

September 26, 2006

Memo to: The Faculty

From: Curricular Innovations Committee (Bill Alford, Scott Brewer, Allen Ferrell, Jerry Frug, Elena Kagan, Martha Minow, Todd Rakoff, Al Warren)

Re: First Year Curriculum

As most of you know, the curricular innovations committee has been meeting since 2003 and has had many conversations with the faculty as a whole and in smaller groups about various aspects of the law school curriculum. On April 13, 2006, we discussed in a regular faculty meeting curricular options for the first year, and we received many good and thoughtful comments, at that meeting and afterward, about the options presented. We now return to the faculty with the proposal that seemed to attract the most broad-based support: briefly put, to add classes focusing on legislation and regulation, international law, and theoretically-grounded problem-solving, and to accommodate these new emphases by changing our calendar to create a January term, reducing all first-year classes to four credits (but otherwise maintaining them in roughly their current form, contrary to several of our original proposals), and eliminating the spring semester of the current legal research and writing program. We believe these changes will better prepare our students to think about and practice in a legal world in which regulations and statutes play as important a role in the creation and elaboration of law as court decisions; in which transactions and interactions among parties are increasingly global in nature; and in which economic, cultural, and technological changes call upon the best lawyers to become skilled in system design and problem solving.

Specifically, the changes seek to ensure:

- ❖ Greater attention from the start to statutes and regulations;
- ❖ Introduction to the institutions and processes of public law;
- ❖ Systematic attention to international and comparative law and economic systems;
- ❖ Opportunities for students to address alone and in teams complex fact-intensive problems as they arise in the world (rather than digested into legal doctrines in appellate opinions) and to generate and evaluate solutions through private ordering, regulation, litigation, and other strategies,
- ❖ More sustained occasions to reflect on the entire enterprise of law and legal studies, the assumptions and methods of contemporary U.S. law, and the perspectives provided by other disciplines.

With these goals in mind, we propose the following changes to the required first year program:

1. Add Legislation and Regulation, a new 4-credit course in the fall;
2. Add a spring requirement that students take one of three 4-credit courses introducing global legal systems and concerns: Public International Law, International Economic Law, or Comparative Law;

3. Add a new 4-credit course, Problems and Theories, that focuses on problem-solving while self-consciously introducing students to theoretical frameworks illuminating legal doctrines and institutions. The course would meet for 2 credits during winter term (with first-year students having the same term schedule as 2Ls and 3Ls), and for 2 credits during spring term, replacing the spring Legal Research and Writing course;
4. Attach the fall Legal Research and Writing course specifically to one of the fall courses, with the Lecturers and Professor working to connect the writing and research exercises to that course;
5. Standardize to 4 credits all first year courses (except for the fall Legal Research and Writing unit) including both the existing courses (Civil Procedure, Contracts, Torts, Property, and Criminal Law) and those to be added;
6. Endeavor regularly to schedule Contracts and Torts together in the fall term to permit more collaborative teaching (and include in the same section those colleagues who would like to pursue integration of the basic common law subjects).

There would likely be a period of transition and phase-in. It seems probable that the Problems and Theories course – and the introduction of a winter term for first year students – would take more time to work out and thus be added after the other changes. The entire set of changes, once phased in, would produce the following schedule:

Fall

Civil Procedure	4
Contracts	4
Torts	4
Legislation and Regulation	4
Legal Research and Writing (attached to one of the above)	2

Winter

Problems and Theories	2
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Spring

Criminal Law	4
Property	4
International or Comparative Law	4
Problems and Theories	2
Elective	3-5

The following explanation of the new courses reflects full-faculty and small-group discussions, though those faculty who become directly involved in designing and teaching the courses would shape the particular features and approaches.

Legislation and regulation (fall): This course will introduce students to the world of legislation, regulation, and administration that creates and defines so much of our legal order. At the same time, it will begin to teach students to think about processes and structures of government and how they influence and affect legal outcomes. The course will introduce students to and include materials on most or all of the following topics: the separation of powers; the legislative process; statutory interpretation; delegation and administrative agency practice; and regulatory tools and strategies. The course will naturally lead into, and enable students to get more out of, advanced courses in the 2L and 3L years on legislation, administrative law, a wide range of regulatory subjects (e.g., environmental law, securities law, telecommunications law), and constitutional law.

International/comparative courses (spring): Coursework in this area should become part of the first year program because, from the start, students should learn to locate what they are learning about public and private law in the United States within the context of a larger universe – global networks of economic regulation and private ordering, public systems created through multilateral relations among states, and different and widely varying legal cultures and systems. After consulting with international and comparative law experts on our faculty, and finding that survey courses in the field have not worked very well at other schools, we chose to go the path of more focused study. Specifically, we recommend the development of three foundation courses, each of which would satisfy the requirement, and each of which represents a door into the global sphere that students will use as context for U.S. law. A course on Public International Law, much like the one currently offered, would introduce students to the sources, institutions, and procedures emerging over time through the bilateral and multi-lateral arrangements among states as well as the participation of nongovernmental actors. A new course on International Economic Law would introduce students to the network of economic regulation and private ordering affecting commercial transactions, trade, banking, and other systems for facilitating and regulating economic relations around the globe. The third course, Comparative Law, would introduce students to one or more legal systems outside our own, to the borrowing and transmission of legal ideas across borders, and to a variety of approaches to substantive and procedural law that are rooted in distinct cultures and traditions. We would offer these three foundational courses in multiple sections and allow students to satisfy the requirement by electing any one of them in the first year. We also would recommend that any student with serious interest in international and comparative law take during subsequent years of law school courses in the other two areas of study. We do not view the new requirement of a course in international or comparative law as a substitute for the ongoing effort to integrate comparative and international materials into existing courses, and hope that the school will continue to support such efforts with research assistance, opportunities for collaborative teaching, and consultation with visitors and other experts.

Problems and theories (winter and spring): Coming after the close of the first term, the new course on Problems and Theories would allow students to reflect on what they have learned through systematic treatment of methods of statutory and case analysis, discussion of different theories of law (perhaps offered in guest lectures and debates), and work on a complex problem (or problems) beyond the bounds of any single doctrinal subject, explored through simulation and team work. By converting the spring Legal Research and Writing course into a continuation of this intensive January-term class, we would give students an ongoing opportunity to work on a set of problems connected to first-year subjects through the use of transactional and regulatory as well as adjudicatory frameworks. The current Legal Research and Writing faculty fellows could assume some responsibility for this course, with faculty members who teach basic and other courses providing theoretical overviews and helping to frame the problems. Offered as two credits in the winter and two in the spring, this course would encompass to the same four credits we recommend for all the first year basic courses.

Legal Research and Writing (fall): This course has undergone many changes in the last five or so years. Although we believe it has improved, we believe it is now time to fully implement the faculty recommendation of tighter connection between this skills course and the fall substantive courses. Informal arrangements have made some progress on this front, but the intellectual integration and the coordination of time and tasks requires more work. The most practical way to accomplish this is to match each lecturer with a faculty member teaching a fall-term course in every section.

We look forward to faculty consideration of this proposal at a forthcoming meeting. If any of you has any questions, please feel free to contact any of us beforehand.