

PHILOSOPHY OF LAW

TTh ##:##-##:## ❖ Room: ###

Most of us think about the law only in those (hopefully rare) moments when we are forced to pay a fine or appear for jury duty. But the law is nevertheless ever-present in our lives: it ensures our security, guarantees our contracts, allocates taxes, keeps our food safe, sanctions marriage and keeps traffic orderly. This course examines the law from two different perspectives. For the first half of the class, we study analytic jurisprudence, which concerns the nature of law and legal systems. We will seek to understand what constitutes a system of laws and how jurists apply the law. For the second half of the class, we examine normative jurisprudence. We look at what the law should and should not prohibit and whether controversial doctrines such as inchoate crimes, strict liability and conspiracy are coherent and morally defensible. We conclude with a brief glance at international law.

Instructor: David Atenasio
✉ Email: datenasio@luc.edu

Office Location: ###
Office Hours: TBD

Texts and Readings

H. L. A. Hart. 2012. *The Concept of Law Third Edition*. Oxford: Oxford University Press.

All other readings will be distributed through the university's online platform.

Learning Outcomes

This course serves as a focused study in the philosophy of law. Students will primarily consider advanced arguments in analytic and normative jurisprudence. Students will also:

- » Acquire an understanding of some basic legal concepts.
- » Learn to develop a conference length philosophical research paper.
- » Practice presenting their work to others.
- » Identify connections between moral and legal theory.
- » Think critically about how we ought to revise (or not revise) our legal system.

Prerequisites

One philosophy course (preferably ethics) or introduction to legal studies

Assessment

To benefit from this course, you must be prepared and engaged in class. This means being on time, completing required assignments before class and participating in class discussion.

The grading distribution is as follows:

Short Papers: 30%. There will be four shorter written assignments, each two to three pages in length. These assignments could require argument reconstruction, argument analysis or argument criticism.

Blog project: 20%. Students will research an applied topic in the philosophy of law and produce an accessible overview on a popular blogging platform.

Presentation: 10%. Presentations may take one of two formats: First, students may treat the presentation as a practice conference paper. For this option, students will present a 5 page paper to the class and respond to questions. Alternatively, students may decide to lead class for approximately twenty minutes. If so, students will present the main argument from the reading and pose questions to get discussion started.

Final Paper: 30%. Students will write an extended response to one or more of the articles we read in class. The paper requires some outside research. The paper will be argumentative and have a clear thesis, a defence of that thesis and consideration of one or two potential objections.

Class Participation: 10% A good, engaging class requires students to freely participate and share their thoughts and criticisms. Students are expected to support the class by regularly attending and participating in class discussion.

Class Policies

Attendance - Assignments are frequently handed out in class, so missing a significant amount of class will result in missed assignments and a reduced class participation grade.

Electronic Devices - Tablets, e-readers, smartphones and laptops are permitted in class, as long as they do not become a distraction. If electronic devices become a distraction, this policy will become significantly more restrictive and only select electronic devices will be permitted.

Late Assignments - Late short papers will not be accepted without a formal excuse. Presentations may be rescheduled, but all presentations must be given on the day of the assigned reading. I will accept the final paper and take home midterm after the day they are due, but either will lose a third of a grade point for each day it is late. For example, an A paper turned in one day late will be assigned an A-. For those students who present a valid formal excuse, makeup work is due by the last day of classes.

Disabilities or Special Needs - I am happy to accommodate students with disabilities or special needs. Any student requiring special accommodations should speak to the instructor immediately.

Academic Dishonesty:

No cheating or plagiarism will be tolerated. Clear cases of cheating or plagiarizing will result in an immediate F for the assignment. Be aware that unintentional plagiarism still counts as plagiarism. If you copy a passage or idea from your notes and forget where it came from, that still counts as plagiarism. It is up to you to make sure that you properly cite any claim, passage or idea that is not your own. Ideas in student writing that are not original or properly cited will count as plagiarism. Please look over the university's policy on plagiarism carefully.

Course Outline

Please make sure to do the readings *before* class.

Week	Content
Theories of Law	
1	<ul style="list-style-type: none"> - T Introduction to the Philosophy of Law - Th Hart ch. 1; J. Raz "Can there be a Theory of Law?"
2	<ul style="list-style-type: none"> - T J. Austin "A Positivist Conception of Law" - Th Hart ch. 2-3
3	<ul style="list-style-type: none"> - T Hart ch. 5-6 - Th R. Dworkin "Model of Rules I"
4	<ul style="list-style-type: none"> - T J. Raz "Authority, Law, and Morality" - Th Hart "Postscript"
5	<ul style="list-style-type: none"> - T R. Dworkin "Integrity" - Th R. Dworkin "Integrity in Law"
6	<ul style="list-style-type: none"> - T J. Finnis <i>Natural Law and Natural Rights</i> (Part One) - Th L. Fuller "The Morality that Makes Law Possible"
Theories of Jurisprudence	
7	<ul style="list-style-type: none"> - T Mid-Semester Break (no class) - T F. Schauer "Formalism"
8	<ul style="list-style-type: none"> - Th R. Bork "The Original Understanding" - Th P. Brest "The Misconceived Quest for the Original Understanding"
9	<ul style="list-style-type: none"> - T D. Bell "Racial Realism" - Th M. Minow "Justice Engendered"
The Harm Principle and its Discontents	
10	<ul style="list-style-type: none"> - T J.S. Mill <i>On Liberty</i> (Chapter 1) - Th J. Feinberg <i>Harm to Others</i> (Introduction & Chapter 1)
11	<ul style="list-style-type: none"> - T G. Dworkin "Paternalism" - Th Thaler & Sunstein "Libertarian Paternalism"
12	<ul style="list-style-type: none"> - T H. Malm "Liberalism, Bad Samaritan Law, and Legal Paternalism" - Th R. Langton "Speech-Acts and Unspeakable Acts"
Controversial Doctrines	
13	<ul style="list-style-type: none"> - T G. Yaffe "Trying, Acting and Attempted Crimes" - Th Thanksgiving Break (no class)
14	<ul style="list-style-type: none"> - T R. Epstein "A Theory of Strict Liability" - Th J. Ohlin "Group Think: The Law of Conspiracy and Collective Reason"
International Law	
15	<ul style="list-style-type: none"> - T Hart ch. 10 - Th Posner & Goldsmith "A Theory of Customary International Law"