

HON 394: Upper Level Jurisprudence

Office Hours: M 8am-11am on Zoom

<https://asu.zoom.us/j/6890029678>

Please schedule through Canvas

Note: No laptops permitted in class (in general)

Course Goals:

This course is an advanced introduction to classics of jurisprudence for students with interests and backgrounds in either law or philosophy. So much ink has been spilled over these classical texts that the disputes between the commentators has obscured the original issues. With that in mind the course covers classic works so students can analyze the original works that inform the current debate. Since it is an upper level course, the syllabus is flexible, some discussions may carry over to the following week.

Required Books:

Ronald Dworkin, *Taking Rights Seriously*, (Harvard University Press, 1977) [the new Bloomsbury edition or the original H.U.P. Version are equally usable]

H.L.A. Hart, *The Concept of Law*, 3rd edition (Oxford, 2012)

Patterson, Dennis (ed.), *Philosophy of Law and Legal Theory: An Anthology*, (Wiley-Blackwell, 2003) [you can dig out the articles individually online, but it is convenient to have them all collected in one book]

All other readings will be available online at the course website. The website will also contain announcements, course policies, and other materials relevant to the course.

Assignments and Grading:

This course consists of two exams and one paper. The paper can be written at time during the term. It is a five-page paper in which you will develop an objection to a view discussed in one of the readings. It is due at the end of the term. The two exams each cover half of the course. Additionally, you must regularly participate in classroom discussion. The paper and exams each compose 25% of your grade and participation is the final 25%.

Exams:

This course has a midterm and a final exam. You are required to bring a Bluebook (or Greenbook) to take the examination. Each examination will begin promptly at the start of class and end exactly at the end of the class time. Improper behavior, i.e. cheating, during an exam will result in a score of a zero for the entire course.

Papers:

This class requires one paper of 5-6 pages in length. The formatting guidelines for the paper will be available in a document on Canvas. The paper must be submitted to SafeAssign through the Canvas site as well as turned in as a hardcopy to me. Failure to submit the paper in both manners before the deadline will result in a grade penalty. Plagiarism on the paper will result in a score of a zero.

Participation:

Effective participation requires mastery of the reading assigned for the class period. Failure to do the reading will make effective participation impossible. Good participation is a matter of quality rather than quantity. **Please come prepared to share at least one comment or question about the week's reading during each class.**

I'm looking forward to hearing your ideas and insights, and I welcome suggestions for things you would like to talk about (confusing passages, key terms, etc.). When you talk, please address your comments to the whole class, not just to me. Being a good participant is not just about speaking, but also about listening attentively to your classmates and addressing their comments thoughtfully. The criteria I use when grading participation include the following:

- **A:** The student in this grade range arrives to class each day thoroughly prepared with comments and questions on the assigned reading. Comments reveal that the student has read carefully; this student occasionally initiates the discussion without waiting for the instructor to do so. This student does not, however, try to dominate the class, but listens carefully to the remarks made by fellow class members, and responds as readily to these as to the instructor's questions. This student's comments are almost always backed up by direct reference to the text under discussion. They will be able to ask others insightful questions about their views and will be able to develop and extend the ideas of others.
- **B:** The student in this grade range participates in most discussions, although not as fully or reliably as the student described above. There is evidence of having done the reading. This student pays attention to the comments of the other students.
- **C:** The student in this grade range participates only intermittently, and is more willing to discuss broad, general questions than to engage in concrete analysis of an assigned text. Sometimes unprepared, this student lacks interest in the ideas of other members of the class, and is often inattentive. This student may also sometimes disrupt or otherwise interfere with others' ability to engage in the discussion.
- **D or E.** The student in this grade range seldom, if ever, participates and/or neglects to bring the proper text to class.

I will calculate your final participation grade at the end of the semester. If you are concerned about this part of your final grade, please come to my office hours so that we can discuss your current performance and possible strategies for improvement.

Policies for Disruptive Behavior:

Students are entitled to receive instruction free from interference by other members of the class. An instructor may withdraw a student from the course when the student's behavior disrupts the educational process per "Instructor Withdrawal of a Student for Disruptive Classroom Behavior"

<http://www.asu.edu/aad/manuals/ssm/ssm201-10.html>

- Appropriate behavior is defined by the instructor and includes keeping course discussion focused on the assigned topics. Students must maintain a cordial atmosphere and use tact in expressing differences of opinion.
- The Office of Student Rights and Responsibilities accepts incident reports from students, faculty, staff, or other persons who believe that a student or a student organization may have violated the Student Code of Conduct <https://eoss.asu.edu/dos/srr/codeofconduct>.

Grading Rubric:

A+ → 100-98%
 A → 97-93%
 A- → 92-90%
 B+ → 89-88%
 B → 87-83%
 B- → 82-80%
 C+ → 79-78%
 C → 77-70%
 D → 69-60%
 E → 59% and below

Grading Standards for Student Papers:

A-level: An excellent paper engages with the subject in an exceptionally rigorous or imaginative way and demonstrates that the writer has arrived at his or her conclusions through a close and sustained examination of the text. The paper progresses through clearly ordered and relevant stages, and it is developed with concrete, substantial, and consistently relevant evidence. Individual paragraphs, as well as the essay as a whole, are unified and coherent, and transitions are effective. Individual sentences are skillfully constructed: coherent, forceful, and effectively varied. The diction is precise and engaging.

B-level: A good paper has many of the same qualities as an excellent paper, but it is not as consistently distinguished in all areas. The content is sound, but not as original as that of an excellent paper. The organization and style are generally effective, but they are not as polished or elegant as those of an excellent paper. Occasional awkwardness in sentence structure, punctuation, or other areas may occur, but they do not detract seriously from the effectiveness of the essay.

C-level: Marginal work suffers from major problems, but it is still minimally passing. In some cases the central idea is not entirely clear or its development is inadequate; there may be little supporting evidence for the admittedly sound generalizations. In other cases, the content may be sound, but the paper contains significant grammatical or mechanical errors. Such grades do not indicate that a student cannot succeed in this course, merely that he or she needs to devote significant time and effort to improving his or her writing and work closely with the instructor to determine the precise source of the problem.

D to E-level: Papers in this grade range suffer from major problems in content, form, or both. In some cases the content is unclear and the central idea is not supported. Organizational problems and/or errors in sentence structure and grammar may severely hinder communication. In other cases the paper may fail to meet the requirements of the assignment.

Accessibility Statement:

In compliance with the Rehabilitation Act of 1973, Section 504, and the Americans with Disabilities Act as amended (ADAAA) of 2008, professional disability specialists and support staff at Student Accessibility and Inclusive Learning Services (SAILS) facilitate a comprehensive range of academic support services and accommodations for qualified students with disabilities. Qualified students with disabilities may be eligible to receive academic support services and accommodations. Eligibility is based on qualifying disability documentation and assessment of individual need. Students who believe they have a current and essential need for disability accommodations are responsible for requesting accommodations and providing qualifying documentation to SAILS. Every effort is made to provide reasonable accommodations for qualified students with disabilities. For more information please visit the SAILS website: <https://eoss.asu.edu/accessibility>.

Mandatory Title IX Statement:

Title IX is a federal law that provides that no person be excluded on the basis of sex from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity. Both Title IX and university policy make clear that sexual violence and harassment based on sex is prohibited. An individual who believes they have been subjected to sexual violence or harassed on the basis of sex can seek support, including counseling and academic support, from the university. If you or someone you know has been harassed on the basis of sex or sexually assaulted, you can find information and resources at <https://sexualviolenceprevention.asu.edu/faqs>.

As a mandated reporter, I am obligated to report any information I become aware of regarding alleged acts of sexual discrimination, including sexual violence and dating violence. ASU Counseling Services, <https://eoss.asu.edu/counseling> is available if you wish to discuss any concerns confidentially and privately. ASU online students may access 360 Life Services, <https://goto.asuonline.asu.edu/success/online-resources.html>

INTRODUCTION	
8/19	Introduction, Paper Guidelines, etc.
Hart's Positivism	
8/24	Hart, <i>The Concept of Law</i> , ch.1-2.
8/26	Hart, <i>The Concept of Law</i> , ch.3-4
8/31	Hart, <i>The Concept of Law</i> , ch.5-6
9/02	Hart, <i>The Concept of Law</i> , ch.7, 8, 10.
Dworkin's Critique and Hart's Response	
9/07	Dworkin, <i>Taking Rights Seriously</i> , ch.1-2.
9/09	Dworkin, <i>Taking Rights Seriously</i> , ch.3.
9/14	Dworkin, <i>Taking Rights Seriously</i> , ch.4,6.
9/16	Dworkin, <i>Taking Rights Seriously</i> , ch. 7.
9/21	Hart, <i>Postscript to The Concept of Law</i> .
9/23	Hurley, "Coherence, Hypothetical Cases, and Precedent" *Online
Positivism's other Critics and Defenders	
9/28	Fuller, "Positivism and Fidelity to the Law: A Reply to Professor Hart."
9/30	Coleman, "Negative and Positive Positivism."
10/05	Finnis, "On the Incoherence of Legal Positivism."
10/07	Shapiro, "The 'Hart-Dworkin' debate: A Short Guide for the Perplexed." *Online
10/12	Exam 1
Theories of Adjudication	
10/14	Holmes, "The Path of Law"
10/19	Llewellyn, "A Realistic Jurisprudence--The Next Step."
10/21	Weintrub, "Legal Formalism: On the Immanent Rationality of Law."

10/26	Schauer, "Formalism." *Online
10/28	Levi, An Introduction to Legal Reasoning, first half *Online
11/02	Levi, An Introduction to Legal Reasoning, second half *Online
11/04	Posner, "What has Pragmatism to Offer Law?"
11/09	Cotter, "Legal Pragmatism and the Law and Economics Movement." *Online
11/11	No Class, Veterans' Day
11/16	Crenshaw, "Race, Reform, and Retrenchment..." *Online
CONCLUSION	
11/18	Bell, " <i>Brown v. Board of Ed...</i> " *Online
11/23	No Class
11/30	Concluding lecture and discussion
12/02	Exam 2

Final Paper Due December 6th at Noon, Hardcopy and Electronic Copy required