

**PHIL175: Philosophy of Law**  
**MW 10:15-11:30, WGR 202**

Professor: Mark Murphy  
Office: 235 New North  
Office Hours: M 1:30-2:30, W 11:30-12:30,  
and by appointment

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***Course description***

There are three commonplaces that guide investigation in the philosophy of law: first, that law is (in some important sense) a matter of social fact; that law is (in some important sense) authoritative; and third, that law is (in some important sense) for the common good. The aim of this course is to get clearer on these commonplaces and on the questions in philosophy of law that they bear on, and to understand and criticize various proposed answers to them. The topics we will consider include: the nature of law; the fundamental roles in legal systems (citizen, legislator, judge); the appropriate aims of law; the nature and justification of criminal law; and the nature and justification of tort law. We will also consider various views that aim not to flesh out the guiding assumptions but to show them up as unrealized or unrealizable.

***Course objectives***

Through active participation in this course, you will . . .

- . . . become aware of deep theoretical problems involved in understanding law
- . . . become aware of deep practical problems involved in responding to law
- . . . see new relationships between seemingly distinct philosophical and legal issues

***Course format***

The course format will typically be a combination of lecture and discussion. Students will always be expected to have done the reading in advance and to have initial takes on the issues we will be dealing with.

### *Course requirements and grading*

Students will be graded on three criteria: the quality of the course papers, the quality of the final exam, the quality and quantity of class participation, and the quality of the unannounced quizzes.

#### *Course papers*

Students must write two course papers, each 6-8 pages (2100-2800 words) in length. Guidelines for these papers can be found on p. 5 of the syllabus. Late papers will be accepted without penalty only if there is a reasonable and verifiable excuse.

#### *Final exam*

There will be a final exam, essay-type, administered during the regular examination period, which is Tuesday, May 6, at 9 A.M.

#### *Active and prepared attendance throughout the semester*

Classes — at least, classes of this size — are cooperative enterprises, and whoever isn't present, prepared, and ready for action isn't doing his or her share for the common good. I expect you to attend every class unless you have a very strong reason not to be present.

#### *Unannounced quizzes*

When the readings are hard, there is a tendency for folks to slack off the reading so that everything can be made clear in class. To help combat this tendency, I'm going to give several unannounced quizzes over the course of the semester. These quizzes will be very short, will be done at the very beginning of class, and will be on that day's reading. I will drop the two lowest quiz grades, so there will be no makeups of these quizzes, except in the case of excused prolonged absence from class.

#### *The final grade*

Of your two papers and final exam, the lowest grade counts for 25%, the middle for 30%, and the highest for 35%. Your quiz grades will count for 10%. I assign no fixed percentage to active and prepared attendance, though particularly helpful class participation can affect one's grade, especially in borderline cases. No one passes the course without completing both papers and taking the final exam. Especially protracted absences, for whatever reason, are a basis for course failure.

## *Course requirements and grading (continued)*

### *'Reasonable and verifiable' excuses*

A 'reasonable' excuse for turning in a late paper consists in an event that (a) the student, for all practical purposes, could not have avoided and (b) prevents the student, for all practical purposes, from getting the paper done on time. A 'verifiable' excuse is one that the student can give evidence for if asked for it. **Note: Difficulties that are normal parts of academic life — papers coming due at the same time, exams scheduled for the same day, etc. — do not provide excuses. Neither do computer problems, unless they are of a spectacular and unforeseeable variety.**

### *Texts*

There are two books to purchase: Susan Dimock's *Classic Readings and Cases in the Philosophy of Law* and Mark C. Murphy's *Philosophy of Law: The Fundamentals*. There are also a few handouts.

### *Consulting*

If you would like to see me, try to come during office hours; other than that, you can try to drop by or set an appointment. (I'm in almost every Monday, Wednesday, and Friday; I'm almost never in on Tuesdays or Thursdays.) If calamity has befallen you, you may call me at home, but please don't call any later than 10 P.M.

## **ASSIGNMENT SCHEDULE**

<b>Date</b>	<b>Assignment</b>	<b>Topic</b>
F, 2/29	Paper #1	Issues in Intro and Chapters 1, 2, and 3 of Murphy, along with the associated readings ( <b>turn in at 235 New North by 10 AM</b> )
W, 4/16	Paper #2	Issues in Intro through Chapter 5 of Murphy, along with the associated readings, so long as the topic is distinct from the topic of Paper #1 ( <b>turn in at beginning of class</b> )
T, 5/6 at 9 A.M.	Final exam	Everything we talked about or read about

## TOPIC SCHEDULE

<b>Date</b>	<b>Topic</b>	<b>Reading</b>
1/9	Commonplaces about law	M, 1-13
1/14	Austin's positivism	D, 20-35; M, 14-26
1/16	Hart's positivism	D, 172-177, 180-183, 53-68; M, 26-31
1/23	Hard and soft positivism	M, 32-35
1/28	Fuller's procedural natural law view	D, 188-203; M, 35-38
1/30	Aquinas's substantive natural law view	D, 5-16; M, 38-45
2/4	The nature of law and legal roles	M, 49-52
2/6	The normative role of citizen	D, 310-327; M, 53-63
2/11	The normative role of legislator	M, 63-69
2/13	The normative role of judge	M, 69-79; D, 257-261; Fuller handout
2/20	The aims of law: the harm principle	D, 375-386; M, 81-88
2/25	Paternalism and offense	D, 387-397; Feinberg handout; M, 88-97
2/27	Legal moralism	D, 397-416, 500-513; M, 98-109
3/10	Crime and punishment	M, 112-116
3/12	Utilitarian theories of punishment	D, 531-541; M, 116-122
3/17	Retributivist theories of punishment	D, 543-570, ; M, 122-132
3/19	Justifications and excuses	D, 665-673; M, 132-142
3/26	Negligence torts	M, 146-148
3/31	Economic vs. justice accounts of tort law	D, 69-76; Perry handout; M, 148-155
4/2	Elements of negligence	D, 113-121; M, 155-165
4/7	Elements of negligence (continued)	D, 99-108, 124-133; M, 165-170
4/9	Damages	M, 170-175
4/14	Intentional torts and strict liability	D, 108-113; M, 175-179
4/16	Against the role of subject	Smith handout; M, 183-191
4/21	Against the role of legislator	D, 84-96; M, 192-198
4/23	Against the role of judge	Realism handout; D, 242-255; M, 198-206
4/28	Revisiting the commonplaces	None

**D** = Dimock's *Classic Readings and Cases in the Philosophy of Law*

**M** = Murphy's *Philosophy of Law: The Fundamentals*

## COURSE PAPER DETAILS

### *Mechanical details*

Each of the two papers turned in must

- (a) be between 2100-2800 words,
- (b) have a separate title page, with an informative title, the writer's name, and an accurate word count,
- (c) have numbered pages, and
- (d) contain an absolute minimum of spelling and grammatical errors.

You should keep an electronic copy of the text of the paper, which I will ask for if I have even the slightest suspicion that the paper is plagiarized (see p. 6).

### *Substance details*

You have full freedom on your paper topic choices, subject to the following constraints:

1. The focus of each paper must be on one or another or some combination of the issues that we dealt with in that section of the course.
2. Your paper must be *philosophical* in nature: **not** legal, historical, autobiographical, etc.
3. Your paper must be either *argumentative* or *interpretive*: **not** primarily expository. You might...

(a) ... criticize an argument in one of the readings.

*For example: In this paper I will show that Austin's argument that the natural law thesis is stark nonsense is not successful.*

(b) ... articulate and defend a position on one of the issues.

*For example: In this paper I will argue that the harm principle is the only defensible account of the limits of justified state coercion.*

(c) ... argue for a connection between positions on two distinct issues.

*For example: In this paper I will argue that if one is a legal positivist, then one should be an originalist in matters of legal interpretation.*

(d) ... apply a position on an issue in a controversial and original way.

*For example: In this paper I will argue that even if one defends legal moralism in principle, in current social circumstances there are no justified uses of morals legislation.*

(e) ... defend a particular interpretation of a difficult and important passage or argument in one of the readings.

*For example: In this paper I will provide an interpretation of Devlin's 'disintegration thesis' that is more defensible than that which is usually ascribed to Devlin.*

4. Do you have to do outside research, that is, go to the library (!) to write this paper? Nope. In fact, if you are of the sort whose main instinct is to cram your paper with nifty research, **DON'T DO OUTSIDE RESEARCH**; it will just be a distraction from the main event, which is **YOU** thinking through a problem. On philosophy, the Internet is generally unreliable; except for a few select sites, philosophy on the Internet is a load of crap.

## STUFF ON ACADEMIC INTEGRITY

Cheating of any form is wrong. It damages the cheater, those whose work is assessed alongside the cheater's, and the institution in which cheating takes place. Because a campuswide honor system is in place, any case of suspected academic dishonesty will be reported to the Honor Council. Anyone found in violation of the honor code for cheating in this class in a premeditated fashion will receive a failing grade for the semester.

The form of cheating to which there seems to be the greatest temptation in introductory philosophy courses is plagiarism. For your information, the university's Honor System brochure describes plagiarism in the following way: "Plagiarism is the act of passing off as one's own the ideas or writings of another" (p. 4). It also emphasizes that "plagiarism can be said to have occurred without affirmative showing that a student's use of another's work was intentional" (p. 4). This means that plagiarism can occur through sloppiness as well as through malice: failure to cite one's sources is plagiarism even if one just forgot to cite it. This means that the burden of care is on **you**.

### *General guidelines:*

If it is a direct quotation, **cite it**.

If it is a paraphrase, **cite it**.

If it is an idea that you got from a particular source — whether a publication or a person — **cite it**.

If you are in doubt about whether it should be cited, **cite it**.

The only items that are not cited are those that one thought up on one's own or those that belong to general knowledge.