

Philosophy 338.001: Philosophy of Law
University of British Columbia
2023 – 2024, Term One
Meetings: Chemistry Building, Room C124
M/W/F, 9:00 – 9:50 AM

Instructor: Dr. Thomas Bittner
Email: tbittner@mail.ubc.ca
Office hours: on Zoom
Tu/Th, 11:00 – 11:50 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 justification and excuse in criminal law and the proper scope of freedom of expression in a free and democratic society to more theoretical questions such as the essential nature of law and the relationship between law, morality, and politics.

This course will be of interest to philosophy majors, students in the social sciences or 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.

(Optional) Textbook:

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

Course requirements:

- There will be two exams and two essay assignments. The midterm exam will be taken in class on October 11. The essay assignments will be due on September 25 and November 8. The final exam will be taken during the final exam period: December 11 – 22.
- Your mark for the course will depend on the midterm exam [25%], the essay assignments [20% each], the final exam [30%], and your overall course involvement [5%]. Course involvement is composed of contributions to in-class and online (on Piazza) discussion, and approximately five unannounced reading quizzes.

Course policies:

There is a grade penalty for late essay assignments (10% per day). Exams must be taken at their scheduled times. Only medical or religious reasons will be accepted for missing an essay deadline or an exam. Students will not ordinarily be excused for work-, travel-, childcare-, or sports-related activity. Normal parts of university life (exams or papers due on the same date, computer problems, etc.) will not provide excuses for missing an exam or essay deadline. Should a medical emergency arise, you must contact me by email before the exam or essay deadline to avoid receiving "no credit."

If you miss marked coursework 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 your reader (or listener) to believe wrongly that these words or ideas are your own. I will not allow plagiarism or any other form 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.¹ Here is a good online source for information on these issues: <http://learningcommons.ubc.ca/academic-integrity/>

For all the assignments in this course, use of ChatGPT or any other AI language model is not allowed.

COVID-19 Safety:

You are advised to wear a non-medical mask during our in-person class meetings, for your own protection and the safety and comfort of everyone else in the class. It is important that all of us feel as comfortable as possible engaging in class activities while sharing an indoor space. Non-medical masks that cover our noses and mouths are a primary tool for combating the spread of COVID-19. Further, according to the provincial authorities, masks are recommended in all indoor public spaces including lobbies, hallways, stairwells, elevators, classrooms and labs. There may be students who have medical accommodations for not wearing a mask. Please maintain a respectful environment.

If you are sick, it is important that you stay at home. Complete a self-assessment for COVID-19 symptoms here: <https://bc.thrive.health/covid19/en>.

If you miss class because of illness, consult the course materials on Canvas to keep up or catch up with readings and assignments. Use Piazza to ask questions. Attend online office hours for further help.

If I am unwell or isolating to protect others, I will not attend class in person. I will let you know by email or Canvas announcement as soon as possible. If I do not attend class in person, the class may still meet on Zoom, through Canvas.

Advice and Expectations:

Try very hard to keep up with the assigned class readings on our schedule. Before each class meeting, read and take notes on the articles, chapters, and law cases assigned for that meeting.

This term we will be using Piazza for class discussion and for questions about course requirements. The system is designed to get you help quickly and efficiently from your classmates, the TA, and myself. Rather than emailing questions to the teaching staff, I encourage you to post your questions on Piazza. If you have any problems or feedback for the developers, email <team@piazza.com>.

Find our class signup link at: <https://>

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 concepts and 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. 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.

¹ 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.

Course Schedule

Readings are available on UBC Canvas in “Modules” or in “Library Online Course Reserves” or both.
(Some readings with page numbers are also in Dyzenhaus, et al. 2007.)

Dates	Topics	Readings
Sept. 6 – 8	Introduction to law Crime and agency	Select one: Appendix 2, 1063 – 1067 “Canada’s System of Justice” (2015) Optional: Holmes (1897) “The Path of the Law” Baker (2017) “ <i>R v. Saunders and Archer</i> (1573)” Optional: pp. 37 - 54
Sept. 11 - 18	Criminal attempts	<i>People v. Dlugash</i> (1977) Fletcher (1986) “Impossible Attempts” Kadish (1994) “The Criminal Law and the Luck of the Draw” <i>State v. Damms</i> (1960)
Sept. 20 – 22	Necessity (Justification/Excuse)	Katz (1992) “The Defense of Necessity”
Sept. 25	First Short Essay due	Fuller (1949) “The Case of the Speluncean Explorers” <i>Q. v. Dudley and Stephens</i> (1884), 154 – 158
Sept 25 – 27	Justification (Reason/Deed)	Robinson (1997) “The Bomb Thief”
Sept 29 – Oct. 2	Insanity	<i>Durham v. U.S.</i> (1954)
Oct. 4 – 6	Automatism	<i>R. v. Parks</i> (1992)
Oct. 9	Thanksgiving Day (no class meeting)	
Oct. 11	Midterm Exam	
Oct. 12 – 16	Public and Private Spheres	Select one: Appendix 1, 1055 – 1062 “Canadian Charter of Rights and Freedoms” (2017) Mill (1859), 306 – 326 Ripstein (2006) Freeman and Mensch (1987)
Oct. 18 – 25	Speech and Sedition Hate speech	<i>Schenck v. U.S.</i> (1919) Moran (1994) <i>R. v. Keegstra</i> (1990), 857 – 897 <i>R.A.V. v. City of St Paul</i> (1992), 897 – 910
Oct. 27	Introduction to legal theory	Hobbes (1651), 6 – 28 Chapters 5, 6, 13, 14, 15, the first two ¶ of 25, and 26

Oct. 30 – Nov. 6	Legal positivism	Hart (1958), 28 – 53 “Positivism and the Separation” <i>Whiteley v. Chappell</i> (1868), 65 – 67 Fuller (1958), 67 – 108, “Positivism and Fidelity” Fuller (1964) “Eight Ways to Fail to Make Law”
Nov. 8	Second Short Essay due	Fuller (1969) “Grudge Informer” Radbruch (1946), 126 – 140 Mertens (2002) “Radbruch and Hart”
Nov. 8 – 10	The Union Model	Hart (1961), 53 – 65, <i>The Concept of Law</i> Chapter V, “Law as the Union” Dworkin (1967) “The Model of Rules”
Nov. 13 – 15	Remembrance Day and Midterm Break (no class meetings)	
Nov. 17 – 24	Legal naturalism	<i>Riggs v. Palmer</i> (1889), 140 – 146 Dworkin (1975) “Hard Cases” Dworkin (1986) “Integrity in Law” Hart (1994) “Postscript” to <i>The Concept of Law</i> , 2 ed.
Nov. 27 – Dec. 6	Legal realism and CLS	Altman (1986) “Legal Realism, CLS, and Dworkin” Altman (1990) “CLS and the Rule of Law” Select one: Kennedy (1986) “Freedom and Constraint in Adjudication” Kennedy (1987) “Toward a Critical Phenom. of Judging” Gabel (2009) “CLS as a Spiritual Practice” <i>O’Neal v. Colton</i> (1976)
Dec. 11 – 22	Final Exam	

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