

# PHL 354: Philosophy of Law

## 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 equality. Students are expected to attend class regularly and to actively participate in discussion.

\* This course is adapted from Prof. Lisa Schwartzman's syllabus, who I would like to thank for her advice on this course and having provided the basis upon which it is structured.

## GOALS

- ▶ Analyze key concepts inherent to the rule of law, e.g., the nature of law, equality, punishment and responsibility
- ▶ Scrutinize standards of review in landmark legal decisions
- ▶ Consider social and legal issues involved in gender and race equality
- ▶ Strengthen critical thinking and argumentative writing skills

## REQUIRED TEXT

Adams, David M. *Philosophical Problems in the Law*. 4th ed. Belmont, CA: Thomson/Wadsworth, 2005. ISBN: 0534584284

## COURSE REQUIREMENTS

- ▶ 2 Exams (6/6 & 6/30)..... 50% total, 25% each
- ▶ 3 Essays (5/26, 5/31; 6/9, 6/13; 6/23, 6/27)..... 45% total, 15% each
- ▶ Class Participation..... 5% total

INSTRUCTOR	Matthew Johnson Department of Philosophy
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OFFICE HOURS	528 South Kedzie Hall Tu., W. 11a-12p . . . <i>and by appointment</i>
CLASS MEETS	M., Tu., W., Th. 12:40-2p 112 Ernst Bessey Hall

**ATTENDANCE**

*I expect students to be responsible for their own class attendance.* Although I do not keep a formal record of your attendance, your attendance and participation every day in class is crucial for your mastery of concepts and arguments in this course, as well as for learning to respond critically to them. Consequently, it is essential to the grade you can expect to earn.

Please arrive on time for class and prepared to discuss the readings scheduled for that day. This means that you should have read the textbook selections assigned, noting any questions or comments that you might have about the reading. Students should always bring their text with them to class. Before class begins, please silence and put away cell phones and/or other items that might distract you or others from participating in class.

If you are unable to attend class for any reason, it is *your responsibility* to get any handouts, assignments, and/or graded work that you might have missed. Since I will not usually repeat what has been covered for students who do not attend class, I encourage you to exchange contact information with at least one or two other “study buddies” who can let you know any important information via e-mail should that become necessary.

**CLASS PARTICIPATION**

A small percentage of your grade is based upon the strength of your contribution to both small group and class discussions assessed on the 4.0 scale. Students should be active participants in our discussion of the textbook readings, and be prepared to consider questions about the assigned readings in small groups. From time to time, I may collect in-class group writing assignments and your participation in those exercises would influence your participation grade.

The best way to be an active participant in class is to become engaged in your own learning. Towards this end, I encourage students to keep a reading journal to keep track of author’s positions, record confusing terms in the text, and make note of questions that you have. Active participation in class does not require you to speak continuously; in fact, I think it frequently involves being a careful listener. In any case, participation in class involves the ability to give cogent responses to questions about course readings.

**EXAMS**

There will be two exams, on 6/6 and 6/30. Each exam counts for 25% of your final grade. The exams will be composed of true/false, multiple choice, and short essay questions that test your comprehension of the assigned readings, and ability to critically analyze the views and arguments presented in the course text and discussions. The final is not cumulative; each exam will cover only the readings assigned for that half of the course.

**GRADING SCALE**

4.0.....	100 - 90
3.5.....	89 - 85
3 .....	84 - 80
2.5.....	79 - 75
2 .....	74 - 70
1.5.....	69 - 65
1.0.....	64 - 60
0.0.....	< 60

Except in extraordinary situations which are usually documented and/or discussed with me in advance, I do not give make-up exams. Accordingly, students must be in class on the scheduled exam days in order to take the exam.

### **CRITICAL ESSAYS**

Students will submit three essays, 4-5 pages (max. 1,000 words) in length, in response to a prompt distributed during class at least one week prior to the due date. These will emphasize critical argumentation, i.e., they will require you to understand and respond to the issues discussed in the text by taking a position and offering compelling reasons in support of it. A non-graded draft of your paper for peer review will be due the class period before submission.

#### *Peer Review*

During the classes before your essays are due (5/26, 6/9, 6/23), we will devote roughly 40 minutes to discussion of a draft of your paper with your peers. You will work in 3-person groups in order to engage in critical reflection on the ideas of others as well as your own. While I will not grade your draft or your review of your peers' essays, failure to participate in this exercise will result in a penalty of -1.5 (on the 4.0 scale) for that paper. (E.g., a paper I would grade as a 3.5 would instead be recorded as a 2.0). You will have time after the review to revise your essay before submitting them for grading the following class period.

#### *Late Policy*

Unless you have a legitimate excuse documented in writing or discussed with me in advance, I will not accept late essays. Failure to turn your essay in on the due date will result in a 0 for the assignment. If you know that you will be away for a university event that is officially excused, please let me know in advance so we can discuss alternatives.

### **ACADEMIC HONESTY**

[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. (See [Spartan Life: Student Handbook and Resource Guide](#) and/or the MSU Web site [www.msu.edu](http://www.msu.edu).)

Therefore, unless authorized by your instructor, you are expected to complete all course assignments, including homework, lab work, quizzes, tests and exams, without assistance from any source. You are expected to develop original work for this course; therefore, you may not submit course work you completed for another course to satisfy the requirements for this course. Also, you are not authorized to use the [www.allmsu.com](http://www.allmsu.com) Web site to complete any course work

in this course. Students who violate MSU rules may receive a penalty grade, including but not limited to a failing grade on the assignment or in the course.

**ACCOMMODATION FOR STUDENTS WITH DISABILITIES**

Students with disabilities should contact the Resource Center for People with Disabilities (RCPD) at the beginning of the semester to develop reasonable accommodations. For information regarding RCPD's services, visit them on the Web at [www.rcpd.msu.edu](http://www.rcpd.msu.edu), or call (517) 884-7273 / TTY: (517) 355-1293. Please let me know if you have any special needs or requirements that I should be aware of.

DATE	TOPIC	READING/ASSIGNMENT
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**INTRODUCTION: THE RULE OF LAW, LIBERTY & MORALITY**

M 5/16	Introduction: Philosophy and the Law	Philosophy and the Law (3-14) What is Law? (15-18)
TU 5/17	Nuremberg Trials & the Rule of Law	Jackson, "Opening Address for the United States, Nuremberg Trials" (22-27) Wyzanski, "Nuremberg: A Fair Trial?" (28-33)
W 5/18	Nuremberg Trials	Film, <i>Judgement at Nuremberg</i> (1961)
TH 5/19	Nuremberg Trials	Film, <i>Judgement at Nuremberg</i> (1961)
M 5/23	Law & Morality	Finish film, <i>Judgement at Nuremberg</i> (1961) [~30 min] Mill, "On Liberty" (200-202) Devlin, "The Enforcement of Morals" (202-206) Hart, "Law, Liberty, and Morality" (207-209)
TU 5/24	Law & Morality	"Cohen v. California" (217-220) "Michael A. Newdow v. United States of America" (223-226) King, "Letter from a Birmingham Jail" (78-82)

**CRIMINAL LAW**

W 5/25	What is a Crime?	What is a Crime? (384-390) "People v. Dlugash" (391-394) Kadish, "The Criminal Law and the Luck of the Draw" (397-404)
TH 5/26	Justification & Excuse: The Insanity Defense	<b>DRAFT OF PAPER #1 DUE FOR PEER REVIEW</b> Robinson, "The Bomb Thief and the Theory of Justification Defenses" (415-421) Morris, "The Abolition of the Insanity Defense" (433-437) Morse, "Excusing the Crazy: The Insanity Defense Reconsidered" (437-440)
M 5/30		<b>MEMORIAL DAY (UNIVERSITY CLOSED)</b>
TU 5/31	Punishment & Responsibility	<b>PAPER #1 DUE</b> The Justification of Punishment (442-446) Moore, "The Argument for Retributivism" (456-461)
W 6/1	The Death Penalty	van den Haag, "The Death Penalty Once More" (476-482) Bedau, "A Reply to van den Haag" (482-489)
TH 6/2	Race & the Death Penalty	"Gregg v. Georgia" (512-516) "McCleskey v. Kemp" (490-493) Kennedy, "Homicide, Race and Capital Punishment" (494-500)
M 6/6		<b>EXAM #1</b>

<b>DATE</b>	<b>TOPIC</b>	<b>READING/ASSIGNMENT</b>
<b>EQUALITY AND THE LAW</b>		
TU 6/7	Equality & Affirmative Action	“Barbara Grutter v. Lee Bollinger, et al” (284-292) Westen, “Puzzles About Equality” (293-295)
W 6/8	Affirmative Action	Zack, “What is Race?” (295-300) Nagel, “A Defense of Affirmative Action” (300-303) Steele, “Affirmative Action” (303-308)
TH 6/9	Discrimination & “Intersectionality”	<b>DRAFT OF PAPER #2 DUE FOR PEER REVIEW</b> Minow, “The Dilemma of Difference” (327-331) Wasserstrom, “The Assimilationist Ideal” (332-338) Crenshaw, “A Black Feminist Critique of Antidiscrimination Law” (339-343)
M 6/13		<b>PAPER #2 DUE</b> TBA (to be announced)
TU 6/14	Gender Discrimination	“United States v. Virginia” (373-377) “Michael M. v. Superior Court of Sonoma County” (378-381)
W 6/15	Same-Sex Marriage	“Baehr v. Lewin” (319-322) Sunstein, “Homosexuality and the Constitution” (322-326)
TH 6/16	Parenthood & the Law	“Michael H. v. Gerald D.” (349-353) Balkin, “A Critique of Michael H. v. Gerald D.” (353-356)
M 6/20	Surrogacy & Parenthood	Dolgin, “Family Law in Transition” (356-359) “Johnson v. Calvert” (359-363) Capron, “Too Many Parents” (363-366)
<b>LEGAL REASONING &amp; THE CONSTITUTION</b>		
TU 6/21	Statutory Interpretation	Legal Reasoning and Constitutional Interpretation (164-172) “Smith v. U.S.” (172-175) “Church of the Holy Trinity v. U.S.” (176-178)
W 6/22	Textualism & the Constitution	Scalia, “The Role of the U.S. Federal Courts in Interpreting...” (178-183) Dworkin, “Comment on Scalia” (184-188)
TH 6/23	Constitutional “Penumbra”?	<b>DRAFT OF PAPER #3 DUE FOR PEER REVIEW</b> “Griswold v. Connecticut” (254-259) Bork, “The Right to Privacy” (188-191) “Lawrence et al v. Texas” (259-265)

<b>DATE</b>	<b>TOPIC</b>	<b>READING/ASSIGNMENT</b>
<b>THEORIES OF LAW</b>		
M 6/27	Natural Law v. Legal Positivism	<b>PAPER #3 DUE</b> Hart, "Positivism and the Separation of Law and Morals" (61-70) Fuller, "Positivism and Fidelity to Law" (70-76)
TU 6/28	Legal Realism & Law as Interpretation	Frank, "A Realist View of the Law" (95-99) Dworkin, "Law as Integrity" (111-118)
W 6/29		TBA (to be announced)
TH 6/30		<b>EXAM #2</b>