

**Philosophy 338:** Philosophy of Law  
University of British Columbia  
2021 – 2022, Term One  
**Meetings:** M/W/F, 9:00 – 9:50 AM

**Instructor:** Thomas Bittner  
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**Office hours:** Tu/Th, 10:00 – 10:50 AM,  
and by appointment

**Teaching Assistant:**  
**Email:**

## Course Outline

### **Course description:**

We will investigate some of the main philosophical problems that arise in connection with law in general and with the legal system of Canada in particular. These problems range from relatively practical questions such as the distinction between intent and knowledge in criminal law and the scope of freedom of expression in a free society to more theoretical questions such as the essential nature of law and the general relationship between a free society and democratic rule.

This course will be of interest to philosophy majors, students in the social sciences and public policy, and people who are thinking about going to law school. The main goals of the course are (1) to improve students' skills at using philosophical methods such as argument analysis and critique in legal and policy contexts and (2) to acquaint students with the major issues in the philosophical tradition of thinking about law.

### **Required text:**

Dyzenhaus, Moreau, and Ripstein (2007) *Law and Morality*, 3<sup>rd</sup> edition, University of Toronto Press.

### **Course requirements:**

- There will be two exams and one short writing assignment. The midterm exam will be taken in class on October 13; the final exam will be taken during the final exam period: December 11 – 22. The short writing assignment will be due on November 8.
- Your mark for the course will depend on the mid-term exam [30%], the short writing assignment [20%], the final exam [30%], and your overall course involvement [20%]. Course involvement is composed of attendance, contributions to in-class and online discussion, and quizzes.

### **Course policies:**

There is a grade penalty for late writing assignments. Exams must be taken at their scheduled times. Only medical or religious reasons will be accepted for missing an essay deadline or exam. Students will not ordinarily be excused for work-, travel-, childcare-, or sports-related activity. Should a medical emergency arise, you must contact me by email before the essay deadline or exam to avoid receiving no credit.

If you miss marked coursework (course involvement, exam, or essay) and believe you may qualify for an in-term concession (ITC) (and you are an Arts student), review the Faculty of Arts' [academic concession page](#) and then complete Arts Academic Advising's [online academic concession form](#), so that an advisor can evaluate your concession case. If you are a student in a different Faculty, please consult [your Faculty's webpage on academic concession](#), and then contact me where appropriate.

Plagiarism is the use of another person's words or ideas without proper citation. It causes the reader (or listener) to believe wrongly that these words or ideas are your own. I will not allow plagiarism or any other forms of academic misconduct, such as cheating on an exam. I will assume that students are familiar with the rules governing plagiarism and cheating and that they know the basic ways to make

proper use of sources. If you have any questions on this, see me.<sup>1</sup> Here is a good online source for information on these issues:

<http://learningcommons.ubc.ca/academic-integrity/>

### **Advice and Expectations:**

Try very hard to keep up with the assigned class readings on our schedule. Read and take notes on the article or chapter assigned for each meeting before class.

This is philosophy, so nearly all of the material is contested ground. You should aim to think critically about, and not just to memorize the arguments expressed in the readings and lectures. What is valued in this course is clarity and strength of argument. I have my own opinions on the issues we'll be covering, but I don't expect you to agree with me all the time. I only expect you to show me that you understand the views of those with whom you agree or disagree and to express and defend your own views clearly and persuasively.

### **Schedule of Topics, Readings, and Major Assignments (Readings are available either in *Law and Morality* or on UBC Canvas)**

Sept. 8 – 10	Introduction to jurisprudence  Introduction to crime Impossible attempts	Appendix 2, 1063 – 1067 Holmes (1897)  <i>People v. Dlugash</i>
Sept. 13 – 20	Possible attempts Necessity	Kadish (1994) Fuller (1949) <i>Q. v. Dudley and Stephens</i> , 154 – 158
Sept. 22 – Oct. 1	Mistake Insanity Automatism Punishment and responsibility	<i>Q. v. Saunders and Archer</i> <i>Durham v. U.S.</i> <i>R. v. Parks</i> Fletcher (2010)
Oct. 4 – 8	Law and values	Appendix 1, 1055 – 1062 Mill, 306 – 326 Lewis (1989) Ripstein (2006)
<b>Oct. 11</b>	<b>Thanksgiving Day (no class meeting)</b>	
<b>Oct. 13</b>	<b>Midterm Exam</b>	
Oct. 15 – 18	Speech	Scanlon, 838 – 856 Moran (1994) <i>R. v. Keegstra</i> , 857 – 897 <i>R.A.V. v. City of St Paul</i> , 897 – 910

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<sup>1</sup> Some of these policies are taken from the course policies sections of the course outlines for COGS 400 and PHIL 100 or from Arts internal resources.

Oct. 20	Introduction to legal theory	Hobbes, 6 – 28
Oct. 22 – 29	Legal positivism	Hart, 28 – 53 Hart, 53 – 65 <i>Whitely v. Chapel</i> , 65 – 67
Nov. 1 – 8	Legal naturalism	Fuller, 67 – 108 Dworkin, 108 – 122 Dworkin, 122 – 140 <i>Riggs v. Palmer</i> , 140 – 146 Fuller (1969) Radbruch (1946) Dyzenhaus (2008)
<b>Nov. 8</b>	<b>Short Essay due</b>	
<b>Nov. 10 – 12</b>	<b>Midterm Break and Remembrance Day (no class meetings)</b>	
Nov. 15 – 24	Legal Realism and CLS	Altman (1986) Kennedy (1986)
Nov. 26 – Dec. 6	Rule of law and democracy	Hutchinson and Monahan (1987) Hampton, 414 – 442
<b>TBD (Dec. 11 – 22)</b>	<b>Final Exam</b>	

#### Copyright

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