

# PHIL 430 – Philosophy of Law – Winter 2009

Instructor: Nathan Hanna  
E-mail: nathan.hanna@lawrence.edu

Office: Main Hall 410  
Office Hours: Wednesdays and Fridays,  
2-3pm and by appointment

## I. Required Texts:

H.L.A. Hart's *The Concept of Law*. It should be available at Conkey's.  
Additional readings will be linked to in Moodle and sent out via email.

## II. Course Description:

This course is an introduction to topics in the philosophy of law, many of which figure prominently in moral and political philosophy more generally. We'll begin by briefly discussing questions about the nature of law. What is law and how, if at all, are law and morality related? The rest of the course will cover more practical issues related to the interpretation, formulation and enforcement of the law. We'll discuss punishment, harm, privacy, torture, pornography, free speech, gay marriage and other topics.

## III. Course Objectives

You won't do well in this course just by memorizing facts. This course is meant to help you develop various **skills**, among them reading, writing and critical thinking skills. You will do this by 1) examining philosophical texts and arguments and 2) advancing and defending your own arguments in speech and writing. You'll learn to identify and evaluate arguments and to formulate and defend your own arguments. This is very difficult. Academic philosophy demands formalism, rigor and a lot of careful thought.

I've tried to select relatively clear, accessible readings, but you'll still have to put a lot of effort into trying to understand them (I've emphasized work by professional philosophers, but we'll also be reading some legal scholarship and excerpts from court opinions). You'll also have to **think** about the positions and arguments we'll discuss. This means thinking both about the particular readings we cover – e.g., the claims made by particular authors – and more generally about the particular issues discussed in those readings. In an important sense, you have to be prepared to **go beyond the readings** – say by identifying relevant issues that may not have been discussed by an author and determining how they might bear on the author's arguments and more generally on different arguments and positions regarding the topic at issue. You'll be expected to challenge your beliefs by evaluating arguments for and against those beliefs and also to evaluate positions on issues you may not have thought much about before. In the process, I hope you'll learn to become careful, sober, objective, but still enthusiastic and imaginative thinkers.

#### IV. Course Requirements

<u>Grade Distribution</u>	<u>Grading Scale</u>		
Quizzes: 5%	A: 94-100	A-: 90-93	
Attendance: 5%	B+: 87-89	B: 83-86	B-: 80-82
Participation: 10%	C+: 77-79	C: 73-76	C-: 70-72
Term Paper: 35%	D: 60-69	F: 0-59	
Paper Draft: 5%			
2 Exams: 20% each			

##### Attendance

Attendance is mandatory. I take attendance. Everyone gets two unexcused absences. Further absences will reduce your grade, directly detracting from your attendance and participation scores and indirectly detracting from the other parts of your grade. You are solely responsible for acquiring notes, handouts, etc. for days you are absent and should check with me to see if you missed any announcements.

##### Term Paper

You'll write one term paper at least 1500 words long (5-6 double spaced pages). I'll distribute topics. You may suggest a topic of your own if you like, but you must get my approval first (the topic will have to be one of the ones we've discussed or will discuss, i.e., related to one of the readings I've assigned but haven't included in the paper topics – if you want to write on a topic we haven't discussed yet, you'll have to read ahead). I'll also provide a handout outlining how papers should be written. A rough draft is required. I'll read it and suggest revisions.

##### Reading and Reading Quizzes

You won't do well unless you do the readings. This should constitute the bulk of the coursework. Reading philosophy and legal scholarship is difficult and time consuming. Read each piece carefully and, if necessary, multiple times. Budget your time accordingly, paying particular attention to the length of each reading well before the day it needs to be read – unavoidably, some days will involve lots more reading than others. Take brief notes on each piece, identify the most important parts (for more reading), jot down questions and comments to bring up in class, etc. As an added incentive, I'll give pop reading quizzes, usually one per week on a random day, though I reserve the right to administer as many as I like – and some weeks I'll probably give multiple ones just to keep you on your toes. Quizzes make up 5% of your grade. Quizzes missed because of unexcused absences can't be made up. I won't give quizzes on exam days or on days that drafts/papers are due. If you are excused from a quiz, I will not give you credit for the quiz, but will simply reduce the number of quizzes when calculating your final grade (e.g., if we take 10 quizzes, you are excused from 1 and get credit for 8 of the ones you took, your quiz grade will be 8/9).

##### Participation

Discussion is crucial to philosophy and it's required. Participation is 10% of your grade. You are expected to come to class prepared to engage in serious discussion. To do this you will have to carefully read and think about the assigned readings. **You also have to**

**be prepared to think on your feet.** You can ask questions and offer comments any time. This is more likely to foster interest, thought and understanding – more than straightforward lectures. I won't lecture all the time (though I have to lecture a bit and may have to temporarily limit discussion if we fall behind). I realize that speaking in class can be difficult, but learning to articulate your thoughts is an important skill that this course is intended to help you develop. There's no way around it. If you find it difficult to talk, try to force yourself to do so (thinking up questions or comments in advance, say while reading, can help somewhat). If you can't bring yourself to talk in class, I strongly recommend that you consider taking another course. Failing to speak regularly will impact your grade. If you do not speak at all, you will get a 0 for your participation score. I reserve the right to call on people. Disrespectful, disruptive behavior will not be tolerated.

#### Exams

You'll take two 100-point exams, the first covering the material discussed over the first few weeks of class and the second covering material discussed over the last few weeks. The exams will be writing intensive, consisting exclusively of short answer and short essay questions. Typically, you'll have some limited options and will not have to answer every single question.

### **V. Additional Policies**

#### Academic Dishonesty

If you cheat or plagiarize, I'll catch you and you'll regret it. I enforce the University's policy on academic dishonesty without exception. If you plagiarize or cheat on any assignment, no matter how seemingly insignificant, the incident will be reported to the Dean of Student Academic Services and to the Honor Council. Even if you plagiarize the paper draft, the incident will be reported. You must write the following statement on all assignments, followed by your signature: "I reaffirm the LU Honor Pledge."

#### Missed Exams

If an emergency (serious illness, injury, passing of a friend or family member) forces you to miss an exam or renders you unable to hand in an assignment on time, try to contact me beforehand (a short email is fine). We'll then schedule a make-up exam or agree on an extension deadline. Vacations, oversleeping, etc. are not acceptable reasons. Plan your term accordingly.

## PHIL 430 – Philosophy of Law – Winter 2009

### VI. Tentative Schedule:

Readings marked “\*” will be distributed via email.

Readings marked “+” are linked to in Moodle.

*CoL = The Concept of Law*

<b>Week 1</b> Introduction Positivism and Natural Law Theory	1/5 – Introduction 1/7 – <i>CoL</i> , Ch 1, pp. 1-17 1/9 – <i>CoL</i> , Ch. 9, pp. 185-212.
<b>Week 2</b> Positivism and Natural Law Theory continued	1/12 – *Murphy, “Natural Law Jurisprudence” 1/14 – <i>CoL</i> , Chs. 2-3, pp. 18-49 1/16 – <i>CoL</i> , Ch. 5, pp. 79-99 and Ch. 6, Sections 1 and 2, pp. 100-117
<b>Week 3</b> Judicial Interpretation and its applications	<b>1/19 – Martin Luther King Day – No class</b> 1/21 – *Dworkin, “The Model of Rules” 1/23 – *Griswold v. Connecticut, 381 U.S. 479 (1965) *Bork, “The Right of Privacy: The Construction of a Constitutional Time Bomb.”
<b>Week 4</b> Law Abidance and Legal Obligation Criminal Law: Retributivism	1/26 – *** <b>Exam 1</b> *** 1/28 – +Hart, “Are There Any Natural Rights?” 1/30 – *Feinberg, “The Classic Debate” *Davis, “They Deserve to Suffer”
<b>Week 5</b> Criminal Law: Retributivism and Consequentialism	2/2 – *Morris, “Persons and Punishment” 2/4 – *Fingarette, “Punishment and Suffering” 2/6 – +Rawls, “Two Concepts of Rules”
<b>Week 6</b> Alternatives to Punishment: Reparations Torture	2/9 – +Sayre-McCord, “Criminal Justice and Legal Reparations as an Alternative to Punishment” 2/11 – *Waldron, “Torture and Positive Law” (selections) <b>2/13 - Reading Day – No Class</b>
<b>Week 7</b> Gay Marriage Free Speech	2/16 – *Sup Court of CA Case# S147999 (2008), pp 1-12. *Jordan, “Is it Wrong to Discriminate on the Basis of Homosexuality?” 2/18 – *373 N.E. 2d 21, (Ill. 1978), Skokie v. National Socialist Party. +Scanlon, “A Theory of Freedom of Expression” 2/20 – +Maitra and McGowan, “On Racist Hate Speech and the Scope of a Free Speech Principle”
<b>Week 8</b> Pornography Affirmative Action Harm	2/23 – +Maitra, “Silence and Responsibility” 2/25 – +Nagel, “Equal Treatment and Compensatory Discrimination” 2/27 – *** <b>Term Paper Drafts Due</b> *** +Ripstein, “Beyond the Harm Principle”
<b>Week 9</b> Equality Civil Disobedience The Laws of War	3/2 – +Frankfurt, “Equality as a Moral Ideal” 3/4 – *Waldman, “Civil Rights – Yes: Civil Disobedience – No” 3/6 – *Wasserstrom, “The Laws of War”
<b>Week 10</b> Civil/Tort Law Contract Law	3/9 – *Perry, “Loss, Agency and Responsibility for Outcomes” 3/11 – *Kronman, “Contract Law and Distributive Justice” <b>3/13 – *** Term Paper Due ***</b> wrap-up