

UNIVERSITY OF GUELPH
DEPARTMENT OF PHILOSOPHY

PHIL 3040DE:

Instructor: Niels Feuerhahn / MacKinnon 368 / email: nfeuerha@uoguelph.ca

Office hours: By appointment

Description of Course:

The philosophy of law is the area of philosophy that seeks to provide a philosophical answer to the question, *What is law?* As such the claim of the philosophy of law is to formulate a *general* theory of law. The objective of this course is to introduce students to the basic concepts, questions and controversies of the philosophy of law. The texts that we will read in this course will allow students to develop a critical and comprehensive insight into some of the most important aspects of the concept and practice of law. We will pay particular attention to the accounts that different legal philosophers and jurists have given of the relationship between law and morality. Other fundamental questions that will occupy us throughout the semester are: *What is the relationship between law and justice? What is the origin of legal validity? Do we have a general obligation to obey the law, and what are the limits of this obligation?* Another important dimension of the study of law will pertain to the questions, *What role do judges and lawmakers play in the practice of law?* and, *What is the nature of legal reasoning?* Over the course of the semester, students will be introduced to some of the theories that have had the greatest impact on the jurisprudential discourse in the Anglo-American world of the past 200 years: legal positivism, legal realism, natural law theory, and Ronald Dworkin's 'law as integrity'. We will critically assess the merits of the answers that these jurisprudential schools have given to the various questions that will guide our investigation of the concept and practice of law. In the second half of the semester, students can expect to study central legal concepts like 'rights', 'legal responsibility', 'justice', and 'punishment'. Students will also participate in a group project that will give them the opportunity to supplement their understanding of the universal elements of law by way of studying landmark court decisions of the Supreme Court of Canada.

Method of Evaluation:

Weekly discussion	=	15%
5 one-page response papers	=	20%
1 mid-term paper (5-7 pages)	=	25% (due June 27, 2013)
Group project	=	10% (due July 26, 2013)
1 final exam	=	30% (date T.B.A.)

The deadline for the submission of the mid-term paper is gauged generously. Therefore, late submissions without a valid excuse will be penalized with a deduction of 5% per overdue day.

Required texts:

All readings will be made available via e-course reserve. Students are not required to purchase any textbooks for this course.

Course requirements

Weekly discussion:

Each week students are expected to post two critical comments on the discussion board of the course. You can either post one new comment along with one comment in response to an original comment from one of your peers. Alternatively you can also post two comments in response to existing posts. The point of the discussion board is to foster an intelligent discussion of controversial issues that you encounter in the readings. As such, before you post a comment you should ask yourself whether or not your contribution will benefit other students in the course. Keep in mind that your peers will have to read through the existing comments before they post their own comment. Try to be as clear and concise as possible. Your comments can incorporate ideas from previous weeks. However, references to readings that will be covered in later weeks ought to be avoided. At the end of the semester students will receive a mark for their contributions to the discussion board. This mark will take into account the quality of the contributions and the number of comments. Since no student is required to submit more than two comments per week, and in order to give everyone a fair chance to participate in the debate, please refrain from posting more than the required number of comments. The discussion board is intended to be a dynamic, interactive space for an intelligent, ongoing discussion about the course material. Although only 15% of your final mark will be based on the work that you put into your discussion board contributions, the collective effort that will go into the discussion will contribute considerably to the overall learning success in the course.

One-page response papers:

Each week I will post a question about the readings that are assigned in the respective week in the news section of the course website. By answering the question you are supposed to demonstrate that you understood the material and that you are able to articulate this understanding in your own words. For most questions you are required to reconstruct an argument and/or to explicate a key concept. You may also be asked to take a stance on an issue and to justify your view. Over the course of the semester you must submit five response papers. Should you choose to submit a response paper for the week in question you must submit your paper no later than 11:59pm of the Sunday of that week (see schedule for exact dates). Late submissions will **not** be accepted. On each paper that you submit you can get a maximum of 5 marks. The length of your submission should not exceed 750 words.

Group project:

Due to the time constraints that we have in this course we will unfortunately not be able to read any major court decisions together in their entirety. To make up for this, groups of 4-6 students will write a philosophical exposé of one of the decisions for their peers. This exposé should contain a summary of the court decision along with a philosophical commentary. You are to submit your exposé at the beginning of Week 12. Prior to posting your results on the course page you must submit an outline of the exposé to the instructor for approval. Every group will receive a mark for their exposé. I will also post one exposé for each decision on the course website. All students will be expected to have read these exposés for the final exam.

Midterm paper:

The midterm paper is an argumentative essay. Students must defend a thesis using the course material of the first six weeks of the semester. A list of possible topics will be posted on the course website. Students will be graded on (1) strength of the argument, (2) use of class material, (3) clarity of writing, and (4) organization. The essay should be between five and seven pages long (font 12, Times New

Roman, 1.5 line spacing).

Final exam:

The final exam will be cumulative and will cover both the primary readings and the lecture notes. Details will be announced later in the semester.

Schedule of readings

- Week 1: **Legal Positivism I** (42 pages)
9.5. - John Austin, *The Province of Jurisprudence Determined*, pp.9-33 ; 124-128 ; 159-164;
19.5. 184-190
- Week 2: **Legal Positivism II** (39 pages)
20.5. - Hans Kelsen, *Pure Theory of Law*, pp.1-19 ; 193-214
26.5.
- Week 3: **Legal Realism** (34 pages)
27.5. - Oliver Wendell Holmes, *The Path of the Law*, pp.457-469
2.6. John Chipman Gray, *The Nature and Sources of the Law*, pp.84-104
- Week 4: **Legal reasoning**
3.6. - John Chipman Gray, *The Nature and Sources of Law*, pp.152-163 ; 170-173 ; 176-183 ;
9.6. 187-193 ; 198-200 ; 211-221
H.L.A. Hart, “The Separation of Law and Morality”, pp.593-600 ; 606-615
- Week 5: **Natural Law Theory** (34 pages)
10.6. - Gustav Radbruch, “Statutory Lawlessness and Supra-Statutory Law”, pp.131-134
16.6. Lon Fuller, *The Morality of the Law*, pp.33-41
Hans Kelsen, “The Idea of Natural Law”, pp.30-34; 36-45; 47-; 52-55
- Week 6: **Legal Positivism III** (36 pages)
17.6. - H.L.A. Hart, *The Concept of Law*, pp.77-100 ; 103-114
23.6.
- Week 7: **Rights and the law** (42 pages)
24.6. - Joel Feinberg, “The Nature and Value of Rights” pp.243-245 ; 249-255
30.6. Ronald Dworkin, *Taking Rights Seriously* pp.22-31 ; 39-45 ; 81-94
- Week 8: **Rights and the law *continued* & Law as integrity** (40 pages)
1.7. - Ronald Dworkin, *Taking Rights Seriously*, pp.101-116
7.7. Ronald Dworkin, *Law's Empire*, pp.225-238 ; 254-266
- +++ **July 5 : 40th day of class** +++
- Week 9: **Attitudes toward the law** (36 pages)
8.7. - John Rawls, “Legal Obligation and the Duty to Fair Play” pp.3-13

- 14.7. Plato's *Crito* pp.37-48
John Rawls, "Civil Disobedience" pp.103-117
- Week 10: **Justice** (28 pages)
15.7. - Joel Feinberg, "Justice and Personal Desert" pp.55-62 ; 67-80
21.7. H.L.A. Hart, *The Concept of Law* pp.151-163
- Week 11: **Punishment** (37 pages)
22.7. - John Rawls, "Two Concepts of Rules" pp.3-13
28.7. Joel Feinberg, "The Expressive Function of Punishment" pp.95-105 ; 110-118
H.L.A. Hart, *Punishment and Responsibility* pp.4-13
- Week 12: **Legal responsibility** (26 pages)
29.7. - Joel Feinberg, "Problematic Responsibility in Law and Morals" pp.25-33
2.8. H.L.A. Hart & A.M. Honoré, *Causation in the Law* pp.58-76

A note on the readings: The reading load in this course is not to be underestimated. In most weeks you are expected to read about 40 pages of primary material plus my lecture notes. While this may seem more than what is expected in other courses, overall the time needed to read the assigned readings and my lecture notes is roughly equivalent to the amount of the time that you would otherwise need to prepare the readings at home and attend the weekly lectures in class. Stylistically, all of the readings are very accessible. My lecture notes are intended to supplement the primary readings. In my notes I try to both highlight and clarify important points and to provide an intelligent structure for the primary texts where such a structure is not immediately apparent.

E-mail Communication

As per university regulations, all students are required to check their <uoguelph.ca> email account regularly: email is the official route of communication between the university and its students.

When You Cannot Meet a Course Requirement...

When you find yourself unable to meet an in-course requirement because of illness or compassionate reasons, please advise the course instructor (or designated person, such as a teaching assistant) in writing, with your name, id#, and e-mail contact. See the undergraduate calendar for information on regulations and procedures for Academic Consideration:

<http://www.uoguelph.ca/registrar/calendars/undergraduate/current/c08/c08-ac.shtml>

Drop Date

The last date to drop one-semester **Summer '13** courses, without academic penalty, is **Friday, July 5 2013**. For regulations and procedures for Dropping Courses, see the Undergraduate Calendar:

<http://www.uoguelph.ca/registrar/calendars/undergraduate/current/c08/c08-drop.shtml>

Copies of out-of-class assignments

Keep paper and/or other reliable back-up copies of all out-of-class assignments: you may be asked to resubmit work at any time.

Academic Misconduct

The University of Guelph is committed to upholding the highest standards of academic integrity and enjoins all members of the University community – faculty, staff, and students – to be aware of what

constitutes academic misconduct and to do as much as possible to prevent academic offences from occurring. The Academic Misconduct Policy is detailed in the Undergraduate Calendar:
<http://www.uoguelph.ca/registrar/calendars/undergraduate/current/c08/c08-amisconduct.shtml>

Recording of Materials

Presentations which are made in relation to course work—including lectures—cannot be recorded in any electronic media without the permission of the presenter, whether the instructor, a classmate or guest lecturer.

Resources

The Undergraduate Calendar is the source of information about the University of Guelph's procedures, policies and regulations which apply to undergraduate programs. It can be found at:

<http://www.uoguelph.ca/registrar/calendars/undergraduate/current/>