

PHIL 336 A01
Spring 2023
Philosophy of Law

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Office Hours: Thursdays 12:30pm-2pm

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 in time to be able to ask questions during lectures.

Evaluation

Take-Home Assignments (3 in total) 60%
Assignment #1 @ 15% (available Jan 23 due Feb 2)
Assignment #2 @ 20% (available Feb 27, due Mar 79)
Assignment #3 @ 25% (available Apr 4, due Apr 15)

8-10 page paper 40%
(assignment sheet available Jan 6, due April 22)

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 of serious and unforeseeable extenuating circumstances such as illness, accident or family emergency.

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 tests and the 8-10 page paper will be considered to have completed the course. Failure to complete at least two of the tests or to submit the 7-9 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 coursepack readings, tests, the essay assignment sheet, powerpoints, and supplementary resources
- collect tests and the essay assignment

Please note that all tests, the essay assignment sheet and all lecture notes and teaching materials posted to Brightspace are the intellectual property of myself and the University of Victoria. **Do not circulate course materials or post them 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.

Expectations Regarding Conduct

All members of the university community have the right to experience, and the responsibility to help create, a respectful and supportive learning environment.

These rights and the responsibilities are present both in interactions in person and online. Racism, sexualized violence, and any form of discrimination, bullying or harassment are not acceptable and will not be tolerated.

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.

Professionalism is expected from all students enrolled in courses in the Faculty of Humanities. As part of professionalism, students, faculty and staff are expected to be familiar with University policies, including the [Tri-Faculty's Standards for Professional Behaviour](#).

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. 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](#).

Academic Supports

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

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 9 The philosophy of law: key ideas and concepts

Theories of Law

Jan 12-16

H.L.A. Hart, "The Concept of Law" **(M&B)**

H.L.A. Hart, "Positivism and the Separation of Law and Morals" **(BCP)**

Roncarelli v. Duplessis **(CCPL)**

Jan 19-23

Lon Fuller, "Eight Ways to Fail to Make Law" **(BCP)**

Lon Fuller, "Positivism and Fidelity to Law: A Reply to Professor Hart" **(BCP)**

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

Assignment #1 Available Jan 23, Due Feb 2 before midnight

Jan 26-30

Ronald Dworkin, "The Model of Rules I" **(M&B)**

Ronald Dworkin, "Constitutional Cases" **(M&B)**

R v. Oakes **(CCPL)**

Feb 2-6

Cass Sunstein, "Incompletely Theorized Arguments" **(M&B)**

Suresh v. Canada **(CCPL)**

Feb 9-13

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)**

Theories of Interpretation

Feb 16

Edward Levi, "An Introduction to Legal Reasoning" (M&B)
Monsanto v. Schmeiser (BCP)

Feb 20-24 READING BREAK

Feb 27

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

Assignment #2 Available Feb 27, Due Mar 7 before midnight

Mar 2-9

S. Munzer and J. Nickel, "Does the Constitution Mean..." (M&B)
John Borrows, "(Ab)originalism and Canada's Constitution" (BCP)
Tsilhqot'in Nation v British Columbia (CCPL)

Mar 13-20

Catherine Mackinnon, "Toward a New Theory of Equality." (BCP)
Athena Mutua, "The Rise, Development and Future Directions of Critical Race.." pp.
358-394(BCP)
Sauve v. Canada (Chief Electoral Officer) (CCPL)

Rights

Mar 16-20

J. Feinberg, "The Nature and Value of Rights" (BCP)
Joseph Raz, "Rights and Individual Well-being" (BCP)
R. v. Keegstra (CCPL)

Mar 23

Peter Jones, "Human Rights, Group Rights and People's Rights" (BCP)
Native Women's Association v. Canada (BCP)

International Law

Mar 23-Apr 6

Mark Janis, "The Nature of *Jus Cogens*" (M&B)
A. Orakhelashvili, "Peremptory Norms ..." (M&B)
*Accordance with International Law of the Unilateral Declaration of Independence in
Respect of Kosovo, Advisory Opinion* (CCPL)

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

Bruno Simma and Philip Alston, "The Sources of Human Rights Law..." (BCP)

UNDRIP (BCP)

Habré v Senegal (BCP)

Assignment # 3 Available Apr 4, Due Apr 15 before midnight

8-10 page essay due April 22 before midnight