



ST. JEROME'S UNIVERSITY

St. Jerome's University in the University of Waterloo

Department of Philosophy

PHIL 327/LS 351 section 001 (Winter 2022)

Philosophy of Law

Scheduled Class Meet Times: Tu/Th, 2:30-3:50pm

Territorial Acknowledgement: *We acknowledge that we are living and working on the traditional territory of the Attawandaron (also known as Neutral), Anishinaabe and Haudenosaunee peoples. St. Jerome's University is situated on the Haldimand Tract, the land promised to the Six Nations that includes ten kilometres on each side of the Grand River.*

1. INSTRUCTOR INFORMATION

Instructor: Andrew Stumpf
Office: Sweeney Hall (SH) 2109
Phone: 519-884-8111 x28207
Office Hours: Thursdays 3:20-3:50pm EST (or by appointment)
Email: adhstumpf@uwaterloo.ca

2. COURSE DESCRIPTION

From the UW Course Calendar: Basic themes in the philosophy of law. Issues include the nature of law and its relation to morality and politics, legal reasoning, the justification of punishment, and theories of rights, responsibility, and liability.

Lawyers and peace officers ask specific questions about particular laws within a given legal system: "Does this law apply?"; "Were procedures properly followed in this case?"; "How does this specific case relate to others in terms of legal detail?"; etcetera. Philosophers of law, on the other hand, ask foundational conceptual and normative questions about the nature of law and its legitimacy. In this course we will explore questions such as:

- What is justice? How do we determine whether a law or institution is just?
- How does the law relate to other normative domains, e.g. ethics?
- What obligations do we have to follow laws? Are there laws we should not obey?
- To what extent does the political state have the right to limit individual liberty?
- How do judges make decisions? Do they apply, interpret, or create the law as they go?
- Are laws necessary for social cohesion? Are they inherently oppressive?
- How should we critically assess law and legal theory, especially as regards gender, sexual orientation, race, class, cognitive/bodily ability, age, citizenship status?
- To what extent is punishment justifiable?
- Can and should different legal traditions fit together in a particular society? In Canada, we have the Common Law (English), the Civil Law (Napoleonic), and Indigenous Law traditions. Is there room for others, e.g. religious legal traditions?

3. COURSE OBJECTIVES

If you apply yourself to all aspects of this course, you should, by the end of the course, be able to:

- a) define and describe key concepts and theories in the philosophy of law;
- b) carefully and thoughtfully analyze arguments and case studies using legal concepts;
- c) explicate the difference between analytical jurisprudence and normative jurisprudence, as well as objections to that distinction;
- d) critically question traditional assumptions about the law, its relation to morality and political authority, and its distinctive role in organizing society;
- e) critically analyze (a) course material, (b) the arguments of peers, and (c) your own work;
- f) use critical comments on your work to make that work better.

4. COVID CONTINGENCY PLAN

This course will be delivered remotely until the University and Public Health allows us to return to in-person learning. The course has been set up as a remote course with some synchronous components. Whenever possible and appropriate, the synchronous components will be recorded and made available to students. If/when we are allowed to return to on-campus lectures, lectures will resume at the regularly scheduled times and classroom locations. In-person sessions will not be recorded, but asynchronous aspects of the course (including previously recorded lecture videos) will continue to be available in Learn.

5. COURSE COMMUNICATIONS AND OFFICE HOURS

Given the current uncertainty of the situation with Covid-19, this course is designed to be flexible between in-person and remote. Each week, I plan to post a lecture video for the following week by Friday at 4pm. You will have Friday through Tuesday to complete that week's assigned readings, watch the lecture video, and complete the associated participation survey and (when relevant) discussion forum. I will then hold a synchronous class meeting (in-person or online, as determined by University policy) on Thursday, from 2:30-3:20pm. In the class meeting, I will make announcements, discuss upcoming assessments, summarize the week's content, respond to questions from the class, and offer a brief response and make room to discuss the week's participation surveys and discussion forums (where applicable). These meetings are important as my way of checking in with you and ensuring we are on the same page; please be sure to attend if at all possible. They will be recorded and posted in Learn.

Office Hours

Immediately following the class meeting each week (see previous paragraph), I will hold live office hours up until 3:50pm, to answer any practical questions about the course content or assessments.

Communication outside of class and office hours

Outside of my live office hours, to get in touch, please contact me by email at the following address: adhstumpf@uwaterloo.ca. I will typically respond to communications from you within 24 hours during regular business days (Monday to Friday, 9am-5pm). I try to take weekends off when possible in an effort to have a bit of a life and spend some time with my family.

For more in-depth one-to-one conversations, I can also be available for scheduled live video chats. If you wish to have a video chat with me, please email me in advance to set up an appointment at a mutually agreeable time. We will use Microsoft Teams.

6. REQUIRED TEXTS [AND OTHER REQUIRED/SUGGESTED READINGS]

1. Keith Culver and Michael Guidice (Eds). *Readings in the Philosophy of Law* (3rd Edition). Broadview, 2017.

The course text is available through the university bookstore as a paperback and an e-book.

Note: Other materials will be made available on LEARN as PDFs or links to external content.

7. COURSE REQUIREMENTS AND ASSESSMENT

	Topic	Due Date	Weight
Participation	Weekly participation surveys	Weekly (weeks 2-12)	10%
	Class discussion forum topics	4x during term (x 1.25)	5%
Assignment #1 (Analysis)	Exposition and assessment of a Philosophy of Law argument	Feb 4, 11:54pm (via Learn dropbox)	15%
Test #1 (Online)	Classical Legal Theory (Weeks 1-6)	Feb 15, 10am – Feb 16, 11:54pm (in Learn)	20%
Assignment #2 (Essay)	Review and assessment of a judicial decision from a prominent case using legal reasoning and legal theories	Apr 1 or 4, 11:54pm (via Learn dropbox)	30%
Test #2 (Online)	Assessment and Application of Legal Theory (Weeks 7-12)	Apr 11, 10am – Apr 12, 11:54pm (in Learn)	20%

8. DETAILED BREAKDOWN OF COURSE REQUIREMENTS

1. Participation (15%)

Weekly participation surveys: Each of weeks 2-12 of the course will have an associated participation survey (11 in total), available in Learn only during that week (Fri 4pm – Tues 11:54pm). Each survey will be based on questions asked during the corresponding week's lecture, and is meant to be completed as you work through the lecture video. Each survey completed gives you 1% of your course grade, up to a total of 10% (so you can afford to miss one).

Class Discussion Forum: Four times in the term (weeks 2, 4, 8 and 10) I will create a discussion thread and prompt in the Class Discussion Forum in Learn. Each thread will be available only during the associated week, from Fri 4pm to Tues 11:54pm. Each time you participate in a thread (by writing a brief post of your own AND at least two comments on the posts of your peers) you will earn 1% toward your course grade. *Nota bene:*

(a) guidelines for posting and commenting must be followed (see Learn);

(b) you can only access the topic/prompt for a given week after you have completed the weekly participation survey for that week

2. Two Online Tests (2 x 20% = 40%)

The first test will be available in Learn between Feb 15, 10am and Feb 16, 11:54pm. Once you open the test, you will have 1.5 hours (90 minutes) to write it. The test will consist of true/false, multiple choice and short answer questions, and will assess your understanding of (classical) legal theory based on readings and lectures from weeks 1 to 6. **The second test**, open in Learn

Apr 11, 10am to Apr 12, 11:54pm, will mirror Test #1 in format and timing, but will cover content from Weeks 7-11, our critical examination of legal theory from multiple perspectives and our consideration of how legal theory applies to several key issues.

3. Assignment #1: Argument Analysis (15%)

Pick any reading from the course schedule that you find particularly interesting or perplexing. (It can be something we have already read by that point in the course, or a reading that has yet to be covered.) Your job will be to offer a very careful exposition of the main argument given in your chosen reading, paying close attention to the steps in the argument, the evidence mobilized by the author, and the way the information is structured. This should take around 2 pages of double-spaced text, including introductory remarks. Then you will spend the rest of the paper critically assessing what you have just explicated for your reader. Does the author provide adequate reasoning and evidence in support of their conclusions, and why? Could the arguments have been strengthened, and why? Could their piece be better structured, and why? Maximum 1,250 words or 5 pages (double-spaced, 1-inch margins, etc.).

4. Assignment #2: Case Study Essay (30%)

Drawing on previous work throughout the term (concepts and theories covered in class and readings as well as ideas you've expressed in the Discussion Forums), write an essay assessing a recent court case (to be provided to you). You will outline the court's reasoning for their conclusion, and provide a reasoned case in support of or opposing that reasoning. You must deploy legal reasoning from at least two of the legal theories we will have discussed in the first part of the course and/or the critical perspectives considered in the second part of the course. The goal of this paper is to explore the relationship between conceptual and theoretical issues in the Philosophy of Law and concrete legal reasoning and decisions. The papers should be as concise as possible – no longer than 8 pages or 2,000 words (excluding bibliography, front matter and inline citations).

9. LATE WORK POLICY

Assignments submitted late will be penalized at a rate of 10% per day late. Surveys, Discussion Forum posts/comments and Tests must be completed within the date/time range noted above. See below for the University's policy on legitimate reasons for accommodations on assignments and tests. Assignments or quizzes (where no communication was made up to the due date) cannot be made up.

10. CITATION STYLE

Use MLA format for all citations: <https://owl.english.purdue.edu/owl/resource/747/01/>

11. USE OF PLAGIARISM DETECTION SOFTWARE

Turnitin.com: Text matching software (Turnitin®) may be used to screen assignments in this course. Turnitin® is used to verify that all materials and sources in assignments are documented. Students' submissions are stored on a U.S. server, therefore students must be given an alternative (e.g., scaffolded assignment or annotated bibliography), if they are concerned about their privacy and/or security. Students will be given due notice, in the first week of the term and/or at the time assignment details are provided, about arrangements and alternatives for the use of Turnitin® in this course. It is the responsibility of the student to notify the instructor if they, in the first week of term or at the time assignment details are provided, wish to submit the alternate assignment.

12. COURSE SCHEDULE

Week	Topic	Required Readings
Part One: Classical Legal Theory		
1 (Jan 5-7)	Course Introduction <i>Get-to-know-you survey</i>	<ul style="list-style-type: none"> • Culver and Guidice, Introduction (13)
2 (Jan 10-14)	What is Law? Justice? <i>Discussion Forum #1</i>	<ul style="list-style-type: none"> • Plato, Book II of <i>Republic</i> (L) • Rawls, excerpt – <i>A Theory of Justice</i> (L)
3 (Jan 17-21)	Natural Law	<ul style="list-style-type: none"> • Aquinas, “Treatise of Law” from <i>Summa Theologica</i> (27) • King, “Letter from Birmingham Jail” (L) • Finnis, excerpt – <i>Natural Law and Natural Rights</i> (41)
4 (Jan 24-28)	Legal Positivism <i>Discussion Forum #2</i>	<ul style="list-style-type: none"> • Hobbes, excerpt – <i>Leviathan</i> (L) • Austin, excerpt – <i>The Province of Jurisprudence Determined</i> (68) • Hart, “Positivism and the Separation of Law and Morals” (84) • Hart, “Law as the Union of Primary and Secondary Rules” (106) • Hart, “The Foundation of a Legal System” (118)
5 (Jan 31 - Feb 4)	Law as Integrity <i>Assignment #1 due (Feb 4, 11:54pm)</i>	<ul style="list-style-type: none"> • Dworkin, “The Model of Rules I” (133) • Dworkin, “Integrity in Law” (155)
6 (Feb 7-11)	American Legal Realism	<ul style="list-style-type: none"> • Holmes, “The Path of the Law” from <i>The Common Law</i> (177) • Frank, excerpt – <i>Law and the Modern Mind</i> (L) • Leiter, “Rethinking Legal Realism: Toward a Naturalized...” (182)
Part Two: Responses to and Applications of Legal Theory		
7 (Feb 14-18)	Some Marxist Perspectives <i>Test #1 in Learn (Feb 15, 10am – Feb 16, 11:54pm)</i>	<ul style="list-style-type: none"> • Marx and Engels, “The Ruling Class and the Ruling Ideas” (L) • Vincent, “Marx and Law” (L)
<i>Reading Week (Feb 19-27) – No Classes or Assignments Due</i>		
(Feb 28 – Mar 4)	Assignment Discussion	None
8 (Mar 7-11)	Feminist Jurisprudence, Critical Race Theory & Legal Pluralism <i>Discussion Forum #3</i>	<ul style="list-style-type: none"> • Smith, “Feminist Jurisprudence and the Nature of Law” (218) • McKinnon, “Toward Feminist Jurisprudence” (227) • Crenshaw, “Demarginalizing the Intersection of Race and Sex” (L) • Palmater, “Shining Light on Dark Places” (L) • VIDEO, TedTalk: Crenshaw, The Urgency of Intersectionality (L) • Delgado, “About Your Masthead” (236) • Borrows, excerpt – “Indigenous Legal Traditions in Canada” (L)
9 (Mar 14-18)	Constitutional Rights, Judicial Review, and Democracy	<ul style="list-style-type: none"> • Waldron, “A Right-Based Critique of Constitutional Rights” (263) • Waluchow, “Constitutions as Living Trees: An Idiot...” (288)
10 (Mar 21-25)	Laws and Limits on Individual Liberty <i>Discussion Forum #4</i>	<ul style="list-style-type: none"> • Mill, excerpt – <i>On Liberty</i> (329) • Devlin, “Morals and Criminal Law” (342) • Hart, excerpt – <i>Law, Liberty and Morality</i> (357) • Dworkin, “The Threat to Patriotism” (366) • Maitra and McGowan, “On Racist Hate Speech...” (L)
11 (Mar 28-Apr 1)	Responsibility and Punishment <i>Assignment #2 due (April 1 (or 4), 11:54pm)</i>	<ul style="list-style-type: none"> • Hart, “Postscript: Responsibility and Retribution” (381) • Duff, “Choice, Character, and Action” (392) • Hurd, “Why Liberals Should Hate Hate Crimes Legislation” (410) • Foucault, excerpt – <i>Discipline and Punish</i> (L)

(Apr 4-5)	<p style="text-align: center;">Wrap Up</p> <p style="text-align: center;"><i>Test #2 in Learn Apr 11, 10am – Apr 12, 11:54pm</i></p>	<ul style="list-style-type: none"> • None
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- *Other than required texts (see sec. 5 above), you can access the readings listed here in UW course reserves.*
- *You are expected to do the relevant readings early each week in order to participate in weekly participation surveys and discussion forum threads in an informed way.*

13. UW POLICY REGARDING ILLNESS AND MISSED TESTS

The University of Waterloo Examination Regulations

(www.registrar.uwaterloo.ca/exams/ExamRegs.pdf) state that:

- A medical certificate presented in support of an official petition for relief from normal academic requirements must provide all of the information requested on the “University of Waterloo Verification of Illness” form or it will not be accepted. This form can be obtained from Health Services or at www.healthservices.uwaterloo.ca/Health_Services/verification.html.
- If a student has a test/examination deferred due to acceptable medical evidence, he/she normally will write the test/examination at a mutually convenient time, to be determined by the course instructor.
- *[Note: At St. Jerome’s, make-up midterm exams and quizzes have traditionally been offered on the first Friday following the exam, from 1:00 pm – 4:00 pm, in room STJ 3012. This may not apply for remote learning course offerings.]*
- The University acknowledges that, due to the pluralistic nature of the University community, some students may on religious grounds require alternative times to write tests and examinations.
- Elective arrangements (such as travel plans) are not considered acceptable grounds for granting an alternative examination time.

14. OTHER IMPORTANT INFORMATION

- **Academic Integrity:** In order to maintain a culture of academic integrity, members of the University of Waterloo community are expected to promote honesty, trust, fairness, respect, and responsibility. Check www.uwaterloo.ca/academicintegrity/ for more information.
- **Grievance:** A student who believes that a decision affecting some aspect of their university life has been unfair or unreasonable may have grounds for initiating a grievance. [Read the St. Jerome’s University Policy on Student Petitions and Grievances.](#) When in doubt, please be certain to contact the St. Jerome’s Advising Specialist, Student Affairs Office, who will provide further assistance.
- **Discipline:** A student is expected to know what constitutes academic integrity, to avoid committing an academic offence, and to take responsibility for their actions. Check www.uwaterloo.ca/academicintegrity/ for more information. A student who is unsure whether an action constitutes an offence, or who needs help in learning how to avoid offences (e.g., plagiarism, cheating) or about “rules” for group work/collaboration should seek guidance from the course instructor, academic advisor, or the Associate Dean. When misconduct has been found to have occurred, disciplinary penalties will be imposed under the [St. Jerome’s University Policy on Student Discipline](#). For information on categories of offences and types of

penalties, students should refer to University of Waterloo [Policy 71, Student Discipline](#). For typical penalties, check the [Guidelines for the Assessment of Penalties](#).

- **Appeals:** A decision made or penalty imposed under the [St. Jerome's University Policy on Student Petitions and Grievances](#) (other than a petition) or the [St. Jerome's University Policy on Student Discipline](#) may be appealed if there is a ground. A student who believes they have a ground for an appeal should refer to the St. Jerome's University policy on [Student Appeals](#).

15. NOTE FOR STUDENTS WITH DISABILITIES

[AccessAbility Services](#), located in Needles Hall (Room 1401) at the University of Waterloo, collaborates with all academic departments to arrange appropriate accommodations for students with disabilities without compromising the academic integrity of the curriculum. If you require academic accommodations to lessen the impact of your disability, please register with AccessAbility Services at the beginning of each academic term, www.uwaterloo.ca/accessability-services/.

16. MENTAL HEALTH SUPPORT

On Campus

- Counselling Services: counselling.services@uwaterloo.ca / 519-888-4567 x32655
- **MATES:** one-to-one peer support program offered by Federation of Students (FEDS) and Counselling Services
- Health Services Emergency service: located across the creek from the Student Life Centre

Off campus, 24/7

- **Good2Talk:** Free confidential help line for post-secondary students. Phone: 1-866-925-5454
- Grand River Hospital: Emergency care for mental health crisis. Extended Assessment Unit Phone: 519-749-4300 x6880
- **Here 24/7:** Mental Health and Crisis Service Team. Phone: 1-844-437-3247
- **OK2BME:** Support services for lesbian, gay, bisexual, transgender or questioning teens in Waterloo. Phone: 519-884-0000 x222

Full details can be found online at the Faculty of ARTS [website](#)

Download [UWaterloo and regional mental health resources \(PDF\)](#)

Download the [WatSafe app](#) to your phone to quickly access mental health support information

Contact Health Services

[Health Services Building](#)

Call 519-888-4096 to schedule an appointment

Call 1-866-797-0000 for free 24/7 advice from a health professional

Contact Counselling Services

[Needles Hall Addition, NH 2401](#)

Call 519-888-4567 x 32655 to schedule an appointment

counserv@uwaterloo.ca

At SJU, Lindsay Thompson, Wellness Coordinator (lindsay.thompson@uwaterloo.ca), is our student wellness resource and is available by email.

17. WRITING AND COMMUNICATION CENTRE

The Writing and Communication Centre works with students as they develop their ideas, draft, and revise. Writing and Communication Specialists offer one-on-one support in planning assignments, synthesizing and citing research, organizing papers and reports, designing presentations and e-portfolios, and revising for clarity and coherence.

You can make multiple appointments throughout the term, or drop in at the Library for quick questions or feedback. To book a 50-minute appointment and to see drop-in hours, visit www.uwaterloo.ca/writing-and-communication-centre. Group appointments for team-based projects, presentations, and papers are also available. Please see the Writing and Communication Centre website for information on how to proceed in light of current Covid-19 restrictions.

Please note that communication specialists guide you to see your work as readers would. They can teach you revising skills and strategies, but will not change or correct your work for you. Please bring hard copies of your assignment instructions and any notes or drafts to your appointment.