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## **COURSE GUIDE TEMPLATE**

### ***CONSTITUTIONAL LAW – Doctrinal Study Group***

***Dr. Luis Franceschi, Strathmore University, Law School,  
Kenya***

***And***

***Professor Bettina Kahil-Wolff Hummer, University of  
Lausanne, Switzerland***

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The purpose of reviewing and discussing this Course Guide Template is to add more substance to it to get it publication ready.

**Please discuss examples (and notate examples within this template) to include for each section in order to develop it into a more comprehensive course guide, such as the following: instructional materials which can be used in or out of the classroom, case studies, articles, exercises, teaching tools, etc., all of which have global relevance. Also, please add any other ideas or comments you may have to each section. Page 2 includes suggested sections to work on.**

This Course Guide will provide our members with a basic, comprehensive and global approach to your doctrinal field of study.

#### **Doctrinal Study Group Chair Role:**

1. To lead their Study Group discussion.
2. To take notes and provide examples (see above) within each section of this document. This document is to be submitted to the IALS Secretariat at the end of discussion.
3. After this meeting and based off this Study Group discussion, shortly thereafter each Study Group Chair is also expected to submit a short report as to how they want to further structure this book, and provide ideas as to what will be contributed to move publication along.

## **Course Guide Template Recommended Sections to work on:**

### 1. Course Curriculum/Core Topics

- Possible additional information to add:
  - Breakdown of Core Topics by semesters (i.e. first vs second, or introductory versus advanced classes). Subtopics.

### 2. Teaching Tools: Teaching Method, Unique Pedagogies, Exercises & Activities

- Study Group members are to share their unique teaching methods.

### 4. Teaching Tools: Elucidating and inciting interest of legal issues

- Study Group members to add their ideas.

### 5. Teaching Tools: Research Topic Suggestions

- Study Group members to add their suggestions. Each country/region is encouraged to elaborate on a list of possible topics that may incite passion, love and interest in students towards the subject.

### 6. Model Syllabi

- Study Group members to add any other pertinent information.

### 7. Study Group Members to add information and share their ideas in whatever sections they feel pertinent to do so.

## Doctrinal Area of Study

This area should include the following:

**Provide a general definition of law for your legal specialty.**

**Purpose behind providing this information**

**Defining specifically what type of law will be studied is especially important for first year law students who are new to the subject and need to understand its fundamental rules. It is the teacher's responsibility to ensure that their students grasp a basic understanding of the groundwork to your legal specialty before delving into subtopics. It is also important to redefine what type of law will be studied to continuing students to remind them of the fundamental rules and law that will be studied and govern a society.**

### **Constitutional Law Defined**

*A constitution may be defined as a set of primary rules of higher authority which deal with the basic structure and functions of the State, its rights and duties towards its subjects and other subjects of law and which is made effective by additional laws and conventions, and by the politics of the country (FRANCESCHI, p. 3). In this sense, as the fundamental and organic law of a nation or State, the constitution establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties. Further, Constitutional Law may be conceptualized as the study of this category of superior rules that govern the activities and the structure of States or State like Organizations (e.g. EU) while granting Fundamental rights to all individuals.*

*Therefore, Constitutional Law teaching primarily focuses on the limits of power and the extent of rights (LIEBERMAN/SANDLER, and 8; POWER, p. 8) in a given social context.*

### **Purpose behind learning Constitutional Law**

*In previous meetings, our Study Group has stated that this subject requires a broader approach in order to contextualize Constitutional Law teaching, thus including topics that are linked to regional challenges, like decolonization (more particularly the need of decolonizing legal education), participative democracy, peculiar government systems and structures, history and social organization. A comparative contextualized approach helps us learn from each other; this includes the study of Constitutional Law Doctrine and Constitutionalism and how they are perceived in different parts of the world (PETERS, p. 68). Constitutional Law Doctrine (which includes teaching and research) is deeply impacted by different typologies of Government, judicial review and the legal and political history of a given context (e.g. MARSCH 2015, p. 277).*

*For example, some jurisdictions are parliamentary oriented or include elements of direct democracy (e.g. Switzerland). In some African jurisdictions, decolonization is a major issue. In some states, religion plays a key role in social and political structures (e.g. Middle East and some Asian countries). It is therefore desirable to include the social and political context of each jurisdiction (state or regional like the EU)*

#### **References**

FRANCESCHI LG, *The Constitution of Kenya: A Commentary*, Strathmore University Press, 2<sup>nd</sup> Edition, 2019

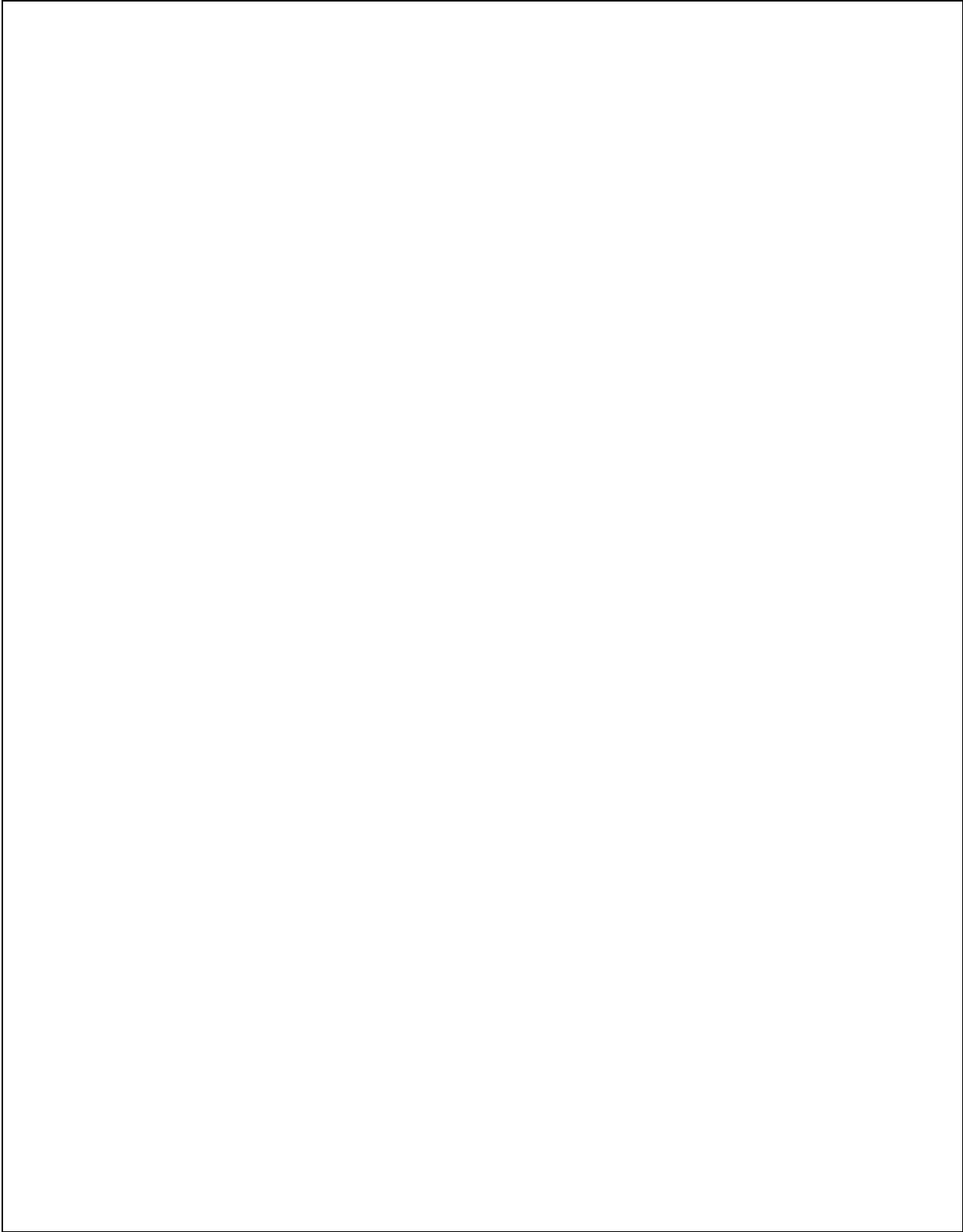
LIEBERMAN, Jethro K. /SANDLER, Ross, *Jumpstart Constitutional Law – Reading and Understanding Constitutional Law Cases*, Wolters Kluwer, New York 2014

MARSCH, Nikolaus, *Verfassungsgerichtsbarkeit*, in Marsch/Vilain/Wendel, ed., *Französisches und Deutsches Verfassungsrecht – ein Rechtsvergleich*, Springer, Berlin 2015, p. 275 et seq.

PETERS, Anne, *Le constitutionnalisme global : Crise ou consolidation ?* Jus Politicum – Revue de droit politique n° 19 Global Constitutionalisme 2018, p. 59 et seq.

POWER, Robert C., *Strategies and Techniques for Teaching Constitutional Law*, Wolters Kluwer, New York 2012

**Notes to add for this section:**



## General description of subject to be studied

It is important that the course outline clearly explain the scope and subject matter of the course. Students should be able to appreciate exactly what they will learn in this course. A good approach that enhances clarity of this content is an articulation of what the course does not cover.

*At the San Francisco meeting, the Working Group agreed that, on the one hand globalization requires to strengthen the international comparative approach. On the other hand, Constitutional Law deeply depends on the structure, culture, history and social context of each country. To find the right balance of both realities is one of the major challenges of legal education today (Study Group report – Session n° 1, 2016).*

*The Group also noticed that there are guidelines made by governments or regulatory academic bodies that limit the extend, manner and quantity of classes (E.g. the “Bologna” ECTS-system in Europe does not allow more than 180 credits for a Bachelor program, and not more that 90 credits for a Master program. See Study Group report – Session n° 2, 2016).*

*In general terms and respecting the specific regulatory requirement of each jurisdictions, the Working Group also agreed that the number of credit units’ load per semester impacts the attainment of the course learning outcomes. For undergraduate studies, the minimum credit units due to Constitutional Law should make sure to provide knowledge in basic concepts of Constitutional Law, founded on the national Constitution and additionally include general comparative studies. The Working Group recommends that at least 10 % of the global credit load should focus on Constitutional Law. Graduate programs can build on that and be more focused on case-study (Study Group report – Session n° 2, 2016).*

*The Group is aware that legal studies have different structures in the different parts of the world. In the US and other countries, law studies require a three or four-year general College degree and are therefore law is considered a post graduate qualification or specialized professional education. On the contrary, in several Asian, African, South American and European countries, legal education starts at the undergraduate level and is mostly composed of a bachelor’s degree in law (three or four years) and a bar exam course or masters (one to two years). The Group therefore prefers to list all the necessary topics without specifying whether they should be taught on the undergraduate or graduate level.*

*The Package should include:*

- *the notion of public law*
- *main definitions*
- *history*
- *the structure of the state (legislative, executive, judicial power)*
- *rights (generation, effect, limitation, litigation)*
- *rule of law*

- *separation of powers*
- *locus standi*
- *judicial review (Constitutional review)*
- *Constitutional interpretation*  
(*Study Group report – Session n° 2, 2016*).

**Notes to add for this section:**

## Learning Outcomes

The [Singapore Declaration on Global Standards and Outcomes of a Legal Education](#) and [Judicial Standards of Legal Education](#) are recommended sources of guidance on the form and nature of the learning outcomes to be adopted. Be guided by these recommendations and specify what each outcome should be for your doctrinal subject matter.

*In the Pune (India) meetings, the Group developed Learning Outcomes as part of a global teaching/learning method (Study Group, report 2017) by using the logic model provided by IALS. Below is a summary:*

### INPUT:

- *Expose to archives, textbook and research articles;*
- *Interpretation techniques;*
- *Two-way division of constitutional law- constitutional law and comparative constitutional law;*
- *Examination.*

### ACTIVITIES:

- *Moot courts & critical writing;*
- *Study of Systems of other countries;*
- *Advice related homework;*
- *Doctrinal & historical research.*

### OUTPUTS:

- *Internalized critical understanding;*
- *Interpretation related moot problems;*
- *Clarity in the constitutional values & theories;*
- *Examination & presentation;*
- *Understanding historical context;*
- *Paper assessment.*

### OUTCOME:

- *Grasp the concept of constitution, constitutionalism and constitutional law;*
- *Understanding of comparative constitutional law and develop the ability to compare and contrast different constitutional systems;*
- *Internalization of constitutional values & principles;*
- *Analyze the validity of subsidiary legislations;*
- *Understanding the philosophical context of the constitution.*

### IMPACT:

- *Knowing yesterday; understanding today and predicting tomorrow;*
- *Capability to interpret and apply constitutional law;*



- *Understand the importance and sacredness of the rule of law.*

**Notes to add for this section:**

## Course Curriculum/Core Topics

This section should layout the core topics and subtopics to be covered.

*The core topics to be covered are based on the opinions given by each member which enriched the original curriculum presented by Strathmore Law School. [See appendix 1.](#)*

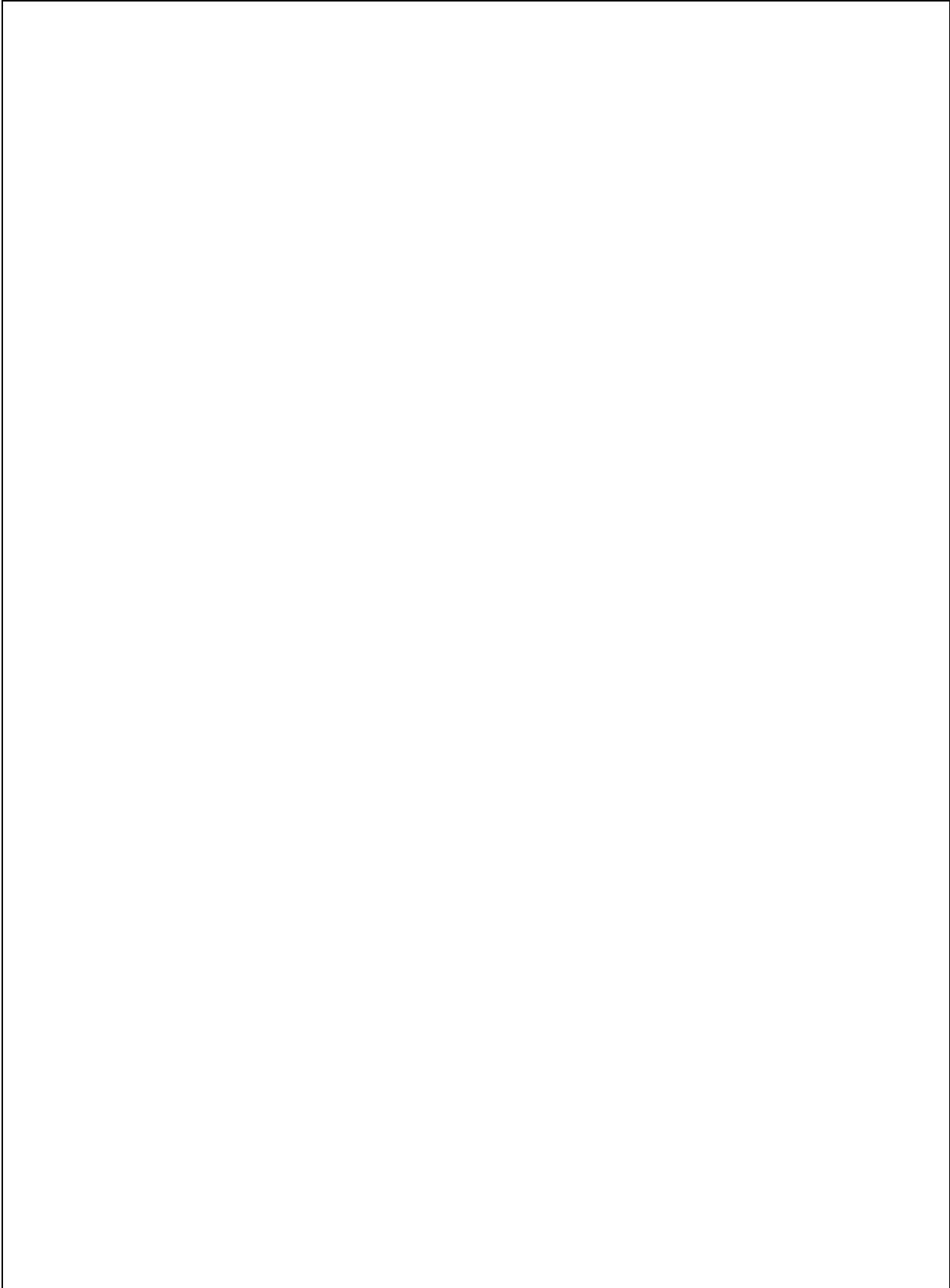
**Notes to add for this section:**

## Teaching Tools: Teaching Method, Unique Pedagogies, Exercises & Activities

Tailor information for your doctrinal area of study related to teaching methods, unique pedagogies, exercises and activities suggested, followed by an explanation of why they are recommended. Some examples are case dialogue/Socratic method, problem-based learning, team-based learning, lecture format, presentations, workshops, outdoor learning, field trips.

*The report presented in 2018 by the Constitutional Law Doctrinal Study Group lists wonderful and innovative pedagogies that may be considered and expanded by the members. [See appendix 2.](#)*

**Notes to add for this section:**



## Teaching Tools: Elucidating and inciting interest of legal issues

Posing scenarios that would elucidate and spark student interest of legal issues covered during the course. For example, a teacher could present textual cases or present an article or video that would put students in the ballpark of the issue and ignite curiosity. Another example could include taking students on a field trip that would highlight legal issues and topics relative to the course. Making a legal issue personal by explaining how it affects or has affected a student's life and family or relative society can be an effective way of moving a student and thus creating passion for the subject.

Pedagogies may also be incorporated in this section if appropriate.

### **Example: Contract Law**

*Village interviews:*

*Before the semester begins, our first-year students are sent back to their home villages with a questionnaire. They are instructed to find the oldest person (or thereabouts) in the village, and ask them questions about how various kinds of common agreements (sale of goods, land, services) were handled when they were young. How did you negotiate a contract? Were there any witnesses to*

*the agreement? Was it written down? Importantly, how did you handle things when contracts broke down?*

*The semester then begins by taking the student findings concerning traditional contracts as the baseline. Topic by topic, the course then introduces the*

*Bhutanese statutory framework (with appropriate comparative counter-examples from foreign common and civil law jurisdictions), with a constant challenge to the students to evaluate whether (and what) the formal framework contributes to the traditional models and how the two models might complement or conflict with one another.*

*This approach reflects the fact that in Bhutan (as in many countries), contract law is a combination of relatively recent statutory law and ages-old traditional law. The interview at the beginning lets the students take some ownership over the class, and allows them to walk into their first law-school classroom already feeling like they know something about the subject.*

*Vice Dean Michael Peil, Jigme Singye Wangchuck School of Law, Bhutan; IALS 2018/2019 Contract Law Doctrinal Study Group Chair Representative*

**Notes to add for this section:**

## Teaching Tools: Research Topic Suggestions

This area should suggest an array of acceptable pursuable research topics for students. Students learn best when they are passionate, inspired, interested in and enjoy learning about a topic; for this reason, if possible, please include any fun ways that a student may pursue their research topic project. Allow ample time for the student to undertake their research project to ensure that the student excels.

Research topics can be presented two different ways to a student: (1) assigning a research topic or, 2) suggest a list of topics for the student to choose from.

Notes to add for this section:

## Goals for the 2019 Study Group meeting

- Enrich the working curriculum/syllabus with specific global nuances;
- Add further innovative teaching technologies and research areas that may ignite each student with a passion for the subject;
- Update the 2018 report with new ideas;
- Synthesize the material brought and studied by previous groups in a concrete plan of action and recommendations that law schools may find applicable and valuable in their given context.

## Sample: Model Syllabus – refer to Appendix 1

### Course Overview

#### **Course Information:**

Full Course Title: Constitutional Law  
Semester: 2 Semesters, 1<sup>st</sup> year LLB  
Duration: 15 weeks

#### **Faculty information:**

Name of instructor: Prof Luis Franceschi  
Office Location: Nairobi-Kenya  
Office Hours: 8:00 to 17:00  
Office Phone: +254 722 312500  
E-mail Address: Lfranceschi@strathmore.edu

#### **Course identification:**

Credits hours/points: Double credits 6  
Days/times course meets: 3 hours per week  
Prerequisites: None





**Constitutional Law**

**Doctrinal Study Group Program**

**2018 Report**



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2018  
Background  
&  
Objectives

## Background and Objectives

The IALS Study Groups are formed around the doctrinal interests of our faculty members and their scholarship. The Association's initial 11 study groups focus on the core doctrinal areas of legal study<sup>1</sup>.

The groups have followed the Association's established process of first establishing a common baseline<sup>2</sup> for each core area of doctrinal law as taught in a law program. This has been done by building a consensus among the relevant stakeholders. Having established that baseline through their development of course outlines, curriculum and model syllabi, the next step has been to investigate different pedagogic approaches in educating a new cohort of students in these concepts. The objective is to continually explore and advance our understanding of each core area to fulfill our fundamental mission of improving legal education globally by learning from each other.

The 11 Study Groups are:

1. Civil Procedure
2. Commercial Law
3. Constitutional Law
4. Contract Law
5. Criminal Law and Procedure
6. Environmental Law
7. Family Law
8. Human Rights Law
9. International Law
10. Legal Entities
11. Property Law

<sup>1</sup>As long as there is sufficient interest in a specific area of study, the Association is open to supporting the formation of a group to investigate that field.

<sup>2</sup>We have followed this process in establishing our foundational principles in the Singapore Declaration, the Madrid Protocol, and the Judicial Standards of a Legal Education.



## Yearly Objective and Goal 2015 - 2019

# Yearly Objective and Goal

## 2019

### **Next Steps – Publication – Continuation of Pedagogies**

From this initial collaboration of establishing baselines and innovative teaching tools, Study Groups should develop into robust collaborative research entities which will work together to bring a global perspective to their core areas. Such research should engage diverse faculty to investigate both theoretically and empirically the new challenges facing their respective areas of scholarship. These collaborative efforts will go beyond pedagogy and should push the boundaries of scholarship in each respective field. Once these projects are underway, the Association will establish peer reviewed publication outlets (handbooks and a book) for the results, thus enabling faculty to disseminate and be recognized for their scholarship.

Building on the 2018 theme of pedagogies and related Study Group work, for the 2019 year pedagogies will be continued. Through our statistical analysis of the 2018 year, it was quite apparent that our members were very engaged in this topic and open to continuing this conversation. Pedagogies is an imperative subject matter for our law teachers whose goal should be to continuously increase and improve their student learning outcomes as to the rule of law. The most effective way to achieve student learning is to use a wide variety of teaching strategies in order to keep students engaged and provide them with hands on applicable approaches to facilitate their learning ranging from basic to complicated in depth subject matters.

## 2018

### **Pedagogies – Student Learning and Engagement**

#### **Beginning steps to Publication**

For the 2018 year Study Groups were focused on pedagogies. We encouraged members to participate and learn from each other unique teaching methods to increase student learning, participation and their overall grades. Our aim was to look for teaching approaches that go beyond traditional classroom methods, like lectures, which many students are finding to be boring.

Earlier this year we introduced this topic by sharing Constitutional Law Co-Chair and Dean of Strathmore University, Law School (Kenya) Luis Franceschi's PowerPoint that showed how he increased student learning and their overall grades through a fun & unique pedagogy employed, called the "Amazing Race". Towards the end of the year Study Group Chairs and members posted additional unique teaching approaches suggested and employed by them.

Towards the end of the 2018 year we began to ask Study Group Chairs, Chair Representatives and Members for a "Call for Topics" for publication. This was further discussed at the 2018 Study Group Meeting November 11, 2018, hosted by Qatar University, College of Law, Doha, Qatar.

## **2017**

### **Creating Outlines & Model Syllabi**

For the 2017 year Study Groups focused on creating model syllabi for members to use as reference material to help aid them in their curriculum. Throughout the year we asked members to submit their syllabi, and towards the end of the year each Study Group Chair created a model syllabus outline based off the syllabi that was submitted for their Study Group. We also asked members to share their experiences, pedagogies, ideas, and add any thoughts or questions related to legal education and their doctrinal study area.

In late December we uploaded the 2017 Annual Meeting notes on Plenary Sessions and Small Group Breakout Discussions for each Study Group. We encouraged members to participate and help us in our future investigation for our Evaluation, Advising and Certification Program.

## **2016**

Annual Meeting: Final discussion regarding the formation of Study Groups

December – Study Groups officially formed

## **2015**

Preliminary Discussions about the formation of Study Groups



## 2018 Study Group Members



# Constitutional Law

## CO-CHAIR'S

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2018

Pedagogies

&

Call for Topics Suggested

INTERNATIONAL ASSOCIATION OF LAW SCHOOLS (IALS)  
2018

# Constitutional Law Doctrinal Study Group Submission on Unique Educational Pedagogies and Call for Topics

**Prepared by**

**Dean Luis Franceschi**

*Strathmore University, Law School,  
Kenya  
Co-Chair, Constitutional Law Doctrinal Study Group,  
IALS*

**Professor Bettina Kahil-  
Wolff Hummer**

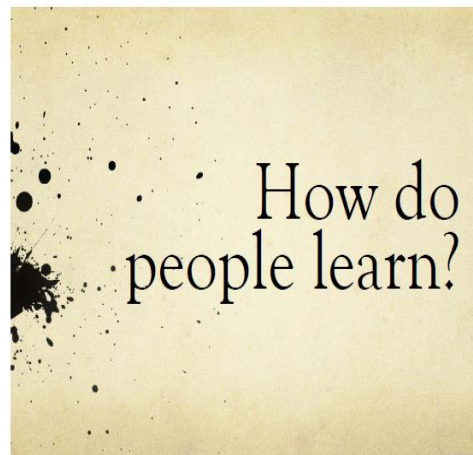
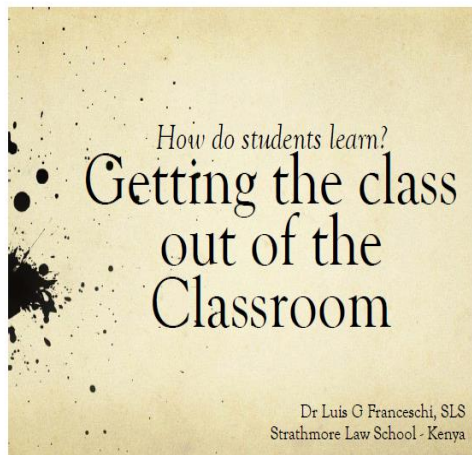
*University of Lausanne, School of  
Law, Switzerland  
Co-Chair, Constitutional Law Doctrinal Study Group,  
IALS  
Chair, Doctrinal Study Group Committee, IALS*

Submitted by Constitutional Study Group Co-Chair Luis Franceschi, Dean, Strathmore University, Law School, Kenya. March 2018.

**Pedagogy:**

Called the “Amazing Race”

PowerPoint





• Getting the class out of the classroom!

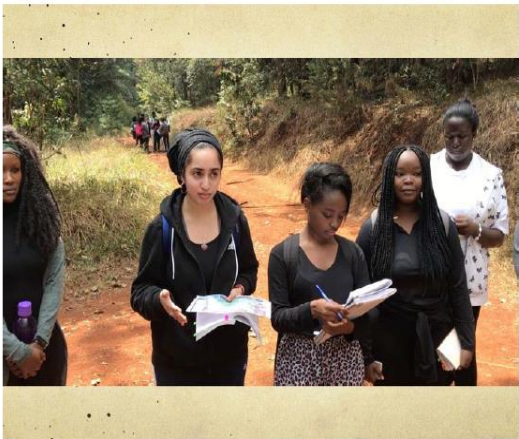
## Amazing Race - traits

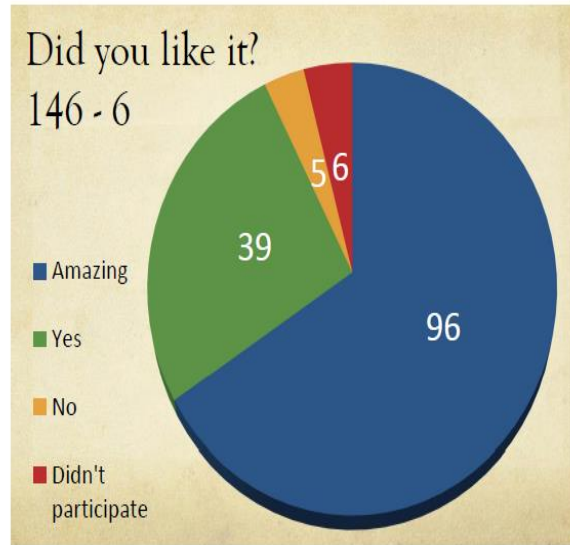
- 140 students in Karura, a city forest;
- 10 questions/10 Km/20 judges

**Constrains:**

- Numbers
- Time
- Costs involved
- Sample

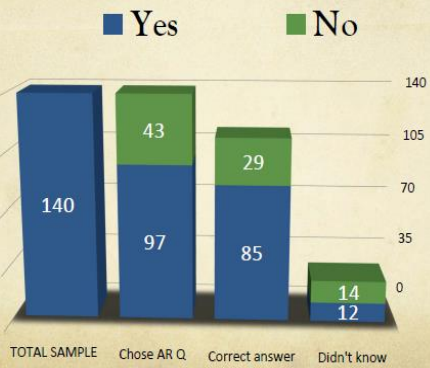
- Lecturers, GAs, Finalists, Practitioners
- Teamwork / run & learn
- Digital Maps
- Results are relied also through WhatsApp
- The winning team gets a prize.







### Question of choice - correct answer



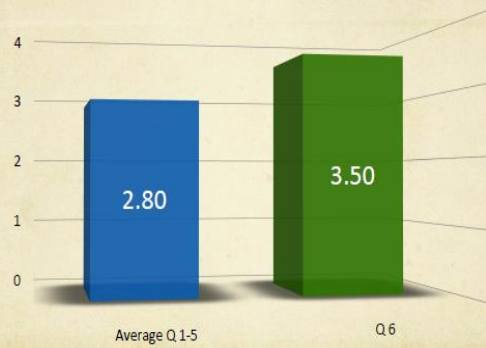
### In the Final Exam

- 1. Bill of Rights 2.0
- 2. Principles of Leadership & Integrity 2.5
- 3. What makes a State Unitary 3.4
- 4. Transformative Constitutionalism 3.0
- 5. What makes a State Secular 3.0
- 6. Independence of the Judiciary 3.5

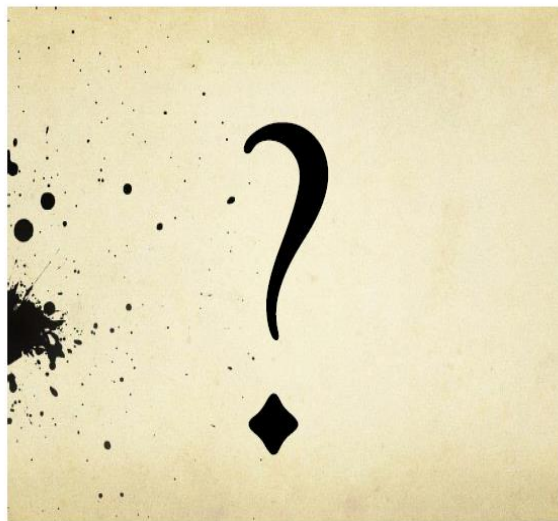
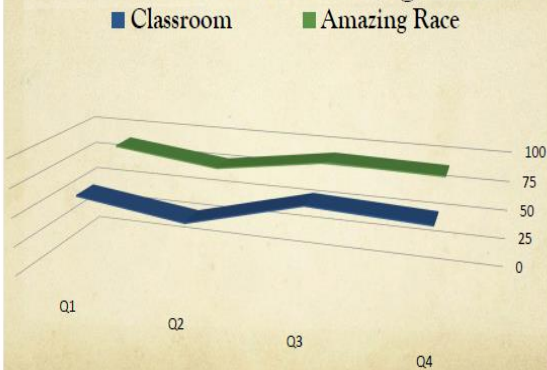
### In the Final Exam



### In the Final Exam - average



### Classroom v. Amazing race





### **More Details**

*Presentation, "Getting the class out of the classroom"*

*By Dean and Constitutional Law Study Group Chair Luis Franceschi, Strathmore University, Law School, Kenya, e-mail: [lfranceschi@strathmore.edu](mailto:lfranceschi@strathmore.edu)*

#### **1. What was role of judges in the Amazing Race?**

The judges are two at every check point. They are lecturers, and sometimes experienced practitioners or actual judges invited by the School. We gave the students reading materials beforehand, and we prepared questions related to those topics. For example, independence of the judiciary for one race, immunities (state and diplomatic) for another race, legal system as well, etc.

The important thing is that the students get the question at the previous check point, so as they walk/run in groups they are discussing and preparing the answer. The idea is NOT that the students reach a checkpoint and are asked a question and answer on the spot. Precisely, what we want is that they discuss the answer as they walk/run... and this is the fun and success. For this to happen, it is important they get their question at the previous checkpoint. So, let's say in checkpoint 3, they answered the question they were given in checkpoint 2. If they answer correctly they are given a new question they will answer in checkpoint 4 and they will prepare that answer as they walk/run to checkpoint 4. The judges assess the students and send their assessment to a central coordinator by WhatsApp. That way, results trickle in real time.

#### **2. What types of questions were the students answering?**

Constitutional Law Questions in the Amazing Race:

1. Explain the concept of sovereignty of the people as discussed in the case of Timothy Njoya.
2. "Article 170 of the Constitution of Kenya is unconstitutional because Article 8 states that we are a secular nation, and is thus more important".

Imagine that you are a judge of the High Court of Kenya faced with such an assertion. What would be your decision on the matter?

3. Explain what HWO Okoth Ogendo discusses in his acclaimed chapter, 'Constitutions without Constitutionalism'.
4. Mr. Omoke wants to know how independent the judiciary of country A is. Given that you are a constitutional law expert, explain to him the parameters by which he can measure such independence.
5. Explain the structure of the legislature under the Constitution of Kenya (2010).

Questions on Final:

1. Explain the concept of sovereignty of the people as discussed in the case of Timothy Njoya.
2. Does the Kenyan legal system subscribe to legal pluralism?
3. "Article 170 of the Constitution of Kenya is unconstitutional because Article 8 states that we are a secular nation, and is thus more important".

Imagine that you are a judge of the High Court of Kenya faced with such an assertion. What would be your decision on the matter?

4. What is the difference between judges and the trial process in civil law legal systems versus in common law systems?
5. Explain what HWO Okoth Ogendo discusses in his acclaimed chapter, 'Constitutions without Constitutionalism'.
6. Mr. Omoke wants to know how independent the judiciary of country A is. Given that you are a constitutional law expert, explain to him the parameters by which he can measure such independence.
7. Is Kenya a monist or dualist state?
8. Explain the current status of judicial independence in the United States or any of the states Dr. Franceschi mentioned in class.

### **3. Were the students in pre-selected groups?**

Yes. Every class had pre-selected teams (we can them firms) and they all group work together. That way we break groupings that may have formed based on ethnic, religious, social, gender or secondary school grounds. We mix them up.

**Additional Pedagogies: Submitted by Constitutional Study Group Co-Chair  
Luis Franceschi, Dean, Strathmore University, Law School, Kenya. November  
2018**

Below are two new subjects “invented” by Strathmore University, Law School, Kenya: 1) “Law and Literature” and, 2) “Law and Department”. They stand out above the rest not only for their knowledge, but also for providing a new graduate with self-confidence, proper social appearance and behavior. Once inside the gates of the professional world, new graduates then have the time to prove themselves through their legal knowledge... but these other essential doors of opportunity need to first be opened, in order to ensure that graduates have soft skills such as these in order to command respect, confidence and dependability.

## **Law and Literature**

**Audience:** LLB 1<sup>st</sup> year students in groups of 20

**Duration:** 45 contact hours

**Pre-requisite:** None

Dating back to ancient times, law, justice, government, and responsibility have featured heavily in great works of literature. This course considers such works exploring what they tell us about law, justice and government and how these interact with the human condition. In these stories students understand and learn to identify the emotional complexity, political values, cultural mores, and the psychology of the people who become criminals, victims, and prisoners. These works tell the human stories behind the cases students.

***The course seeks to impart the following skills:***

**Critical thinking:** Law looks at the status of the facts and is therefore rigid in that regard, literature is fluid much like reality - hence students develop the art of critical thinking in an environment that is synthetic, creative, and ambivalent. Learning from interpreting literary texts to how to interpret law.

**Learn the art of persuasion:** Students will learn how to appreciate great works of literature and the role of narration, persuasion in storytelling and by extension appreciate the law which is somewhat similar.

**History:** Acquire a robust understanding of how the past shapes us. Debate how people have encountered this before and what they did.

**Act of interpretation:** Embedded in works of literature are truths not found in jurisprudence because law is not a narration hence they will learn how to identify linguistic and philosophical

nuances in law that jurisprudence makes abstract e.g. justice, custom, law and political power with a view to illustrating how these ideas engage with real life and how the system is functioning.

### ***About the Course***

The course was taught in July – October 2018, to 1<sup>st</sup> year students. The course was taught for 3 hours per week. A shared enquiry methodology is adopted and for this reason the class was divided into groups of 40. Students are required to read the texts before the class

The books students cover:

- BEFORE THE LAW by Franz Kafka
- THINGS FALL APART by Chinua Achebe
- TO KILL A MOCKING BIRD by Lee Harper
- THE MERCHANT OF VENICE by William Shakespeare
- The students also undertake a short research project on any precolonial society of their choice.

### ***Student experience***

- At the beginning of the course, it was difficult to get students to read and recall details of the story. Some of the students were also uncomfortable with class discussions and would have preferred straightforward lectures.
- At the end of the course, some students said they liked the course especially thematic discussions. Several of them wrote an email to the lecturer. They said: *“This unit has been a real joy. Amazing experience, especially the reading and discussion of the splendid book: To Kill a Mockingbird.”*

## **Law and Department**

**Audience:** LLB 1<sup>st</sup> year students in groups of 20

**Duration:** 45 contact hours

**Pre-requisite:** None

This course seeks to impart to students the weight and value of professional tradition, responsibility and the skills necessary for lawyers who will influence society positively. The classes are 3 hours long. Some sessions are delivered as lectures while others are practical sessions.

### ***Course content:***

#### **Virtuous leadership**

Students will have fireside chats that will impart to them the history and lofty ideals of the legal profession. Students will also learn virtuous leadership. They will be taken through sessions that will heighten their self-awareness and learn to make the link between self-management and the impact these have on one's health, career and relationships.

#### **Dining Etiquette (1 and 2)**

Students will learn the basics of dining etiquette, which includes utensil usage and general dining behavior. The second session takes them through a fine dining session thus empowering them with crucial dining skills needed for all occasions.

#### **Image Etiquette**

These sessions help students to put their best foot forward: sitting, walking and standing, basic hygiene and make up application (for ladies).

#### **Business Etiquette**

Empower students with the basics of business etiquette. Seating in a board room, participating in a meeting. Running a meeting. Proper introductions, greetings and generally how to stand out in the workplace in a positive way.

#### **Protocol**

Students will learn international protocol and learn cross- cultural awareness. They will be given protocol "intelligence skills" that are changing the way world citizens interact with one another e.g. names, titles, forms of address, giving and receiving gifts etc.

International Association of Law Schools  
Fall 2018

**Submission of Unique Pedagogies for Legal Education  
and “Call for Topics”**

by

Bettina Kahil-Wolff Hummer

Chair of the Doctrinal Study Group Committee and Member of the Constitutional Law Study Group  
Professor for Social Law at the University of Lausanne, School of Law, Switzerland

Please find herein a description of a teaching experience from the academic year 2016/2017 (1). The method used may be helpful as a starting point for our discussion at the 2018 Annual and Study Group Meeting in Doha, Qatar regarding innovative teaching skills and values.

Furthermore, this paper provides an idea for a subject that could become part of a workshop (followed by publication) concerning innovative legal education (2).

### 1. Teaching experience

The class referred to was part of the master’s program at the University of Lausanne, School of Law. About 30 students participated, which is the average class size in our master’s program. All students already had a basic legal education and were aware of the fundamentals of the subject to be studied. These fundamentals were learned during their Social Security Law class, which is a mandatory class in the bachelor program.

One of the guidelines ruling our master’s program is to encourage interactivity between the professor and the students. In this class, interactivity had two strings: first, during a two-week class session, we discussed different topics; secondly and afterwards, the students had to produce papers that received comments by the teacher and were corrected by the students for the purpose of ultimately being published.

During the beginning of this class the students were informed that they were to elaborate a legal act for a fictive long-term care insurance. The insurance would become part of the legislation of their home region, the Canton de Vaud in Switzerland. This information surprised the students who had expected a more classical learning-testing approach. They seemed excited by this task and only one person abandoned after the second day.

They then received a theoretical overview about the related law, as well as some aspects of comparative law (i.e. explaining how does long-term care insurance works in Germany, Belgium and Luxembourg). This part was presented as a traditional lecture of about 2 hours and was very well received by the students who seemed to absorb as much information possible in order to develop their own ideas later on. They were also told that they should act like a committee of legal experts mandated to prepare a law that the government wanted to bring into parliament soon.

For the next step, the group was lectured on respecting a certain number of main principles such as public law based mandatory insurance, financing by individual contributions, decentralized administration, etc. This part needed more preparation than the theoretical overview because it was necessary to develop a model of such an insurance.

During the following period, groups of 2-3 students had to formulate and comment on one article each. They were given one or two days before the plenum came together again to make their presentations in front of the class. The plenum discussions helped to criticize and perform the solutions that were proposed by the different groups. Since each provision of such a legal act was part of a whole, the audience was alert and interested by every article; furthermore, the discussion was constructive, and the students brought the project forward step by step.

After this, each group had to study the project globally as put together in the plenum; to conclude, we came together for a final discussion. The project was approved as a whole at the end of the day.

The longest time-consuming period during this assignment was where each group had to write down their contribution in a more detailed manner than the presentation that had been requested for the panel discussions. For most of the students, their contributions became good after some critiques and corrections, while others turned in papers that were perfect right away. These contributions have been published in a book; in addition, the book also contains a commentary article by article.

As I have mentioned in Groupsite, the challenge of this project was to integrate a political decision into statutory law, in a field that is specialized and complex. Participants had to get familiar with the federal, regional and even community law that is regulating social security and social welfare in Switzerland. They were also obliged to study similar statutory laws of other countries, along with corresponding language issues. Writing and editing the texts and commentaries were impeded by the necessity to work in small groups and coordinate their work with the work done by all other groups.

## 2. Proposal for a paper

I believe that each of our members has his/her personal teaching and research experiences; therefore, all of us certainly can give good input for a paper to publish.

Since I am teaching Legal German (besides Social Law), I would like to develop some ideas about how to use and perform language skills (foreign languages) in the field of law.

Lausanne, October 21<sup>st</sup> 2018





## 2018 Study Group Meeting

# Notes and Final Research Topic Chosen

Event: 2018 Annual Meeting hosted by Qatar University, College of Law

November 11, 2018: 3 p.m. – 4 p.m.

Al Mukhtasar Ballroom, The Ritz Carlton, Doha, Qatar

October 22, 2018

## A “CALL FOR TOPICS” FOR A CONFERENCE AND BOOK (DIVERSITY AND INNOVATION IN LEGAL EDUCATION AND TEACHING METHODS)

At the 2018 Annual Meeting of the International Association of Law Schools held at the University of Qatar’s College of Law from 10 – 12 November 2018, an announcement will be made about the forthcoming Conference of the IALS on the Diversity and Innovation in Legal Education and Teaching Methods.

The Conference is being organised with the realisation that legal education in the university of the future demands that facilitation of legal education in a way in which it was done since the nineteenth century may no longer be appropriate for the demands of the profession in the twenty first century. It is therefore necessary that the teaching methods associated with the bygone era, such as rote learning, should be dispensed with.

The need for the change is in light of the reality that education can no longer be seen as being mechanistic, focusing on data absorption and replication. In the past, teaching methods in legal education were largely ineffective in translating information into usable and practical knowledge.

Today, the central focus of legal education must be seen to be concerned with preparing learners for the practical world where they would ultimately develop into experts. As such, there is an invariable need for a shift from the teaching methods of the university of the past to those which are concerned with data dissection and reconstruction and their application in real and hypothetical situations.

With this new approach, information is being translated into usable and practical knowledge. The new approach requires capitalising on interdisciplinary research – such as applying behavioural science to develop new learning methods – in order to uncover the best methods of translating the information into usable practical knowledge.

This serves as a call for topics to be discussed at the above conference. The conference will culminate in the production of a book on ‘Diversity and Innovation in Legal Education and Teaching Methods.

More details will be communicated and finalized at the 2018 IALS Annual Meeting at Qatar University’s College of Law on 11 November 2018

Forward the topics to the Chairs or Chair Representatives of the different Doctrinal Study Groups before or during the meetings of the Study Groups scheduled for the 11<sup>th</sup> of November 2018.

## **Constitutional Law Doctrinal Study Group**

### **Attendees:**

1. Co-Chair and Chair of IALS Study Group Committee Bettina Kahil-Wolff Hummer, Professor, Dean Emeritus, University of Lausanne, School of Law, Switzerland, [bettina.hummer@unil.ch](mailto:bettina.hummer@unil.ch)
2. Co-Chair Luis Gabriel Franceschi, Dean, Strathmore University, Strathmore Law School, Africa, [lfranceschi@strathmore.edu](mailto:lfranceschi@strathmore.edu)
3. David Marcello, Executive Director, Tulane University, Law School, United States of America, [dmarcello@tulane.edu](mailto:dmarcello@tulane.edu)
4. Tomasz Tadeusz Koncewicz, Professor, University of Gdansk, Faculty of Law and Administration, Poland, [tomasz.koncewicz@provider.pl](mailto:tomasz.koncewicz@provider.pl)
5. Purvi Pokhariyal, Dean, Nirma University, Ahmed, Institute of Law, India, [director.il@nirmauni.ac.in](mailto:director.il@nirmauni.ac.in)
6. Shampa Dev, Dr., Christ University, School of Law, India, [shampa.dev@christuniversity.in](mailto:shampa.dev@christuniversity.in)
7. Nathaniel Inegbedion, Dean, Professor, University of Benin, Faculty of Law, Edo State Nigeria, Africa, [nathaniel.inegbedion@uniben.edu](mailto:nathaniel.inegbedion@uniben.edu)
8. Hlako Choma, Advocate, University of Venda, School of Law, South Africa, [advchoma@yahoo.co.uk](mailto:advchoma@yahoo.co.uk)
9. Denis Bikesha, Dean, University of Rwanda, School of Law, Africa, [bikesha25@gmail.com](mailto:bikesha25@gmail.com)

### **Meeting Report:**

#### **Study Group Co-Chair Bettina Kahil-Wolff Hummer**

The group first got into a discussion that was inspired by the Panel presentation made by Tomasz Koncewicz, and therefore focused on the question on how constitutional law can be protected in a populist environment. We then stated that our Group is formed by experts from different regions of the world and that this cultural diversity is a strength we should exploit. We also debated the question on if we should focus on one subject, for instance the rule of law, or have a broader approach. We expressed interest in building on the statements made at the 2016 Annual Meeting in San Francisco, CA, USA.

## **Study Group Co-Chair Luis Franceschi**

We spoke of the need of contextualizing constitutional law teaching. While there are many commonalities, there are also historical, social and political tones that inform this subject. That balance isn't easy to achieve.

For example, in Africa there's currently a strong movement that speaks of decolonizing legal education and consequently constitutional law. This is interesting and complex for Africa is not one uniform reality, and the diversity, even genetic, between African people is sometimes deeper than between African and non-Africans.

So, it seems that so far we have been more focused on finding the common topics of constitutional law that should be studied everywhere; instead we should have been more focused on the systems or tools, and let the topics be driven by the peculiarities of each society. This wasn't discussed but I've been reflecting a bit on this. I've come to a personal conclusion that this could be used for future discussions: more than democracy and separation of powers (which as we saw in Qatar is a no-no) we should talk of fairness, transparency, accountability, justice... therefore keeping the big goals in sight as the essential commonalities.

Additionally, we spoke of innovative methods but nothing very concrete came to light apart from the video games and the amazing race in the forest.

### **Final Research Topic:**

Subject: Teaching diverse typologies of Government

Title: "Teaching Constitutional Law in the 21<sup>st</sup> Century: stuck in uniformity - dreaming of universality"

Phase 1: National reports

Phase 2: Finding common ground?

Phase 3: Are we dreaming together or drifting apart?

Phase 4: Teaching Constitutional Law and the role of us teachers

*Submitted by Co-Chair and Chair of IALS Study Group Committee Bettina Kahil-Wolff Hummer, Professor, Dean Emeritus, University of Lausanne, School of Law, Switzerland. Co-Chair Luis Gabriel Franceschi, Dean, Strathmore University, Strathmore Law School, Africa.*



## 2018 Timeline

# Doctrinal Study Group Program - 2018 Timeline

## *January – March 2018*

Members were asked to review the 2017 Annual Meeting notes on Plenary Sessions, Small Group Breakout discussions, and Logic Model, and continue the conversation; in addition, share their experiences, pedagogies, ideas, and adding any thoughts/questions related to legal education and their doctrinal study area. The IALS also reminded members about the valuable resources that can find in their Groupsite file cabinet. IALS posted on behalf of President Wang and General Secretary/Treasurer Holden Smith.

Constitutional Law Study Group Chair & Dean Franceschi's Pedagogy PowerPoint, "Getting the Class out the Classroom" was uploaded. We asked members to view it and participate in letting us know if they were facing challenges in their law school or doctrinal area. IALS posted on behalf of President Wang and General Secretary/Treasurer Holden Smith.

March: Recruitment Campaign.

January 2018:

Member participation: 6

Page Views: 628

February 2018:

Member participation: 0

Page Views: 157

March 2018:

Member participation: 0

Page Views: 1,669

## *April 2018*

We welcomed new members to their Study Group. IALS posted on behalf of President Wang.

We sent an attachment that informed members what Study Groups are, and asked members to circulate this attachment that also included information on how their peers can join. IALS posted on behalf of President Wang.

We asked members to view Chair Franceschi's PowerPoint and participate in a survey to guide us in helping them with their curriculum.

Environmental Law: We introduced new Study Group Chair Professor (Dr.) Sanjeevi Shanthakumar, Dean of G.D. Goenka University, School of Law, India to his Study Group. IALS post.

April 2018:

Member participation: 1

Page Views: 1,725

### *May – June 2018*

We thanked those members who had taken the survey so far. IALS posted on behalf of President Wang

We reminded those members who had not taken the survey to participate. IALS posted on behalf of President Wang.

We reminded those members who had not taken the survey to participate. IALS post.

Contract Law: We introduced new Study Group Chair, Judge Enqian Yang, from the Suzhou Intermediate Court, China to his Study Group. IALS post.

May 2018:

Member participation: 3

Page Views: 1,222

June 2018:

Member participation: 0

Page Views: 169

### *July 2018*

We thanked Chair Franceschi for allowing us to share his Pedagogy PowerPoint. IALS post.

We posted survey result's regarding Chair Franceschi's Pedagogy employed. IALS post.

We sent an attachment that had more details about Chair Franceschi's pedagogical approach.

We asked members to share with us any unique pedagogies, other than traditional teaching methods. IALS post.

Uploaded Compendium of Study Group Reports 2015 – 2017. IALS post.

Formation of Study Group Committee

We introduced the formation of the Study Group Committee to all Chairs and informed them that they were part of this committee.

July 2018:

Member participation: 1

Page Views: 2,198

### *August 2018*

We introduced the formation of the Study Group Committee to all Study Group members in a joint letter sent on behalf of Chair Kahil-Wolff Hummer and respective Study Group Chair.

Senior Judge Yang and Professor Dahdal accepted positions as Vice Chairs of the Study Group Committee.

We sent out a letter to all Study Group Members who were not yet registered for the Annual Meeting an invitation to join us, and extended the early bird deadline to them until September 15.

We shared Chair Kahil-Wolff Hummer's pedagogy. IALS posted on behalf of Chair Kahil-Wolff Hummer.

We asked members to share with us their pedagogies.

August 2018:

Member participation: 2

Page Views: 705

### *September 2018*

Phone conference with Study Group Committee Chair Kahil Wolff-Hummer, Vice Chair Yang, and Vice Chair Dahdal – via Skype.

Preparation for 2018 Annual & Study Group Meeting, November 10 - 12. Requested Study Group Chairs and Chair Representatives for their Pedagogies and "Call for Topics". Coordinated by the Study Group Committee Chair and Vice Chairs. Report was due by October 22.

We asked members to upload their profile picture, if they hadn't done so already. IALS post.

We asked Commercial Law and Contract Law Study Group Members to help Dr. Biswal from Gujarat National University with her research project. IALS post.

We asked members to share with us their pedagogies. IALS post.

September 2018:

Member participation: 2

Page Views: 862

### *October 2018*

We asked members to share with us their pedagogies, and to be included in 2018 Study Group Report, sent on behalf of Study Group Chair/Chair Representatives, and Study Group Committee Chair Kahil-Wolff Hummer.

We shared a pedagogy employed by Chair Kakooza and asked members to share theirs and participate. IALS post.

Sent weekly Gentle Reminders through Outlook to Chairs: Preparation for Annual Meeting, November 10 - 12. Requested Study Group Chairs and Chair Representatives for their Pedagogies and "Call for Topics". Coordinated by the Study Group Committee Chair and Vice Chairs. Report was due by October 22.

We uploaded pedagogies employed by Study Group Chairs and their "Call for Topics" onto respective Study Group page's.

Recruitment of IALS Annual Meeting participants that plan on attending the 2018 Study Group Meeting.

October 2018:

Member participation: 15

Page Views: 2,836



### *November 2018*

We uploaded pedagogies employed by Study Group Chairs and their “Call for Topics” onto respective Study Group page’s.

We uploaded the Compendium of Model Syllabi (lists the basic topics of each Study Group’s doctrinal area) created by each Study Group. IALS post.

We uploaded 2018 Study Group Preliminary Report and Executive Summary. IAS post.

We posted “Call for Research Topics” and Study Group Meeting Preparation information for attendees. IALS post.

2018 Annual Meeting & Study Group Chair Meeting. Hosted by Qatar University, College of Law. Doha, Qatar. The Study Group Meeting was held November 11, 2018.

November 2018:

Member participation: 2

Page Views: 3,218

### *December 2018*

We uploaded 2018 Study Group Meeting Notes and Final Topics suggested for publication, based on Study Group Meeting held November 11, 2018, and also sent them to the Study Group Committee.

We asked Constitutional Law Study Group Members to help Dr. Bikesha from the University of Rwanda with recommending Constitutional Law books to be purchased for their library.

Upload revised 2018 Study Group Report onto Groupsite and in preparation for 2019 Regional Workshops:

- Recaps 2018 work
- Includes Study Group Chairs’ and members’ Pedagogies and “Call for Topics”
- Includes 2018 Annual Meeting/Study Group Meeting notes, which

December 2018:

Member participation: 1

Page Views: 1,104



## 2018 Member Participation

## 2018 Member Participation

(order begins with most recent posts)

**December 27: Denis Bikeshwa, Constitutional Law. Request to Study Group Members. IALS posted on his behalf.**

We received a small request from Ag. Dean (Dr.) Denis Bikeshwa from the University of Rwanda. He has recently been approached by the universities library administration to make a list of constitutional law books to be purchased. Do you have any related books to recommend, especially ones in which you have authored?

Enclosed is a list of Constitutional Law Books as recommended by Dean Luis Franceschi from Strathmore University, Law School, Kenya and Advocate Senior Lecturer Hlako Choma from the University of Venda, School of Law, South Africa. They are the main list of suggested readings as found in their syllabi that was submitted to you last year. Enclosed is the recommended list.

Please help us add to this list and contribute to legal education on a global level.

We look forward to your participation!

**November 7: Bettina Kahil-Wolff Hummer, Constitutional Law. Responded to IALS Secretariat message regarding recent posting of Preliminary Executive Summary and Report.**

Thank you to IALS Secretariat for posting the 2018 IALS Doctrinal Study Group Program (Summary and Report). This will help us a lot for our upcoming meeting and further work.

I look forward seeing you in Qatar and wish you safe travels.

**November 5: Michael Peil, Contract Law. Continued October 25<sup>th</sup> message. Pedagogy employed:**

Here are a couple of documents related to how we teach Contract Law at JSW Law (Bhutan), from my colleague Stephan Sonnenberg, who teaches the course.

The first is our Syllabus. The second is a PowerPoint that he uses to explain the objectives and purposes of some of the more unique aspects of the course.

**October 26 & 29/November 2: IALS posted on his/her behalf their Pedagogies and Call for Topics submitted.**

### **NOVEMBER 2:**

1) Shashikala Gurpur, International Law

### **OCTOBER 29:**

1) Abdulkarim A. Kana, Criminal Law & Procedure

### **OCTOBER 26:**

1) Anthony Kakooza, Property Law

2) Bettina Kahil-Wolff Hummer, Constitutional Law

### **MESSAGE TEMPLATE:**

This year we are focused on pedagogies. Our objective is to look for teaching approaches that go beyond traditional classroom methods, like lectures, which many students are finding to be boring.

Enclosed, you will find two documents from your Study Group CHAIR/OR CHAIR REPRESENTATIVE NAME/TITLE/SCHOOL (some of the text in actual message may vary):

1. Pedagogies Employed (some of the text in actual message may vary)
2. "Call for Topics", which will be used as reference material for the Association to establish peer reviewed publication outlets (journal and books)

Both documents are also herein announced in preparation for discussions that will be taking place at our 2018 Annual and Study Group Meeting's next week at Qatar University, College of Law in Doha, Qatar.

Thank you CHAIR/CHAIR REPRESENTATIVE NAME for providing us with these examples.

We hope that you find this helpful to aid you in your students learning and engagement.

We encourage you to participate here on Groupsite and learn from each other about this and other unique teaching methods to increase student learning, participation and their overall grades.

Please let us know what pedagogies you have employed in your classroom, and/or if you have questions or comments. We also welcome your input and ideas on a "Call for Topics" here on Groupsite.

Help us and your peers in our mission to advance and improve legal education by learning from each other.

**October 30: Florence Masajuwa, Contract Law. Responded to Michael Peil's and Alan Yang's most recent messages:**

Interesting.

**October 30: Alan Yang, Contract Law. Responded to Michael Peil's October 25<sup>th</sup> message:**

Chinese Law school students spend a lot of time to learn rules and theories for the Bar exam, because the Chinese Bar Exam typically tests participant's knowledge of law rather than their skills of applying law. Even those students have passed the bar exam, they might not be really well prepared for practice. So, the legal method training course were very popular.

**October 30: Cheng Han Tan, Legal Entities. IALS posted on his behalf his pedagogies and Call for Topics submitted.**

As mentioned in a recent message to you, this year our objective is to investigate unique pedagogic approaches in educating a new cohort of students.

Enclosed, you will find two documents from your Study Group Chair Cheng Han Tan, Professor, National University of Singapore, Singapore:

1. Pedagogies recommended
2. "Call for Topics", which will be used as reference material for the Association to establish peer reviewed publication outlets (journal and books)

Thank you Chair Tan for providing us with these examples.

Let us know what unique teaching methods you have used to increase student learning; in addition, if you have any recommendations as to "Call for Topics" please share them with us!

**October 30: Norma Martin Clement, Family Law. Posted her pedagogies and asked members for their input.**

To date there have been no responses to the requests for unique pedagogies. To start us off, I will describe two activities from my repertoire.

The first is called "Any Questions". This happens in a seminar where students are examining the legal effects of marriage compared to cohabitation. Many ordinary people think that cohabitation attracts more legal consequences

in England and Wales than it actually does so this is an attempt to use some of those “urban myths” about cohabitation and expose them as false. The scenario is that this is TV show where the “audience” ask questions to an “expert panel”. A student takes the role of host, managing the audience and the panel, the panel is made up of students who have done the preparatory work for the seminar, and I have a set of 5 questions to prime the audience. It works best when you have a confident host who can run the show and invite additional audience participation. I think the concept could be adapted to other areas of law where there are common misunderstandings about the law.

The second activity is Who wants to be a Family Law Millionaire? Again based on the real game show, this is a revision activity with a set of multiple choice questions building from the simple to the more difficult or obscure. The key to making this work is audience. In the past I have used hand-held clickers but it is also possible for students to use their mobile phones and Socrative to respond. It is possible to run two contests with different questions in around an hour.

Can you build on this by describing an activity you use to engage students?

Many thanks.

**October 29: George Letlhokwa Mpedi, Human Rights. IALS posted on his behalf his pedagogies and Call for Topics submitted.**

As mentioned in a recent message to you, this year our objective is to investigate unique pedagogic approaches in educating a new cohort of students.

Enclosed, you will find two documents from your 2018 Annual Meeting Study Group Chair Representative George Letlhokwa Mpedi, Executive Dean, Professor, University of Johannesburg, South Africa:

1. Detailed pedagogies employed
2. "Call for Topics", which will be used as reference material for the Association to establish peer reviewed publication outlets (journal and books)

Thank you Chair Mpedi for providing us with these examples.

Let us know what unique teaching methods you have used to increase student learning; in addition, if you have any recommendations as to "Call for Topics" please share them with us!

**October 25: Michael Peil, Contract Law. Responded to Alan Yang’s October 25<sup>th</sup> message:**

This is great! How successful has it been? Do you have any anecdotes?

**October 25: Alan Yang, Contract Law. Referring to October 15<sup>th</sup> post that included Dr. Kakooza’s pedagogy, and in response to Michael Peil. Pedagogy employed.**

The unique pedagogical approach I used in my teaching is to introduce and emphasize the legal methods in judicial process to students by analyzing the so-called “hard cases” through panel discussion or mini-moot-court. The legal methods include philosophy or logic, history, custom, social utility, balancing of interests, etc. The discussed “hard cases” will cover almost all the commonly used legal methods. Students are expected to get familiar with judicial decision making and equip themselves with these skills, so that they may be able to deal with new tough issues in their future practice.

**October 25: Smita Pandey, Environmental Law. Responded to October 25<sup>th</sup> Chair Shanthakumar’s Call for Topics.**

A topic for Ideas for Call for Topic

Interplay of Environmental Law and other aspects of Law through real life examples.

**October 25: Sanjeevi Shanthakumar, Environmental Law. IALS posted on his behalf his Call for Topics.**

Enclosed you will find a “Call for Topics” submitted by your Study Group Chair (Dr.) Shanthakumar. This will be used as reference material for the Association to establish peer reviewed publication outlets (journal and books), and for our discussions at the 2018 Annual Meeting.

We welcome your input and ideas on a “Call for Topics” here on Groupsite.

**October 24/26: IALS posted on his/her behalf their Pedagogies (& Call for Topics for Chair Dahdal).**

**OCTOBER 26:**

1) Sital Kalantry, Human Rights. IALS Posted on her behalf her pedagogies

**OCTOBER 24:**

1) Andrew Dahdal, Commercial Law. IALS posted on his behalf his pedagogies and Call for Topics

2) Tshepo Mongalo, Legal Entities. IALS posted on his behalf his pedagogies.

3) Sanjeevi Shanthakumar, Environmental Law. IALS posted on his behalf his pedagogies

**MESSAGE TEMPLATE:**

This year we are focused on pedagogies. Our objective is to look for teaching approaches that go beyond traditional classroom methods, like lectures, which many students are finding to be boring.

Enclosed, you will find pedagogies that have been employed by your Study Group CHAIR/CHAIR REPRESENTATIVE NAME; in addition, they are herein announced in preparation for our 2018 Study Group Meeting next month at Qatar University, College of Law in Doha, Qatar.

Thank you CHAIR/CHAIR REPRESENTATIVE NAME for providing us with these examples.

We hope that you find this helpful to aid you in your students learning and engagement.

We encourage you to participate here on Groupsite and learn from each other about this and other unique teaching methods to increase student learning, participation and their overall grades.

Please let us know what pedagogies you have employed in your classroom, and/or if you have questions or comments.

Help us and your peers in our mission to advance and improve legal education by learning from each other.

**October 15: Michael Peil, Contract Law. Referring to October 15 post that included Anthony Kakooza’s pedagogy. Pedagogy employed.**

In Bhutan (as in many countries), contract law is a combination of relatively recent statutory law and ages-old traditional law. Our graduates will have to contend with both -- and, indeed, handle the interactions and conflicts between the two systems.

As such, before our semester even begins, our first-year students are sent back to their home villages with a questionnaire. They are instructed to find the oldest person (or thereabouts) in the village, and ask them questions about how various kinds of common agreements (sale of goods, land, services) were handled when they were young. How did you negotiate a contract? Were there any witnesses to the agreement? Was it written down? Importantly, how did you handle things when contracts broke down?

I'll provide more details later, but the semester then begins by taking the traditional contracts as the baseline. Topic by topic, we then introduce the Bhutanese statutory framework (with appropriate comparative counter-examples from foreign common and civil law jurisdictions).

The interview at the beginning lets the students take some ownership over the class, and allows them to walk into their first law-school classroom already feeling like they know something about the subject.

**October 15: Anthony Kakooza, Civil Procedure, Commercial Law, Constitutional Law, Contract Law, Criminal Law & Procedure, Environmental Law, Family Law, Human Rights Law, International Law, Legal Entities, Property Law. Shared his pedagogy. IALS posted on his behalf.**

In an effort to improve your student learning and make your classroom curriculum a little bit more exciting, here is a unique pedagogical approach that goes beyond the realm of traditional teaching from Property Law Study Group Chair Dr. Anthony Kakooza from Uganda Christian University:

**Linking up Intellectual property law students with students undertaking other disciplines outside of law to enable them work jointly on related projects and thus appreciate the practical side of the law. For instance, students in my Patent law class are encouraged to team up with students in the Faculty of Science and Technology who are undertaking projects on innovations and technical solutions. The law students are meant to assist with analyzing the Tech projects on worthiness for Patent filings and, if so, to go ahead and file for grant of patent.**

What methods have you used in your classroom other than traditional teaching methods, such as lectures?

If you have any questions or comments regarding this approach please let us know as well.

We look forward to your contribution!

**October 10: Anthony Kakooza, Property Law. Asked members to participate. IALS posted on his behalf.**

I look forward to attending our 2018 Annual Meeting this November 10 - 12 at Qatar University, College of Law in Doha, Qatar!

This year we have been learning about unique teaching approaches that go beyond traditional classroom methods, like lectures. We would like to make our contribution as the Property Law Study Group to this program. It will be included in our Annual 2018 Study Group Report to go out this December.

In preparation for our meeting we need to develop examples of unique teaching pedagogies we have employed or suggestions for those who may wish to employ them in our classrooms to improve our students' learning experiences. For instance, in my Intellectual Property (IP) Law classes, I often come up with practical problems on the basis of which I organize the students into separate teams which then conduct Moot Court competitions to resolve the problems. This is normally towards the end of the semester when the students have a full appreciation of the concepts in IP.

So please share your experiences as well. Your participation will not only help your peers from around the world improve their classroom curriculum and pedagogy but will also give you the opportunity to be recognized for your work on a global level.

Please post your innovative teaching pedagogies and or suggestions on our Groupsite page. Thank you.

**OCTOBER 10: Asked members to participate. IALS posted on their behalf.**

- 1) Bettina Kahil-Wolff Hummer, Sanjeevi Shanthakumar, Environmental Law
- 2) Bettina Kahil-Wolff Hummer, George Mpedi, Human Rights

3) Bettina Kahil-Wolff Hummer, Anthony Kakooza, Civil Procedure

**MESSAGE TEMPLATE:**

Your Study Group Chair CHAIR/CHAIR REPRESENTATIVE NAME and I look forward to attending our 2018 Annual Meeting this November 10 - 12 at Qatar University, College of Law in Doha, Qatar!

This year we have been learning about unique teaching approaches that go beyond traditional classroom methods, like lectures. We would like to make our contribution as the Environmental Law Study Group to this program. It will be included in our Annual 2018 Study Group Report to go out this December.

In preparation for our meeting we need to develop examples of unique teaching pedagogies we have employed, and/or provide suggestions for those who may wish to employ them in our classrooms to improve our students' learning experiences.

Your participation will not only help your peers from around the world improve their classroom curriculum and pedagogy, but will also give you the opportunity to be recognized for your work on a global level.

Please post your innovative teaching pedagogies and/or suggestions on your Groupsite page.

Thank you.

**October 8, 9, 10: Encourage participation, 2018 Annual Meeting preparation. IALS posted on his/her behalf.**

**OCTOBER 10:**

- 1) Norma Martin Clement, Family Law
- 2) Bettina Kahil-Wolff Hummer, International Law, Legal Entities

**OCTOBER 9:**

- 1) Andrew Dahdal, Commercial Law
- 2) Michael Peil, Contract Law

**OCTOBER 8:** 1) Abdulkarim A. Kana, Criminal Law & Procedure

**MESSAGE TEMPLATE:**

I look forward to attending our 2018 Annual Meeting this November 10 - 12 at Qatar University, College of Law in Doha, Qatar!

This year we have been learning about unique teaching approaches that go beyond traditional classroom methods, like lectures. We would like to make our contribution as the Family Law Study Group to this program. It will be included in our Annual 2018 Study Group Report to go out this December.

In preparation for our meeting we need to develop examples of unique teaching pedagogies we have employed, and/or provide suggestions for those who may wish to employ them in our classrooms to improve our students' learning experiences.

Your participation will not only help your peers from around the world improve their classroom curriculum and pedagogy, but will also give you the opportunity to be recognized for your work on a global level.

Please post your innovative teaching pedagogies and/or suggestions on our Groupsite page.

Thank you.



**September 21: Mamata Biswal, Contract Law. Asked members for assistance with her research project. IALS posted on her behalf.**

Study Group Member Dr. Biswal from Gujarat National Law University is currently working on an exciting research project. We kindly request for you to please answer her short questionnaire in order to help advance her current work.

If you have any questions please e-mail her at: mbiswal@gnlu.ac.in.

Thank you!

**IALS Secretariat**

**Message from Dr. Biswal:**

Dear Colleagues,

Greetings.

Myself, Dr. Mamata Biswal, working as a Professor of Law at Gujarat National Law University, India. I need a small help from you.

Currently, I am pursuing a research in the topic, 'Legal Challenges before India to ratify the United Nation's Convention on Contracts for the International Sale of Goods (CISG): A Critical Analysis'.

In my research, one empirical research has been designed to understand and examine the efficacy of the CISG in the member countries, to test one of the hypothesis i.e, The United Nation's Convention on International Sale of Goods (CISG) is one of the instrumental convention conferring unified body of laws on International Sale of Goods .

For the said purpose, I would request you to provide me your valuable inputs about the efficacy of the CISG since 1980. Your opinion out of your vast experience will add value to my research.

Please click the following for the questions.

[QUESTIONNAIRE \(Efficacy of the CISG\)](#)

Thank you,

Dr. Mamata Biswal

**September 1: Andrew Dahdal, Commercial Law. Referring to August 31 post by Bettina Kahil-Wolff Hummer regarding her pedagogy.**

Dear Bettina,

Thank you for sharing that experience.

I have often advocated for the injection of some controversy into classroom discussions as means of engaging students in a meaningful way. The political divide with respect to views on social welfare is a perfect example of that. Students are thus encouraged to see the law through the lens of how it effects underlying ethical and political beliefs. For example, how does the Swiss Law enhance or undermine family bonds of care and responsibility with respect to parents and children. Does the law shift the traditional responsibility away from the family and places that burden on the State? And, is this a good thing? Or alternatively, one can argue that the State provided safety net is essential for those without a family care network.

These are the type of deep, meaningful and exciting dimensions that can invigorate legal education.

In the context of commercial law, this approach is even more appropriate given the socialist or capitalist underpinnings of the economic thought that informs commercial law.

Sometimes the power of the ideas and their challenging nature can be just as engaging as the modality of teaching.

**August 31: Bettina Kahil-Wolff Hummer, Luis Franceschi, Constitutional Law. Asked members to participate. IALS posted on their behalf.**

Study Group Co-Chair Franceschi and I look forward to attending our 2018 Annual Meeting this November 10 - 12 at Qatar University, College of Law in Doha, Qatar!

This year we have been learning about unique teaching approaches that go beyond traditional classroom methods, like lectures. We would like to make our contribution as the Constitutional Law Study Group to this program. It will be included in our Annual 2018 Study Group Report to go out this December.

In preparation for our meeting we need to develop examples of unique teaching pedagogies we have employed, and/or provide suggestions for those who may wish to employ them in our classrooms to improve our students' learning experiences.

Your participation will not only help your peers from around the world improve their classroom curriculum and pedagogy, but will also give you the opportunity to be recognized for your work on a global level.

Please post your innovative teaching pedagogies and/or suggestions on our Groupsite page.

**August 31: Bettina Kahil-Wolff Hummer, Civil Procedure, Commercial Law, Constitutional Law, Contract Law, Criminal Law & Procedure, Family Law, Environmental Law, Family Law, Human Rights, International Law, Legal Entities, Property Law. Shared her Pedagogy. IALS posted on her behalf.**

In an effort to continue the conversation, here is a pedagogical approach that I have used in my classroom that goes beyond the realm of traditional teaching:

*I recently had a class where we elaborated a whole Legal Act for a fictive long-term care insurance. Groups of 2-3 students had to formulate and comment one article each. The plenum discussions helped to put everything together. The students were so motivated that they wrote very good contributions that will be published in a 300 page book soon.*

*For the students, the special challenge of this project was to put a political decision into statutory law, in a field that is very specialized and complex; participants had to get familiar to the federal, regional and even community law that is regulating social security and social welfare in Switzerland; they were also obliged to study similar statutory laws of other countries, such as Belgium and Germany, with the corresponding language issues (the Act elaborated in the seminar is largely inspired by German law). Writing and editing the texts and commentaries were impeded by the necessity to work in small groups and coordinate their work with the work done by all the other groups. By reading the different articles in the book one can feel the enthusiasm experienced by the students. I am looking forward to seeing the book published this Fall and hope that it will stimulate the political discussion in Switzerland concerning the protection and help given to elderly persons in need of permanent nursing.*

What methods you have used in your classroom other than traditional teaching methods? Please let us know your thoughts.

Help us in our mission of improving legal education by learning from each other.

**July 20: Nurul Barizah, International Law. Referring to 2015-2018 Compendium of International Law Study Group Reports.**

Thank you very much for the Compendium of International Law Study Group Reports. It is indeed, very useful for us, as an international law lecturer. Thank for an excellent job chaired by Nerina Boschiero.

**May 25: Rupal Rautdesai, Commercial Law. Referring to Dean Franceschi's PowerPoint.**

Thank you for sharing your experience through presentation

**May 10: Sital Kalantry, Human Rights. Referring to April 6 post by Professor Wang welcoming new members to their Study Group, asking members to participate in the survey regarding Dean Franceschi's pedagogy/PowerPoint, and asking members to circulate advertisement about joining a Study Group to their colleagues.**

Following on President Wang's message, I wanted to also welcome the new members of our group. We had a very successful meeting in November of last year in Pune, India. Our group came up with a few core topics that we believe should be included in a global human rights curriculum. I will be attending the America's Forum in New York City next week and I look forward to seeing some of there.

We will now be turning our attention to innovative pedagogies that are suitable for various environments. I just finished teaching a human rights clinic at Cornell Law School where students travelled to Colombia to meet with indigenous communities. The students are drafting a petition to the Inter-American Commission on behalf of the communities to seek compensation for an extractive industry built on their land without their consent or consultation. This kind of course requires a lot of preparation and follow up, but it is a life-changing experience for the students to gain the skills and compassion of a human rights lawyer.

**May 9: Tshepo Mongalo, Legal Entities. Asked question/for assistance to members.**

I am in the process of developing a new LLM programme in Capital Markets and I would like to find out if any of you has such a similar programme in your institutions. Also, I want to know what modules should be core modules for LLM Programme in Entertainment Law.

**April 8 & 9: Bettina Kahil-Wolff Hummer, Constitutional Law. Referring to April 6 post by Professor Wang welcoming new members to their Study Group, asking members to participate in the survey regarding Dean Franceschi's pedagogy/PowerPoint, and asking members to circulate advertisement about joining a Study Group to their colleagues.**

I also would like to welcome our new Study Group members - thank you for joining.

When I was going to the survey in order to answer the questionnaire, I ended up on the page called "Join a doctrinal study group" (<https://www.surveymonkey.com/r/XZ6BC5V>). Is there another link available to reach the right page?

April 9: Perfect, this time it worked. Thank you very much

**January 10: Provided 2017 Study Group Meeting notes and Logic Model. IALS posted on his/her behalf.**

- 1) Taslima Monsoor, Family Law
- 2) Sital Kalantry and Joan Howland, Human Rights Law
- 3) Andrew Dahdal, Commercial Law
- 4) Luis Gabriel Franceschi and Bettina Kahil-Wolff Hummer, Constitutional Law

**MESSAGE TEMPLATE USED:**

Enclosed, you will find the Logic Map/Model and notes from your STUDY GROUP CHAIR/CHAIR REPRESENTATIVE NAME from SCHOOL NAME, COUNTRY. This information is based of our most recent Study Group conversations, held at the 2017 Annual Meeting at Symbiosis Law School in Pune, India November 9th - 11th.

We encourage you to continue the conversation, and add to this Logic Model to help us in our mission of advancing and improving legal education. For those of you who were not at the Annual Meeting, below is some information regarding what a Logic Model is.

A logic model (also known as a logical framework, theory of change, or program matrix) is a tool used by funders, managers, and evaluators of programs to evaluate the effectiveness of a program. They can also be used during planning and implementation. Logic models are usually a graphical depiction of the logical relationships between the resources, activities, outputs and outcomes of a program. While there are many ways in which logic models can be presented, the underlying purpose of constructing a logic model is to assess the "if-then" (causal) relationships between the elements of the program.

#### **Logic Model**

##### *Your Planned Work*

INPUTS: Certain resources are needed to operate your program.

ACTIVITIES: If you have access to them, then you can use them to accomplish your planned activities.

##### *Your Intended Results*

OUTPUTS: If you accomplish your planned activities, then you will hopefully deliver the amount of product and/or service that you intended.

OUTCOMES: If you accomplish your planned activities to the extent you intended, then your participants will benefit in certain ways.

IMPACTS: If these benefits to participants are achieved, then certain changes in organizations, communities, or systems might be expected to occur.

(Information comes from the Kellogg Foundation)

The development of these strategies and how to measure progress for iterative improvement through the sharing of experiences is an essential component of the Evaluation, Assessment and Certification Program. The purpose of the EAC Program is not to impose another set of regulatory rules upon the legal education community. We have too many already. Rather, it is the response of the global legal education community to determine for itself what really matters to us professionally in our obligation to teach the next generation the concepts and values embodied in the rule of law. Our work is to help formulate and articulate our views as law teachers as to our responsibilities, and to improve what we do from our own perspective.

If you have any questions, please email us at [ials@ialsnet.org](mailto:ials@ialsnet.org).



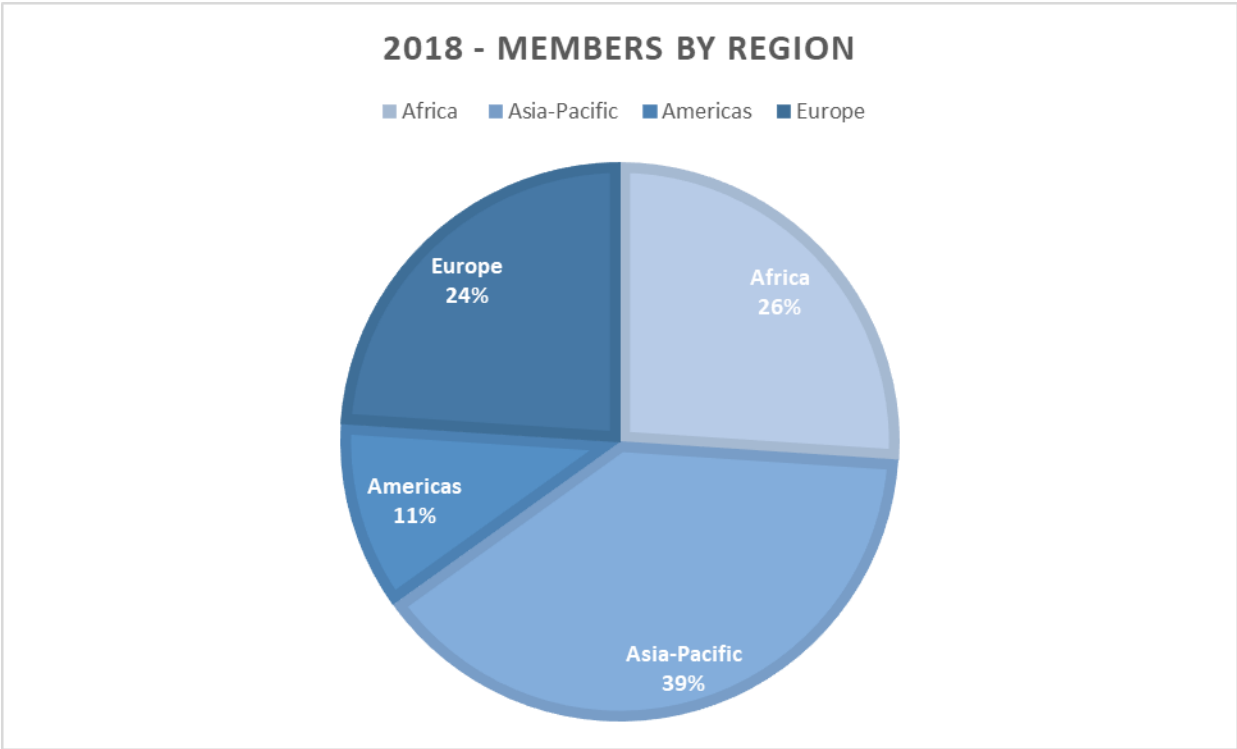
## 2018 Statistical Analysis of Groupsite

# Statistical Analysis of Groupsite

From our analysis of the statistics generated by our Groupsite for Study Groups, especially page views, it is apparent that members are using Groupsite more as reference material to aid them in their curriculum and classroom learning, versus participating in discussion threads to communicate with their peers. Overall participation on Groupsite remains low. For this reason, we continue to study what type of communication engages our members. We have found that surveys so far have engaged our members the most, versus participating in discussion threads. It is still clear that Study Groups are successful reference material for our members; for this reason, Groupsite remains to be a powerful tool, even if participation in discussion threads and engaging with other members remains low.

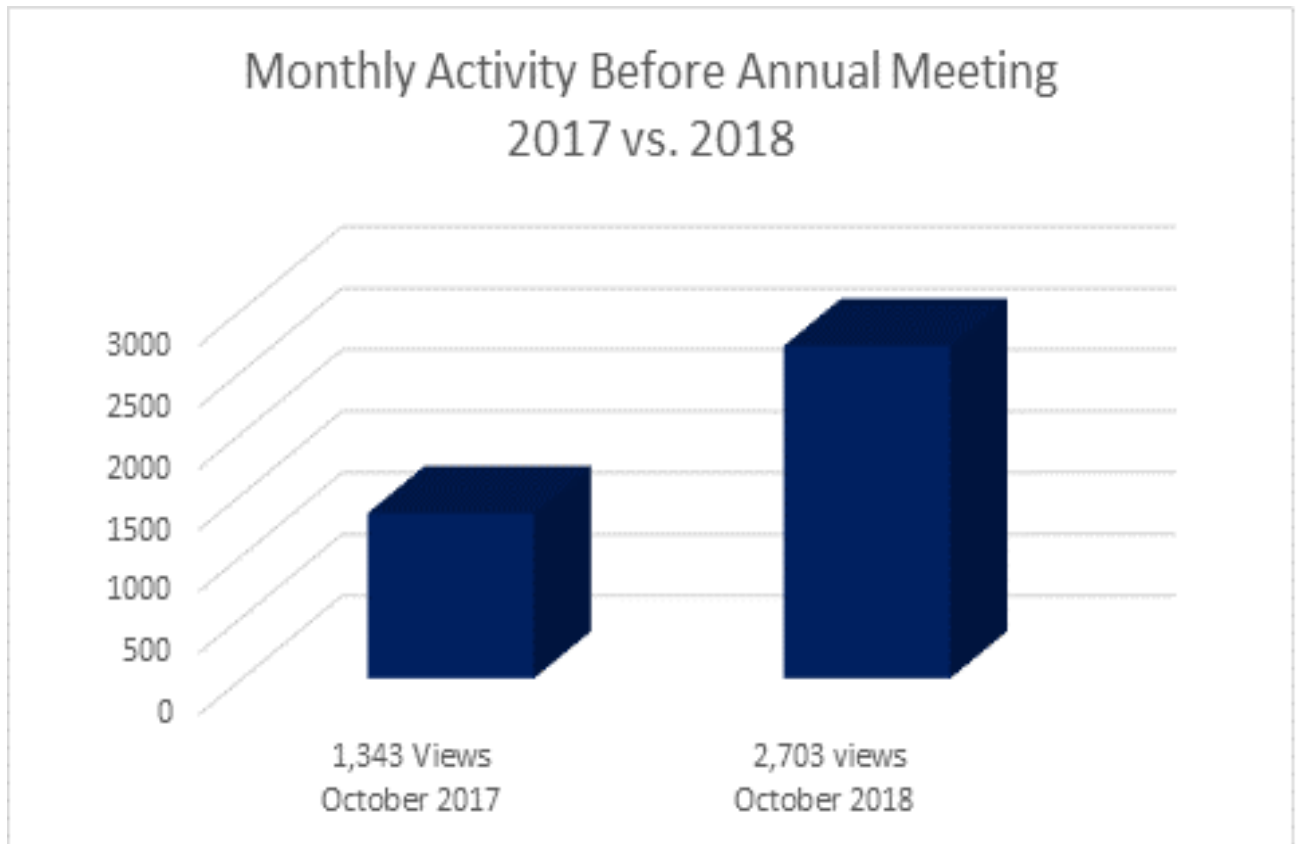
## Study Group Statistics

We have approximately 200 members from around the world. We continue to increase our member count. In 2017 we had 121 members.

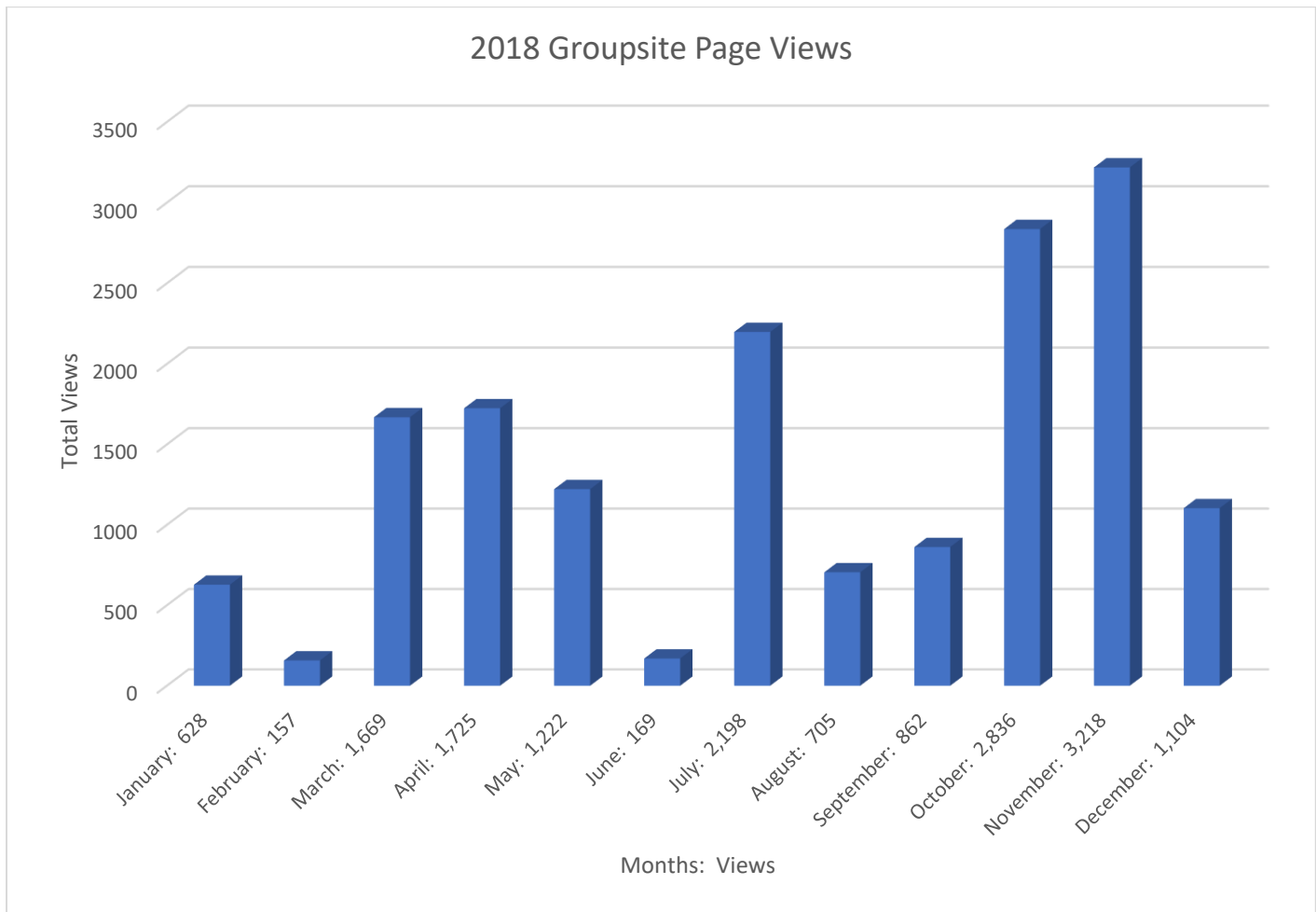


- Monthly activity before the 2017 Annual Meeting versus up to the 2018 Annual Meeting increased!

October 2017: 1,343 views. October 2018: 2,703 views.



- Total Page Views. We have many page views even though activity and participation is low. We do not generate a great deal in terms of interaction across the platform. Although, it is obvious that people look at messages and use Groupsite more as a resource. We need to encourage a wider discussion and more involvement.







## 2018 Study Group Committee

# Study Group Committee Information

## Committee Members

### Chair:

Bettina Kahil-Wolff Hummer, Dean Emeritus, Professor, University of Lausanne, School of Law, Switzerland

### Vice Chairs:

Enqian Yang, Senior Judge, Suzhou Intermediate Court, China

Andrew Dahdal, Dr., Professor, Qatar University, College of Law, Qatar

## Goal as Chair and Vice Chairs of the Study Group Committee:

To encourage Chairs and members to participate and continue conversations.

To map strategies that move Study Groups forward for the objective of improving legal education.

## Steps taken this year in conjunction with IALS Administration:

- Developed an overall plan – focused on invigorating discussions among each groups' members – tasking SG chairs – with a deliverable for the 2018 Study Group Meeting, November 11 (Doha, Qatar), and moving to next steps from there.
- Telephone conference with Chair Kahil Wolff-Hummer, Vice Chair Yang and Vice Chair Dahdal, that mapped a strategy on developing an overall plan focused on creating more member participation, developing key learning tools for legal education, and plans for 2019 program.



# **CONSTITUTIONAL LAW COURSE OUTLINE 2017**

**(90 Hour-course)**

## **General Comments**

An excellent lawyer is complete only on acquisition of the highest cognitive skills. The discipline of law is not just about knowledge on the subject but also its application, synthesis and evaluation. This course is designed to achieve all these through the lenses of constitutional law. It begins by introducing constitutional law and contextualizing the country's Constitution, before delving to discussing the overarching constitutional principles. The course then embarks on discussing government, and eventually the Bill of Rights.

At the very outset, learners are encouraged to think critically, to appreciate as well as question existing laws and bodies of knowledge. This end is only possible upon constant survey of comparative literature, especially legislations, judicial decisions, academic articles and text books, and frequent engagement in intellectual discourses. In other words, a critical and comparative appreciation of the course is desirable.

The objectives of this course are met through a variety of methodologies. Invariably interactive lectures will be conducted. We see ourselves simply as facilitators, meaning that the classes are envisioned to be learner-centered. In some instances, learners will be expected to, in their groups, research on the various topics and report back to the plenary that is the entire class. As indicated in this course outline, learners may also visit certain constitutional bodies to decipher for themselves what the institutions are about. Group reports shall both be in written and spoken form the whole idea being to enhance these vital skills of lawyering. These presentations go hand in hand with occasional debates on various topics. On certain occasions, Guest Lecturers will deliver the story from the 'horse's mouth'. Even during these sessions, learners are encouraged to take part actively by questioning and commenting on the subject at hand. There shall also be room to watch videos and documentaries on certain aspects under discussion.

## Means of Assessment

The means of assessment will be as follows: Term paper - 15%; Group work – 10%; Oral CAT – 10%; Class Participation – 5%; and Final Examination - 60%. There will also be a ‘Treasure Hunt’ around the city. Students will find the ‘clues’ at the key institutional institutions in the city. This Hunt will carry bonus marks, which will allow a student who, after final results, is on the edge (between two grades) to cross the threshold to the next grade. There will also be an “Amazing Race” at Karura Forest. Students (in groups) will be expected to run from judge to judge answering relevant questions about the subject.

All these evaluations shall test the ability of the learner to apply the knowledge learnt to resolve practical problems which may arise in the dispensation of constitutional law.

At the end of the course, *Constitutional Law*, learners should be able to:

- Analyse the social, political, legal and comparative context of the Constitution;
- Evaluate the various constitutional principles;
- Analyse systems of government;
- Identify the salient features of a Bill of Rights; and
- Appraise the Constitution as a transformative document.

## Main Reference Material

1. *Constitution of Kenya* (2010)
2. Franceschi L & Lumumba PLO, *The Constitution of Kenya, 2010: An introductory commentary*, Strathmore University Press, Nairobi, 2014
3. Kiwinda Mbondenyei M and Osogo Ambani J, *The new Constitutional Law of Kenya*, LawAfrica, Nairobi, 2013
4. Migai, *Administrative Law*, SUP, 2017
5. Ghai YP and McAuslan JPWB, *Public law and political change in Kenya*, Oxford University Press, Nairobi, 1970
6. JB Ojwang *Constitutional development in Kenya: Institutional adaptation and social change*, ACTS Press, Nairobi, 1990
7. Bradley AW and Ewing K, *Constitutional and administrative law*, 1994
8. Currie I and de Waal J, *The new constitutional and administrative law*, JUTA, 2001
9. Mutakha Kangu J, *Constitutional law of Kenya on devolution*, Strathmore University Press, Nairobi, 2015

## Part I (Week 1, 2 & 3) Introduction

### 1. Introduction to constitutional law

- What is a constitution?
- Why are constitutions written?
- When are constitutions written?
- Who writes the constitution?
- Sources of (constitutional) law

#### Reading:

- ✓ Kiwinda Mbondenyei M and Osogo Ambani J, *The new constitutional law of Kenya* (2013) Chapter 1 (pages 3 - 11)
- ✓ Show video

### 2. Classification of Constitutions

- Autochthonous v non-autochthonous
- Exact (specific) v inexact (vague)
- Parliamentary v presidential
- Republican v monarchical
- Rigid v flexible
- Secular v religious
- Supreme v subordinate
- Unitary v federal v confederal
- Written v unwritten
- *Constitution of Kenya* (2010) in the classification of constitutions

#### Readings:

- ✓ Kiwinda Mbondenyei M and Osogo Ambani J, *The new constitutional law of Kenya*, Claripress, Chapter 2 (pages 11 - 20)
- ✓ Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Strathmore University Press, Nairobi, pages 1 – 24

#### Learning Activities

- Drafting the Constitution of Utopia (in groups)

### 3. History of Constitution Making around the world and in Kenya

- History of constitution-making in the world
  - Constitutions in the ancient world
  - Magna Carta
  - The French Revolution
  - The USA Constitution
- History of the Constitution in Kenya
  - Reception of English law in Kenya

- The colonial legal order
- The Lancaster constitutional deliberations
- The independence Constitution
- Profile of amendments to the independence Constitution
- The quest for constitutional reforms (1988 - 2010)

*Reading:*

- ✓ Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, pages 25 - 49

*Further reading:*

- ✓ Ojwang JB, *Constitutional development in Kenya: Institutional adaptation and social change*, pages 19 - 39

*Learning Activities:*

- Lectures
- Movies – John Adams

*Learning outcomes:*

At the end of this part, learners should be able to:

- Discuss the meaning of, and rationale for, constitutions;
- Discuss the different types of constitutions;
- Describe the historical evolution of the constitution making around the world and in Kenya;
- Outline the process of constitutional amendment in Kenya.





## Part II (Week 4, 5, 6, 7, 8, 9, 10) Constitutional Principles

### 4. Sovereignty of the People

- Sovereignty of the people prior to the *Constitution of Kenya* (2010)
- Sovereignty of the people under the *Constitution of Kenya* (2010)
- Power to constitute the frame of government
- Power to choose those to govern
- Power to be involved in government

#### Readings:

- ✓ Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 1 (pages 57 - 75)
- ✓ Kiwinda Mbondenyei M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part II Chapter 4 (pages 41-42)
- ✓ *Njoya and 6 others v the Attorney General and 3 others* (No 2) (2008) 2 KLR

#### Further reading:

- ✓ Mutakha Kangu J 'We the people' as the sovereign in the theory and practice of governance' 1 *Moi University Law Journal* 1, 197

### 5. Supremacy of the Constitution

- Article 2, *Constitution of Kenya* (2010)
- Judicial precedent: *Marbury v Madison* and the aftermath
- Judicature Act and constitutional supremacy
- The *grundnorm* theory and constitutional supremacy
- The social contract theory and constitutional supremacy
- Supremacy of the people v the principle of parliamentary supremacy

#### Readings:

- ✓ Kiwinda Mbondenyei M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part II Chapter 5 (pages 43 - 51)
- ✓ *Jesse Mwangi and 25 others v the Attorney General* (2010) (Both High Court and Court of Appeal decisions)

### 6. Rule of Law

- *Diceyan* conception
- Declaration of Delhi, 1959
- Rule of law in the *Constitution of Kenya* (2010)

#### Readings:

- ✓ Kiwinda Mbondenyei M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part II Chapter 6 (pages 53 - 62)

## 7. National Values and Principles; and Principles of Leadership and Integrity

### *National Values and Principles*

- Application of national values and principles
- Utility of national values and principles
- National values and principles listed under Article 10, *Constitution of Kenya* (2010)
- Comparative study of India's directive principles of State policy

### *Principles of Leadership and Integrity*

- Constitutional provisions on leadership and integrity
- Emerging judicial jurisprudence on principles of leadership and integrity
- The Public Officers Ethics Act, 2003 and 2009

### *Readings*

- ✓ Franceschi *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 2 (pages 104 - 107)
- ✓ Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 6 (pages 297-311)
- ✓ Emerging jurisprudence on the principles of leadership and integrity:
  - *International Centre for Policy and Conflict & 5 others v The Hon Attorney General & 4 others* (2013) eKLR;
  - *Trusted Society of Human Rights Alliance v Attorney General & 2 others* (2012) eKLR;
  - *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others* (2013) eKLR (High Court decision)

### *Learning Activity:*

- Movie: A Man for All Seasons

### *Further Reading*

- ✓ Ambani JO 'Oval slides in triangular spaces? Anchoring national human rights institutions in 'tripartite' Commonwealth Africa' obtainable at [http://repository.up.ac.za/bitstream/handle/2263/1200/ambani\\_jo\\_1.pdf](http://repository.up.ac.za/bitstream/handle/2263/1200/ambani_jo_1.pdf)
- ✓ Kibwana K and Ambani JO 'The case for constitutional articulation of directive principles of state policy' in Mitullah WV, Odhiambo M and Ambani O (eds) *Informing a constitutional moment: Essays on constitution reform in Kenyan*, Claripress, 2005
- ✓ Roux T 'Transformative Constitutionalism and the best interpretation of the South African constitution: distinction without a difference' 20 *Stellenbosch Law Review*, 2009, 258.

## 8. Separation of Powers and Government (Executive, Legislature, Judiciary)

- Montesquieu and Separation of Powers
- Separation of powers in the *Constitution of Kenya* (2010)
- The *Constitution of Kenya* (2010) and the idea of checks and balances
- Constitutional protection of socio economic rights and separation of powers
- Independent constitutional commissions and the tripartite system of government

### *Readings*



- ✓ M Kiwinda Mbondenyei & J Osogo Ambani *The new Constitutional Law of Kenya*, Part II Chapter 7 (pages 63 - 74)
- ✓ *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR (Civil Appeal No 290 of 2012)
- ✓ *Communication from the Chair – Re-appointment of Justice Aaron Ringera as KACC Director* (Marende Ruling)
- ✓ Federalist papers No.s 47 to 51

## Government

### The Executive

- Devolution as an overarching principle of government
- National Executive
  - Narrow conception of the Executive
    - Presidency
    - Cabinet and responsibility to the President
    - Prerogative powers
    - Immunities
  - Wider conception of the Executive
    - Public service
    - National security organs
    - Public corporations
    - Commissions of enquiries and related bodies
- County Executive
  - Governor
  - County Executive Committee
  - Jurisdiction of county governments
  - Further devolution of power
  - Relationships between governments

### Readings

- Mutakha Kangu J, *Constitutional law of Kenya on devolution*, Strathmore University Press, 2015 (Chapter 5)
- Kiwinda Mbondenyei M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part III (Chapter 9)
- Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 9 (pages 419 - 466)

### The Legislature

- General background to the legislature in Kenya
- Bicameral Parliament
  - Senate – structure, composition and mandate
  - National Assembly – structure, composition and mandate
  - Parliament and oversight over the Executive
  - Parliamentary constitutional offices

- County Assembly
  - Structure, composition and mandate of county assemblies
  - Oversight over the county executive
  - County assembly offices
  
- Overarching matters
  - The law making process
  - Legislature and the budget process
  - Legislative committees
  - Introduction to Standing Orders
  - Legislative powers and privileges

*Readings:*

- Mutakha Kangu J, *Constitutional law of Kenya on devolution* (2015) Strathmore University Press (Chapter 10)
- Kiwinda Mbondenyi M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part III (Chapter 10)
- Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 8 (pages 357 - 417)

**Judiciary**

- Background to the Judicature in Kenya
- Principles guiding judicial authority in Kenya
- Outline of the court system in Kenya
  - Superior courts
    - Supreme Court
    - Court of Appeal
    - High Court
  - Subordinate courts
    - Magistrate courts
    - Kadhis' courts
    - Courts Martial
    - Other tribunals
  
- Key State offices and institutions in the Judiciary
  - Chief Justice
  - Deputy Chief Justice
  - Chief Registrar
  - Judicial Service Commission

*Readings:*

- Kiwinda Mbondenyi M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part III (Chapter 11)
- Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 10 (pages 467 - 509)

## 9. Constitutionalism

- Meaning of constitutionalism
- Constitutionalism in the *Constitution of Kenya* (2010)
- The African paradox of constitutions without constitutionalism

### Readings

- ✓ Okoth-Ogendo HWO, 'Constitutions without constitutionalism: Reflections on an African political paradox' in Shivji I (ed) *State and constitutionalism: An African debate on democracy* (1991)
- ✓ Klare, Karl E, 'Legal culture and transformative constitutionalism.'<sup>14</sup> *South African Journal on Human Right*, 1998

## 10. Independence of the judiciary

- Appointment and qualification of judicial officers
- Structure of the government and judicial independence
- Security of tenure of judicial officers
- Remuneration of judicial officers
- Security of tenure for judicial officers
- *Constitution of Kenya* (2010) and judicial independence

### Readings

- ✓ Luis Franceschi *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 10 (pages 477 - 480)
- ✓ Kiwinda Mbondenyei M and Osogo Ambani J, *The new Constitutional Law of Kenya*, Part II Chapter 8 (pages 75-81)

### Learning activities

- Lectures
- Documentary on:
  - Mobutu Sese Seko Kuku Ngbendu Wa Za Banga
  - King Mswati

### Group presentations on:

- i. *Marbury v Madison*, 5 US (1 Cranch) 137 (1803)
- ii. *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995)
- iii. *Okunda v Republic* [1970] EA
- iv. *Njoya & 6 Others v Attorney General & 3 Others* (No 2) [2008] 2 KLR
- v. *Institute of Social Accountability & Another v National Assembly & 4 others* [2015] eKLR
- vi. *Community Advocacy and Awareness Trust & 8 others v Attorney General* (2012) eKLR

- vii. *Communication from the Chair – Re-appointment of Justice Aaron Ringera as KACC Director (Marende Ruling)*

*Learning outcomes:*

At the end of this part, learners should be able to:

- Explain the meaning and rationale for key constitutional principles;
- Evaluate the extent to which the *Constitution of Kenya (2010)* incorporates key constitutional principles; and
- Compare the constitutional principles in the *Constitution of Kenya (2010)*, the repealed Constitution and other comparative constitutions

## 11. **Independent Constitutional Commissions and Offices**

- Constitutional Commissions and independent offices. Their nature, origin and purpose;
  - Objects, authority and funding of commissions and independent offices
  - Composition, appointment and terms of office
  - General functions and powers
  - Incorporation of commission and independent offices
  - Reporting by commissions and independent offices

*Readings:*

- Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 15 (pages 639 - 658)

*Learning Activities*

- Lectures
- Guest lectures from ‘insider perspectives’:
  - Member of National Assembly, *Hon. Neto Agostino*
  - Judge of the High Court/Court of Appeal- *Justice Lenaola*
- Group presentations on:
  - Kenya National Commission on Human Rights Act, (No 14 of 2011)
  - Commission on Administrative Justice Act, (No 23 of 2011)
- Visit to the National Assembly/Senate

*Learning Outcomes:*

At the end of this part, the learner should be able to:

- Outline the structure of government;
- Appraise the composition, powers and functions of the various organs and institutions of State;
- Explain the operational practices and procedures of the various organs and institutions of State; and
- Identify the main traits in the design and architecture of political power.

*Further Reading:*

Ojwang JB, *Constitutional development in Kenya: Institutional adaptation and social change*, pages 75 – 173



## Part III (Week 12 and 13)

### Bill of Rights/ Constitutional Interpretation

#### 12. The Bill of Rights

- Introduction to the concept of rights
- General background to the Bill of Rights
- Salient features of the Bill of Rights

##### *Reading:*

- Kiwinda Mbondenyi M and J Osogo Ambani *The new Constitutional Law of Kenya*, Part IV (pages 155 - 213)
- Franceschi L, *The Constitution of Kenya, 2010: An introductory commentary*, Chapter 4 (pages 121 - 261)

##### *Learning activities:*

- Lectures
- Movie: To Kill a Mockingbird

##### *Learning outcomes:*

- Discuss the basic principles of human rights;
- Describe the historical social, political and legal context and necessitated a robust system of protection of human rights; and
- Appraise the salient features of the Bill of Rights in the *Constitution of Kenya* (2010).

#### 13. Constitutional Interpretation

- Constitutional interpretation in historical perspective
- Amendment of the Constitution

##### *Readings:*

- Muigai G, 'Political jurisprudence or neutral principles: Another look at the problem of constitutional interpretation' 1 *East African Law Journal*, 2004
- Thiankolu M, 'Landmarks from El Mann to the Saitoti ruling: Searching a philosophy of constitutional interpretation in Kenya', obtainable at [www.kenyalaw.org](http://www.kenyalaw.org)
- Mutakha Kangu J, *Constitutional law of Kenya on devolution*, Strathmore University Press, Nairobi, Chapter 2, 2015
- Yongo C, 'Constitutional Interpretation of Human Rights and Court Powers in Kenya: Towards a More Nuanced Understanding' (forthcoming) 25 *African Journal of International and Comparative Law* 4, Edinburgh University Press, November 2017.

##### *Learning Outcomes:*

At the end of this class, learners should be able to:

- Demonstrate knowledge of the jurisprudence of constitutional interpretation