UNSW Course Outline

JURD7431 Legal Theory - 2024

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General Course Information

Course Code : JURD7431
Year : 2024
Term : Term 1
Teaching Period : T1
Is a multi-term course? : No
Faculty : Faculty of Law and Justice
Academic Unit : School of Law, Society and Criminology
Delivery Mode : In Person
Delivery Format : Standard
Delivery Location : Kensington
Campus : Sydney
Study Level : Postgraduate
Units of Credit : 6

<u>Useful Links</u>

Handbook Class Timetable

Course Details & Outcomes

Course Description

Legal Theory encourages students to take a **reflective** interest in the study of law - its intellectual foundations, its social conditions, its relationships with morality and politics, and its kinship with other disciplines, especially philosophy, ethics and social theory.

In the Western tradition this reflection starts with Aristotle's concept of **Nomos** which defined law

as the "principles and customs which *guide the whole way of life of a community*, including specific *commands and prohibitions*…but also including accounts of the *nature of things* and *justifications of the law* itself?" We can translate this description in four **key questions**:

- What guides the life of the community (**morality**)?
- What can be commanded as necessary or prohibited (**power**)?
- What do we understand as the real nature of things (**truth**)?
- What justifies the restrictions, judgements and force of law (**legality**)?

In other words, law refers to metaphysical concepts and very concrete human behaviour and social practices in our day to day lives: stopping for a red light even if no car is coming; paying taxes even if we disagree with the government. Why do we do these things? Is it because we want to do the "right" thing? Or simply because it is the law? Put differently: why do humans need and create laws and what do we aim to accomplish through law?

Within the Western tradition, law often reflects religious values (for example, those of the Ten Commandments) while Roman Law established the first sophisticated "rule of law". From the authoritarian commands of Kings, Queens or dictators to the promise of "social contracts" and modern deliberative democracy, law has developed into a highly complex tool to organize the way we live together. It is now perceived as safe-guarding our freedom and equality, as solidifying the power of economic and political elites, empowering minorities to fight racism and discrimination, a tool to control property and territory, and organize global flows of people and products. Law is, most importantly, also our main instrument to overcome violence and injustice, punish, settle conflicts and create reconciliation.

The course examines all these aspects in a historical, analytical and critical manner by showcasing different legal-philosophical positions, mainly taken from the Western jurisprudential canon while also looking at Indigenous and Asian perspectives. Some of the theories we engage with are: Natural Law, Legal Positivism, Legal Hermeneutics, Legal Realism, Feminist Jurisprudence, Legal Pluralism, Legal Pragmatism. In addition, the course engages with the wider framework of law: moral and political philosophy.

In sum, Legal Theory reflects on fundamental problems of modern law from a legal, moral and political perspective and provides students with a deeper understanding of the presuppositions that inform law, legal institutions and their own future professional practices. Its ultimate goal is to clarify what it means to be 'before the law' and if, how and where 'law meets justice'.

Course Aims

The course sees law as a phenomenon which may usefully be investigated from viewpoints other than those of the

practitioner. It critically discusses a number of basic notions associated with contemporary legal philosophy, including the

nature of legal analysis, the separation of law from other areas of social life, the character of legal positivism, the role of

the legal decision-maker, legal practice as an interpretive activity, the character of moral judgment, the difference in moral

theory between the right and the good, liberalism as a political theory and its opponents, and liberalism's attitude to rights

and to cultural difference. The course then applies some of these ideas to a number of 'problems' in contemporary legal

practice, which vary from semester to semester. They may include human rights in East Asia, the legal response to

cultural diversity, feminism and difference, legal responsibility, punishment, rights and judicial power, citizenship, and the

character of legal decision-making.

Relationship to Other Courses

This course closely relates to other theory courses such as 'Theories of Law and Justice' and 'Law and Social Theory"; it also extends questions examined in 'Lawyers, Ethics, and Justice' and several Criminology courses.

Course Learning Outcomes

Course Learning Outcomes
CLO1 : Demonstrate awareness of principles of legal theory and their relationship to the broader context (PLOs 1, 2, 3, 4, 5, 6, 7, 8)
CLO2 : Engage in critical analysis of social and legal institutions (PLOs 1, 2, 8)
CLO3 : Engage in critical analysis of the law on one hand and personal and public morality on the other (PLOs 1, 11)
CLO4 : Produce scholarly writing that demonstrates: (1) acquaintance with the vocabulary of philosophical reflection on law;(2) analysis, synthesis, critical judgment, reflection and evaluation; and (3) cites a range of practical and scholarlyinterdisciplinary research sources (PLOs 5, 6, 8)
CLO5 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflectiveand respectful manner (PLOs 9, 10)
CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previousfeedback received in the course (PLOs 12).

Course Learning Outcomes	Assessment Item
CLO1 : Demonstrate awareness of principles of legal theory and their relationship to the broader context (PLOs 1, 2, 3, 4, 5, 6, 7, 8)	• Final Research Essay (3000 words) • Mid-Session Research Essay (1500 words) • Class Participation
CLO2 : Engage in critical analysis of social and legal institutions (PLOs 1, 2, 8)	• Final Research Essay (3000 words) • Mid-Session Research Essay (1500 words) • Class Participation
CLO3 : Engage in critical analysis of the law on one hand and personal and public morality on the other (PLOs 1, 11)	• Final Research Essay (3000 words) • Mid-Session Research Essay (1500 words)
CLO4 : Produce scholarly writing that demonstrates: (1) acquaintance with the vocabulary of philosophical reflection on law; (2) analysis, synthesis, critical judgment, reflection and evaluation; and (3) cites a range of practical and scholarlyinterdisciplinary research sources (PLOs 5, 6, 8)	• Final Research Essay (3000 words) • Mid-Session Research Essay (1500 words)
CLO5 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflectiveand respectful manner (PLOs 9, 10)	• Class Participation
CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previousfeedback received in the course (PLOs 12).	• Final Research Essay (3000 words) • Mid-Session Research Essay (1500 words)

Learning and Teaching Technologies

Moodle - Learning Management System

Learning and Teaching in this course

All details are on the Moodle page; instructions per lecture in each section, including teaching philosophy and expectations.

Additional Course Information

All additional information can be found on the Legal Theory Moodle page.

Assessments

Assessment Structure

Assessment Item	Weight	Relevant Dates
Final Research Essay (3000 words) Assessment Format: Individual	50%	Start Date: Start & Due date for Research essay vary, see details on Moodle. Due Date: Start & Due dates Research Essay vary, see details on Moodle. Post Date: 16/05/2024 12:00 AM
Mid-Session Research Essay (1500 words) Assessment Format: Individual	30%	Start Date: variable Due Date: variable Post Date: 16/05/2024 12:00 AM
Class Participation Assessment Format: Individual	20%	Start Date: Not Applicable Due Date: one post per week fin 8 weeks of course Post Date: 16/05/2024 12:00 AM

Assessment Details

Final Research Essay (3000 words)

Assessment Overview

Final Research Essay (3000 words) - 50%

Content/ Skills

- Perform in-depth research on legal thinking in a particular area
- Critically engage with legal theory literature/ authors
- Develop argument & draw reflective conclusion

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

Course Learning Outcomes

- CLO1 : Demonstrate awareness of principles of legal theory and their relationship to the broader context (PLOs 1, 2, 3, 4, 5, 6, 7, 8)
- CLO2 : Engage in critical analysis of social and legal institutions (PLOs 1, 2, 8)
- CLO3 : Engage in critical analysis of the law on one hand and personal and public morality on the other (PLOs 1, 11)
- CLO4 : Produce scholarly writing that demonstrates: (1) acquaintance with the vocabulary of philosophical reflection on law;(2) analysis, synthesis, critical judgment, reflection and evaluation; and (3) cites a range of practical and scholarlyinterdisciplinary research sources (PLOs 5, 6, 8)
- CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previousfeedback received in the course (PLOs 12).

Detailed Assessment Description

The details for the Research Essay can be found on the Moodle page.

Assessment Length

Word requirement 3000 words (includes 250 words bibliography); details on Moodle.of

Submission notes

Always include exact question/ topic of the essay on top of the first page, and state how many content words it has. More details on Moodle.

Assessment information

All additional information can be found on Moodle.

Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

Mid-Session Research Essay (1500 words)

Assessment Overview

Short research essay (1500 words) - 30%

Content/ Skills

- Display understanding and critical engagement with the literature
- Development of the skills of exposition
- Analysis and argumentation as they pertain to theoretical thinking

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

Course Learning Outcomes

- CLO1 : Demonstrate awareness of principles of legal theory and their relationship to the broader context (PLOs 1, 2, 3, 4, 5, 6, 7, 8)
- CLO2 : Engage in critical analysis of social and legal institutions (PLOs 1, 2, 8)
- CLO3 : Engage in critical analysis of the law on one hand and personal and public morality on the other (PLOs 1, 11)
- CLO4 : Produce scholarly writing that demonstrates: (1) acquaintance with the vocabulary of philosophical reflection on law;(2) analysis, synthesis, critical judgment, reflection and evaluation; and (3) cites a range of practical and scholarlyinterdisciplinary research sources (PLOs 5, 6, 8)
- CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previousfeedback received in the course (PLOs 12).

Detailed Assessment Description

See for more details the Legal Theory Moodle site

Assessment Length

1500 words excl bibliography and footnotes

Assessment information

All additional information is on the Moodle site

Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

Class Participation

Assessment Overview

The CP mark for this class counts for 20% of the overall mark.

Information about CP will be provided in class.

Content/ Skills

- Critically engage with the readings
- Elicit constructive discussions in class with peers

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

Course Learning Outcomes

- CLO1 : Demonstrate awareness of principles of legal theory and their relationship to the broader context (PLOs 1, 2, 3, 4, 5, 6, 7, 8)

- CLO2 : Engage in critical analysis of social and legal institutions (PLOs 1, 2, 8)
- CLO5 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflectiveand respectful manner (PLOs 9, 10)

Detailed Assessment Description

CP is a holistic mark for 1) active class participation (just being present does not give you any marks) individually and within group tasks, and 2) one weekly 'reading response' which are collected and submitted as a "reflective journal" to Turnitin as the end of Term.

Assessment Length

Reading Responses min. 250 words per week.

Submission notes

NA

Assessment information

All additional information is on the Moodle site

Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

General Assessment Information

All additional details will be discussed in the first lecture and is available on the Moodle site.

Grading Basis

Standard

Requirements to pass course

80% attendance of all class, and '50' overall/ total grade of all completed assignments.

Course Schedule

Attendance Requirements

Students are strongly encouraged to attend all classes and review lecture recordings.

General Schedule Information

See the Moodle page of this course

Course Resources

Prescribed Resources

All resources are on the Moodle page available: readings, audio and video clips, Power Points, Online Modules, and Online Forums. All readings are marked with *** are mandatory reading, readings with ** or * are (highly) recommended but not mandatory.

Recommended Resources

All readings are marked with *** are mandatory reading, readings with ** or * are (highly) recommended but not mandatory.

Additional Costs

NA

Course Evaluation and Development

Feedback is informallly gathered mid-Term throuhg in-class evaluation of first part of the the course with the students, and more formally in the MyExperience survey; students can also provide feedback in last Forum submission. Course readings, content and assignments are updated regularly based on student feedback and lecturer knowledge of changes in the academic literature or requirements of the legal profession.

Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
Convenor	Marc De Leeuw		Room 330 Law Building	0433426773	after class or by appointment	Yes	Yes

Other Useful Information

Academic Information

Upon your enrolment at UNSW, you share responsibility with us for maintaining a safe, harmonious and tolerant University environment.

You are required to:

- Comply with the University's conditions of enrolment.

- Act responsibly, ethically, safely and with integrity.
- Observe standards of equity and respect in dealing with every member of the UNSW community.
- Engage in lawful behaviour.
- Use and care for University resources in a responsible and appropriate manner.
- Maintain the University's reputation and good standing.

For more information, visit the UNSW Student Code of Conduct Website.

UNSW Law & Justice Assessment Policy

It is essential that all students undertaking this course read and abide by the UNSW Law & Justice Assessment Policy & Student Information. This document includes information on Class Attendance, Late Work, Word Limits, Marking, Special Consideration, Workload, and Academic Misconduct & Plagiarism. More information can also be found at Assessment & Exam Information.

Information regarding Course Outlines are subject to change and students are advised to check updates. If there is a discrepancy between the information posted here and the handbook or the UNSW Law & Justice website, please contact Student Services via The Nucleus Hub for advice. UNSW Law & Justice reserves the right to discontinue or vary such courses or staff allocations at any time. If your course is not here, please visit Handbook for information.

Academic Honesty and Plagarism

As a student at UNSW you are expected to display academic integrity in your work and interactions. Where a student breaches the UNSW Student Code with respect to academic integrity, the University may take disciplinary action under the Student Misconduct Procedure. To assure academic integrity, you may be required to demonstrate reasoning, research and the process of constructing work submitted for assessment.

To assist you in understanding what academic integrity means, and how to ensure that you do comply with the UNSW Student Code, it is strongly recommended that you complete the Working with Academic Integrity module before submitting your first assessment task. It is a free, online self-paced Moodle module that should take about one hour to complete.

Submission of Assessment Tasks

Before submitting assessment items all students must read and abide by the UNSW Law &

[Justice Assessment Policy & Student Information](#).

Special consideration

Special consideration is primarily intended to provide you with an extra opportunity to demonstrate the level of performance of which you are capable. To apply, and for further information, see Special Consideration on the UNSW [Current Students](#) page.

Feedback

UNSW Law & Justice appreciates the need for students to have feedback on their progress prior to the last date for withdrawal without failure. All courses will therefore provide feedback to students prior to this date, as well as throughout the course. However, students should note that feedback does not take the form only of formal grades and written comments on written assessments. Rather, formative feedback, which helps students to self-assess, to identify misunderstandings, and to identify areas requiring further work, will occur during class and possibly online. For example, where a teacher asks the class a question, all students should think about how they might answer. Even though not all students will necessarily be able to respond orally, everyone can reflect on their tentative answer in light of the teacher's response and subsequent class discussion. If you are struggling to understand what is being asked in class, or if your tentative answers prove incorrect and subsequent discussion does not clear things up, then you should continue to ask questions (of yourself, your peers or your teacher). Similarly, you can get a sense of your ability in a course through peer feedback during group work, your teacher's responses to your in-class contributions, and your own response to in-class problems and examples (whether or not you are called on to relay your answer to the class) and also your online activities and responses by others to those activities. Students enrolled in this course may check their Moodle course page for details on the specific feedback used in this course.

Faculty-specific Information

Additional support for students

- Student support: https://www.student.unsw.edu.au/support
- Academic Skills and Support: https://student.unsw.edu.au/academic-skills
- Student Wellbeing, Health and Safety: https://student.unsw.edu.au/wellbeing
- Equitable Learning Services: https://student.unsw.edu.au/els
- UNSW IT Service Centre: https://www.myit.unsw.edu.au

Course improvement

Student feedback is very important to continual course improvement. This is demonstrated within the Faculty of Law & Justice by the implementation of the UNSW online student survey myExperience, which allows students to evaluate their learning experiences in an anonymous way. myExperience survey reports are produced from each survey. They are released to staff after all student assessment results are finalised and released to students. Course convenors will use the feedback to make ongoing improvements to the course. Students enrolled in this course may check their Moodle course page for details on the actions taken in response to evaluation feedback in Student Survey.

School Contact Information

Please contact Nucleus Student Hub for all enquiries. The Nucleus acts as a central communications hub for UNSW and will distribute your enquiry to the best person to respond.