

PHIL 155 PHILOSOPHY OF LAW

Class Meetings: MW 12:00-1:15 in DH 110
Instructor: Dr. Christina Bellon, Department of Philosophy
Office Hours: M&W 10-11:30; and by appointment.
Contact: MND 3030, 278.4759, www.csus.edu/indiv/b/bellonc; via SacCT email. Please keep all course related communications within SacCT.

A Note on Availability:

Other than during scheduled office hours, communication will be answered generally within one working day. After 5pm M-F or on the weekend, do not expect a response until the next business day.

CATALOGUE DESCRIPTION

This course will examine *theories of the nature of law, e.g., natural law, legal positivism, legal realism. Selected controversies in contemporary law will also be studied, such as the justification of punishment, the legislation of morality, judicial activism vs. judicial restraint.*

COURSE DESCRIPTION

What is 'law'? Is it something like gravity, which, though we may wish to defy it, always has its way us? Is it something which it is possible to resist, on what terms, at what risks to those who do? Since King John of England signed (however unwillingly and unhappily) the *Magna Carta* in 1215, people have been asking how far and to who's benefit the state may regulate the behaviour of the people who comprise it. This course will consider answers offered to these and other questions about the nature of law, its role in the mediation of the relationship between the state (community) and the individual.

Toward this end, we will consider several theoretical approaches to law and jurisprudence. Once we have a solid appreciation of theoretical matters, we will explore the relation between law, morality and politics as the latter provide alternative sources of justification for the law's authority. We will also examine the philosophical underpinnings of such important legal concepts as the rule of law, privacy, liberty, responsibility (culpability), intentionality, and punishment. Finally, we will consider the role of law in maintaining an ordered and structured society. We will also spend some time on the basics of legal reasoning (i.e., logic for lawyers) and on techniques and tools needed to read cases fruitfully, both as philosophers and as budding scholars of law.

TEXTS

1. Kavanagh and Oberdiek, *Arguing About Law* (Routledge, 2009), Price: \$50.00 (\$43.25 on Amazon, \$55.25 at the Hornet Bookstore). ISBN: 9780415462426
2. Martin Golding, *Legal Reasoning* (Broadview Press, 2001), Price \$22.95. ISBN: 9781551114224
3. Supplemental readings in SacCT.

LEARNING OBJECTIVES

At the completion of this course, students should have *refined* the following scholarly abilities:

1. Accurately describe and distinguish between a variety of legal concepts, theories, and positions;
2. Express one's own judgements and construct basic legal arguments in a cogent and clear fashion;
3. Engage in cogent and respectful discussion of difficult and sometimes controversial issues;
4. Analyze specific legal arguments for consistency and credibility (including one's own);
5. Read and analyze legal case texts;
6. Demonstrate familiarity with common law traditions and their operation in actual legal systems (primarily the US, UK, International system).

EVALUATION

Students will be evaluated by several means. These will include a series of short in-class interpretive essays, substantive essays, case analyses, and on-line discussions. The course is graded on the basis of 100pts (1pt = 1%).

ALL assignments and essays are administered within SacCT. Print or hand submitted copies will not be accepted. All assignments must be completed in the appropriate assignment or assessment area in SacCT.

Grading Scale

A Outstanding (96pts and above)	A- Very Good (90-95pts)
B Range Satisfactory (75-89pts)	C Range Minimally Satisfactory (60-74pts)
D Range Poor (50-59pts)	F Unacceptable (below 50pts)
This is based upon a 100 pt scale with 1pt = 1%	

Technology Component

Please note this course includes a significant SacCT component. Essay assignments can be found there, as well as required group discussion, and general calendar and class notification options. You will need a saclink account to participate in this component of the course. Technical problems must be addressed to the Saclink Help Line @ 278-7337.

A Note on Participation

As this is an upper division class, it should be taken as an opportunity for you to enhance your communication skills. I strongly encourage you to come regularly, do the readings ahead of time, and participate in class discussions and activities. Attendance will be taken at the beginning of every class.

Analytic Exercises (20pts)

At least ten times during the semester, you will be given a question at the beginning of class which will prompt you to reflect on some aspect of the assigned reading. You will have approximately ten minutes in class to write and submit a one page (250 word) reflection. These prompts will serve to focus discussion for the class period. If more than ten opportunities are provided, your grade for this component of the course will consist of your best ten scores.

These submissions will be graded as excellent (A: 2.0), good (B: 1.75), satisfactory (C: 1.5), unsatisfactory (D: 1.0) on a two-point scale. Failure to submit a response during the class period assigned will result in a zero grade (F: 0). No make-ups, no late submissions.

Legal Reasoning Quizzes (Best 4 of 5 Quizzes x 5pts each = 20pts)

These quizzes pertain to the material in the section on legal reasoning. Each quiz will be administered online, will be timed, and will be available for at least 3 calendar days. There will be no make-up opportunity for these quizzes. You will be required to submit 5, your best 4 scores being counted toward your grade.

Short Essays (2x 15pts = 30pts)

You will be required to write and submit two formal essays, each of which will consist of a 1500-2000 word (double spaced, normal font & margins) explication and analysis of the issue identified in the essay assignment for each course segment. *You must submit both essays for grading to complete the course. Failure to do so will result in a grade of F for the course.*

Case Analysis (10pts)

This is a short 1000 word assignment in which you will demonstrate your ability to read and analyze legal cases.

On-Line Discussion (20pts)

Every student will be required to contribute at least 12 times to the on-line discussion, including at least thrice (three times) to each of the four course sections. Each student is also expected to read and follow the discussions of their class-mates. Contributions may consist of:

- (i) asking philosophical questions which probe the reading and engage in further explication and analysis of the text,
- (ii) responding thoughtfully to someone else's question,
- (iii) suggesting connections between this reading and other course material,
- (iv) bring current events and other empirical facts/evidence to bear on the reading.

All of this must be conducted in the effort to better understand the texts and to further our appreciation of the material's strengths and weaknesses. Polemics, ideological shortcuts, and other rather thoughtless and unscholarly contributions will not satisfy this requirement and should be resisted. Proper on-line etiquette is expected; violations will not be tolerated.

Each student must have made a total of 12 contributions to on-line discussion by the end of semester (with at least three postings to each of the four course sections). Further, *each student must have read at least ¾ (three-quarters) of the available contributions of their fellows to qualify for a satisfactory grade of C- or better (regardless of how many submissions they have made).*

COURSE POLICIES AND ETIQUETTE

Attendance

Regular attendance is expected from all class participants. Disruptions, rudeness and private discussions, including cell phone disruptions, will not be tolerated. This means while in class, you should be focused on classroom activities and material. Sleeping, using a cell phone, reading a newspaper, doing assignments for other classes, or otherwise engaging in disruptive or disrespectful behavior will be met with a loss of ½pt (per incidence) from the final course grade. **All cellular devices and iPods/music players must be turned off during class unless being used explicitly for class activities.**

Late Assignments

All essay assignments are due at the beginning of class on the day listed in the course schedule. Late assignments will be penalized at a rate of 10% per calendar day (not merely class period) beginning with the due date. After three days, acceptance of the assignment is at the instructor's discretion. If you know you will not be able to meet a due date, it is your responsibility to consult with the instructor before the assignment is due. It is your responsibility to know the due dates and to plan accordingly. Leaving an assignment until the day or two prior is risky and makes you more vulnerable than you already are to factors and events in the universe beyond your control! **No extensions, no exceptions.**

When submitting any assignment in SacCT, ALWAYS check its status to ensure it was submitted. Do not merely hit "submit" and leave. It is your responsibility to ensure your assignment was submitted accurately and timely. Do not wait for the instructor to ask you about it or for a "0" to appear in your grade column!

Plagiarism and Cheating

Plagiarism is a serious academic offence and will not be tolerated in this class. Assignments in which plagiarism is found will at the least be graded at 0 (not just an F). ALL incidents of plagiarism will be reported both to the Department Chair and to the Judicial Officer in the Office of Student Affairs for possible further administrative sanction. **It is your responsibility to**

know and comply with the University's Academic Honesty Policy

<http://www.csus.edu/umannual/student/UMA00150.htm>.

Disability Accommodation

If you have a documented disability (visible or invisible) and require accommodation or assistance with assignments, tests, attendance, note taking, etc., please see the instructor by the end of the third week of classes so that arrangements can be made. Failure to notify and consult with the instructor by this date may impede my ability to offer you the necessary accommodation and assistance in a timely fashion. Also be sure to consult with the Services to Students with Disabilities (Lassen Hall) to see what other campus services and accommodation options are available for you.

WEEKLY SCHEDULE

- Au 29 Introductory class
Welcome, personal introductions, discuss syllabus, requirements, etc.
- Au 31 Introductory class
What is law? What does it have to do with us?
Read: Kavanagh & Oberdiek, pp 1-6.
- Se 5 **No Class – Labour Day! Go rest!**
- Se 7 Reading Cases
Read: “How to Read a Case.” Be prepared for in class discussion of two cases
Riggs v Palmer 22 N.E. 188 (1889), Lochner v New York 198 U.S. 45 (1905).

☺ **Case Analysis [*Plessy v Fergusson 163 US 537 (1896)*] Due at noon on Monday, Se 12th.**

Section One: General Jurisprudence

- Se 12-14 The Nature of Law
Read: Kavanagh & Oberdiek, Section 1, Holmes, Hart, Fuller, pp 9-70.
- Se 19-21 Legality and Morality
Read: Kavanagh & Oberdiek, Section 1, Dworkin, pp 70-92; Section 2, Coleman, Raz, pp 93-126.
- Se 26-28 Law and Morality, II
Read: Kavanagh & Oberdiek,; Section 2, Dworkin, George, Gardner, pp 127-174.

Section Two: Law, the State, and the Individual

- Oc 3-5 The Rule of Law
Read: Kavanagh & Oberdiek, Section 3, Raz, Dworkin, Waldron, pp 175-228.
- Oc 10-12 The Duty to Obey
Read: Kavanagh & Oberdiek, Section 4, Raz, Rawls, King, pp. 229-264.
- Oc 17-19 The Nature of Rights
Read: Kavanagh & Oberdiek, Section 6, Hart, MacCormick, Dworkin, Raz, pp 305-357.

☺ **Essay 1 DUE at noon on Monday, Oc 24.**

Section Three: Legal Reasoning

Oc 24-26 Legal Reasoning and Types of Argumentation
Read: Golding, Ch 1, pp 1-44.

☺ **Quiz 1 Available 5pm Oc 26 to 11pm Oc 30.**

Oc 31 Argument by Analogy & Practical Reasoning
Read: Golding, Ch 2, pp 44-60.

No 2 Conflicting Decisions
Read: Golding, Ch 2, pp 60-96.

☺ **Quiz 2 and 3 Available 5pm No 2 to 11pm No 6.**

No 7-9 Precedent & Case Law Development
Read: Golding, Ch 3, pp 97-144.

☺ **Quiz 4 and 5 Available 5pm No 9 to 11pm No13.**

Section Four: Theorizing Areas of Law and Justice

No 14-16 Constitutional Theory: Interpretation and Authority
Read: Kavanagh & Oberdiek, Section 8, Marmor, Scalia, Waldron, Fabre, pp 393-468.

No 21-23 Criminal Theory: Punishment
Read: Kavanagh & Oberdiek, Section 9, Farrell, Gardner, Duff, pp 469-528.

Nov 24 - 26 – No class – Thanksgiving Holiday – Go Eat, Share, Be Merry!

No 28-30 Tort Theory: Corrective Justice
Read: Kavanagh & Oberdiek, Section 10, Honoré, Perry, pp 525-568.

De 5-7 Critical Legal Theory: Race and Gender
Read: Kavanagh & Oberdiek, Section 11, Unger, Delgado, Phillips, pp 569-616.

☺ **Essay 2 DUE at noon on Monday, De 12.**

NO FINAL EXAM.