

PHIL 338: Philosophy of Law

Winter 2025, Term 2 (Sect. 002)

Meets: T 15:30-17:00 and R 15:30-17:00 BUCH-Floor 2-Room A202

Instructor:

Stefan Lukits
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Teaching Assistant:

TA: Annabelle Rondeau
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Office Hours:

- Stefan: by appointment
- Annabelle: 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 [TBA](#). Use the access code 1cu7aj6nw5m. 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. Collaborate with colleagues to discuss and evaluate arguments in a debate about the philosophy of law.
4. Discuss and defend their own view around issues of the philosophy of law.

Course Website

We have a site on the UBC course website system called [Canvas](#). Your grades are recorded and accessible in Canvas. To access the Canvas site, go to [this site](#) and log in with your Campus Wide Login and password.

Evaluation/Assignments

25% Reading Assessments

There is a fair bit of reading to do for this course. There will be reading assessments on Canvas during class time to ensure that students read these texts carefully. Attendance is also a part of this grade component. The 25% break down as follows: 5% attendance; 20% reading assessment quizzes. Taking the quiz automatically gives you the attendance mark. If for some reason you miss the quiz, you can always tell me to mark you present manually after the lecture.

25% Freestyle Essay

The first essay assignment (Freestyle Essay) is an assignment that you submit in hardcopy before Tuesday, January 20, 2026, at 3:30pm (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 the Final Exam Essay), 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 the Freestyle Essay 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 the Freestyle Essay 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 the Freestyle Essay. If you put recognizable effort into this project, you will receive 85% or more. 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 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 on the paper, only the first-placed, third-placed, fifth-placed, and seventh-placed digits of your student number (for example, if your student number is 40867512, then put 4871 on your Freestyle Essay with no other identifying information). 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 four-digit identifying code on it. As the essays are anonymous, I will not return them to you or comment on them.

25% Daily Questions

For each reading, you will submit a question video (minimum 30 seconds, maximum 60 seconds). I am not providing criteria for asking particular types of questions, because a great variety of questions (from honest-to-god "I don't know what's going on" questions to deep philosophical probing) can be excellent.

What makes a question good or even excellent is the precision with which it is asked, the depth of philosophical understanding that it reveals, the wrestling with the text to which it testifies. If you read your question or in some other way make the grader suspect that you have used AI in the formulation of your question, then it is more difficult to get a good grade for your question.

25% Final Exam

The Final Exam will be held during the exam period for term 2, which is April 14–25, 2026. Date and time are set by UBC. During the exam, you will write a prepared essay with no access to the internet or your notes (closed book). The Final Exam Essay 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), with much less emphasis on the latter. The Final Exam Essay 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. You can write the final exam essay in any language you like. If there is no grader who can read your language we may ask you to translate it (it is usually sufficient to use a translation program for this). You must write a minimum of 1200 words. You can bring an 8.5x11 piece of paper with handwritten notes or an outline on it (back and front); however, fully formulated paragraphs are not permitted on your notes.

Course Policies

Class Etiquette and Rules

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>Natural Law</i>		
	January 6	MLK	ANT
	January 8	HTA	HTB
Week 2	<i>Legal Positivism</i>		

	January 13	ASC,RDW	HKB
	January 15	FLP	HKC
Week 3	<i>Hermeneutics</i>		
	January 20	RIC	
	January 22	FMM	
Week 4	<i>Utilitarianism</i>		
	January 27	DEL	NUL
	January 29	JSM	DOS
Week 5	<i>Ethics</i>		
	February 3	BWA	POS
	February 5	NAN	
Week 6	<i>Kant I</i>		
	February 10	KNT	CKG
	February 12	NOZ	
Week 7	<i>Midterm Break</i>		
	February 17	no class	Midterm Break
	February 19	no class	Midterm Break
Week 8	<i>Kant II</i>		
	February 24	JPS	
	February 26	RWL	TSC
Week 9	<i>Systems Theory</i>		
	March 3	CTH	NLM
	March 5	NAN	
Week 10	<i>Marxist Critique</i>		
	March 10	MRX	REN,POU
	March 12	CMK	JHZ
Week 11	<i>Political Economy of Law</i>		
	March 17	PRL	CAI
	March 19	NAN	
Week 12	<i>Critical Theory</i>		
	March 24	EOL	MMP
	March 26	AVC	SMW
Week 13	<i>Poststructuralism</i>		
	March 31	MFD	BAR
	April 2	NAN	
Week 14	<i>Wrap-Up</i>		
	April 7	STF	CTC
	April 9	NAN	

Acronym	Author	Title	Pages
ANT	Sophocles	Antigone	all
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
CMK	Catherine MacKinnon	Toward a Feminist Theory of the State	TBA
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
EOL	Katharina Pistor	Empire of Law	1--22
FLP	Jules Coleman and Brian Leiter	Legal Positivism	105--118
FMM	Frank Michelman	Law's Republic parts II and IV	1507--1515 and 1524--1532
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
JHZ	Jürgen Habermas	The Sociology of Law versus the Philosophy of Justice	42--66
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
MMP	Michael Sandel	Markets, Morals, and the Public Sphere	Lecture II
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	613--621
RDW	Ronald Dworkin	Comment	196--203
REN	Karl Renner	Legal Institutions and Economic Structure	45--80
RIC	Ronald Dworkin	Law's Empire Selection	45--68 plus 419- -424, 225--238
RWL	John Rawls	Justice as Fairness	3--46
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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