A.J. MCGINN, A CASEBOOK ON ROMAN FAMILY LAW (2004), 3-21   MASHA ANTOKOSLAKIA, Family Law and the national culture: Arguing Against the cultural constraints argument, Utrecht Law Review, 2008. |
| Class  Four | 2/9 | **Regulation of Intimacy: Marriage consent**   1. Bride kidnapping 2. Child marriage 3. Gifts, Bride price |
| Class  Five | 2/16 | **Regulation of Intimacy: Polygamy**  Reading materials:   1. Pearls and Menski, Muslim Family Law (1998), p. 256-267 2. State v. Holm 137 P.3d 726 (Utah 20060 (Excerpts) 3. Bibi v. Chief Adjudication Officer, UK, Gazette 94/27 1997. 4. Javaid Rehman, *The Sharia, Islamic Family Laws and International Human Rights law: Examining the Theory and Practice of Polygamy and Talaq* (Excerpts)*,* 21 Int’l J. Law, Policy and the Family 108, 2007. 5. <http://www.youtube.com/watch?v=6tNouIAL-Kg> |
| Class Six | 2/23 | **Regulation of Intimacy: Polygamy (cont.)**   1. <http://www.youtube.com/watch?v=u7HKmu3eMEk> 2. Lydia Polgreen, One Bride for Two Brothers: A Custom Fades in India, NYTimes, July 16, 2010. 3. Lisa M. Kelly, Bringing International Human Rights Law Home: An Evaluation of Canada’s Family Law Treatment of Polygamy 65 U.T. Fac. L. Rev. 1 |
| Class  Seven | 3/1 | **Regulation of Intimacy: Cohabitation and same-sex marriage**  Reading materials   1. Goran Therborn, Between Sex and Power, 2004, 192-207 2. Peter de Cruz, Family Law, Sex and Society: A Comparative Study of Family Law, 2010, 255-282 3. Goodridge v. Dept. of Public Health, [798 N.E.2d 941](http://en.wikipedia.org/wiki/Case_citation) ([Mass.](http://en.wikipedia.org/wiki/Massachusetts_Supreme_Judicial_Court) 2003), Excerpts 4. Minister of Home Affairs v Fourie (South Africa, 2005), Excerpts 5. Reference Re Same-Sex Marriage (Canada 2004), Excerpts |
| Class  Eight | 3/15 | **Adoption and comparative law**  **Guest speaker: Prof Ezra Rosser**  Reading materials: [Estin](http://west.thomson.com/store/authorbio2.aspx?R=139382&Product_id=40569881&MaterialNumber=40569881&AuRec=2000020532Auth) and Stark, Global Issues in Family Law, 106-121  1. European Commission of Human Rights, Keegan v. Ireland (1993) 2. Odievre v France ECHR 2004 (right to identity) 3. Baby M case…(guest speaker Professor Ezra Rosser) 4. AMK Navajo Supreme Court |
| Class Nine | 3/22 | **Child custody and support**  Reading materials:   1. Blair, Weiner, Stark and Maldonado, Family Law in the World Community: Cases, Materials, and Problems in Comparative and **International Family Law (**2009), 389-400, 406-409, 413-427 |
| Class  Ten | **Friday 3/25 (make-up session for 1/19)** | Cont. custody |
| Class  Eleven | 3/29 | **Family and regulation of economic activity**  WB group on business and women’s rights |
| Class  Twelve | 4/5 | **Regulation of Reproduction: The new motherhoods and fatherhoods: Assisted Reproductive Technologies**  Reading materials   1. Machteld Vonk, “The role of formalized and non-formalised intentions in legal parent-child relationships in Dutch Law”, in Katharina Boele-Woelki, Debates in Family Law Around the Globe at the Down of the 21st Century. 2. <http://www.youtube.com/watch?v=APMVPFQjFI8> |
| Class  Thirteen | 4/12 | **Family and Violence.**  Reading materials:   1. Blair, Weiner, Stark and Maldonado, Family Law in the World Community: Cases, Materials, and Problems in Comparative and **International Family Law, P. 306-322** 2. Inter American Commission of Human Rights, Maria da Penha Maia Fernandes v. Brazil (2001). 3. Constitutional Court of Uganda, Constitutional Petition No.08 Of 2007 (Female Genital Mutilation) |
| **Class**  **Fourteen** | **4/19** | **Children’s Rights**  Reading materials: [Estin](http://west.thomson.com/store/authorbio2.aspx?R=139382&Product_id=40569881&MaterialNumber=40569881&AuRec=2000020532Auth) and Stark, Global Issues in Family Law,182-197Boyd and Rhoades, Law and Families, 2006, 306-334 |