

**PHL 491: PHILOSOPHY OF LAW
SPRING 2014
Instructor: Dr. Kristen Intemann
E-mail: intemann@montana.edu
Office: Wilson 2-152
Office Hours: T & TH 11:00-12:00 and by appointment**



COURSE DESCRIPTION

This course examines philosophical issues in both analytic and normative jurisprudence. *Analytic jurisprudence* concerns philosophical questions about the nature of law, such as what makes something a law, the extent to which laws ought to be followed, and how judges ought to go about applying or interpreting the law. *Normative jurisprudence* concerns the extent to which laws can justifiably restrict individual liberty. For example, are laws that restrict one's liberty for one's own good ever justified? Is the state justified in taking individual property for the benefit of the community? Are unjust contracts legally binding? How should we understand the separation of church and state? What are the limits of free speech? What constitutes "equality under the law"? Several of these questions will be explored through examining landmark Supreme Court cases, including recent decisions such as *Hamdi v. Rumsfeld* (enemy combatants), *Kelo vs. New London* (eminent domain), *Citizens United vs. the Federal Elections Commission* (limits on corporate expenditures in political campaigns), *United States v. Windsor* (same-sex marriage), and *Shelby County v. Holder* (Voting Rights Act),

COURSE LEARNING OBJECTIVES

Students who successfully complete this course will improve their ability to:

- Understand important theories and concepts in moral philosophy and jurisprudence.
- Identify arguments embedded in philosophical texts – to identify premises, inferences, and conclusions.
- Evaluate arguments for validity and soundness and recognize fallacious reasoning.
- Distinguish between normative and descriptive claims, and between different kinds of normative claims (moral, legal, prudential, etc.)
- Write clearly and precisely, constructing arguments and supporting those arguments with relevant textual and/or empirical evidence.
- Engage in rigorous, but respectful, philosophical debate.

DESIRE 2 LEARN: The D2L page for this course can be found at: <https://ecat.montana.edu/>. Log in using your NetID and password. You will be able to access course materials, electronic readings, handouts, and your grades.

REQUIRED READINGS: All readings will be electronically available on D2L and will be posted under the week for which they are assigned under the “content” link on D2L.

COURSE REQUIREMENTS:

1. Participation (20%): Everyone is expected to come to class having done the assigned readings, and to participate in class discussion. You can earn participation points in large group discussions, small group discussions or activities, or by posting on D2L. Attending class regularly is necessary, but not sufficient, for participation points.

2. Case presentations (10%): Students will sign-up for group presentations on 2 of the court cases used in the class. Group members will each participate. It is up to you how to divide the labor in your group, but your presentation will need to:

- Present a brief overview of the facts of the case.
- Identify the central legal and philosophical issues the case raises.
- Explain the conclusion and the reasoning used to reach that conclusion in the majority opinion.
- Critically evaluate the reasoning the judge(s) used, considering at least one objection.
- Facilitate discussion by presenting questions that the case raises and how the case related to other assigned readings for that day.

3. Papers: (20% each, 40% total): Students will write two papers (approximately 5-7 pages each). Topics and guidelines will be handed out in class. Papers will be evaluated in terms of how well you clearly develop good arguments in support of your thesis, your ability to accurately explain views or ideas from class or readings, and your ability to anticipate and respond to objections to your view.

4. Final Exam (30%): There will be a take home final exam. The exam will consist of a set of essay questions and will cover all of the material from the course. **This will be due at the end of our scheduled final exam (4pm on April 28th. ALSO philosophy majors will have the option of writing a longer research paper in lieu of the final exam, but I must approve your topic first.**

IV. GRADING: Your final grade will be determined by the percentage of points you earn out of 500 (the total points possible for the course). I will use the scale below in assigning final grades. I may also adjust an individual's grade for improvement.

94-100% = A	89-86% = B+	75-72% = C	68-66 = D+
93-90% =A-	85-82= B	78-76% = C+	65-63 = D
	81-79% = B-	71-69 = C-	62-60 = D-
			Below 59 = F

ABSENCES, LATE/MAKE-UP WORK: Make-up exams or presentations will only be granted under exceptional circumstances. Absences for illness, or the serious illness or death of an immediate family member may be excused with the appropriate documentation, e.g. a doctor's note, or with my advance approval. Please talk to me as soon as possible if you know that you will be missing a class. **Unexcused late papers will be penalized.**

ACADEMIC MISCONDUCT: Work for this course must be completed by the person submitting it. This includes papers, journal entries, presentations, and any other work submitted for credit. Anyone found guilty of plagiarism, cheating, forgery, falsification, or other forms of academic dishonesty will **fail the course**. In addition, the incident will be reported to the Office of Student Affairs. You are expected to be familiar with the University's academic misconduct policy, which can be found at http://www2.montana.edu/policy/student_conduct. Read the policy as well as examples including:

- **Collaboration:** Unless otherwise specified, students may not collaborate on graded material. Any exceptions to this policy will be stated explicitly for individual assignments. If you have any questions about the limits of collaboration, you are expected to ask for clarification.
- **Plagiarism:** Paraphrasing or quoting another's work without citing the source is a form of academic misconduct. Even inadvertent or unintentional misuse or appropriation of another's work (such as relying heavily on source material that is not expressly acknowledged) is considered plagiarism. If you have any questions about using and citing sources, you are expected to ask for clarification

CLASSROOM BEHAVIORAL EXPECTATIONS:

- Come to class on time.
- Turn off and put away all electronic devices **including laptops**. If you have a documented disability that requires use of a laptop or some other electronic device, please talk to me about it.
- Be respectful of others. Some of the material for this course will be controversial and it is likely that you will strongly disagree with an author or a classmate. Disagreement is important and valuable! It allows us to develop critical thinking skills, helps us understand why we believe what we do, and increases our appreciation of why others hold different views. You are encouraged to express your views and disagreements. But, we also want to make sure that the *way* in which we express our disagreements is respectful. Make sure you are criticizing an *argument*, rather than attacking the *person* who makes that argument.

ACADEMIC ACCOMODATIONS: Any student eligible for and needing academic accommodations because of a disability is requested to speak to me and provide documentation as soon as possible. If you suspect that you have a disability, contact Disabled Student Services at: (406) 994-2824 (voice), (406) 994-6701 (TTY), or on the web at: <http://www.montana.edu/wwwres/disability/index.shtml>

COURSE SCHEDULE, TOPICS & READING LIST

DATE	TOPIC, READINGS, ASSIGNMENTS
WEEK 1	Introduction to Philosophy of Law
Jan. 9	Course Syllabus
WEEK 2	What is law? Are unjust laws really laws?
Jan. 14	Ableman v. Booth (Fugitive Slave Act)
Jan. 16	Aquinas, <i>Summa Theologica</i> , On Human Law
WEEK 3	Natural Law Theory v. Positivism
Jan. 21	"Eight Ways to Fail to Make Law," Lon Fuller
Jan. 23	"Grudge Informers and the Rule of Law," H. L. A. Hart "The Problem of the Grudge Informer," Lon Fuller
WEEK 4	Natural Law Theory v. Positivism (Cont.)
Jan. 28	"Positivism and the Separation of Law and Morals," H. L. A. Hart <i>Riggs v. Palmer</i> (Can Murders Inherit?)
Jan. 30	Law as the Union of Primary and Secondary Rules," H. L. A. Hart "The Model of Rules," Ronald Dworkin
WEEK 5	Should we always obey the law? Should civil disobedience be punished?
Feb. 4	"Letter from the Birmingham Jail," Martin Luther King Jr. "The Justification of Civil Disobedience," John Rawls
Feb. 6	"On Not Prosecuting Civil Disobedience," Ronald Dworkin <i>United States of America v. Tim DeChristopher</i> (Punishment of Environmental Activism)
WEEK 6	Punishment and the rights of defendants
Feb. 11	<i>Hamdi v. Rumsfeld</i> (Detention of Enemy Combatants)
Feb. 13	<i>Gregg v. Georgia</i> (Capital punishment) <i>McKlesky v. Kemp</i> (Racial bias in sentencing) First paper due

WEEK 7	Criminal Responsibility
Feb. 18	<p>"Intention," H.L.A. Hart <i>People v. Koerber</i> (Drunkenness as an excuse) "What Is So Special About Mental Illness?" Feinberg</p>
Feb. 20	<p><i>Regina v. Morgan</i> (Rape, Consent, and <i>Mens Rea</i>) <i>Rape, Force, and Consent</i>, Susan Estrich.</p>
WEEK 8	Responsibility and Negligence in Tort Law
Feb. 25	<p>"Negligence," Prosser <i>U.S. v. Carroll Towing Company</i> (Economic Efficiency and the "Hand Formula") <i>Stone v. Bolton</i> (Foreseeable risk)</p>
Feb. 27	<p>"Tort Liability and Corrective Justice," Mark Murphy and Jules Coleman "Negligence and Due Care" (<i>Palsgraf v. Long Island Railroad Co.</i>, 1928) "Loss, Agency, and Responsibility for Outcomes," Perry "Liability Without Causation?" (<i>Summers v. Tice</i>, 1948)</p>
WEEK 9	Are contracts always legally binding?
Mar. 4	<p>The Basis of Contract", Cohen "Contract as Promise", Fried "Unconscionable Contracts" (<i>Williams v. Walker-Thomas Furniture Co.</i>, 1965)</p>
Mar. 6	<p>"Surrogate Mother Contracts" (Supreme Court of New Jersey, 1988) Shiffrin, Seana Valentine. "Wrongful Life, Procreative Responsibility, and the Significance of Harm."</p>
WEEK 10	NO CLASS – SPRING BREAK March 10-14th
WEEK 11	Understanding property rights
Mar. 18	<p>Property", Locke "Property and Sovereignty", Cohen "Eminent Domain," (<i>Kelo v. New London</i>, 2005)</p>
Mar. 20	TBA

WEEK 12	How should we understand the right to free speech and expression?
Mar. 25	"Mill, <i>On Liberty</i> , "Of the Liberty of Thought and Discussion Snyder v. Phelps (Westboro Baptist Case 2011)
Mar. 27	Langton, Rae. "Speech Acts and Unspeakable Acts." "Obscenity" (Paris Adult Theatre v. Slaton, 1973), Citizens United vs. FEC (Campaign contributions). Second paper due
WEEK 13	How should we understand equality?
Apr. 1	"The Great School Desegregation Case" (Brown v. Board of Education, 1954 "Pre-clearance requirement of the Voting Rights Act," Shelby County v. Holder 2013
Apr. 3	"Racial Equality and Affirmative Action," Dworkin "Affirmative Action in Universities" (Grutter v. Bollinger & Gratz v. Bollinger, 2003),

WEEK 14	How should we understand equality? (Cont.) /Judicial Interpretation
Apr. 8	Same-Sex Marriage (United States v. Windsor 2013)
Apr. 10	"Judicial Activism and Gay Marriage: A Debate,, Tribe and Parker, <i>R</i> , 584-588
WEEK 15	How should judges interpret the law?
Apr. 17	"Integrity in Law," Ronald Dworkin " <i>Vague</i> " <i>Constitutional Clauses</i> , Ronald Dworkin.
Apr. 19	"Common Law Courts in a Civil Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws," Antonin Scalia "Comment," Ronald Dworkin
WEEK 16	Conclusions, Review
Apr. 22	TBA
Apr. 24	Conclusions
FINALS	Final exams due by 4pm on Monday, April 28th

NOTE: Reading assignments & due dates may change. Any changes will be announced in class.