

**Fall 2018**  
**PHL 354: Philosophy of Law**

Mon. and Weds. 3:00-4:20 p.m.  
C302 Synder Hall

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Professor: Lisa H. Schwartzman  
Office: 500 South Kedzie Hall (My office is inside the main office of the Philosophy Dept., 503 S. Kedzie. If the main office door is closed, knock loudly and I'll let you in—my door is just inside the main office, to the left)  
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### Course Description

This course will introduce students to philosophical issues concerning the nature of law, legal reasoning, and the relationship between law and morality. We will also look carefully at philosophical questions that have arisen in various different areas of the law and at a number of highly contested contemporary legal issues, including affirmative action, the death penalty, and questions concerning sex and gender equality. Students are expected to attend class regularly and to actively participate in discussion.

### Required Text (be sure to purchase the 5<sup>th</sup> Edition)

David Adams, *Philosophical Problems in the Law*, 5<sup>th</sup> Edition (Wadsworth/Cengage Learning, 2013).

### Course Requirements and Evaluation

Course requirements include two exams, a group presentation, a final paper, two short writing assignments, class participation, and occasional homework. Homework assignments will be announced in class and are not scheduled on the syllabus. If you are absent for any reason it is your responsibility to contact a classmate and find out what you have missed. Because we are dealing with complicated and controversial issues, it is essential that you come to class having already read and thought about the material; class discussion is a crucial element of the course. Be prepared to discuss your ideas with others, but also come with an open mind and a willingness to listen carefully and respectfully to others—even when you disagree with their views. We will be doing a number of activities in class, both oral and written, and these will count as part of your “participation” grade (see below).

**Grades** will be calculated as follows:

Exam #1 (Oct. 10)	25%
Exam #2 (Nov. 19)	25%
Short Paper #1 (due Sept. 26)	10%
Short Paper #2 (due Oct. 31)	10%
Class Presentation	5%
Final Paper (due Dec. 5)	20%
Attendance/Participation/Homework	5%

## **Exams**

There are two exams, each of which counts for 25% of your final grade. The exams will test your comprehension of the reading (key concepts, ideas and arguments of the authors, etc.) as well as your analytic abilities. You will need to be able to understand the arguments and positions of the authors and think critically about their ideas. The format of the exams will be varied—most likely a combination of multiple choice, true/false, and short essay questions. Each exam will focus on the material covered in that half of the course (the second exam is not a comprehensive final exam).

You must be in class on scheduled exam days and on days when any work is due. I will not give make-up exams except in very unusual circumstances that are documented in writing and, when possible, arranged in advance.

## **Short Papers**

Short papers will emphasize critical argumentation skills: you will need to understand the readings and apply tools of philosophical reasoning to develop and defend arguments for your position. These papers must be 2-3 pages in length (double-spaced, normal margins and 12-point-font). Topics and guidelines will be distributed in class one week in advance.

## **Class Presentation**

In addition to the topics explicitly covered in the course readings, each student will work in a group on a controversial philosophical issue concerning some aspect of the law that is of interest to the group (and that is not already covered on the syllabus). Most likely, these presentations will center on controversial cases that have arisen in recent years, though it is up to each group to pick their own topic (which I must approve). You should choose an issue that will provide for an interesting and thought-provoking class discussion, and you should center on philosophical questions that arise around the case or topic. I will be giving you more information about the format and requirements for these presentations shortly, but you should begin to think about what topics are of interest to you, and you should begin to consider with whom you would like to work. We will develop a schedule for the presentations, including your choices of topics, sometime in the first month of class.

## **Final Paper**

The final paper is due at the beginning of class on Wednesday, December 5 (our last class meeting). It must be type-written, double-spaced, and between 5-7 pages in length. In deciding on a topic for this paper, you have two options: You may choose to write an argumentative essay based on the independent research that you did in working on your presentation. Or, alternatively, you may choose to write an argumentative essay on an issue that we read about in class. If you choose the latter option, you must submit to me a written statement of the thesis you wish to defend at least two weeks before the paper is due (so that I can approve the topic/thesis and offer suggestions if necessary). Guidelines for final papers will be distributed in class.

## **Attendance/Class Participation/Homework**

**Attendance:** Because we will be discussing a number of controversial issues, and because your reactions to and questions about the readings are likely to guide our class discussions, it is absolutely essential that you attend class regularly. You should plan to attend all, or nearly all, class meetings. If you have more than three absences, your grade for the attendance/participation/homework portion of your final grade will be lowered by .5 for each absence. The only exceptions are for “excused” absences, for which you must provide documentation.

**Class Participation:** Class participation is very important. I expect you to come to class prepared to discuss the readings and to share your thoughts—as well as your questions—with your classmates. If you find something to be difficult or confusing, chances are that others do too and that your questions will be useful in guiding our discussion. Because we will often be discussing questions from the book, you must bring your textbook to class (not doing so will negatively affect your ability to participate in discussion).

**Homework:** I may give occasional homework assignments, and there will periodically be in-class activities for which you hand in written answers, summaries, etc., at the end of that day's class. It is your responsibility to be in class to do these activities, and to turn in any homework assignments. These will be graded on a plus/check/minus scale and will figure into the attendance/participation/homework portion of your grade.

### **Other Important Information**

**Late Policy:** All written assignments must be turned in on the day that they are due. For any papers turned in late, your grade on that paper will be reduced by .5 (on a 4.0 scale) for each 24-hour-period that it is late (this period begins at the start of class on the day that the assignment is due). The only exceptions to this are in the case of unusual circumstances, which must be documented, and where the student makes arrangements with me before the date that the assignment is due, whenever possible.

**Academic Honesty/Plagiarism:** Article 2.3.3 of the Academic Freedom Report states: “The student shares with the faculty the responsibility for maintaining the integrity of scholarship, grades, and professional standards.” In addition, the Department of Philosophy adheres to the policies on academic honesty specified in General Student Regulation 1.0, Protection of Scholarship and Grades; the all-University Policy on Integrity of Scholarship and Grades; and Ordinance 17.00, Examinations. (For more details on these policies, see *Spartan Life: Student Handbook and Resource Guide*.) If you commit an act of academic dishonesty, you may receive a failing grade for the course and/or the assignment. If you are unsure of what constitutes plagiarism, it is your responsibility to discuss your questions with me before turning in your paper. Remember that any sources you use must be cited, including any electronic sources. The following are some general examples of plagiarism:

- copying without quotation marks
- paraphrasing someone else's writing without acknowledgment
- using someone else's facts or ideas without citing your source(s)

**Accommodations for Students with Disabilities:** Students with disabilities should contact the Resource Center for People with Disabilities [353-9642 or 355-1293(TTY)] at the beginning of the semester to develop reasonable accommodations. Please notify me if you have any special requirements or needs of which I should be aware.

## Course Schedule

As the semester progresses, I may make some minor changes in the schedule, which will be announced in class. In particular, I may ask you to do some additional readings of cases, either from the textbook or distributed on handouts. You should have all readings done before class begins on the day the readings are scheduled, and you should **always bring the textbook with you to class.**

### INTRODUCTION & THE RULE OF LAW

- W 8/29 Introduction to the course
- M 9/3 **Labor Day (No Class)**
- W 9/5 Philosophy and the Law (3-14)
- M 9/10 What is Law? Controversies Regarding Nuremberg (15-19)  
Jackson, "Opening Address for the United States, Nuremberg Trials" (23-28)  
Wyzanski, "Nuremberg: A Fair Trial?" (29-34)

### LAW, LIBERTY, MORALITY & FREE SPEECH

- W 9/12 Mill, "On Liberty" (243-251)  
Devlin, "The Enforcement of Morals" (261-265)  
Hart, "Law, Liberty, and Morality" (266-268)
- M 9/17 "Edmund G. Brown, Jr., Governor of Calif., et al., Petitioners v. Entertainment Merchants Association, et al." (252-261)  
"Village of Skokie v. National Socialist Party of America" (276-280)

### CRIMINAL LAW

#### What is a Crime?

- W 9/19 What is a Crime? (470-475)  
"People v. Dlugash" (476-479)  
Kadish, "The Criminal Law and the Luck of the Draw" (482-489)

#### Justification and Excuse: The Insanity Defense

- M 9/24 Robinson, "The Bomb Thief and the Theory of Justification Defenses" (500-506)  
Morris, "The Abolition of the Insanity Defense" (518-522)  
Morse, "Excusing the Crazy: The Insanity Defense Reconsidered" (522-526)

#### Punishment and Responsibility

- W 9/26 **1<sup>st</sup> Short Paper DUE**  
Punishment and Responsibility (528-531)  
Moore, "The Argument for Retributivism" (558-562)

#### The Death Penalty

- M 10/1 van den Haag, "The Death Penalty Once More" (578-584)  
Bedau, "A Reply to van den Haag" (584-592)
- W 10/3 "Gregg v. Georgia" (623-627)  
"McCleskey v. Kemp" (592-595)  
Kennedy, "Homicide, Race and Capital Punishment" (596-602)

#### Racism, Justice, and Mass Incarceration

FILM screening in class: *13<sup>th</sup>* (directed by Ava DuVernay)

M 10/8 finish FILM screening in class, 13<sup>th</sup>; discussion of film

W 10/10 EXAM #1

## EQUALITY AND THE LAW

### Constitutional Equality, Affirmative Action, and Integration

- M 10/15 Westen, "Puzzles about Equality" (367-369)  
"Barbara Grutter v. Lee Bollinger, et al" (374-383)  
Nagel, "A Defense of Affirmative Action" (383-386)
- W 10/17 Steele, "Affirmative Action" (386-391)  
"Parents Involved in Community Schools v. Seattle School District" (347-354)

### Sex, Gender, and Equality

- M 10/22 "United States v. Virginia" (456-461)  
"Michael M. v. Superior Court of Sonoma County" (461-465)  
Minow, "The Dilemma of Difference" (404-409)  
Crenshaw, "A Black Feminist Critique of Antidiscrimination Law" (409-414)

### Parenthood, Same-Sex Marriage, and Equality in the Law

- W 10/24 "Michael H. v. Gerald D." (414-418)  
Balkin, "A Critique of Michael H. v. Gerald D." (418-421)  
"In Re Marriage Cases" (421-436)
- M 10/29 Jordan, "Is It Wrong to Discriminate on the Basis of Homosexuality" (441-448)  
Sunstein, "Homosexuality and the Constitution" (436-441)

## LEGAL REASONING AND THE CONSTITUTION

- W 10/31 **2<sup>nd</sup> Short Paper DUE**  
Legal Reasoning and Constitutional Interpretation (201-207)  
"District of Columbia et al. v. Heller" (224-234)
- M 11/5 "Smith v. U.S." (208-211)  
"Church of the Holy Trinity v. U.S." (211-213)
- W 11/7 Scalia, "The Role of the U.S. Federal Courts in Interpreting..." (214-219)  
"Griswold v. Connecticut" (311-316)  
"Lawrence et al v. Texas" (316-322)

## THEORIES OF LAW

### Natural Law versus Legal Positivism

- M 11/12 King, "Letter From Birmingham Jail" (96-100)  
Hart, "Positivism and the Separation of Law and Morals" (69-78)  
Fuller, "Positivism and Fidelity to Law" (78-81)

### Law as Interpretation

- W 11/14 Dworkin, "Law as Integrity" (129-137)  
*Student Presentation*

M 11/19 EXAM #2

W 11/21 **No Class**

M 11/26 *Student Presentations*

W 11/28 *Student Presentations*

M 12/3 *Student Presentations*

W 12/5 **Final Papers DUE**  
*Student Presentations*