

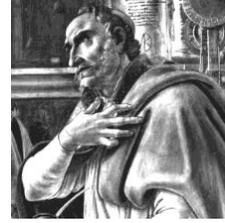
# Philosophy of Law (PHI 345)

Instructor: B C Hutchens, D.Phil.



The law is reason unaffected by desire.

Aristotle, Politics



The letter kills, the spirit gives life.

Augustine, quoting Paul, 2 Cor. 3:6



Law in its proper sense is  
right reason in harmony with nature.

Cicero, Republic



Laws are both the relations  
that exist between [primitive  
reason] and the different beings,  
and the relations of these various  
beings to each other.

Montesquieu



Law is a certain rule and measure of acts whereby man is induced to act or is restrained from acting.

Thomas Aquinas, Summa Theologica

## VIRTUES

There are a number of scholarly and personal virtues necessary for success in this or any other class:

FIDELITY, or constancy of purpose in devotion to learning;

INDUSTRIOUSNESS, or always working when working is called for;

DILIGENCE, or always working well, both as the task requires and as one's abilities permit;

PERSPICACITY, or always learning the details of a matter instead of being merely 'vaguely familiar' with it;

HUMILITY, the proper understanding of one's own self-worth without claiming to be entitled to anything beyond that worth; and

GRATITUDE, the acknowledgement that something transcends oneself and provides appreciable natural gifts.

## COURSE OBJECTIVES:

Upon successful completion of this course, students will be able to:

- (a) name and identify individuals, events, themes, and issues of major importance in the history of the philosophy of law;
- (b) demonstrate a basic level of competence in differentiating the various schools of the philosophy of law and the significance of historical context;
- (c) develop an understanding of the use of philosophical texts and display some familiarity toward different types of argumentation.

## OVERVIEW OF POLICIES

### REQUIRED TEXT

You **MUST** buy a print copy (books), not digital forms that can be accessed by cell-phone or laptop, as cell-phone and laptop usage during class is **STRICTLY FORBIDDEN**.

May, Larry and Jeff Brown, editors. Philosophy of Law: Classic and Contemporary Readings. Wiley-Blackwell, 2009.

ISBN-13 978-1405183871

### ASSIGNMENTS

Your final grade will be the average of three tests (100 points each), two or four pop quizzes (50 points each) and one composite score consisting of marks for a presentation, a formal dialogue, and class participation (specifically in response to presentations and dialogues).

### ATTENDANCE

Here are the rules pertaining to attendance.

First, you may excuse any absence if you show a medical, legal or other official document. It must be dated. Also, if you perform or compete for Rutgers University, necessary absences will be excused.

Second, you may miss class **TWICE** without excuse, that is to say, you may miss two classes without excuse this semester. There is no penalty for these absences.

Third, when you miss the third class without excuse, I will subtract ten points from the next test.

Fourth, when you miss the fourth class without excuse, I will subtract ten points from your final average.

Fifth, when you miss the fifth class without excuse, you automatically fail the course.

So, again,

2 absences—no penalty

3<sup>rd</sup> absence—ten points off next test

4<sup>th</sup> absence—ten points off the final average

5<sup>th</sup> absence—automatic failure of the course

## TARDINESS

You may be tardy for class twice this semester, but I will subtract three points for every tardy arrival after the first two.

You may leave the class twice this semester, without penalty, but I will subtract three points for every temporary absence after the first two.

## PRESENTATIONS

Each student will give one presentation this semester. Presentations will be graded in terms of their articulation, organization, argumentation and grasp of the reading. Your presentation must be at least 20 minutes in length. Presentations of less than 20 minutes can only receive a grade of 30 of the 40 points for the assignment.

## POP QUIZZES

Pop quizzes, no fewer than two and no more than four in number, will be given this semester. Being 'pop', they can be given at any time. Each pop quiz will be worth 50 points, with the first two composing one 100-point assignment. The second two quizzes, if any, will compose another 100-point assignment. Each pop quiz will take place at the beginning of class. It will cover the material to be addressed in that particular class as well as any class in the previous two weeks. If you are learning in the course, this should be a benefit to you.

## LAPTOPS AND CELLPHONE

USE OF LAPTOPS AND CELLPHONES DURING CLASS IS STRICTLY FORBIDDEN.

## MISSING TESTS

If you miss a test, you will only be permitted to take it if you produce a medical, legal or official document from a university administrator explaining the nature of your participation in a university-sponsored event. Many students choose to miss an exam because they have not prepared for it and imagine that extra time to prepare

will be to their advantage. If you are absent when an exam takes place, you can only take a make-up test AFTER THE WITHDRAWAL DEADLINE. This make-up test will not resemble the exam taken by everyone else. For example, if everyone else takes a matching, fill-in-the-blank or multiple-choice exam, your exam will consist of short-essay questions.

## COMPOSITE GRADE

One of your grades this semester will be a composite of three assignments: a presentation, a dialogue and class participation. You will receive up to 40 points for the presentation you offer. You will receive up to 40 points for the way you comport yourself in an assigned dialogue or debate. You will receive up to 20 points for class participation, mainly questions you ask of other presenters and other disputants.

So, again,

40 points for presentation

40 points for dialogue/disputation

20 points for class participation

## SCHEDULE

### First Week

T Introduction

Th Kant, Critique of Judgement, Introduction, sections I-II (READING ON BLACKBOARD)

### Second Week

T Kant, Introduction, sections III and IV

TH Finnis, Natural Law and Natural Rights, Part I, Chapter I, pages 1-19 (READING ON BLACKBOARD)

### Third Week

T Finnis, Natural Law and Natural Rights, Part II, Chapter Three pages 59-75

TH Finnis, Natural Law and Natural Rights, Part II, Chapter Four, pages 81-97

#### Fourth Week

T Hohfeld, pages 39 of PDF [35 in text] to 42[38], devoted mainly to rights and duties (READING ON BLACKBOARD)

AND

Hohfeld, pages 42 [38] to 54[50], privileges and no-rights

TH Hohfeld, pages 54[50] to 64[60], powers and liabilities

AND

Hohfeld, pages 64 [60] to 68 [64], immunities and disabilities

#### Fifth Week

T TEST

TH Levi, An Introduction to Legal Reasoning, pages 11-22 and

Llewellyn, Remarks on the Theory of Appellate Decision, pages 23-31

#### Sixth Week

T Schauer, Formalism, 32-42

TH Sunstein, Incompletely Theorized Agreements, 43-53

#### Seventh Week

T May, Custom, Opinio Juris, and Consent, 54-69

TH TEST

#### Eighth Week

T Hart, The Concept of Law, 85-99

TH Dworkin, The Model of Rules I, 99-108

Ninth Week

T Moore, Law as Justice, 108-129

TH Posner, The Economic approach to Law, 129-135

Tenth Week

T Kennedy, The Distinction between Adjudication and Legislation, 135-145

TH Hart and Honoré, Causation and responsibility, 307-314

Eleventh Week

T Feinberg, Sua Culpa, 315-321

TH Hobbes and Atiyah, pages 449-464

Twelfth Week

T Mill, On Liberty, 369-376

TH Devlin, The Enforcement of Morals, 377-383

Thirteenth Week

T Fried, Contract as Promise, 465-478

TH Legally Enforceable Commitments, 479-486

Thirteenth Week

T Dworkin, Constitutional Cases, 523-534

AND

Munzer and Nickel, Does the Constitution mean what it always meant?, 535-547

TH TEST

## Academic Integrity Violations

The Rutgers University Academic Integrity Policy defines plagiarism as the representation of the words or ideas of another as one's own in any academic work. Intentionally committing plagiarism is a serious offense with severe consequences. Instructors are required to report students who intentionally violate this policy to the department chairperson and to the Office of Student Judicial Affairs. The most common forms of plagiarism are:

Quoting directly or paraphrasing without acknowledging the source (this includes copying or paraphrasing material from a web site without providing a proper citation for the site)

Presenting the work of another as one's own

Plagiarizing major portions of a written assignment

Submitting purchased materials such as term papers

The Rutgers University Academic Integrity Policy establishes levels of violations and recommends sanctions. Depending upon the severity of the case and the level of the violation, the sanctions for these violations include: a failing grade for the assignment, failure in the course, mandatory participation in a series of noncredit academic integrity workshops, academic probation, and/or suspension. (If you are in doubt as to what constitutes plagiarism or are concerned that you are misappropriating someone's words or ideas, speak immediately with your instructor. For more information, you can also consult the University Code of Student Conduct or the Student Judicial Affairs website <http://judicialaffairs.rutgers.edu>.)

## Policy concerning Disabilities

Rutgers abides by the Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments (ADAA) of 2008, and Sections 504 and 508 which mandate reasonable accommodations be provided for qualified students with disabilities and the accessibility of online information. If you have a disability and may require some type of instructional and/or examination accommodation, please contact me early in the semester so that I can provide or facilitate in providing accommodations you may need. If you have not already done so, you will need to register with the Office of Disability Services, the designated office on campus to provide services and administer exams with accommodations for students with disabilities. The Office of Disability Services is located in the Robeson Student Center. For more information on disability services at Rutgers, go to <http://disabilityservices-uw.rutgers.edu/>

