

An Introduction to Law

SSC 1007

Table of Contents

General Information	3
Overview.....	3
Course literature	4
Lectures.....	4
Teaching Method.....	4
Attendance.....	4
Assessment	5
Blackboard (ELEUM)	6
Contact information.....	6
Content	7
Lectures.....	7
Tutorial meetings	7
Meeting 1	7
Meeting 2	7
Meeting 3	8
Meeting 4	8
Meeting 5	9
Meeting 6	9
Meeting 7	9
Meeting 8	10
Meeting 9	10
Meeting 10	10
Meeting 11	11
Meeting 12.	11

General Information

Overview

This course aims to introduce students to the general content of modern law and to the discipline of legal reasoning. These two go together. Law cannot be fully understood in abstraction of the particular way that lawyers, judges and other expert operators of the legal system look at it. Coming out of the course, students should be able to understand what law is and how it is different from (and similar to) morality, identify the main branches of Law and their basic institutions, recognize and differentiate the principal values underlying those branches and understand the nature of legal reasoning and be able to apply it to legal problems.

It is often assumed that to study law means essentially to study the law of a particular jurisdiction. A Dutch lawyer studies Dutch law and a German lawyer studies German law, and there is little that they share beyond the name of their chosen profession. This picture is misleading. Despite the fact that every country establishes its own legal system, there is much less diversity in law than what one would imagine. A key theme of this course is that law arises naturally as a solution to various social problems and, to the extent that human societies face the same problems, similar responses appear almost everywhere. Even though details may vary, contract, property, inheritance, marriage, constitutions and crimes exist in almost all modern societies. Instead of focusing on specific sets of rules like the Dutch Civil Code, or the French Criminal Code, this course focuses on these widely shared problems and widely shared institutional responses.

This course has many benefits for the prospective student even if he chooses not to concentrate on law in the future. A social scientist can always benefit from understanding law from the point of view of lawyers. Often social scientists critique law taking for granted certain assumptions that jurists reject. For instance, they sometimes consider that lack of real-world effectiveness is a decisive criticism for any piece of legislation. For the jurist, the importance of law may lie primarily in its capacity to justify coercion and real-world effectiveness may be secured through other means. Social scientists may find that judges do not stick by the text of the law and conclude that they must be politicized. Some jurists would see such judicial flexibility as something that has been built into the system from the beginning. The social scientist will typically try to predict what the judge will do, or try to explain it by reference to psychological or sociological determinants of judicial behavior. The jurist would argue that while that is all well and good, it does not help us solve a concrete legal problem. Needless to say, jurists are prone to making different mistakes like ignoring social reality and thinking that Law is the solution to all social problems. Proper interdisciplinary communication is difficult and this course aims to enable such communication.

Additionally, law can be interesting from the perspective of ethics and normative political philosophy. In modernity there has been a constant effort to show that moral rules are reducible to a few (or even one) rational and explicit super-rules, for instance the principle of utility, Kant's Categorical Imperative, Lockean rights or Mill's Harm Principle. An overview of the institutions and subdivisions of modern legal systems shows a radically different strategy for solving normative problems. Every area of law -contracts, criminal law, international law, etc.- can be shown to have its own special principles and goals. In contrast to modern normative theorizing, law can exemplify a more grounded, more contextual approach to matters of right and wrong.

Finally, dealing with law can be an excellent way to learn how to reason and debate effectively in matters of social interest. The practice of law teaches the student to put together logical precision and common sense in trying to find a solution to complex problems. Outside the field of law, these two qualities seldom go hand-in-hand.

Course literature

The book is Jaap Hage, Antonia Waltermann and Bram Akkermans (eds.) *Introduction to Law* (Springer: Heidelberg 2017). Please make sure to buy this 2017 version and not older versions!

Lectures

There will be 3 lectures covering the theoretical aspects of the course. They appear in boxes in the content section below. Check in timetable for the exact time and location. The lectures are obligatory and they sometimes require reading some parts of the book.

Teaching Method

The teaching method is PBL. Although the final decision lies on the discussion leaders, students are encouraged to pre-discuss both chapters and tasks. With regards to chapters, what is important is to activate prior knowledge. Just by virtue of being citizens in a modern society, we already know a lot about law, albeit in a non-structured manner. Reflecting on this will make the tasks easier. Furthermore, this will help formulate learning goals that are appropriate for the subject matter.

It should be noted that the tasks do not seek one right answer. It is to be expected that many problems in law admit many possible solutions. That does not mean that anything goes. Some options are clearly better than others and some are unacceptable. A main goal of this course is to instill in students a sense of what is a good legal argument.

Attendance

There will be two tutorials per week. A minimum of two absences is admitted. In case of three absences, you can contact the course coordinator for an extra task to compensate. Exceptions will be made for special circumstances. For this contact the course coordinator.

Assessment

The grade will depend 80% on the final exam. There will also be a presentation for 20% of the grade. Because of the unpredictable nature of PBL, and the fact that different tutorial groups may discuss different things, the exam will focus on the book (Hage, Waltermann & Akkermans 2017), but you can expect your tutor to discuss and explain what is most important of each chapter in class. The exam will cover all the chapters that are used in the course, including those read for the lectures. The exam will take place in week 7 as set forth in timetable.

Final Exam Information (80% grade)

The final exam will consist of 5 “objective questions” on the legal institutions discussed in the book. The emphasis is on the legal institutions, on what they are and on what are their characteristics. So a typical question might be “what is a contract” or “what types of property rights exist” or “briefly explain what sovereignty is”. Slightly more complicated questions are possible but they all involve objective answer based on the book. In the sixth week, students will do together with their tutor a mock exam to practice for the final exam. While the questions are objective, they are not yes or no questions. This implies that precision and memory are needed, the students should prepare accordingly. Summarizing or mind-mapping book chapters is recommended. The questions can all be answered in 5/7 lines.

All the book chapters used in the course will be part of the exam. This includes the chapter on tax law, the chapter on legal interpretation, the chapter on basic legal concepts and the chapter on legal philosophy; this excludes the chapter on procedural law.

Grading criteria, listed in order of importance, include:

- Correctness: Is the information provided true?
- Completeness: Was all the required information provided? Did the student make all the relevant distinctions? For example, if I ask for “briefly explain what is sovereignty?” and there are two types of sovereignty, the student should cover both types.
- Clarity: Is the answer clear, or is it cluttered with irrelevant information?
- Avoidance of circularity: A definition should not include the word that is being defined explicitly or covertly. (Example A property right is a right by virtue of which property is...). Arguments should not “beg the question”.
- Proper use of legal language: if legal words are needed they should be used and they should be used correctly.

Tax law presentation (20% grade)

See meeting 11 on tax law below for instructions

Blackboard (ELEUM)

This course manual, the e-readers, announcements and assignment will be placed on ELEUM. Please check Blackboard regularly.

Contact information

You can contact the course coordinator at gustavo.rosemena@maastrichtuniversity.nl.

Content

Lectures

The course involves three mandatory lectures as follows. For these lectures you have to come prepared having studied the material that is specified below:

- Lecture 1: What is Law? Sources of Law (chapter 1 of the book)
- Lecture 2: Interpretation and Basic Legal Concepts (chapters 2 and 3 of the book)
- Lectures 3: Legal Philosophy (chapter x of the book)

For the exact time and location of each of the lectures see timetable. It is expected that lectures 1 and 2 will take place in the first two weeks, and lectures 3 in the last week of the course.

Tutorial meetings

This course meets twice per week for 6 weeks. Therefore there are 12 meetings. The tasks below are organized in post-discussion order. Before each post-discussion a pre-discussion should take place (naturally this is not possible for the first session).

Meeting 1

Chapter I of Introduction to law must be read beforehand. In the first part of the first session students should be able to answer questions from the tutor and to show understanding of this chapter.

Meeting 2

Contracts “In order to avoid the usual problems to make rejected asylum seekers leave the country, France has devised a new strategy: asylum seekers who enter the country and apply for asylum are required to sign a contract in which they agree to leave the country within five days after they received a definitive rejection on their application. In return, the government of France promises to decide on the request within a month and to provide the asylum seekers with free housing, food and medical care until the final decision. The value of this housing, food and medical care has to be repaid in fivefold as a penalty if the asylum seekers are rejected and do not leave the country within the agreed term. If asylum seekers do not sign this contract, their application will not be taken into consideration.

Behrouz Aziz has signed such a contract, and his application for asylum has been refused. He fears for his life if he has to return to his home country and wants to stay in France. His attorney says that maybe there are still some possibilities to arrange something. On short term, however, it is the contract that bothers him. Paying five times the costs of his family’s stay until now will take all his savings. Must he really pay that money? Maybe one thing can help. When he signed,

he understood “three times” the amount of money and not “five”, so maybe because of this mistake, he can be helped.”¹

Readings: Chapter IV of *Introduction to Law*.

Meeting 3

Property. “Simon is a new law student in Maastricht. Originating from the city of London, he has not owned a bike yet. However, upon arrival, he discovers that having a bike is very convenient. He is able to borrow a bike from his upstairs neighbor Jeffrey, who is the proud owner of three bikes. The only thing is that Jeffrey asks €10 euro per month for this; a bargain with which Simon happily agrees.

Things go very well, but one Wednesday night the bike disappears from the Vrijthof. It is gone and Simon has to tell Jeffrey about this. He, however, is a bit afraid of Jeffrey and postpones telling him as long as he can. Just as Simon cannot wait any longer - the next month’s payment is coming up - he finds the bike across the street in the hands of Mrs. Fletcher. He approaches Mrs. Fletcher and claims the bike back. Mrs. Fletcher however, argues she is the owner of the bike as she bought it at the second hand department of the station bike-store. Moreover, she argues Simon cannot prove he is entitled to the bike.”²

Readings: Chapter V of *Introduction to Law*.

Meeting 4

Torts. “Stella, her son Jim and grandson Chris drove to the airport to drop off Jim for an early flight. Stella, 79 years old but quite fit had just retired from a long career as a department store sales clerk. After leaving the airport, Stella and Chris, who was driving, stopped at McDonald’s drive-up window for breakfast. After they received their food, Chris pulled over and parked the car so Stella could add some cream and sugar to her coffee. In order to put the cream and sugar in her coffee, she put the cup between her knees so she could use both hands to remove the lid and add the cream and sugar to the coffee. While she was attempting to remove the lid, the coffee spilled into her lap. She screamed as the scalding coffee soaked into and through her sweat suit and scorched her skin. Chris raced her to the emergency room of a hospital, but by the time they arrived, Stella had severe third-degree burns on her lower body. She remained in the hospital for seven days and later underwent skin grafts. The grafts were almost as painful as the burns. Stella lost quite a bit of weight and was practically immobilized. She was disabled for two years and was left with permanent scars. Stella and her family thought McDonald’s should pay her medical expenses as well as reimburse her daughter for wages lost while staying home to take care of her (approximately \$20,000). About six months after the accident, Stella’s daughter

¹ Adapted from the coursebook for “Introduction to Law” used in the Law Faculty of Maastricht University in 2013.

²*Ibid.*

wrote to Mc Donald's to request reimbursement for these items and to ask Mc Donald's to lower the temperature of its coffee. In response Mc Donald's offered Stella and her family \$800, claiming that it had done nothing 'wrong' and was therefore not liable for her injuries.”³

Readings: Chapter VI of *Introduction to Law*.

Meeting 5

Criminal Law. Pierre went drinking on Saturday evening. His favorite football club, Paris St Germain had lost the match against Manchester United. After drinking seven bottles of Orval beer, he meets a noisy group of Manchester fans who were visiting Paris. They see him with a Paris St Germain t-shirt and start to provoke him throwing ash from a few ashtrays at him. Pierre tries to ignore them, but they get more incensed by his reaction and start to push him around. Snapping in anger at physical contact, Pierre hits one of the Manchester fans with a bottle of Orval. The fan falls to the ground bleeding. One of the Manchester fans carried a knife with him, in retaliation he stabs Pierre. Afterwards everybody left the scene and Pierre is found dead. The Manchester fan that was hit in the head did not suffer any medical problem. After a medical examination, it became clear that the Manchester fans were heavily intoxicated.

Readings: Chapter VII of *Introduction to Law*.

Meeting 6

Constitutional Law. In 2016 Donald Trump won the presidency of the United States of America. This came as a shock to many given the coarse and populist nature of the candidate. Many have blamed the “electoral college” system of the United States for this result, as the Democratic candidate, Hillary Clinton, gained more votes than Donald Trump, and yet still lost. Yet the Presidential system might be equally to blame, as it encourages populism by giving people a chance to vote for the president directly, and making it very difficult to take him out of office. This result would not have occurred in Europe. Upon reflection, one can see that the American electoral system, is a part of the constitutional governance structure and it represents a compromise between a great variety of values. Have Americans struck the right balance? Have Europeans?

Readings: Chapter VIII of *Introduction to Law*.

Meeting 7

Administrative Law. Jones wants to sell pizzas in a movable kiosk on the Vrijthoff square. He rents the space of a closed café and gets ready to make a profit. Sadly, after he has rented the café, he receives a notification from the municipality that his petition for a permit to sell pizzas has been denied. The municipality responds that “pizza is an Italian dish that does not go well

³Adapted from the coursebook for “An Introduction to Law” used in University College Maastricht in 2012.

with the traditions of Limburg, and that it will be detrimental to the image of the city”. Jones thinks this decision is ill founded and wants to challenge it. What can he do? Jones has discovered a few things that may help him. There are other international foods offered in the area and the mayor’s son has a pizza place two blocks from Vrijthoff. Could this help?

Readings: Chapter IX of *Introduction to Law*.

Meeting 8

International Law: Ukraine holds a grudge against Russia due to the annexation of Crimea. A new Ukrainian leader has bowed to bring Russia to justice. He has a few ideas in mind. First, he will appeal to the UN to resolve the issue. That should settle things. If that does not work, he will take Russia to Court in the Hague. If that does not work, he will sue Vladimir Putin personally in the International Criminal Court for all the bad things he has done. And if that does not work, he will travel personally to Geneva to discuss matters in front of the Security Council. He is already in good terms with American diplomats and he is sure the Security Council will use the blue helmets to deliver the territory back to Ukraine. He will hire the best lawyers. Although they are getting paid by the hour, his lawyers feel the need to curb his enthusiasm.

Readings: Chapter XII of *Introduction to Law*. Chapters 1-7 of the UN Charter.

Meeting 9

The law of Europe: There are many types of Brexiters. While many Brexiters have been motivated by prejudice, ignorance and fear, Woody thinks he is different. He holds very specific things against the European Union. First, he is worried that the sacred tradition of the Common Law will be lost, as EU law will run over it. Second, he thinks that it is important to keep government under popular control, and he believes the EU makes this impossible. Third, he believes that the free market should be subordinated to the goal of providing welfare for one’s fellow citizens, and he thinks the EU imposes strict market disciplines that make this impossible. Wanda disagrees. The EU is democratic, and even if it is not democratic, that is far outweighed by the benefits it brings.

Readings: Chapter X of *Introduction to Law*.

Meeting 10

Human Rights. Dora is a human rights activist, or at least she thinks she is. She has three causes that she fights for in Facebook and twitter. The first one, *Don’t be a Zuckerberg*, is a demand that Facebook should stop gathering data on its users and selling it to private companies. The second one, *“Pals”* is a campaign for recognizing the rights of pets and other domestic animals. Her third cause, *power together* pushes for the distribution of cheap electricity in the third world. Her friend Leyla has studied some law and she thinks that Dora is not a human rights activist. For none of her causes have anything to do with human rights. Leyla’s friend Mark, who is a philosopher, is appalled at the causes Dora is pursuing. He thinks she is taking away attention

for more important stuff. Dora is not sure she should care. After all, Amnesty International just retweeted her.

Readings: Chapter XIII of *Introduction to Law*.

Meeting 11

Tax Law:

Students will prepare for the session on tax law a tax law project. They will present a proposal for a new tax that will contribute to the achievement of legally valid aims. Groups will be made on the second tutorial session.

This will familiarize them with the ends of taxation, and with the interface between law and public policy.

Grading will take place in groups. The grading criteria include:

- Realistic: The tax project is potentially implementable.
- Linkage with tax policy and tax concepts: the students show that they can engage with the tax policy concepts used in the book and that they can use the language of tax law.
- Persuasive: the presentation shows that this tax project would be a good policy decision.
- Clarity: The presentation is clear to other students and helps them learn about tax law.

The project should include:

- A characterization of the tax's ends in terms of the three R's of taxation
- An identification of the source of wealth that is going to be taxed (income? Property? Other?)
- A clear conception of the conditions for tax liability for the tax
- Tax rates or brackets (as needed, a flat tax proposal may be possible), and of deductions or exemptions, as foreseen to be appropriate

Readings: Chapter XI of *Introduction to Law*.

Meeting 12.

For meeting 12 we will do a practice exam together in class.