

St. Jerome's in the University of Waterloo
Department of Philosophy
PHIL 327 sec 001-LS 351 sec 001
Philosophy of Law
Course outline
Winter 2020

Course Information:

Lecture Time: Tu 6:30-9:20

Classroom: SJ1 #3027

Professor: Stephanie Gregoire

Office: Sweeney Hall #2002

Office Phone: 884-8111 #28247

Office hours: Th 12:00-12:50; 3:00-4:00, or by appointment

Email address: gregoire@uwaterloo.ca

Email policy: Please, use emails for administrative purposes only and not to ask about course content. For example, before a test, you may email me to set up an appointment but not to ask a question about the material.

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.

Classes will consist in a presentation of the material by the professor on the issues to be considered, accompanied by periods of discussions. Some videos will also be shown. You will be notified in advance of the texts to be discussed, and you will be responsible for doing the reading assignments prior to the class session.

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 three in class tests (28 January, worth 8% of final grade; 3 March, worth 20% of final grade; 24 March, worth 32% of final grade) and one final examination (worth 40% of final mark). We will go over the correct answers in class.

Attendance Policy and Missed Tests:

I emphasize that class attendance is critical for good performance in this course. As for missed tests, I am forewarning you that I will be following very strictly the UW policy. That means that if you are prevented from writing a test because of sickness, 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. Also, note that elective arrangements such as travel plans, heavy workload, hobby commitments, family and part time jobs obligations, etc, are not considered acceptable grounds for granting an alternative examination time. I will make no exceptions. See <https://uwaterloo.ca/registrar/final-examinations/examination-regulations-and-related-matters>. All make-up midterm exams and quizzes will be offered on the first Friday following the exam, from 1:00 pm – 4:00 pm.

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. These are to help you to take and to structure your course notes. 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: To maintain a culture of academic integrity, members of the University of Waterloo and its Federated University and Affiliated Colleges are expected to promote honesty, trust, fairness, respect, and responsibility.

Academic Integrity Office (UW): A resource for students and instructors

Discipline: A student is expected to know what constitutes academic integrity, to avoid committing academic offences, and to take responsibility for his/her actions. 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 professor, 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 offenses and types of penalties, students should refer to the St. Jerome's University Policy on Student Discipline.

Grievance: A student who believes that a decision affecting some aspect of his/her university life has been unfair or unreasonable may have grounds for initiating a grievance. Students who decide to file a grievance should refer to University of Waterloo Policy 70 (Student Petitions and Grievances). For more information, students should contact the Associate Dean of St. Jerome’s University.

Appeals: A student may appeal the finding and/or penalty in a decision made under the St. Jerome’s University Policy on Student Discipline or University of Waterloo Policy 70 (Student Petitions and Grievances) if a ground for an appeal can be established. In such a

case, read University of Waterloo Policy 72 (Student Appeals).

Note for Students with Disabilities: The AccessAbility Services (AS) Office, located in Needles Hall, Room 1132, 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 the AS Office at the beginning of each academic term.