

**St. Jerome's in the University of Waterloo**  
**Department of Philosophy**  
**Philosophy of Law**  
**PHIL 327 sec 041-LS 351 sec 041**  
**Course outline**  
**Winter 2021**

**Course Information:**

Lecture and Office Hours: There will be one recording of one to two hours posted on Learn each week on Tuesday or Wednesday. Those are mandatory. There will be one synchronous live one-hour session on most Thursdays at 4:00 pm: those are optional and no new material will be covered; they are meant for students to ask questions, get clarifications, interact and engage in discussion if they wish to do so.

Professor: Stephanie Gregoire

Email address: [gregoire@uwaterloo.ca](mailto:gregoire@uwaterloo.ca)

Supplementary Meetings: Whenever you need help, you are welcome to send me a email. I will schedule a phone appointment or a Webex 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, rather 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.

The format of the lectures is oral, and does not involve Power Point or slides of any type. Recorded lectures will consist in a spoken presentation of the material by the professor on the issues to be considered. You will be notified in advance of the topics and readings to be discussed. (Some videos might also be included.) No transcripts of the recordings will be provided. You should listen to them, reflect, try to understand, and relate their content to the readings. Note that all of these steps, even if they are time consuming and require an effort, are necessary for you to integrate the material and are normal in the context of a philosophy course. They have nothing to do with the covid 19 situation and its online

environment, i.e., they would be required even if the course was delivered in a physical classroom.

### **Required Text and Readings:**

You will be provided on UW LEARN with documents entitled ‘Guidelines for Study’ which are 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 through the electronic reserve of the UW library. If you prefer you can get these same readings in a courseware format at the UW bookstore.

### **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 2 February (12%); 2 March (28%); 23 March (35%); 13 April (25%). Apart from the last one, which is due on April 20<sup>th</sup>, 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 and your document must be in a Word format (no PDF, no Pages) with your name as the title on the icon. I will download the document, mark it and send it back to you as an attachment in time for my recorded lecture of the following week, during which I will discuss the criteria for grading and the correct answers.

I do encourage group studies and collaboration between students. But understand that a group study consists in a number of colleagues meeting to discuss the material. It does not consist in posting your answers online. This makes you vulnerable: if someone copies your answers and hand them in as theirs, you will be involved in my inquiry regarding plagiarism. For it is not allowed to hand in the same development/essay answers as another student. This is cheating, and it is unacceptable. If I see that extensive parts of your answers are word-for-word identical to those of another student, you will both get zero for the test and I will have to report your behaviour to the administration. (See the note about discipline at the end of the syllabus.)

### **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).

**Attendance Policy, Late and Missed Tests:**

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.

**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’

#### **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/](http://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](http://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/](http://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](http://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](http://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](http://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](http://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/](http://www.uwaterloo.ca/accessability-services/).