

PHIL 336 A01
Spring 2021
Philosophy of Law

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Office Hours: Wed 2 pm-3 pm
Thu 1:30 pm-2:30 pm
pre-booking required

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 course is reading-intensive and it requires a good deal of writing as well. It is very important that you keep up with the readings as we go along. The ideal is to do the readings *before* the class in which they are covered.

Evaluation

Take-Home Assignments (4 in total) 60%

Assignment #1 @ 10% (available Jan 22 due Jan 29)

Assignment #2 @ 15% (available Feb 10, due Feb 19)

Assignment #3 @ 20% (available Mar 12, due Mar 19)

Assignment #4 @ 15% (available Mar 31, due Apr 7)

8-10 page paper 40%
(assignment sheet available Jan 6, due April 19)

Late assignments and papers will be penalized in the amount of 5% per 24 hours to a maximum of 30%. Late penalties begin to accrue at 5:01 pm PST on the due date.

100-90 = A+, 85-89 = A, 80-84 = A-, 77-79 = B, 73-76 = B, 70-72 = B-, 65-69 = C+, 60-64 = C, 50-59 = D, 0-49 = F

N Grades

Students who have completed two take-home assignments and the 8-10 page paper will be considered to have completed the course. Failure to complete at least two of the take-home assignments or to submit 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.

Brightspace

A Brightspace page has been set up for this course. You may access it by signing in with your netlink id. This page will be used to post announcements, to:

- give you online access to assignments, powerpoints, and supplementary resources
- collect assignments

- give you access to invites for zoom meetings

Please note that **all assignments for this course and all materials posted to Brightspace are the intellectual property of myself and the University of Victoria.** Do not circulate this material or post it to note-sharing sites without my permission. **Posting course materials to note-sharing sites or otherwise circulating course materials without the permission of your instructor violates the *Policy on Academic Integrity*. Any evidence you are circulating materials without permission will be referred to the Chair of the Philosophy Department for investigation.**

Online Student Conduct

The University of Victoria is committed to promoting critical academic discourse while providing a respectful and supportive learning environment. All members of the university community have the right to this experience, and the responsibility to help create, such an environment. The University will not tolerate racism, sexualized violence, or any form of discrimination, bullying or harassment.

By logging into UVic's learning systems and interacting with online resources you are engaging in a university activity. This means that your conduct is subject to University policies in those settings.

(<https://www.uvic.ca/services/studentlife/student-conduct/online-student-conduct/index.php>).

Academic Integrity

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.

You are expected to read the University's *Policy on Academic Integrity*. You can find it in the Undergraduate Calendar

(https://www.uvic.ca/calendar/undergrad/#/policy/Sk_0xsM_V?bc=true&bcCurrent=08%20-%20Policy%20on%20Academic%20Integrity&bcGroup=Undergraduate%20Academic%20Regulations&bcltemType=policies). It is your responsibility to know and follow the University's regulations regarding academic integrity. Penalties for academic integrity violations are harsh and are applied as written.

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 (<https://www.uvic.ca/students/academics/academic-integrity/#ipn-resources>).

Academic Supports

The University has a number of academic support services that may help you in this course, including the Centre for Academic Communication (<https://www.uvic.ca/learningandteaching/cac/>), the Library's Research Anywhere site (<https://onlineacademiccommunity.uvic.ca/ResearchAnywhere/>) and the Library's "Ask Us" service (<https://www.uvic.ca/library/research/ask/index.php>). Information about

academic supports can be found through the University's Learn Anywhere site (<https://onlineacademiccommunity.uvic.ca/LearnAnywhere/academic-supports/>)

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 (<https://www.uvic.ca/services/cal/online-services/register/index.php>). 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 (<https://www.uvic.ca/services/cal/programs/academic/index.php>).

Texts

- May, Larry and Brown, Jeff, eds. *Philosophy of Law: Classic and Contemporary Readings* (Wiley-Blackwell: 2010.) **(M&B)**
- Culver, Keith, Giudice and J.E. Bickenbach, eds. *Canadian Cases in the Philosophy of Law*, 5th ed. (Broadview Press: 2018.) **(CCPL)**
- Brightspace Coursepack **(BCP)**

Schedule of Readings

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

A number of cases will be used to illustrate the concepts and arguments in each section. **These cases are part of the required reading load** and you will be expected to be able to discuss them in assignments and essays.

Jan 6 The philosophy of law: key ideas and concepts

Theories of Law

Jan 9-13 H.L.A. Hart, "The Concept of Law" **(M&B)**
Roncarelli v. Duplessis **(CCPL)**
Edwards v. Attorney-General of Canada **(CCPL)**

Jan 15-20 Lon Fuller, "Eight Ways to Fail to Make Law" **(BCP)**
Re Singh and Minister of Employment and Immigration **(BCP)**
Assignment #1 Available Jan 22, Due Jan 29 before 5 pm PST

Jan 22-27 Ronald Dworkin, "The Model of Rules I" **(M&B)**
Ronald Dworkin, "Constitutional Cases" **(M&B)**
R v. Oakes **(CCPL)**

Theories of Interpretation

Jan 29 -Feb 2 Cass Sunstein, "Incompletely Theorized Arguments" **(M&B)**
Suresh v. Canada **(CCPL)**

Feb 3-9 Edward Levi, "An Introduction to Legal Reasoning" (M&B)
Karl Llewellyn, "Remarks on the Theory of Appellate ..." (M&B)
Reference Re Resolution to Amend the Constitution of Canada (CCPL)
Reference re: Secession of Quebec (CCPL)

Feb 10 Richard Posner, "The Economic Approach to Law" (M&B)
Assignment #2 Available Feb 10, Due Feb 19 before 5 pm PST

Feb 16-19 READING BREAK

Feb 23 Richard Posner, "The Economic Approach to Law" (M&B)
Monsanto v. Schmeiser (BCP)

Feb 24-Mar 5 Patricia Smith, "Feminist Legal Critics.." (M&B)
Athena Mutua, "The Rise, Development and Future Directions of Critical
Race.." pp. 358-394 (BCP)
Sauve v. Canada (Chief Electoral Officer) (CCPL)
Little Sisters Book and Art Emporium (CCPL)

Mar 9-12 John Borrows, "Living Between Water and Rocks" (BCP)
Tsilhqot'in Nation v British Columbia (CCPL)
Assignment #3 Available Mar 12, Due Mar 19 before 5 pm PST

Rights

Mar 16-23 J. Feinberg, "The Nature and Value of Rights" (BCP)
Joseph Raz, "Rights and Individual Well-being" (BCP)
Peter Jones, "Human Rights, Group Rights and People's Rights" (BCP)
R. v. Keegstra (CCPL)
Native Women's Association v. Canada (BCP)

International Law

Mar 24-31 Larry May, "Custom, *Opinio Juris* and Consent" (M&B)
Mark Janis, "The Nature of *Jus Cogens*" (M&B)
A. Orakhelashvili, "Peremptory Norms ..." (M&B)
Dinah Shelton, "Normative Hierarchy in International Law" (BCP)
Lovelace v Canada (BCP)
Habré v Senegal (BCP)
Assignment # 4 Available Mar 31, Due Apr 7 before 5 pm PST

Law and Social Justice

Apr 6, 7 A. Wertheimer, "Unconscionability and Contracts" (M&B)
L. Berat, "South African Contract Law" (M&B)

8-10 page essay due April 19 before 5 pm PST