

PHIL 338: Philosophy of Law

Winter 2022, Term 2 (Sect. 001)

Meets: T 18:30-20:00 and R 18:30-20:00 BUCH A-203

Instructor:

Stefan Lukits
stefan.lukits@ubc.ca

Teaching Assistant:

TA: Carsten von Wersebe
TBA

Office Hours:

- Stefan: by appointment
- Carsten: by appointment

We will be using Piazza discussion about course logistics. Piazza is an alternative to emailing questions to the instructor, the TA, or your classmates with the added advantage that everyone can follow the discussion. Find our class signup link [here](#). Use the access code `thaicizo`. It is imperative that students read UBC-generated emails by the instructor sent to all students, as they may contain important announcements.

Description

PHIL 338 "Philosophy of Law" in general addresses subjects such as concepts of law, constitution and sovereignty; law and morality; natural law theories and legal positivism; obligation, responsibility, and punishment. This course in particular will focus on legal positivism, Marxism, and poststructuralist approaches to laws and norms.

Learning Objectives

Students who successfully complete the course will be able to:

1. Outline a complex argument in an assigned text, stating premises and conclusion.
2. Assess the strength of arguments in assigned texts.
3. Complete an essay that discusses and evaluates arguments with a clear structure and well-supported arguments.
4. Discuss and defend one's own view around issues of the philosophy of law.

Course Website

We have a site on the UBC course website system called "Canvas." We will use the Canvas site for several purposes, but grades will be in an instructor spreadsheet, not on the UBC Canvas site. I will provide access to the instructor spreadsheet using a special set of login credentials. To access the Canvas site, go to this site and log in with your Campus Wide Login and password: <http://canvas.ubc.ca>

Evaluation/Assignments

25% Reading Assessments

There is a fair bit of reading to do for this course. There will be reading assessments during class time to ensure that students read these texts carefully. Attendance is also a part of this grade component. I will record attendance and conduct the reading assessments on an academic platform called acadly (the registration code of this course for acadly is RNBBN8; however, do not sign up on acadly before carefully reviewing the instructions on Piazza). The 25% break down as follows: 5% attendance; 20% reading assessment quizzes.

50% Essays

Essay #1

The first essay assignment (Essay #1) is an assignment that you submit in hardcopy before Tuesday, September 20, 2022, at 6:30pm (under normal circumstances, you will just bring the hardcopy to class). It is freestyle, which means that you have a fair amount of artistic licence. One conventional choice for students is to write personal literary non-fiction. There is no limit on what you can do EXCEPT write an academic or argumentative paper. You do not need (and in fact are discouraged) to refer to philosophy or the material that we have covered in class.

The idea is to write a literary non-fiction text based on the idea that making decisions (possibly related to law or morality) in your life (or the life of someone close to you) provides a stimulus for asking some of the questions of philosophy: who am I? what should I do? what do I owe others? what do I value? what is love? what method should I use to answer the big questions? Note that I do not want you to answer these questions in a detached and academic manner (you will do some of this in Essay #2), and you definitely don't have to cover all of them (you may not even want to cover any of them explicitly). If it helps you, you can read the poem *Law, Like Love* by W.H. Auden (easily accessible by a simple internet search) and write Essay #1 in response to it, but keep in mind that the essay needs to be specifically about you and you should not write it in a detached way from a third-person perspective. I want Essay #1 to be personal and non-academic, perhaps like a journal entry or a letter written to a close friend. You are also encouraged to drill down immediately into something that is pointedly particular about you—do not waste time with generalities. The more detailed and specific this paper is about you, the better, and you get to choose YOUR preferred way of expressing yourself about what matters to you.

Don't worry about your grade or a grading rubric for Essay #1. If you put recognizable effort into this project, you will receive 85%–100%. The first paper is freestyle in the extreme and meant to be personal -- about YOU, meaning that there are really no limits as to what you can do -- EXCEPT write an academic or argumentative paper. You do not need to relate Essay #1 to the philosophy of law. You do not need to address the questions suggested in the previous paragraph, they are only meant to help you think about this project. You will submit the paper anonymously with no name or student number on the paper, only your six digit code (SDC). The essay must be exactly two letter-sized pages (no title page!), but the formatting can be anything you like. Print the two pages on one sheet (back and front). Each student therefore submits exactly one sheet with only a six-digit code on it.

Essay #2

The second essay assignment (Essay #2) is an assignment that you submit on Canvas before Friday, December 9, 2022, at 11:59pm. Essay #2 is very different from Essay #1. It is an academic paper in which you address a philosophical question based on the readings. Your audience is an intelligent undergraduate student who has attended our course and done our readings. The essay will be marked on content (clarity of presentation, strength of argument, relevance of thesis) and form (spelling, grammar, presentation in print).

Essay #2 needs to be argumentative, not expository or interpretive. You need an informative thesis, one that is strong enough so someone can reasonably disagree with it. Then you defend your thesis against the best objections of your reasonable opponents, much like a lawyer would: professionally and without flourish. You pick your own topic; it must fulfill the following constraints: (1) it is based on one of the class readings; (2) it relevantly touches on a theme or an issue that we have talked about in the lectures. I will put some material in the Modules section of Canvas to help you get started.

This paper will be six pages in length, where "six pages" means that the length of the paper must be at least six pages and at most seven pages. Use 1.5 line spacing and a font between 11pt and 12pt. Put your name and UBC student number on top of the paper. No title page. Submit in pdf format. (25%)

25% Final Exam

The final exam will be held during the exam period for Term 1, which is December 11–22, 2022. Date and location are set by UBC. The exam will consist of two parts: an essay question and a multiple choice / short answer section. To prepare for it, attend the lectures, do all the readings required for the class, and take some notes that you can review before the final exam. No extensive studying before the exam should be necessary. If you have attended class, read the material, and reminded yourself of the main ideas of the readings and their authors, you should comfortably pass this requirement.

Course Policies

Class Etiquette and Rules

I don't encourage the use of computers during class time, although you may do so if you are taking notes. Use the computer as you would on an airplane, i.e. off-line. Often it's best to raise your hand if you want to speak, but I'm also happy to have free-form discussions in class where people don't raise their hands as long as everyone is respectful of others (avoid cutting others off, interrupting them when they're in the middle of saying something).

Basic rules of respectful dialogue will be enforced. Disrespectful speech such as name-calling, stereotyping, and derogatory remarks about ethnicity, religion, gender, sexual orientation and sexual/gender identity should be avoided and may constitute harassing speech.

Harassing speech will not be tolerated. The UBC Equity office defines harassment as follows: "Harassment, a form of discrimination, is a comment, conduct or behaviour that humiliates, intimidates, excludes and isolates an individual or group based on the BC Human Rights Code's thirteen grounds of prohibited discrimination." The thirteen grounds of prohibited discrimination are: age, ancestry, colour, family status, marital status, physical and mental disability, place of origin, political belief, race, religion, sex (including gender and pregnancy), sexual orientation, unrelated criminal conviction. Examples of harassment include "repeated derogatory comments or jokes based on one of the prohibited grounds," and "discussing the culture of other classmates, co-workers, or colleagues in a disrespectful or ridiculing manner."

General information on assignments: Students should retain a copy of all submitted assignments and should also retain all their marked assignments in case they wish to apply for a Review of Assigned Standing. A final examination becomes the property of UBC and must remain in the possession of UBC for one year from the date of the examination, after which it should be destroyed or otherwise disposed of in accordance with UBC policy.

Policies on Late or Missed Assessments

All essays are due on the day noted on this syllabus and on the assignment instructions. Late essays are subject to a 5% per 24 hours reduction in points. The first late day carries an extra penalty of 5%. This means that if you submit ten minutes late, the penalty is already 10% (5% for lateness, 5% for the first 24 hours). Contact Arts Advising as soon as you are aware you may need an in-term concession. Please review the website for concession criteria as well as process to follow. As instructors are no longer able to assess documentation other than the Student Self-Declaration Form, I will not be handling any in-term or final exam concessions. Go [here](#) instead.

Grading Standards

The following provide general guidelines that apply to all courses in the Faculty of Arts, including this one.

The following guidelines offer a broad-brush characterization of the type of work that might be associated with various ranges of grades. The intent here is to encourage general consistency across the Faculty of Arts rather than to provide precise specifications.

- 80% to 100% (A- to A+) Exceptional performance: strong evidence of original thinking; good organization; capacity to analyze and synthesize; superior grasp of subject matter with sound critical evaluations; evidence of extensive knowledge base.
- 68% to 79% (B- to B+) Competent performance: evidence of grasp of subject matter; some evidence of critical capacity and analytic ability; reasonable understanding of relevant issues; evidence of familiarity with the literature.
- 50% to 67% (D to C+) Adequate performance: understanding of the subject matter; ability to develop solutions to simple problems in the material; acceptable but uninspired work, not seriously faulty but lacking style and vigour.
- 0% to 49% (F) Inadequate performance: little or no evidence of understanding of the subject matter; weakness in critical and analytic skills; limited or irrelevant use of the literature.

Marks in this course may be scaled (see Calendar, under Grading Practices).

University Policies

UBC provides resources to support student learning and to maintain healthy lifestyles but recognizes that sometimes crises arise and so there are additional resources to access including those for survivors of sexual violence. UBC values respect for the person and ideas of all members of the academic community. Harassment and discrimination are not tolerated nor is suppression of academic freedom. UBC provides appropriate accommodation for students with disabilities and for religious

observances. UBC values academic honesty and students are expected to acknowledge the ideas generated by others and to uphold the highest academic standards in all of their actions. Details of the policies and how to access support are available on the [UBC Senate](#) website.

Schedule of Readings and Assignments

		Mandatory	Optional
Week 1	<i>Introduction</i>		
	September 8	NAN	
Week 2	<i>Positivism</i>		
	September 13	MLK	
	September 15	HTA	HTB
Week 3	<i>Positivism</i>		
	September 20	NAN	HKA
	September 22	FLP	HKB
Week 4	<i>Hermeneutics</i>		
	September 27	ASC,RDW	HKC
	September 29	RIC	SGR
Week 5	<i>Hermeneutics</i>		
	October 4	DEL	DRD
	October 6	NAN	HKA
Week 6	<i>Consequentialism</i>		
	October 11	JSM	POS
	October 13	DOS	BWA
Week 7	<i>Kant</i>		
	October 18	KNT	CKG
	October 20	NOZ	
Week 8	<i>Existentialism</i>		
	October 25	JPS	
	October 27	NAN	
Week 9	<i>Normativity</i>		
	November 1	RWL	TSC
	November 3	CTH	NLM
Week 10	<i>Marx</i>		
	November 8	MRX	REN
	November 10	no class	midterm break
Week 11	<i>Marx</i>		
	November 15	PRL	POU
	November 17	NAN	CAI
Week 11	<i>Postmodernism</i>		
	November 22	AVC	SMW
	November 24	NAN	
Week 12	<i>Postmodernism</i>		
	November 29	MFD	CTC
	December 1	STF	NUL
Week 13	<i>Conclusion</i>		

Readings

Acronym	Author	Title	Pages
ASC	Antonin Scalia	Common-Law Courts in a Civil-Law System	187- -196
AVC	Andrew Vincent	Marx and Law	371- -397
BAR	Roland Barthes	The Death of the Author	2--6
BWA	Bernard Williams	Consequentialism and Integrity	20-50
CAI	Maureen Cain	The Main Themes of Marx' and Engels' Sociology of Law	136- -148
CKG	Christine Korsgaard	Creating the Kingdom of Ends	188- -221
CTC	Charles Taylor	Foucault on Freedom and Truth	69--102
CTH	Chris Thornhill	Two Rival Critiques of Metaphysics	331- -365
DEL	Douglas E. Litowitz	Modern Law Has Come Unmoored from Its Normative Grounding	Chapter 5
DOS	Fyodor Dostoyevsky	Underground	3--41
DRD	Jacques Derrida	The Theory of Writing	293- -344
FLP	Jules Coleman and Brian Leiter	Legal Positivism	105- -118
HKA	Hans Kelsen	Law and Nature	1--58
HKB	Hans Kelsen	Law and Morals	59--69
HKC	Hans Kelsen	The Pure Theory of Law and Analytical Jurisprudence	44--70
HTA	HLA Hart	Positivism and the Separation of Law and Morals	593- -629
HTB	HLA Hart	A More Recent Positivist Conception of Law	36--50
JPS	Jean-Paul Sartre	Existentialism Is a Humanism	345- -369
JSM	John Stuart Mill	What Utilitarianism Is	185- -202
KNT	Immanuel Kant	Selections from Grounding for the Metaphysics of Morals	105- -111
MFD	Michel Foucault	The Body of the Condemned	3--31
MLK	Martin Luther King	Letter from Birmingham Jail	213- -217
MRX	Karl Marx and Friedrich Engels	Anthology	647- -676
NAN	Reading Furlough	No Reading Assigned	
NLM	Niklas Luhmann	Law as a Social System Selection	TBA
NOZ	Robert Nozick	Moral Constraints and the State	26--53
NUL	Tracy McNulty	The Commandment against the Law	34--60
POS	Richard Posner	Consequentialism	94--118

POU	Nicos Poulantzas	Marxist Examination of the Contemporary State and Law and the Question of the Alternative	25--46
PRL	Patrick Riley	Karl Marx's Philosophy of Law	257- -265
RDW	Ronald Dworkin	Comment	196- -203
REN	Karl Renner	Legal Institutions and Economic Structure	45--80
RIC	Ronald Dworkin	Interpretive Concepts	45--86
RWL	John Rawls	Justice as Fairness	3--46
SGR	Peter Singer	Famine, Affluence, and Morality	229- 243
SMW	Sigi Mwanzia	Marxist Perspectives of Law in Capitalist Society	1--17
STF	Stanley Fish	Working on the Chain Gang	201- -216
TSC	T.M. Scanlon	Contractualism and Utilitarianism	103- 128

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