

St. Jerome's in the University of Waterloo
Department of Philosophy
PHIL 327 sec 041-LS 351 sec 041
Philosophy of Law
Course outline
Fall 2020

Course Information:

Lecture-meeting time: There will be one recording of one to two hours, posted on Learn before noon each Tuesday. There will be one synchronous live one-hour session on Thursdays at 3:00 pm. (The time for the live sessions may change, depending on my understanding of the availability of students.)

Professor: Stephanie Gregoire

Email address: gregoire@uwaterloo.ca

Office hours: I will not hold specific office hours. Whenever you need help and want to connect, send me an email. I will schedule a phone appointment or a zoom meeting at our mutual convenience. Do not hesitate to contact me, I am happy to help, and it is always better to take action earlier than later.

Course Description/Learning Objectives:

The goal of this course is to become familiar with some of the basic issues in the philosophy of law. In the first part of the course we will reflect upon the nature of law, starting from our experience and with the two principal legal theories (naturalism and positivism). We will also ask questions concerning aspects of legal practice, such as the nature of legal reasoning and the duties and responsibilities of those involved in the legal system. In the second part of the course, we will familiarize ourselves with the division of law into its different parts, such as constitutional, criminal and civil law, and we will examine certain key notions in these fields of law, such as rights, responsibility, excuses and punishment.

Recorded lectures (Tuesdays) will consist in a presentation of the material by the professor on the issues to be considered, some reading and commenting of key passages, and discussions of study questions. Some videos might also be shown. You will be notified in advance of the topics to be discussed, and you will be responsible for doing the reading assignments prior to the session. The synchronous live hour is meant for exchanges between students and the professor, discussions, questions, clarifications, comments, etc.

Intellectual Property

Students should be aware that this course contains the intellectual property of their instructor, TA, and/or St. Jerome's University. Intellectual property includes items such as:

- Lecture content, spoken and written (and any audio/video recording thereof);
- Lecture handouts, presentations, and other materials prepared for the course (e.g., PowerPoint slides);
- Questions or solution sets from various types of assessments (e.g., assignments, quizzes, tests, final exams); and
- Work protected by copyright (e.g., any work authored by the instructor or TA or used by the instructor or TA with permission of the copyright owner).

Course materials and the intellectual property contained therein, are used to enhance a student's educational experience. However, sharing this intellectual property without the intellectual property owner's permission is a violation of intellectual property rights. For this reason, it is necessary to ask the instructor, TA, and/or St. Jerome's University for permission before uploading and sharing the intellectual property of others online (e.g., to an online repository). Permission from an instructor, TA, or the University is also necessary before sharing the intellectual property of others from completed courses with students taking the same/similar courses in subsequent terms/years. In many cases, instructors might be happy to allow distribution of certain materials. However, doing so without expressed permission is considered a violation of intellectual property rights.

Please alert the instructor if you become aware of intellectual property belonging to others (past or present) circulating, either through the student body or online. The intellectual property rights owner deserves to know (and may have already given their consent).

Course Requirements and Marking Scheme:

Examinations will consist of multiple-choice, true or false, short answer questions and essay questions. They will be cumulative and will cover the lecture material, the video material and the reading material. There will be four open-book take-home tests posted on 29 September (10%); 27 October (25%); 17 November (40%); 3 December (25%) after the lecture or the synchronous session. Apart from the last one, which is due on December 10th, each test is due on the Thursday following the posting at 5pm the latest. They should be left in the Dropbox. I will not be accepting any scanning of hand-written documents; you must type all of your answers. I will mark them and post my comments in time for the live session of the following week, during which the answers and performance will be discussed.

Attendance Policy and Missed Tests:

I emphasize that listening and understanding the lectures is critical for good performance in this course. Late tests will be penalized at a rate of 8% of the total possible grade for the test, per day late, unless you are prevented from writing a test because of sickness.

Then, a medical certificate must be presented and must provide all of the information requested by the “University of Waterloo Verification of Illness” form or it will not be accepted. It is better for all parties involved that you take good note of this at the beginning of the term.

Required Text and Readings:

You will be provided on UW LEARN with documents entitled ‘Guidelines for Study’ which are more or less detailed lists of the main points raised in the lectures and of the readings to be done. These are to help you to take and to structure your course notes and to keep up with the readings. You will also be provided with a number of handouts. The rest of the readings are available to you either through a courseware format at the UW bookstore, or through the electronic reserve of the UW library.

Suggestions of Texts for Personal Consultation:

- Philosophical Problems in the Law*, David M. Adams, 4th edition, Wadsworth, 2004.
- Classic Readings and Canadian Cases in the Philosophy of Law*, edited by Susan Dimock, Prentice Hall, 2002.
- Readings in the Philosophy of Law*, William H. Shaw and John Arthur, second edition, Prentice Hall, 1993.
- Philosophy of Law An Introduction to Jurisprudence*, Jeffrie G. Murphy and Jules L. Coleman, Totowa, N.J. : Rowman & Allanheld, 1984.

Provisionary List of Readings:

Section I: Introduction

‘Philosophy and the Law; The Case of the Overcrowded Lifeboat’

Section II: The Essence of Law

Minos, Plato

Antigone, Sophocles

‘Dissoi Logoi’ from *The Older Sophists*

‘What is Law?’

‘Nuremberg: A Fair Trial?’

‘Can a Murderer Inherit’

‘Classical Theories of Law’

‘Natural Law Theory’

‘The Province of Jurisprudence Determined’ (by John Austin)

‘Positivism and the Separation of Law and Morals’ (by H.L. Hart)

‘Law as the Union of Primary and Secondary Rules’ (by H.L. Hart)

The Summa Theologica; First Part of the Second Part Questions 90-96 (by T. Aquinas)

Section III: The Ethical Responsibilities of the Lawyer

‘The Practice of Law: Lawyer’s Ethics in an Adversary System’

‘Lawyers as Professionals: Some Moral Issues’

The Summa Theologica; Second Part of the Second Part Question 71 article 3 (by T. Aquinas)

Section IV: Criminal Law: Punishment and the Death Penalty

‘Punishment and Responsibility’

‘The Argument for Retributivism’

‘The Death Penalty’

‘Gregg v. Georgia’ 428 U.S. 153 (1976), United States Supreme Court

‘Atkins v. Virginia’ 536 U.S. 304 (2002), United States Supreme Court

‘The Death Penalty Once More’

The Summa Theologica; Second Part of the Second Part Question 64 articles 2-3-7

‘Legal Reasoning and the Constitution’

‘Boundaries of the Law: Freedom of Expression and Enforcing Morality’

‘Obscenity and Pornography’

Section V: Responsibility

‘What is a Crime?’

Oedipus the King, Sophocles

‘The Principles of Criminal Law’

Aristotle’s *Nicomachean Ethics*: Book III chapter 1

‘Who should be punished? The Case of the Dog Provetie’

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, www.sju.ca/sites/default/files/upload_file/PLCY_AOM_Student-Petitions-and-Grievances_20151211-SJUSCapproved.pdf. 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, www.sju.ca/sites/default/files/PLCY_AOM_Student-Discipline_20131122-SJUSCapproved.pdf. For information on categories of offences and types of penalties, students should refer to University of Waterloo Policy 71, Student Discipline, www.adm.uwaterloo.ca/infosec/Policies/policy71.htm. For typical penalties, check the Guidelines for the Assessment of Penalties, www.adm.uwaterloo.ca/infosec/guidelines/penaltyguidelines.htm.

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, www.sju.ca/sites/default/files/PLCY_AOM_Student-Appeals_20131122-SJUSCapproved.pdf.

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/.