

PHIL_V 338-001: Philosophy of Law
University of British Columbia
2024 – 2025, Term One
Meetings: Lasserre (LASR), Room 104
M/W/F, 10:00 – 10:50 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: @ubc.ca

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.

Textbook (Optional):

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 7. The essay assignments will be due on September 23 and November 8. The final exam will be taken during the final exam period: December 10 – 21.
- Your mark for the course will depend on the midterm exam [20%], the essay assignments [20% each], the final exam [30%], and your overall course involvement [10%]. Course involvement is composed of contributions to in-class and online (on Piazza) discussion, and in-class quizzes.

Course policies:

There is a grade penalty for late essay assignments (5 percentage points deducted for each day the essay is late). 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 any of the assignments in this course, use of ChatGPT or any other generative AI tool is not allowed.

COVID-19 Safety:

It is permissible for you to wear a non-medical mask during class meetings, for your own protection and the safety and comfort of everyone else in the class, while sharing an indoor space. Non-medical masks that cover our noses and mouths are a good tool for combating the spread of COVID-19. There may also 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 to extend 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://piazza.com/ubc.ca/winterterm12024/phil_v3380012024w1

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. 4 – 6 | Crime and agency | Baker (2017) “ <i>R v. Saunders and Archer</i> (1573)” Optional: pp. 37 - 54 |
| Sept. 9 – 16 | Criminal attempts | <i>People v. Dlugash</i> (1977) Fletcher (1986) “Constructing a Theory of Impossible Attempts” Kadish (1994) “The Criminal Law and the Luck of the Draw” <i>State v. Damms</i> (1960) |
| Sept. 18 – 20 | Necessity (justification/excuse) | Katz (1992) “The Defense of Necessity” |
| Sept. 23 | First short essay due | Fuller (1949) “The Case of the Speluncean Explorers” <i>Q. v. Dudley and Stephens</i> (1884), 154 – 158 <i>U.S. v Holmes</i> (1842) |
| Sept 23 – 25 | Justification (reason/deed) | Robinson (1997) “The Bomb Thief” |
| Sept 27 - 30 | Insanity | <i>Durham v. U.S.</i> (1954) |
| Oct. 2 – 4 | Automatism | <i>R. v. Parks</i> (1992) |
| Oct. 7 | Midterm exam | |
| Oct. 9 – 11 | Free society | Select one: Appendix 1, 1055 – 1062 “Canadian Charter of Rights and Freedoms” (2017) Mill (1859), 306 – 326, <i>On Liberty</i> |
| Oct. 14 | Thanksgiving Day (no class meeting) | |
| Oct. 16 – 18 | Public and private spheres | Ripstein (2006) “Beyond the Harm Principle” Freeman and Mensch (1987) “The Public-Private Distinction” |
| Oct. 21 – 25 | Speech and sedition Hate speech | <i>Schenck v. U.S.</i> (1919) Moran (1994) “Talking about Hate Speech” <i>R. v. Keegstra</i> (1990), 857 – 897 <i>R.A.V. v. City of St Paul</i> (1992), 897 – 910 |

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| Oct. 28 | Introduction to legal theory | Marmor (2012) "The Nature of Law" Hobbes (1651), 6 – 28, <i>Leviathan</i> 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, "Statutory Lawlessness" Mertens (2002) "Radbruch and Hart" |
| Nov. 8 – 15 | 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. 11 – 13 | Remembrance Day and midterm break (no class meetings) | |
| Nov. 18 - 25 | 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. 2 | Legal realism and CLS | Altman (1986) "Legal Realism, CLS, and Dworkin" Altman (1990) "CLS and the Rule of Law" |
| Dec. 4 – 6 | Law and politics | 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. 10 – 21 | Final Exam | |

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