

AFRICAN LEGAL THEORY, LAW AND DEVELOPMENT

FALL 2019

SYLLABUS AND READINGS. (REVISED AUGUST, 2019)

A. AFRICAN LEGAL THEORY

INTRODUCTION

[3 & 10 September]

Books:

1. Introduction to African Legal Philosophy by John Murungi¹
2. African Legal Theory and Contemporary Problems by Oche Onzi²
3. African Law and Legal Theory by Gordon R. Woodman and A.O. Obilade

Articles:

1. On “African Legal Theory”: A Possibility, an Impossibility or Mere Conundrum? By Chikosa Mozesi Silungwe. Chapter 2: African Legal Theory and Contemporary Problems. Springer
2. African Law in Action by Salvatore Mancuso. 2014 Journal of African Law 58
3. The Pure Theory of Law, Summary of Kelsen’s The Idea of a Pure Theory of Law
4. An Introduction to African Legal Theory

CASES

Otieno v. Ouko (courseworks)

EXERCISE: 1. The Law, Religion, Superstition and the Rest - Digesting Otieno v. Ouko.

¹ Library Book

² Library Book

B. THE MAKING AND CONTENT OF AFRICAN CONSTITUTIONS

[17 & 24 September]

ARTICLES:

1. The Fourth Constitution-Making Wave of Africa - Constitutions 4.0? By Gedion T. Hessebon. 28 Temp. Int'l & Comp. L.J.185*
2. Nigeria - The Search for Autochthonous Constitution by Emmanuel Ibiam Amah. Beijing Law Review, 2017, 8, 141-158*
3. Constitutionalism under Siege - the Court's Role in the face of military Coups, armed uprisings and the "stress of necessity" P.L. 2014, Oct, 682-697.*
4. On Revolution and Legality in Fiji. I.C.L.Q. 1988, 37(4), 961-975. *
5. African Coups and the Situation in Eritrea a Test for the African Union by: Simon M. Weldehaimanot. 2010 J.A.L 54
6. The Independence of the Judiciary: A Third World Perspective by Yash Vyas Volume II Law, Accountability, and Development: Theories,
7. The African Union, Constitutionalism and Power-Sharing by Stef Vandegisnste, 2013 J.A.L. 57(1) 1

* Required Reading

CASES

Removal of the Presidential Age Limits from the Uganda Constitution.

1. Male H. Mbirizi K. Kiwanuka v. Attorney General (Consolidated Appeals Nos. 02 of 2018, 3 of 2018 and 4 of 2018: Judgement of Chief Justice Bert Katurebe.
2. Republic of Fiji v. Prasad (2001) 2 L.R.C. 743 (FJCA (Fiji))

TEXTS:

1. The Constitution of Kenya 2010
2. The South African Constitution 1996

EXERCISE: Draft a Model Constitution for the Republic of Sudan, 2019

C. DUALISM IN AFRICA

[October 1, 8]

Books:

1. The Future of African Customary Law Edited by: Jeanmarie Fenrich, Paolo Galizzi and Tracy E. Higgins. Cambridge. 2011.
2. African Law and Legal Theory by Gordon R. Woodman and A.O. Obilade

ARTICLES:

1. The Encounter Between Traditional Law and Modern Law in French-Speaking Africa: A Personal Reflection. By Xavier Banc-Jouvan 25 Tul.Eur. & Civ. L. F. 197
2. Romancing Customary Tenure: Challenges and Prospects for the Neo-Liberal Suitor by Janet L. Banda. The Future of African Customary Law Ed. Jeanmarie Fenrich, Paolo Galizzi and Tracy E. Higgins. Chapter 14
3. Primogeniture and Illegitimacy in African Customary Law: The Battle for Survival by Jelili A. Omotola 15 Indian International and Comparative Law Review 2000.

CASES:

1. *Virginia Edith Wamboi Otieno v. Joash Ochieng Ougo and Omolo Siranga* (Civil Appeal No. 31 of 1987)*
2. *Nankululeko Bhe and others. v. Magistrate, KHAYELITSHA and others.* Case CCT 49/03*
3. *Mifumi (U) Ltd & Others. v. Attorney General and Kenneth Kakuru* (Const. Appeal 02/2014).
4. *Essilfie and Another. v. Quarcoo.* [1992] 2 Ghana Law Reports 180
5. *Yaitey v. Quaye.* [1961] 2 Ghana Law Reports 573*

***Required Reading**

STATUTES:

1. The Judicature Act of Kenya (Laws of Kenya CAP.8);
2. The Judicature Act of Uganda (Laws of Uganda Cap. 113)

D. PHILOSOPHY OF BANJUL CHARTER

[October 15]

Articles:

1. African Values, Human Rights and Group Rights: A Philosophical Foundation for the Banjul. By Thaddeus Metz. Charter. Chapter 7 in African Legal Theory and Contemporary Problems - Springer

TEXT:

2. The African (Banjul) Charter on Human and People's Rights, 1986.

EXERCISE:

Embodiment of "People" : Examples

E. MECHANISM FOR RESTORING PEACE IN FAILED STATES

[October 22]

1. Engendered Discontent: The International Criminal Court in Africa. By Ssekandi and Tesfay (Georgetown Journal of International Affairs, 2017, p. 77.
2. Nation Building in the Context of A Transition: South Africa, Rwanda and Sierra Leone. By Tonbarara Ekiyor. 2016

3. Transitional Justice in a New Era. By Ruti G. Teitel. 26 Fordham Int'l L.J. 893.
4. Transitional Justice in Africa: The Experience with Truth Commissions. By Charles Manga Fombad, 2017.

EXERCISE:

“COUP” OR “TRIAL”. Discuss outcomes of Sudan, Circa 2019

F. THE THEORY AND PRACTICE OF LAND OWNERSHIP IN AFRICA

[October 29, November 5 and 10]

CASES:

Legacy of the Usufruct.

Amodu Tijani Appellant v. The Secretary, Southern Nigeria Respondent (Privy Council). [1921] 2 A.C. 399

Customary Tenure

Attorney General v. Lohay Akonaay and Joseph Lohay (Tanzania CA) 1995 TLR 80

Titling versus Customary Tenure

Mbui v. Mbui (Kenya Court of Appeal) 2005 East African Law Reports Vol. 256

Women's Rights to Property

- a. Ephrahim v. Pastory & Another (Tanzania High Court)
- b. Muthiora v. Muthiora (Kenya) [1982] LLR 1381 (CAK)

ARTICLES:

Property Rights and Development

1. Property Rights and Development: The Case for Formalization. By Michael Trebilcock and Paul-Erik Veel; U.Pa.J.Int'l. Vol.32(2) 398

2. Unintended Consequences of Legal Westernization In Niger: Harming Contemporary Slaves by Conceptualizing Property. By Thomas Kelley 56 A,J.Com.L.999

G. MANAGEMENT OF BENEFITS OF TRADE AND INVESTMENT LAWS IN AFRICA
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[November 26, December 3 and 10]

TEXTS

1. Agreement Establishing the African Continental Free Trade Area, Kigali March 2018
2. Amendment of the TRIPS Agreement. Decision 6 December 2005

ARTICLES

1. Investor-State Dispute Settlement in Africa and the AfCFTA Investment Protocol.
2. Dispute Settlement in the Continental Free Trade Area. Trade law Centre.
3. Free Trade, The Washington Consensus, and Bilateral Investment Treaties: The South African Journey: A Rethink on the Rules on Foreign Investment by Developing Countries. By Ziyad Motala American University Business Law Review Vol. 6 2016
3. African Union rising to the need for continental IP protection? The Establishment of the Pan-African Intellectual Property Organization. By Y. Mupangavanhu. 2015 J.A.L 59(1) 1-24.

