

PHILOSOPHY 336 A01
Spring 2019 CRN 22371
Philosophy of Law

Dr. Cindy Holder
Cle B322
Email: clholder@uvic.ca

Office Hours: Thursdays 3:30 pm-4:30 pm
or by appointment

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; how international law differs from national law; human rights as a branch of international law; theories of rights; and theories of interpretation.

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) 65%

Assignment #1 @ 15% (handed out Jan 17, due Jan 24)

Assignment #2 @ 15% (handed out Feb 4, due Feb 11)

Assignment #3 @ 20% (handed out Mar 4, due Mar 11)

Assignment #4 @ 15% (handed out Mar 25, due Apr 1)

10-12 page paper (due April 12) 35%

Assignments must be handed in before lecture begins on the day they are due.

Assignments handed in after lecture has begun will be considered late. **Late assignments and papers will be penalized in the amount of 5% per 24 hours they are late to a maximum of 30%.**

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 of the assignments and 10-12 page paper will be considered to have completed the course and will be assigned the percentage achieved from the components completed. Failure to complete at least two of the assignments and the 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.

CourseSpaces

A CourseSpaces 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 lecture notes, handouts and assignment sheets and to collect short writing assignments. Please note that I will not be monitoring any online chats or billboards that CourseSpaces enables. This means that **you cannot rely on me to catch and correct mistakes in postings by fellow students**, nor can you rely on me to ensure a civil tone.

Assignments must be handed in as a paper copy. **The 10-12 page paper may be handed in through CourseSpaces. Do not use CourseSpaces to hand in your four in-term assignments.**

Learning Supports

I encourage all students to take advantage of the extensive range of learning supports available on campus. Many of these, such as the Research Help Desk (<http://www.uvic.ca/library/research/refdesk/>) and the Centre for Academic Communication (<http://www.uvic.ca/learningandteaching/students/home/centre/>) may be found in the Learning Commons, located on the main floor of the McPherson Library, (<http://www.uvic.ca/library/locations/home/learning/>).

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. **Failing to acknowledge sources that have been used and/or where in your work material taken from these sources appears constitutes plagiarism. Plagiarism and other forms of cheating, as well as aiding others to cheat by posting assignments and lecture notes to note-sharing sites such as CourseHeroes is contrary to the University's academic regulations, and shows a profound lack of respect for myself, for fellow students and for the university as an institution of higher learning. It will not be tolerated.**

The University's expectations, procedures and the penalties for academic dishonesty are set out in the Policy on Academic Integrity. You can find this Policy in the Undergraduate Calendar (<http://web.uvic.ca/calendar/FACS/UnIn/UARe/PoAcI.html>). The University Library has information designed to assist students in understanding and adhering to the University's expectations with respect to plagiarism (<http://www.uvic.ca/library/research/citation/plagiarism/>). I strongly advise you to consult both the Policy on Academic Integrity and the Library's resources on proper citation.

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.) **(B)**
- Coursepack **(CP)**

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 short answer assignments and essays.

Background

Jan 7 What is the Philosophy of Law?
 H.L.A. Hart, "The Concept of Law" **(M&B)**

Theories of Law

Jan 7, 10 H.L.A. Hart, "The Concept of Law" **(M&B)**
 Roncarelli v. Duplessis **(B)**
 Edwards v. Attorney-General of Canada **(B)**

Jan 14, 17 Lon Fuller, "Eight Ways to Fail to Make Law" **(CP)**
 R.v Heywood **(B)**
 Assignment #1 Handed Out Jan 17, Due Jan 24 before class begins

Jan 21, 24 Ronald Dworkin, "The Model of Rules I" **(M&B)**
 Ronald Dworkin, "Constitutional Cases" **(M&B)**
 R v. Oakes **(B)**
 Re Singh and Minister of Employment and Immigration **(B)**

Theories of Interpretation

Jan 28, 31 Cass Sunstein, "Incompletely Theorized Arguments" **(M&B)**
 Edward Levi, "An Introduction to Legal Reasoning" **(M&B)**
 Karl Llewellyn, "Remarks on the Theory of Appellate ..." **(M&B)**

Feb 4 *Reference Re Resolution to Amend the Constitution of Canada* **(B)**
 Reference re: Secession of Quebec **(B)**
 Assignment #2 Handed out Feb 4, Due Feb 11 before class begins

Feb 7,11 Richard Posner, "The Economic Approach to Law" **(M&B)**
 Monsanto v. Schmeiser **(CP)**

Feb 14 Patricia Smith, "Feminist Legal Critics.." **(M&B)**

Feb 18, 21 Reading Break

Feb 25 Kimberlé Crenshaw, "Critical Race Theories: The Key Writings..." **(M&B)**
 Sauve v. Canada (Chief Electoral Officer) **(B)**

Feb 28, Mar 4 John Borrows, "Living Between Water and Rocks" **(CP)**
 Tsilhqot'in Nation v British Columbia **(CP)**
 Assignment #3 Handed out Mar 4, Due Mar 11 before class begins

Rights

- Mar 7, 11 J. Feinberg, "The Nature and Value of Rights" (CP)
Joseph Raz, "Rights and Individual Well-being" (CP)
R. v. Keegstra (B)
Attis v. The Board of School Trustees (B)
- Mar 14 Peter Jones, "Human Rights, Group Rights and People's Rights" (CP)
Native Women's Association v. Canada (B)

International Law

- Mar 18, 21 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" (CP)
- Mar 25, 28 Virginia Held, "Morality, Care and International Law" (CP)
Lovelace v Canada (CP)
Suresh v, Canada (B)
Habré v Senegal (CP)
Assignment # 4 Handed out Mar 25, Due Apr 1 before class begins

Law and Social Justice

- Apr 1, 4 A. Wertheimer, "Unconscionability and Contracts" (M&B)
L. Berat, "South African Contract Law" (M&B)
10-12 page essay due April 12 before 4 pm