

# **PHIL 338 Philosophy of Law**

Lecturer: Irwin Chan

Email: [Irwin.chan@ubc.ca](mailto:Irwin.chan@ubc.ca)

Office Hours: TBA

## **Overview**

We live in a society where the rule of law is taken for granted. We think that we should respect the legal system, obey the law, and be punished if we violate any law. But what is law? What makes a law a law and what distinguishes it from other rules such as etiquette? What is the rule of law and why is it valuable? What, if any, are the limits of freedom of expression? This course aims to explore these issues and demonstrate their relevance to our lives.

## **Part 1 The Nature of Law**

We will start with a discussion of what law is. What makes a law a law? Is law necessarily moral such that all immoral/unjust laws are not valid laws? And must the legal system meet some (moral) criteria to be a proper legal system?

## **Part 2 Rule of Law**

What is the rule of law? Rule of law is often understood in terms of what it is not: it is not rule by law and not rule by men. We will try to understand what it is. We will discuss some general features of the rule of law and explore two general approaches—formal and substantive—to explaining the rule of law. Such discussion can help us understand the value of the rule of law more clearly.

## **Part 3 Freedom of Expression**

It is easy to say "I disapprove of what you say, but I will defend to the death your right to say it", but it is difficult to explain the value of freedom of expression, not least defend an understanding as strong as propounded in this quote. Through discussing its value and limits, we will be able to consider whether and why freedom of expression should be restricted.

## **Course Learning Objectives**

At the end of the course, successful students will be able to:

- (1) explain the nature of law and its purported connection to morality;
- (2) explain and evaluate the role of law in their lives as well as in modern society; and
- (3) explain and evaluate the value of freedom of expression.

## Attendance & Participation

Attendance is crucial to success in this course. This is not just because participation is part of the assessment (details below), but also because participation is an essential part of the learning process. Participation includes contributing to discussion on the discussion board and during online meetings. **Self-study is important, but you can't learn everything on your own. I therefore strongly encourage you to attend the lectures.**

Although assessment is not based on attendance, it is your responsibility to attend scheduled online tutorials where lots of important information will be given. If you miss any tutorials, please ask your classmates for what you have missed. I will give priority to enquiries that have not already been addressed in tutorials.

## Respectful Classroom Policy

Students are expected to respect other participants in the online platform. Public messages during online tutorials are reserved for questions or issues that require immediate attention. For other questions and comments, please use the raise-hand function. Disruption, disrespectful comments, lack of due participation, and other inappropriate behaviours, if repeated, will result in mark deductions and other disciplinary action.

## Reading

You do not need to buy any textbooks for this course. Most of the reading materials can be found on the library website in electronic form. Other reading materials can be downloaded from Canvas or will be distributed in class under the fair use provisions.

**Please read the assigned reading before coming to class.** Doing the assigned reading and familiarizing yourself with the topic can facilitate the learning process and are essential to your in-class participation.

## Reading List:

Mark Murphy (1) “Introduction”, sections 0.1 & 0.2 (p. 1-11)

Mark Murphy (2) “Natural Law Theory”.

Mark Murphy (3) “Analytical Fundamentals” sections 1.1 & 1.2, p.14-25

H.L.A. Hart. “Laws as the Union of Primary & Secondary Rules”

Mark Murphy (4) “Analytical Fundamentals” (p.26-31)

Lon Fuller. “The Morality that Makes Law Possible” (p.33-41)

Brian Tamanaha (1). “Three Themes”

Brian Tamanaha (2). “Formal Theories” & “Substantive Theories”

John Stuart Mill. On Liberty. (Ch. 2, excerpt)

Thomas Scanlon. “A Theory of Freedom of Expression”.

Caroline West. “Words that Silence?”

## Schedule

	Topic	Reading
1	Housekeeping	
	<i>Part 1: The Nature of Law</i>	
2	Introduction	Mark Murphy (1)
3	Natural Law Theory (1)	Mark Murphy (2)
4	Legal Positivism (1)	Mark Murphy (3)
5	Legal Positivism (2)	H. L. A. Hart; Mark Murphy (4)
6	Natural Law Theory (2)	Lon Fuller
	<i>Part 2: Rule of Law</i>	
7	Three Common Features	Brian Tamanaha (1)
8	Concrete Theories	Brian Tamanaha (2)
	<i>Part 3: Freedom of Expression</i>	
9	Liberal Approach (1)	J. S. Mill
10	Liberal Approach (2)	Thomas Scanlon
11	A Richer Concept	Caroline West

### Assessment

(The assignments are quite complex; please read the following explanations more than once and make sure you understand the assessment.)

There are two short writing assignments (50 + 50%). **Both allow two attempts.**

On each assignment,

- (i) You write and submit a first attempt. It will be marked and feedback will be given.
- (ii) You then have the option to revise your essay based on the feedback and submit a second attempt—I strongly encourage you to do so.

Notes:

- (iii) For each of these two assignments, your grade will be the higher grade of the two attempts.
- (iv) Due to the multi-attempt policy, please try to submit on time.
- (v) Your essays will be assessed based on a 5+2-criterion rubric. To receive a specific grade (e.g. B), an essay must receive at least that grade on each of the 5+2 criteria. (The 5+2 criteria are argument development, argument engagement, clarity, strength and originality, background understanding, writing and mechanics, and citations).

**Q: “I have never seen any assignments like this. Why do you design the assignment in this way?”**

A: This assessment system is informed by pedagogical research and my own teaching experience (See, for instance, Benjamin Bloom 1968; Fred Keller 1968; Thomas Guskey 2007; Linda Nilson 2015). Research has shown that students learn more effectively, achieve higher performance, and are more motivated if:

- (i) they receive formative feedback and are given opportunities to improve,

The multi-attempt policy gives you multiple opportunities to learn from formative feedback and make improvements.

(ii) they know clearly what are they expected to do and how to achieve their goals,

The criteria for achieving each grade on an assignment are clearly stated.

(iii) they have a choice on what they want to learn and achieve,

Given the clearly stated criteria, you can choose which grade you want to aim at.

(iv) they are held to high expectations.

### **Course Website**

Our course website is **Canvas**. You can find the syllabus, lecture notes, and other reading materials there.

### **Interim Course Evaluation**

A short and informal survey will be posted on **Canvas** in **Week 3**. This is to let me know your thoughts and comments on the course materials, the lectures, the assignments, etc., and help me to improve the course. I encourage you to do the survey.

### **Late Submission Policy**

If you cannot submit your assignments on time and require academic accommodations, you are welcome to come and talk to me about your situations, but please do so as early as possible. Extensions may be given depending on your circumstances. However, late assignments without legitimate excuse will be subject to penalties (10% per day).

### **Office Hours**

Please find my office hours on Canvas. You are also welcome to talk to me before/after class, write me an email, or arrange a meeting. My email address is [irwin.chan@ubc.ca](mailto:irwin.chan@ubc.ca)

## Plagiarism

Plagiarism is a serious academic misconduct. It will not and should not be treated lightly. Please cite properly if you take any text from someone else. For details on UBC's plagiarism policy and tips on avoiding plagiarism, please see <http://www.calendar.ubc.ca/Vancouver/index.cfm?tree=3,54,111,959> and <http://learningcommons.ubc.ca/resource-guides/avoiding-plagiarism/>

## Diversity and Inclusivity

Philosophy is for everyone. I encourage everyone to participate and contribute. I will also do my best to design the course and arrange the lectures in ways that give everyone a fair chance to participate and contribute. If you have any thoughts or comments on the course arrangements, you are always welcome to come talk to me in person or send me an email.

The University provides academic accommodations for students with disabilities. You can find more details on academic accommodations by contacting Accessibility Services or go to <http://students.ubc.ca/success/student-supports/academic-accommodations#registeradLinks to an external site..>

If you have any other concerns about assignment deadlines, missing classes, etc., please come and talk to me in advance, preferably one week in advance if possible.

## A Note on Sensitive Topics in this Course

The following passage is written by the UBC administration.

During this pandemic, the shift to online learning has greatly altered teaching and studying at UBC, including changes to health and safety considerations. Keep in mind that some UBC courses might cover topics that are censored or considered illegal by non-Canadian governments. This may include, but is not limited to, **human rights, representative government**, defamation, obscenity, gender or sexuality, and **historical or current geopolitical controversies**. If you are a student living abroad, you will be subject to the laws of your local jurisdiction, and your local authorities might limit your access to course material or take punitive action against you. UBC is strongly committed to academic freedom, but has no control over foreign authorities (please visit <http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,33,86,0> for an articulation of the values of the University conveyed in the Senate Statement on Academic Freedom). Thus, we recognize that students will have legitimate reason to exercise caution in studying certain subjects. If you have concerns regarding your personal situation, consider postponing taking a course with manifest risks, until you are back on campus or reach out to your academic advisor to find substitute courses. For further information and support, please visit: <http://academic.ubc.ca/support-resources/freedom-expression>