PHILOSOPHY OF LAW

PHILOSOPHY 6000 FALL 2013

Course Description: This course will provide an introduction to the philosophy of law. Rather than comprehensively explore some particular set of questions, our approach will be broadly pluralistic, both in terms of content and methodology. Coverage will comprise the following principal areas, chosen for their philosophical richness: jurisprudence, torts, criminal law, and First Amendment law. Following our introductory unit in jurisprudence, each subsequent unit presents both philosophical writings and pertinent case law. Students will therefore acquire a facility not just with academic work, but also will acquire the analytical abilities needed to work through court opinions. A final research paper will allow students to explore a topic in philosophy, law, or the intersection thereof.

Professor: Dr. Fritz Allhoff

Friday 1:00-2:30; 3006 Moore Hall

387-4503 (w)

Seminar: Friday 2:30-4:50; Moore 3014

Readings: All materials will be posted in a shared Dropbox folder.

Grading: Attendance/Participation 20%

Case Briefs10%Presentations10%Annotated Research Bibliography10%Research Paper50%

Attendance/Participation: You are required to attend each seminar and to participate. If you miss a seminar, you may turn in a 1000-word reaction to the assigned readings (half exegetical, half evaluative) at the beginning of the following seminar to avoid a zero for the previous week. You may do this, at most, two times.

Case Briefs: You should brief each case that you read, which means providing: a citation; the salient facts; the "procedural posture" (i.e., who the court found for, including at both the trial and, if applicable, appellate levels); the issue (i.e., what's the question the court was trying to answer?) and the holding (i.e., what the answer was); and the reasoning (i.e., why). Each brief should be done on a separate page, whether written or typed. Note further that any student is responsible for providing any of the above information with regards to any case at any time, so the case briefs—as well as conscientious reading—effectively bear on your participation grade as well.

Presentations: Each student will be assigned at least one presentation at some point in the semester, most likely on one of the academic—as opposed to case-based—readings. Good presentations will not merely trace through the assigned reading, but will make connections across readings (or cases), incorporate external sources, and promote broad discussion. PowerPoint is strongly encouraged.

Annotated research bibliography: Before writing their research papers, students will compile a research bibliography which will support the research for their projects. There should be at least fifteen academic sources in this bibliography, at least half of which should be from after 2,000. An additional five sources should be court decisions; the timing of these is unimportant, but they should not have been overturned. For each of these twenty sources, students should provide full bibliographic information as well as a 100-word précis. Comments will be offered on the bibliography as will be useful for developing the research paper.

Research paper: Students will incorporate the annotated research bibliography into a research paper, which will be in the 6,000-9,000 word range. My preference would be for something approximately in the middle of this range as I suspect shorter papers will lack some of the depth of longer ones and that longer ones will lack some of the focus of more intermediate ones. Nevertheless, you have some flexibility on this length.

Papers should be submitted in 11 point for the body—10 point for the footnotes—with Calibri or Cambria preferred. Both the body and footnote text should be fully justified. Spacing should be double, except for block quotes in single. At least twenty sources and fifty footnotes are strongly encouraged.

Statement on Academic Honesty: You are responsible for making yourself aware of and understanding the policies and procedures in the Graduate Catalog (pp. 25-27) that pertain to Academic Honesty. These policies include cheating, fabrication, falsification and forgery, multiple submission, plagiarism, complicity and computer misuse. If there is reason to believe you have been involved in academic dishonesty, you will be referred to the Office of Student Conduct. You will be given the opportunity to review the charge(s). If you believe you are not responsible, you will have the opportunity for a hearing. You should consult with me if you are uncertain about an issue of academic honesty prior to the submission of an assignment or test.

Seminar, Reading, and Assignment Schedule

Week	Date	<u>Topic</u>	Readings
1	9/6	Jurisprudence I: Rule of Law	Lon Fuller, "Eight Ways to Fail to Make a Law" Jeremy Waldron, "The Rule of Law and the Importance of
			Procedure" H.L.A. Hart, "Laws and Morals"
2	9/13	Jurisprudence II: Natural Law Theory	Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, chs. 1-2
			Saint Thomas Aquinas, <i>Summa Theologica</i> , Questions 90, 94
			John Finnis, "Natural Law and Natural Rights"
3	9/20	Jurisprudence III: Legal Positivism	John Austin, <i>The Providence of Jurisprudence Determined</i> , Lecture 1
			H.L.A. Hart, The Concept of Law (excerpts)
			Ronald Dworkin, "The Model of Rules"
4	9/27	Torts I: Negligence	Glanville Williams, "The Aim of the Law of Tort"
			United States v. Carroll Towing, 159 F.2d 169 (2d Cir. 1947)
			Vaughan v. Menlove, 132 Eng. Rep. 490 (1837)
			Robinson v. Lindsay, 598 P.2d 392 (Wash. 1979)
			Breunig v. American Family Ins. Co., 173 N.W.2d 619 (Wisc. 1970)

5	10/4	Torts II: Luck	Garratt v. Dailey, 279 P.2d 1091 (Wash. 1955)
			Ranson v. Kitner, 31 III. App. 241 (1889)
			Talmage v. Smith, 59 N.W. 656 (Mich. 1894)
			Jeremy Waldron, "Moments of Carelessness and Massive Loss"
			John Goldberg and Benjamin Zipursky, "Tort Law and Moral Luck"
6	10/11	Torts III: Causation	Hill v. Edmonds, 270 N.Y.S.2d 1020 (N.Y. App. Div. 1966)
			Anderson v. Minneapolis, 179 N.W. 45 (Minn. 1920)
			Summers v. Tice, 199 P.2d 1 (Cal. 1948)
			Sindell v. Abbott Laboratories, 607 P.2d 924 (Cal. 1980)
			H.L.A. Hart and A.M. Honoré, "Causation and Responsibility"
7	10/18	Criminal Law I: Burden	In re Winship, 397 U.S. 358 (1970)
		of Proof	Patterson v. New York, 432 U.S. 197 (1977)
			Fritz Allhoff, "Wrongful Convictions, Wrongful Acquittals, and Blackstone's Ratio"
8	10/25	Criminal Law II: Acts and Omissions	Sanford Kadish et al., <i>Criminal Law and Its Processes:</i> Cases and Materials, pp. 205-223
			John Kleinig, "Good Samaritanism"

9	11/1	Criminal Law III: Self- Defense	People v. Goetz, 497 N.E.2d 41 (N.Y. Ct. App. 1986) State v. Norman, 366 S.E.2d 586 (N.C. App. 1988) State v. Norman, 378 S.E.2d 8 (N.C. 1989) Stephen Morse, "Neither Desert nor Disease" Kimberly Kessler Ferzan, "Defending Imminence: From Battered Women to Iraq", §§I, IIC, III, IV
10	0 11/8	Criminal Law IV: Necessity Annotated Research Bibliography Due	U.S. v. Holmes, 26 F. Cas. 360 (C.C.E.D. Pa. 1842) Regina v. Dudley and Stephens, 14 Q.B.D. 273, 274 (1884) Lon Fuller, "The Case of the Speluncean Explorers"
1:	1 11/15	First Amendment I: Why Protect Freedom of Expression?	Chemerinky, <i>Constitutional Law</i> , pp. 1205-1212 John Stuart Mill, <i>On Liberty</i> , ch. 2 <i>Whitney v. California</i> , 274 U.S. 357, 375 (1927) (Brandeis, J., concurring) <i>Abrams v. United States</i> , 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)
1:	2 11/22	First Amendment II: Limits on Freedom of Expression	Brandenburg v. Ohio, 395 U.S. 444 (1969) Chaplinksky v. New Hampshire, 315 U.S. 568 (1942) New York Times Co. v. Sullivan, 376 U.S. 254 (1964) United States v. O'Brien, 391 U.S. 367 (1968) Texas v. Johnson, 491 U.S. 397 (1989)
13	3 11/29	No Class (Thanksgiving)	

14	12/6	First Amendment III: Free Exercise	Prince v. Massachusetts, 321 U.S. 158 (1944)
			McGowan v. Maryland, 366 U.S. 420 (1961)
			Braunfeld v. Brown, 366 U.S. 599 (1961)
			Sherbert v. Verner, 374 U.S. 398 (1963)
		Case Briefs Due	Employment Division v. Smith, 494 U.S. 872 (1990)
FEW	12/13	Research Paper Due	[in my mailbox by 500p]