

Course Syllabus (p.1 of 3)

In this course, we will examine some of the most important debates in contemporary legal philosophy by asking a series of questions about the relationship between law and morality. We will start with some questions about the nature of law and the role of moral principles in adjudication. How do we know what the law is? Does correctly identifying and applying the law ever require a judge to engage in controversial moral argument? Then we will look at two important values, liberty and equality. We will examine the different ways in which legal systems have understood these values, and we will ask which kinds of liberty and which kinds of equality should matter to us. Which liberties should the state protect? What limits does this place on majority rule? Do judges really have the power to constrain the majority, when they infringe the liberties of minorities? Should they have this power? Should the state always treat everyone equally? What does it mean to treat everyone equally, and why do we care about this? Do we care primarily about social and political status --the absence of domination and of second-class citizens? Or do we care about the equal distribution of certain important opportunities?

Required Readings

All of the readings for the course are contained in *Law and Morality: Readings in Legal Philosophy*, 3rd Edition, ed. Dyzenhaus, Moreau and Ripstein. It is available at the University of Toronto Bookstore.

Note: You must have the 3rd edition. The earlier editions omit much of the material we are using.

Evaluation

- (1) Short answer test on **October 17** covering Unit 1. Closed book. (20%)
- (2) Short essay (1,500 words). Topic given out in class on October 29 and due in your tutorial on **November 14**. Will cover Unit 2. (40%)
- (3) Two hour final in-class essay on **December 5** (20%)
- (4) Tutorial participation (20%)

Tutorials (starting Monday Sept. 19)

In addition to the Monday lectures, each of you has a weekly tutorial with one of our Tutorial Leaders. There is no extra reading for tutorials: their purpose is rather to clarify the lectures and the readings and to give you a chance to engage in philosophical discussion in a small group setting. Tutorial attendance and participation are mandatory. *If the only tutorials available at the time of your registration in the class conflict with other courses that you have, please see the Head T.A. Steven Coyne, who will be able to arrange for you to attend a tutorial at a time when you don't have other courses.

What to do if you have questions

Administrative questions (eg. Which tutorial am I in? Can I write a make-up test?)

Please contact the Head T.A.: steven.coyne@mail.utoronto.ca

Substantive questions (eg. about the content of the readings or the lectures)

Feel free to contact either me or your Tutorial Leader. You could raise a question during your tutorial. You are welcome to come to talk with me during my office hours: Tuesdays from 12:15-2pm, Jackman Law Building, rm 334. I am also always available after class to help with questions and clarifications. You are welcome to email me if you need to set up an appointment time: sr.moreau@utoronto.ca. But administrative questions should be sent to the Head T.A. (see above) and substantive questions about the course materials should be asked in person, not by email.

Course Syllabus (p.2 of 3)

Policies

(1) Recording / Photos in Class

No part of our classes may be recorded, unless you have been given specific permission by me as part of an accommodation through Accessibility Services.

(2) Absence During Short Answer Test – October 17

You must be present to write the Short Answer Test on Unit 1 unless you can provide a doctor's note. If you are ill that day, you need to email the Head T.A. (steven.coyne@mail.utoronto.ca) as soon as possible and you need to obtain, within the week, a doctor's note using the official U of T medical form:

www.illnessverification.utoronto.ca. Students who provide a doctor's note will be given one chance to write a make-up test/quiz, approximately two weeks after the original test date.

(3) Late Penalty for Take-Home Essay – November 14

You must hand a hard copy of your essay into your tutorial leader during your tutorial time on November 12. Late penalty without a doctor's note is 5 grade points per day (ie 80, to 75, to 70). There will be no exceptions. If you anticipate having heavy commitments in November, do not leave your essay writing until the last minute. *Essays will not be accepted beyond 7 days after the due date.*

(4) Academic Misconduct (<http://uoft.me/CodeofBehaviour>)

The University of Toronto's Code of Behaviour on Academic Matters outlines the behaviours that constitute academic misconduct, the processes for addressing academic offences, and the penalties that may be imposed. You are expected to be familiar with the contents of this document. Teaching Assistants and Instructors are required to report any instance of suspected academic dishonesty.

Potential offences include, but are not limited to:

In papers and assignments:

- Using someone else's ideas or words without appropriate acknowledgement.
- Submitting your own work in more than one course without the permission of the instructor.
- Making up sources or facts.
- Obtaining or providing unauthorized assistance on any assignment (this includes working in groups on assignments that are supposed to be individual work).

On tests and exams:

- Using or possessing any unauthorized aid, including a cell phone.
- Looking at someone else's answers.
- Letting someone else look at your answers.
- Misrepresenting your identity.
- Submitting an altered test for re-grading.

Misrepresentation:

- Falsifying or altering any documentation required by the University, including (but not limited to) doctor's notes.
- Falsifying institutional documents or grades.

If you have questions about appropriate research and citation methods, you are expected to seek out additional information from your T.A. or other campus resources like the College Writing Centers www.writing.utoronto.ca/writing-centres/centres/arts-and-science, the Academic Success Centre www.asc.utoronto.ca, or the U of T Writing Website www.writing.utoronto.ca.

Course Syllabus (p.3 of 3)

PHL 271F: Schedule of Readings

Sept. 12 Introduction to the Course and to Unit 1
The Queen v. Dudley and Stephens 14 Q.B.D. 273 (1884), p.154

1. Positivism and the Separation of Law and Morals

Sept. 19 Hart, "Positivism and the Separation of Law and Morals", p.28
Hart, extracts from *The Concept of Law*, p.53
26 Dworkin, "Law's Ambitions for Itself", p.108
Dworkin, Extracts from *Law's Empire*, p.122
Oct. 3 Tony Honore, "The Necessary Connection Between Law and Morality," p. 146
Breakaway sessions: (1) Taking the debate further; (2) Extra help with the basic ideas
10 Thanksgiving Monday – no class
17 **In-Class Test on Unit 1**

2. Liberty, Democracy and the Rule of Law

17 Mill, Excerpts from *On Liberty*, p. 306
24 *R. v. Marmo-Levine*; *R. v. Caine*, p. 326
Berlin, "Two Concepts of Liberty", p. 342
Taylor, "What's Wrong with Negative Liberty?", p.359
31 Devlin, "Morals and the Criminal Law", p.369
Dworkin, "Liberty and Moralism", p. 393
Nov. 7 Reading Week – no class
14 ***Essay on Unit 2 due**

3. Equality Rights and Discrimination

Nov. 14 The Canadian Supreme Court's Approaches to Equality Rights (Handout)
Halpern v. Canada, p. 453
21 Moreau, "The Wrongs of Unequal Treatment" (available on Blackboard)
Iyer, "Categorical Denials," p. 480
28 Hellman, Excerpt from *When is Discrimination Wrong?* (available on Blackboard)
Khaitan, Excerpts from *A Theory of Discrimination Law* (available on Blackboard)
Dec. 5 **In-class essay on Unit 3**