



**UNSW**

## UNSW Course Outline

# JURD7431 Legal Theory - 2024

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## General Course Information

**Course Code :** JURD7431

**Year :** 2024

**Term :** Term 2

**Teaching Period :** T2

**Is a multi-term course? :** No

**Faculty :** Faculty of Law and Justice

**Academic Unit :** School of Law, Society and Criminology

**Delivery Mode :** Multimodal

**Delivery Format :** Standard

**Delivery Location :** Kensington

**Campus :** Sydney

**Study Level :** Postgraduate

**Units of Credit :** 6

[Useful Links](#)

[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 the other Legal Theory courses on offer - Theories of Law and Justice, Law and Social Theory, and Legal Experientialism.

## 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 scholarly interdisciplinary research sources (PLOs 5, 6, 8)
CLO5 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflective and respectful manner (PLOs 9, 10)
CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previous feedback 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)	<ul style="list-style-type: none"> <li>• Mid-Session Research Essay (1500 words)</li> <li>• Final Research Essay (3000 words)</li> <li>• Class Participation</li> </ul>
CLO2 : Engage in critical analysis of social and legal institutions (PLOs 1, 2, 8)	<ul style="list-style-type: none"> <li>• Mid-Session Research Essay (1500 words)</li> <li>• Final Research Essay (3000 words)</li> <li>• Class Participation</li> </ul>
CLO3 : Engage in critical analysis of the law on one hand and personal and public morality on the other (PLOs 1, 11)	<ul style="list-style-type: none"> <li>• Mid-Session Research Essay (1500 words)</li> <li>• Final Research Essay (3000 words)</li> </ul>
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 scholarly interdisciplinary research sources (PLOs 5, 6, 8)	<ul style="list-style-type: none"> <li>• Mid-Session Research Essay (1500 words)</li> <li>• Final Research Essay (3000 words)</li> </ul>
CLO5 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflective and respectful manner (PLOs 9, 10)	<ul style="list-style-type: none"> <li>• Class Participation</li> </ul>
CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previous feedback received in the course (PLOs 12).	<ul style="list-style-type: none"> <li>• Mid-Session Research Essay (1500 words)</li> <li>• Final Research Essay (3000 words)</li> </ul>

## Learning and Teaching Technologies

Moodle - Learning Management System

## Learning and Teaching in this course

All Readings, and audio and video material is available on Moodle for this course.

# Assessments

## Assessment Structure

Assessment Item	Weight	Relevant Dates
Mid-Session Research Essay (1500 words) Assessment Format: Individual	30%	
Final Research Essay (3000 words) Assessment Format: Individual	50%	
Class Participation Assessment Format: Individual	20%	

## Assessment Details

### 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 scholarly interdisciplinary research sources (PLOs 5, 6, 8)
- CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previous feedback received in the course (PLOs 12).

### 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 scholarly interdisciplinary research sources (PLOs 5, 6, 8)
- CLO6 : Demonstrate self-management through self-assessment of capabilities and performance and use of previous feedback received in the course (PLOs 12).

## 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, reflective and respectful manner (PLOs 9, 10)

## General Assessment Information

All Assessment information can be found on the course Moodle page.

## Grading Basis

Standard

### Requirements to pass course

Active Class Participation (80% attendance) showcasing critical engagement with the readings and class topics.

Essays will be marked on following criteria:

### Marking Criteria

*Structure* (clear introduction, body, and conclusion)

*Topic definition* (clarity of scope/delineation of scope of essay)

*Argument*

- Logical flow of proposition and evidence.
- Integration of evidence.
- Consideration of contrary positions.
- Grammar, sentence, paragraph structure well constructed

*Research* (evidence of sufficient independent research; use of peer-reviewed sources)

*Analysis/critical thinking*

- Demonstrated understanding of material analysed
- Reflection – essay demonstrates independent thought.
- Conclusions are drawn.
- Different perspectives are evaluated.
- Identification of knowledge gaps.

*Citation and referencing* (all sources acknowledged; correct citation; bibliography)

## Course Schedule

## Attendance Requirements

Please see information about attendance requirements in **Law & Justice Assessment Procedure and Student Information** located in the Other Useful Information tab in the Academic Information field.

Please be advised there will be no classes on public holidays. If your class falls on a public holiday, alternative arrangements will be made by the course convenor to make up the missed class.

## General Schedule Information

This course has an 80% attendance requirement.

## Course Resources

### Prescribed Resources

See Moodle.

### Recommended Resources

See Moodle page.

## Course Evaluation and Development

There is an informal mid-term student evaluation to see how students experience the course; and an end-of-term MyExperience survey which may lead to changes in the course content and assessments in subsequent Terms.

## Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
	Marc De Leeuw					No	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 Plagiarism

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.