

PHIL 336 A01 (CRN 12757)
Philosophy of Law

CLASS TIMES: M, TH: 10:00 am -11:20 am

CLASS LOCATION: MacLaurin D283

OFFICE HOURS: Thursdays 11:45 am – 12:45 pm or by appointment

I acknowledge and respect the Lək'wəŋən People (Songhees and X^wsepsem/Esquimalt nations) on whose territory the university stands, and the Lək'wəŋən and W̱SÁNEĆ Peoples whose historical relationships with the land and waters of this region continue to this day.

COURSE DESCRIPTION:

This is an introductory course in the philosophy of law. The principal goal is to give you an overview of the central philosophical issues that arise in the generation, operation and application of laws. The course readings focus on: the nature of law and legal reasoning; theories of law; theories of rights; how international law differs from and relates to national law; and how social justice considerations can and should shape the law.

This face to face course is reading-intensive and requires a good deal of writing as well. It is very important that you attend and that you keep up with the readings as we go along. The ideal is to do the readings in time to be able to ask questions during lectures.

LEARNING OUTCOMES:

This course is designed to provide you with the following:

- a basic understanding of how philosophical methodologies and concepts can be used when engaging with questions about the law
- a basic understanding of key concepts used in the philosophy of law
- the ability to understand, apply and critically engage with philosophical analyses, arguments and conclusions about the law
- the ability to understand and critically reflect on how theoretical analyses, arguments and conclusions about the law relate to legal cases and decisions
- the ability to clearly articulate, in written form, how concepts, analysis, arguments and conclusions from materials covered in the course relate to examples, analysis or arguments in materials not covered in the course

ATTENDANCE:

You are expected to attend both meetings each week in person. Class meetings are not recorded.

AI:

The use of AI or other LLM tools to write your assignments or take-home exams is prohibited. Your ideas and their expression (including visual, oral or written formats) **must** be your own unless explicitly quoted and otherwise cited.

You may use AI to find information (if you acknowledge such use) but all such information must be double checked and cited in a scholarly manner to a reliable source. If you cannot otherwise confirm and accurately cite information gleaned from an AI source, do not use it.

Using AI to summarize readings for you rather than doing the reading yourself is not something I can regulate. However, you should be aware that AI summaries are highly unlikely to pick up the nuance or detail that is necessary for the type of analysis we will undertake in classroom discussion and that will be expected of you in assignments. For this reason, I strongly recommend against relying on AI summaries of the readings in this course.

TEXTS:

Coursepack (CP)

Culver, Keith, Giudice and J.E. Bickenbach, eds. *Canadian Cases in the Philosophy of Law*, 5th ed. (Broadview Press: 2018.) (CCPL)

EVALUATION:

Quizzes 5 @ 1% each 5%

Administered through Brightspace

Take-home Exams 2 @ 30% each 60%

Exam #1 distributed Oct 8; due back Oct 14 before midnight

Exam #2 distributed Nov 12; due back Nov 18 before midnight

8-10 page paper 35%

Assignment sheet available Sep 14, due Dec 10 before midnight

The paper must include discussion of both one item listed on the assignment sheet, and one item listed in Week 10, 11, 12 or 13 of the course outline.

All assignments will be graded with percentage grades using the standard UVic [scale](#).

POLICY ON LATE ASSIGNMENTS:

Exceptions to deadlines are governed by UVic [policies on Academic Concessions](#). If you are unable to meet a deadline because of conflicting responsibilities, or unexpected or unavoidable circumstances **you must contact me as soon as you are aware of the circumstances or conflict**.

Late assignments and papers will be penalized in the amount of 5% per 24 hours to a maximum of 30%. Exceptions to this penalty will only be considered in cases where an alternate deadline was arranged ahead of time or lateness was caused by an unexpected or unavoidable circumstance, as described in the [Undergraduate Calendar entry on academic concessions](#).

N GRADES

Students who have completed two exams and the 8-10 page paper will be considered to have completed the course. Failure to complete two exams and the 8-10 page paper will result in a grade of "N" regardless of the cumulative percentage on other elements of the course. N is a failing grade and factors into GPA as a value of 0.

EXPECTATIONS REGARDING CONDUCT:

This course is governed by UVic's policies on student behaviour and adheres to its commitment to [Creating a respectful, inclusive and productive learning environment](#). All members of our class—myself, and all students—have the right to experience and the responsibility to help create such an environment.

Professionalism is expected from all students enrolled in courses in the Tri-Faculty; these [standards for professional behaviour](#) apply to interactions both in person and online. Please see also information on University expectations regarding [Student Conduct](#) and policies regarding [Non-academic Student Misconduct](#).

ACADEMIC INTEGRITY:

You are expected to read the University's [Policy on Academic Integrity](#). You can find it in the Undergraduate Calendar. It is your responsibility to know and follow the University's academic integrity regulations.

Any and all sources used in preparing work that is submitted for evaluation must be acknowledged. This includes websites and other students' work. **Plagiarism and other forms of cheating will not be tolerated.** Such conduct is contrary to the University's academic regulations and shows a profound lack of respect for me, for fellow students and for the university as an institution of higher learning.

For additional information about the University's expectations with respect to academic integrity and resources to help you meet those expectations, visit [the University's Academic Integrity page](#).

MATERIALS POSTED TO BRIGHTSPACE:

Academic integrity includes respect for others' copyright. Course materials (including video recordings) provided by myself or others during this course must not be shared or distributed without permission.

Do not circulate (e.g., post online or upload to a note-sharing site) assignment sheets, lecture notes, or teaching materials posted to Brightspace without my permission. Posting course materials to note-sharing sites or otherwise circulating teaching materials without the permission of your instructor is a form of academic dishonesty. Any evidence you are circulating materials without permission will be investigated as a violation of the Policy on Academic Integrity.

ACADEMIC SUPPORTS:

The University has a number of academic support services that may help you in this course, including the [Academic Skills Centre](#), the [Library's Assignment Help](#) resources and the [Library's "Ask Us" service](#). Information about academic supports can be found through the [University's UVicLearn site](#).

ACADEMIC ACCOMMODATIONS:

The University of Victoria is committed to creating a learning experience that is as accessible as possible. If you anticipate or experience any barriers to learning in this course, please feel welcome to discuss your concerns with me. If you believe you will require academic accommodations to address barriers to your education in this course and you are not already registered with the Centre for Accessible Learning, please do so using the [CAL registration process](#). The Centre for Accessible Learning is the office designated to make arrangements for accommodations. You can find information about academic accommodations through the [Centre for Accessible Learning's website](#).

SCHEDULE OF READINGS:

The following is the anticipated schedule of readings and assignments. Dates and readings may be modified over the course of the term. Such changes will be announced ahead of time.

Week 1: September 10

Introductory lecture: What is the philosophy of law?

Week 2: September 14, 17

H.L.A. Hart, "Law as the Union of Primary and Secondary Rules" **(CP)**

Roncarelli v. Duplessis **(CCPL 207-210)**

Quiz #1: available on Brightspace Sep 18, closes Sep 20 at midnight

Week 3: September 21, 24

Lon Fuller, "The Morality of Law" **(CP)**

Edwards v. Attorney-General of Canada **(CCPL 42-45)**

Week 4: September 28, Oct 1

Ronald Dworkin, "The Model of Rules" **(CP)**

Ronald Dworkin, "Integrity in Law" **(CP)**

R v. Oakes **(CCPL 64-68)**

Quiz #2: available on Brightspace Oct 2, closes Oct 4 at midnight

Week 5: October 5, 8

Cass Sunstein, "Incompletely Theorized Arguments" **(CP)**

Sudhir Krishnaswamy, "Legitimacy of the Basic Structure Doctrine"

Reference Re Resolution to Amend the Constitution of Canada **(CCPL 36-41)**

Exam #1 distributed Oct 8; due back Oct 14 before midnight

Week 6: October 15

Karl Llewellyn, "Remarks on the Theory of Appellate ..." **(CP)**

Edward Levi, "An Introduction to Legal Reasoning"

Monsanto v. Schmeiser **(CP)**

Week 7: October 19, 22

Richard Posner, "The Economic Approach to Law" **(CP)**

Alan Wertheimer, "Unconscionability and Contracts" **(CP)**

Quiz #3: available on Brightspace Oct 23, closes Oct 25 at midnight

Week 8: October 26, October 29

John Borrows, "(Ab)originalism and Canada's Constitution" **(CP)**

Tsilhqot'in Nation v British Columbia **(CCPL 352-365)**

Week 9: November 2, 5

Athena Mutua, "The Rise, Development and Future Directions of Critical Race..." pp. 358-394 **(CP)**

Sauve v. Canada (Chief Electoral Officer) **(CCPL 323-327)**

Quiz #4: available on Brightspace Nov 6, closes Nov 8 at midnight

Reading Break: Nov 9-11

Week 10: November 12

J. Feinberg, "The Nature and Value of Rights" (CP)

Exam #2 distributed Nov 12; due back Nov 18 before midnight

Week 11: November 16, 19

Joseph Raz, "Rights and Individual Well-being" (CP)

R v Keegstra (CCPL 82-91)

Week 12: November 23, 26

Mark Janis, "The Nature of *Jus Cogens*" (CP)

A. Orakhelashvili, "Peremptory Norms ..." (CP)

Dinah Shelton, "Normative Hierarchy in International Law" (CP)

Habré v Senegal (CP)

Quiz #5: available on Brightspace Nov 27, closes Nov 29 at midnight

Week 13 November 30, Dec 3

Lynn Berat, "South African Contract Law" (CP)

Last day of classes: Dec 7

8-10 PAGE ESSAY DUE DEC 10 BEFORE MIDNIGHT