



PHL 341
Philosophy of Law

Credit Hours: 3	Prof. Marcus Schultz-Bergin (he/him)
Pre-Requisites: One prior philosophy course	Rhodes Tower 1333
Course Meeting Time: Tue/Thu 12:30-1:45pm	m.schultzbergin@csuohio.edu
Classroom: BH 441	Student Drop-in Hours: M, Th 3:00-4:00pm

What will we investigate in this course?

Law and legal practice are an inextricable part of all our lives. We constantly, but often unknowingly, conform our behavior to the laws of our city, state, and country. The law exercises substantial control over our lives and threatens to harm us if we do not conform our behavior. And yet, the rise of legal systems is arguably one of the most positive developments in human civilization, making possible substantial developments in human welfare.

We will be exploring these, and other, aspects of law and legal systems. We will focus on questions related to the structure of legal systems, the law's authority, the relationship between law and morality, the interpretation of legal texts, and attempts to justify legal punishment.

What are we trying to achieve in this course?

By the end of this course, you will be able to engage in philosophical debates about the law and connect those debates to legal practice

To achieve the above goal, along the way you will develop the ability to...

1. Charitably interpret and reconstruct philosophical arguments and positions
2. Present and engage fairly with multiple perspectives on philosophical questions
3. Construct philosophical arguments to support original conclusions
4. Communicate complex philosophical ideas to an intelligent public audience

What will I need for this course?

All readings will be provided, as PDFs, on Blackboard. You should ensure you have access – preferably on paper – to the relevant reading for each class session. You should also be sure to have notebook paper and a writing utensil.

What should I do to succeed in this course?

You should come to class having completed the required reading, with access to that reading in class, and prepared to engage with your teammates (and the rest of the class) in a philosophical exploration of the topic. Your notetaking should focus on concepts, positions, and arguments. Your goal should be to both understand the existing conversation and be prepared to offer something new to it.

How will we know what you've learned?

This syllabus is subject to change at the instructor's discretion. If any changes are made, they will be communicated both through Blackboard and in class.

Your final course grade is a function of the demonstrated level of achievement of our course goal. That means each assignment type is designed to assess one or more specific types of achievement. As a result, your course grade doesn't simply add together points or percentages. Instead, letter grades are based on showing reasonable competency at the various levels, as indicated by the relevant assignments.

The types of assessments and their associated level of achievement are as follows:

Assessment Type	Level of Achievement
3 in-class exams	Interpretation & Understanding
2 short essays	Engagement & Communication
1 original research essay & presentation	Argumentation & Communication

Additionally, there is a "Teamwork Bonus Modifier". This modifier reflects your active engagement in the social process of learning. Active engagement is essential to true learning and learning in a social context greatly enhances learning.

You will earn this modifier if your team complete at least 80% of the in-class teamwork activities and you earn at least 9 out of 13 possible points on the Effective Collaborator evaluations.

Core Course Grade		Teamwork Bonus Modifier	
To earn a(n)...	You must...	If you earn the Teamwork Bonus Modifier, then your 'core course grade' is increased by one step:	
D	Earn at least a 75% average across the 3 exams		
C+	Meet requirements for a 'D' and pass 1 short essay		
B	Meet requirements for a 'C' and pass an additional short essay		
A-	Meet requirements for a 'B' and pass the Research essay/presentation		
		If your core grade is...	Then it becomes...
		D	C
		C+	B-
		B	B+
		A-	A

Assignments Overview & Due Dates

Effective Collaborator evaluations are completed online through PeerAssessment.com. They will be available for completion starting the Wednesday before the stated due date.

Exams are completed in class.

Short Essays will be submitted through Blackboard. Topics will be provided at least 10 days prior to the stated due date.

The **Research Essay** has multiple components, with multiple due dates as indicated below. All elements except the presentation will be submitted through Blackboard.

Assignment	Due Date
Effective Collaborator 1	Sunday, February 2 nd
Exam 1	Tuesday, February 11 th
Short Essay 1	Sunday, February 23 rd
Effective Collaborator 2	Sunday, March 2 nd
Exam 2	Thursday, March 6 th
Short Essay 2	Sunday, March 30 th
Research Essay Topic Submission	Sunday, April 13 th
Research Essay Draft Submission	Sunday, April 27 th
Exam 3	Thursday, May 1 st
Effective Collaborator 3	Sunday, May 4 th
Research Essay Presentation	Tuesday, May 6 th
Research Essay Final Submission	Sunday, May 11 th

Growth Tokens: Learning from Failure

I want you to fail! Not the course, but with some of your work along the way. This is because we learn the most from our failures and failure is an essential part of the learning process. But I also don't want these failures to negatively impact your course grade, and I want your course grade to fully reflect your demonstrated achievement.

As such, you each now have **3 growth tokens**. These tokens have no grade value but may be spent to learn from your failures in the following ways:

- Submit a revision of a short essay within 1 week of it being returned
- Submit a short essay or revision up to 48 hours late
- Make up a missed exam within 1 week of its original date

You do not need to justify your reason for using a token, nor inform me of your plan in the case of the short essays and revisions. Simply take the action. You, obviously, do need to inform me of your intention to make up an exam to setup a time with me.

Course Schedule

Date	Topic	Pre-Class Preparation
Jan 14	Law Firm Formation & Course Introduction	
Law as Social Construction		
Jan 16	Trial Day: Should the Cannibals be put to Death?	Fuller – “The Case of the Speluncean Explorers”
Jan 21	Laws, Gunmen, and Commands	Hart – “Laws, Commands, and Orders” (CL ch. 2)
Jan 23	Judges & the Reality of Law	Holmes – “The Path of Law”; Frank – <i>Law and the Modern Mind</i>
Jan 28	The Psychology of Legal Obligation	Hart – “Law as the Union of Primary and Secondary Rules” (CL ch. 5)
Jan 30	Law as Social Construction	Hart – “Foundations of a Legal System” (CL chs. 5-6)
Feb 4	Legal Indeterminacy & Judicial Decision-Making	Hart – “Positivism and the Separation of Law and Morals”
Feb 6	Legal Positivism Review & Exam Prep	
Feb 11	Exam 1	
Morality & the Law		
Feb 13	Trial Day: Should a Murderer Inherit?	<i>Riggs v. Palmer</i>
Feb 18	Legal Principles & Legal Reasoning	Dworkin – “The Model of Rules”
Feb 20	Including Principles in the Law	Coleman – “Inclusive Legal Positivism”
Feb 25	Excluding Morality from the Law	Shapiro – “Was Inclusive Legal Positivism Founded on a Mistake?”
Feb 27	Morality and “The Rule of Law”	Raz – “The Rule of Law and its Virtues”
Mar 4	Morality & Law Review & Exam Prep	
Mar 6	Exam 2	
Law as Interpretation		
Mar 18	Disagreements about Law	Dworkin – “What is Law?” (LE ch. 1)
Mar 20	Law as Interpretative Enterprise	Dworkin – “Integrity in Law” (LE ch. 7)
Interpreting the Law		
Mar 25	Trial Day: Was it Human Trafficking?	<i>Caminetti v. United States</i>
Mar 27	Text, Purpose, & Intention in Legal Interpretation	Honoré – “Interpretation”
Apr 1	Textualism, Originalism, & Democracy	Scalia – “Common-Law Courts in a Civil Law System”
Apr 8	The Constitution as a Moral Document	Dworkin – “The Moral Reading of the Constitution”
Apr 10	The Constitution as a Living Document	Strauss – <i>Living Constitutionalism</i>
Legal Punishment		
Apr 15	Trial Day: Should the dog be hanged?	<i>The Case of the Dog Provetie; and</i> Feinberg – “The Classic Debate”
Apr 17	Communication & Retribution	Duff – “Retrieving Retributivism”
Apr 22	Punishing without Blame	Kelly – “Is blame warranted in applying justice?”
Apr 24	How should we punish?	Brennan – “Corporal Punishment as an alternative to incarceration”
Apr 29	Interpretation, Punishment, & Exam Prep	
May 1	Exam 3	
May 6 ¹	Philosophical Presentations	

¹ The May 6th class session is 2 hours long, between 12:30-2:30pm. We will use this time to honor your work through the presentation of your original research in the philosophy of law.

Course Policies

We are a Learning Community

My fundamental policy for this course is that we are all part of a learning community. As a community, we each have obligations to one another. My fundamental obligation is to facilitate and support your learning. Your fundamental obligation is to take responsibility for your learning. All other course policies flow from this fundamental policy. And if there is not an explicit policy on some topic, our approach will be guided by the fact that we are a learning community. As such, keep the following in mind:

- I genuinely believe each and every one of you can succeed in this course if you put in the work, and I am always willing to work with you if you are committed to your learning.
- Transparency and communication are key. It is always easier for me to help you if you communicate with me early and often.
- We should respect each other. Arriving and leaving class late, distracting yourself or others from our shared inquiry, communicating harshly with one another are all forms of disrespect. There is more to it than that, but I believe each of you knows what it means to respect each other, we all just need to keep it in mind in our interactions.

Academic Honesty & Generative AI (i.e., ChatGPT) Policy

The point of taking a course is to learn, not merely receive a grade. I want your grade to be something you earned, and you will too (at least later in life). Moreover, every assignment in this course is a learning opportunity itself, even if it is also a demonstration of learning. But the only way to take up that learning opportunity is if you do the work yourself. That means the following sorts of activities constitute academic dishonesty and may result in no credit for the assignment or the course as well as a report to the University:

- Plagiarism. Copying information without attribution, such as online sources or the work of current or past students. This applies both to the papers and the exams.
- Generative AI use. The use of any generative AI system (such as ChatGPT) to produce text *or* to modify text you provide it.

Generative AI is changing our world. It will be important that everyone have some fluency in how to responsibly use it. And there can be responsible uses. However, the assignments in this course are designed in such a way that no use constitutes responsible use. Additionally, several of the potentially responsible uses of generative AI are better facilitated by University resources that you already pay for:

- **CSU Writing Center:** Rather than use generative AI to “fix” your writing, work with a person who will support you in making the changes so that you understand their value and are more likely to do it better in the future.
- **Instructor & Peers:** Rather than use generative AI to help you understand something, speak with a person more familiar with the context of the course.

If you have any questions/doubts about academic honesty, please speak to me. I will never “punish” or otherwise take a bad view of you for asking questions about such things.

Accommodation Policy

Educational access is the provision of classroom accommodations, auxiliary aids and services to ensure equal educational opportunities for all students regardless of their disability. Any student who feels they may need an accommodation based on the impact of a disability should contact the Office of Disability Services at (216) 687-2015. The Office is located in Rhodes West (RW) 210. Accommodations need to be requested in advance and will not be granted retroactively.

Inclusive Learning Community & other Accommodations

I want you to feel comfortable and welcomed in the classroom as a whole person. It is difficult for me to know all that that might mean, so you should always feel welcomed to reach out to me about anything I can do to improve your classroom experience. But here are a few specific matters that I know can arise:

- **Religious Accommodation.** If you know you will miss class for religious reasons, please let me know within the first two weeks of the semester so we can plan accordingly. If any other accommodations need to be made due to religious reasons, please speak to me as soon as you are aware.
- **Preferred Name.** I will always honor your request to address you by your preferred name and/or pronouns. Please let me know early in the semester and have grace with me if I do screw up, but also don't hesitate to call me out (respectfully) if I do screw up.
- **Discrimination, harassment, and sexual violence.** You each have a variety of rights under federal law to equitable treatment and to accommodation in the cases of matters such as harassment and sexual violence. These matters are generally handled by our Office for Institutional Equity (AC 236). But I am also here to assist to the degree I can and the degree you are comfortable sharing information with me. You are under no obligation to share any such information with me.
- **Mental Health.** If you are experiencing poor mental health, CSU has resources for you and I want to make sure you take care of yourself. You may reach out to the CSU Counseling Center (UN220) or, if comfortable, speak to me.
- **Physical Health & Illness.** If you are experiencing poor physical health, especially any potentially contagious illness, it is best if you do not attend class. If symptoms are mild, you may attend while wearing a face covering to protect others. You do not need to share details with me, but if you know you will be missing class due to physical health issues, please inform me.
- **Basic Needs Insecurity.** If you are experiencing food, housing, or other basic needs insecurity, the CSU Lift Up Vikes Program can provide assistance. The Life Up Vikes resource center can be found in BH 148 while the food pantry can be found in BH 122.