

Legal Studies 137 (LEGALST 137) - Comparative Equality Law
A Multi-University Legal Studies Course
3 units -- Fall 2021
Professor David Oppenheimer

Note the odd times at which this course meets!

Comparative Equality Law meets on Tuesday and Thursday mornings.

The Tuesday class meets at 9:10 (9:00 “Berkeley Time”) for 50 minutes, in a classroom on the Berkeley campus.

The Thursday class meets on Zoom at 15:00 UTC (Coordinated Universal Time). For most of the semester that’s 8:00 am in Berkeley, but when we move from “daylight savings time” to “standard time” in November, 15:00 UTC becomes 7:00 am in Berkeley. Because the course includes students and faculty from at least eight time zones in North America, South America, Europe, Africa and Asia it is essential to set the course meeting time in Universal time instead of Pacific time. And, because most of our partner universities start their classes on the hour, **we will not use “Berkeley Time” for our Thursday class meetings.**

Course Description

Comparative Equality Law uses a problem-based approach to examine how the law protects equality rights in different jurisdictions. The course will comparatively examine US, European, and other national, regional and international legal systems (including those of India, Brazil, Colombia, Canada and South Africa) and provide a global overview of legal protection from and legal responses to inequalities. The course covers 5 topic modules:

1. Theories and sources of contemporary equality law;
2. Employment discrimination law (race, sex, age, disability, LGBTQ+);
3. Secularism, human rights and the legal rights of religious minorities;
4. Sexual harassment/Violence;
5. Affirmative action (race, caste, origin)/gender parity.

The class will meet twice a week on Tuesday and Thursday mornings. The Tuesday meeting will be in person on the Berkeley campus for 50 minutes. The Thursday meeting will be remote, on Zoom, for 120 minutes, and will include students and faculty from 10-15 other universities in Africa, Asia, Europe, North America and South America.

The format for the Thursday class meetings will be as follows:

- A five minute introduction.
- A fifteen minute lecture.
- A fifteen minute discussion in break out rooms, with all participants able to respond/participate on a shared Google doc.
- A twenty minute plenary discussion.
- A five minute break.
- A fifteen minute lecture.

- A fifteen minute discussion in break out rooms, with all participants able to respond/participate on a shared Google doc.
- A twenty minute plenary discussion.
- A ten minute wrap-up and look-ahead lecture (usually by one of the lecturers for the next week's class).

The break out room discussions will focus on a discussion problem related to the day's reading and lectures which will be included in this syllabus or distributed in advance.

Most of the reading will be from two text books and a web-course.

The first text is a casebook, Oppenheimer, Foster, Han & Ford, ***Comparative Equality and Anti-Discrimination Law*** (3d ed. 2020). Copies can be [purchased from the publisher](#) (Edward Elgar, in the UK) for a discounted price of \$68 ([or at full price \(\\$85\) from Amazon](#)). Used copies may be available on Amazon. Students must use the **third** edition.

The second text is a collection of essays, Noel and Oppenheimer (eds.), ***The Global #MeToo Movement*** (2020). Copies can be [purchased from the publisher](#) or Amazon for \$16, or [downloaded for free](#).

Additional course material will be delivered through a Stanford edX web-based course, Ford & Oppenheimer, ***Comparative Equality and Anti-Discrimination Law***. These materials mix video recordings of group discussions, debates, and interviews with 44 scholars and activists from six continents. The material is provided through Stanford University's edX portal. Access is free.

The course materials listed above will be supplemented for each class meetings with additional readings proposed by the faculty lecturers for that class, which will be posted to the b-course site.

Berkeley students will be required to write two 5-7 page papers, each of which will account for 30% of the final grade, and to complete a take-home exam. The papers must compare how two or more national/legal systems approach a particular problem of inequality. (For example, a paper might compare the law of reproductive rights in the United States and Argentina, or the law of employment discrimination for transgender persons in the United States and the United Kingdom, or the law of sexual harassment at public universities in the United States and South Africa.) The exam will present a hypothetical problem and ask how the problem would be analyzed in two countries we have studied.

Each university will determine for its own students the assessment requirements and award of credits in light of that university's academic rules. Only Berkeley students will receive Berkeley academic credit.

The course is organized and led by Professor David Oppenheimer (Berkeley Law) and Professor Panos Kapotas (Portsmouth Law, UK), and will include 15-25 additional faculty lecturers from around the world.

For a description of how the structure works, [see this recent article from the Berkeley Law website](#).

Learning Objectives

By the end of the course, students will be able to:

1. Compare how different legal systems address problems of inequality and discrimination;
2. Read discrimination case decisions and analyze the theories of equality underlying the decision;
3. Read proposed statutes, constitutional amendments and treaties and analyze the theories of equality underlying the proposal;
4. Read articles about inequality and discuss the issues raised in light of the underlying theories of equality, using examples from several legal systems;
5. Connect with students from around the globe as friends/colleagues to discuss ongoing issues of inequality in light of the material they studied together;
6. Reflect on teaching and learning methods used by students and faculty from several nations;
7. Better understand their own connections to a global community of research and learning.

Assessment

Berkeley Students will be assessed based on two papers of 5-7 pages each, a final exam and class participation (which includes both attending and speaking).

Paper 1	30%
Paper 2	30%
Final Exam	30%
Class Participation	10%

Office Hours for Berkeley Students

I will hold open office hours for Berkeley students on Tuesdays from 11:00 am – 12:30 pm Pacific Time, beginning on August 31. I hope at some point these will be IRL in my office at 498 Simon Hall in the law building complex. But for now [they will be on Zoom at this link](#).

Students are encouraged to drop by to discuss the reading and discussion material, their paper topics, the general issue of inequality, career planning, or anything else.

Syllabus

Week 1: Introduction to Comparative Equality Law and Equality Theory (Aug 26)

See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (August 31)

Introductions. Discussion of Deborah A. Widiss, *Pregnancy and Work – 50 Years of Legal Theory, Litigation and Legislation* (2021). [Here is the link.](#)

Week 2: Theories of Equality (Sept 2)

See Universal Syllabus

~~Berkeley Tuesday morning 9:00 am IRL session (September 7)~~

Class meeting and office hours are cancelled today.

Week 3: Sources of Equality Law (Sept 9)

See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (September 14)

Discussion of diversity, inclusion and integration in the United States and France.

Week 4: Employment Discrimination

(Sept 16) (some students and faculty will be absent for Yom Kippur) (Berkeley students may choose to watch the recording instead of attending class.)

See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (September 21)

Discussion of the problem of proving discrimination in the US legal system. The role of empathy and the presumption of fairness.

Week 5: Employment Discrimination (Sept 23)

See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (September 28)

Discussion of stereotyping and implicit bias, and the relationship to discrimination.

Week 6: Employment Discrimination
(Sept 30)
See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (October 5)
Discussion of your paper topics.

Week 7: Equality and Religion: Freedom of Religion as a Human Right
(Oct 7)
See Universal Syllabus

First Comparative Equality Paper Due for Berkeley students

Berkeley students must submit a 5-7 page paper, which will account for 30% of the final grade. The paper must compare how two or more national/legal systems approach a particular problem of inequality. (For example, a paper might compare the law of reproductive rights in the United States and Argentina, or the law of employment discrimination for transgender persons in the United States and the United Kingdom, or the law of sexual harassment at public universities in the United States and South Africa.) Students are encouraged to discuss their paper topic with Professor Oppenheimer during office hours. **The paper is due by email to Professor Oppenheimer (doppenheimer@law.berkeley.edu) by 5:00 pm on Friday October 8.**

Berkeley Tuesday morning 9:00 am IRL session (October 12)
Should religion (or minority religions) be accommodated to prevent religious discrimination?

Week 8: Equality and Religion: Religious Dress and Religious Symbols
(Oct 14)
See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (October 19)
How do we distinguish hypocrisy from cultural difference?

Week 9: Equality and Religion: Reproductive Rights and the Church
(Oct 21)
See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (October 26)
Is access to abortion a universal human right under human rights law? Why/why not?

Week 10: Sexual Harassment/Violence (sexual harassment as discrimination; intersectionality)
(Oct 28)
See Universal Syllabus

October 28/29: All are invited to a Berkeley Comparative Equality Center program on “New Developments in Sexual Harassment/Violence in Education: A Global Perspective.”

Berkeley Tuesday morning 9:00 am IRL session (November 2)
Discussion of sexual harassment on college campuses as an issue of discrimination law.

Week 11: Sexual Harassment/Violence
(Nov 4)
See Universal Syllabus

Second Comparative Equality Paper Due for Berkeley students

Berkeley students must submit a 5-7 page paper, which will account for 30% of the final grade. The paper must compare how two or more national/legal systems approach a particular problem of inequality. (For example, a paper might compare the law of reproductive rights in the United States and Argentina, or the law of employment discrimination for transgender persons in the United States and the United Kingdom, or the law of sexual harassment at public universities in the United States and South Africa.) Students are encouraged to discuss their paper topic with Professor Oppenheimer during office hours. **The paper is due by email to Professor Oppenheimer (doppenheimer@law.berkeley.edu) by 5:00 pm on Friday November 5.**

Berkeley Tuesday morning 9:00 am IRL session (November 9)
Is the #MeToo Movement changing people’s lives?

Week 12: Sexual Harassment/Violence
(Nov 11) (Note that today is a holiday in the United States. Berkeley students may elect to review the recording instead of attending class.)
See Universal Syllabus

Berkeley Tuesday morning 9:00 am IRL session (November 16)
TBD

Week 13: Affirmative Action (Positive Action, Positive Measures)
(Nov 18)
See Universal Syllabus

**Week 14: Procedures and Remedies for Discrimination
(Nov 25)**

See Universal Syllabus

Berkeley classes do not meet on Thursday Nov 25

LAST Berkeley Tuesday morning 9:00 am IRL session (November 23)

The diversity justification for affirmative action

~~**Berkeley Tuesday morning 9:00 am IRL session (November 30)**~~

Class Cancelled

**LAST CLASS FOR BERKELEY STUDENTS: Week 15: Affirmative Action (Positive Action, Positive Measures) & Gender Parity
(Dec 2)**

See Universal Syllabus

~~**Week 16: New Developments in Comparative Equality Law
Dec. 9**~~

See Universal Syllabus

~~**(Berkeley Reading Week is Dec 6 – 10; Berkeley students will not be present)**~~

Week 15: Reading Week

(Dec 6 – 10)

Exam Period (Dec 13-17)

Final Exam for Berkeley students

The final exam will be a 6-hour take-home exam with a 1500 word limit. The exam will present a hypothetical problem and ask how the problem would be analyzed in two countries we have studied.