

PHL 443: Philosophy of Law
Philosophy Department
SUNY College at Oswego
Spring 2019 (1:50/Marano 231)

Course Description: This course will focus on philosophical problems in the law. The first unit of the course will address the question: "What is law?" After a brief look at the nature of morality and arguments regarding both the importance of liberty and its restriction, we will look at issues at the intersection of morality and law such as (e.g.) reproductive freedom, freedom of expression, obscenity and pornography, punishment, and more. What is the basis in the law for these things? Is this basis philosophically sound? We will examine the reasoning in relevant U.S. legal cases to serve as a springboard for our analysis of the underlying philosophical issues.

Professor/Office Hours: Dr. Robert Card, Professor, Department of Philosophy, 212 Campus Center. Scheduled office hours are Mondays and Fridays 3:15-4:45, and I am available by appointment. See me after class or contact me via email for an appointment if you cannot come during regular office hours. If I need to cancel office hours for some reason, I will announce this fact in advance.

Phone and Email Contact Information: The most effective way to contact me is via email. My email address is: robert.card@oswego.edu Phone and Voicemail: X2793. If you leave a voicemail include your name, class, and contact information. My website is: <http://www.robertcard.com> You will find important course information and resources on my website to help you succeed in this course. You will find important course information and numerous resources on my website to help you succeed in this course.

Required Texts:

Xeroxed Packet (XP) containing reading materials (available at The College Bookstore) Adams, David M. (ed.) *Philosophical Problems in the Law*. Fifth Edition. ISBN-10 #1-133-04999-0 (Wadsworth Publishing)

Suggestions:

As you read, you should be considering possible points of agreement and disagreement with the writer. I expect you to attend class well-prepared and to be able to discuss any of the readings assigned up to and including the date of the class. Frequent in-class writing assignments will be given to underscore the importance of keeping up with the readings. To facilitate these goals, do the reading assignments well in advance. Philosophy is difficult and requires disciplined thought. You may have to read the text several times before you have a sufficient grasp of the material. Feel free to ask informed questions during class time. Utilize my office hours to test and further your understanding of the material.

Course Requirements: 500 total course points

1. *In-Class Questions*: 20% of final grade (100 points)

*These are short essay questions that will be handed out on a periodic basis in class and completed in class. These quizzes will be centered on course materials and will be used to encourage and test preparedness for class as well as to assist with class discussion. These questions will be graded on a scale of one to ten, with the following qualitative descriptions as representative for various point levels:

10/9 out of 10: includes the main points, answers question correctly, and makes no errors

7/6 out of 10: clearly did the reading but does not include the main points for the question

3 out of 10: present in class but essay lacks clear evidence of having read the material

*If you miss class for an excused reason on a day in which an in-class question is distributed and completed, you must provide notice. An email explaining the circumstances of the absence should be sent to me in advance; this allows discussion of the possibility of making up this assignment. (See policy below on excused absences.)

2. *Class Participation*: 10% of final grade (50 points)

*Students are responsible for contributing to the dialogue concerning course material. Class participation will be assessed in several ways. Students may be assigned to participate in group discussions. In addition, students will be assigned to be discussion leader for the reading material on certain dates. The goal of this informal presentation is (1) to keep in focus the main points of the readings for that class and (2) raise questions and make comments which will stimulate class discussion of the main issues. Students can expect to take part in this several times during the semester.

*Making substantial and relevant contributions to class discussion can positively affect students' final grade.

3. *Midterm essay*: 20% of final grade (100 points) [Due: Fri. Mar. 15]

*This essay may be rewritten in order to improve your grade. Rewrites are optional. If the essay is rewritten, you will then receive as your final grade for the assignment the *average* of those two grades. The privilege of rewriting the paper is withdrawn if the complete paper is not originally turned in on time. This rewrite is due one week after the paper is returned in class. If you choose to rewrite your paper, hand in both papers and staple the original paper behind the rewrite.

4. *Final Essay*: 30% of final grade (150 points) [Due: Fri. May 10]

*Since this essay is due at the end of the semester, rewrites are not an option. However, meeting to discuss an outline of your paper is suggested. (We will discuss this in class.)

5. *Final exam*: 20% of final grade (100 points) [Scheduled: Mon. May 13, 2-4pm]

Schedule of Readings:**A. Introduction and Overview of Morality and Law**

Editor's Introduction, p. 3-14; Regina v. Dudley and Stephens (XP #1)

Dershowitz (XP#2)

Jackson (p. 23); Wyzanski (p. 29); Trial of Border Guards (p. 19)

B. Theories of Law: Natural Law Theory, Legal Positivism, Legal Realism

Aquinas (p. 82); Austin (p. 64)

Hart (p. 69)

Riggs et. al. v Palmer (p. 184); Dworkin (XP #3)

Henningsen v. Bloomfield Motors, Inc. and Chrysler Corporation (XP #4)

Dworkin (XP #5)

Fuller (XP #6)

Holmes (p.108); Frank (p. 113)

Cases for Further Reflection (selection) (XP #7; p. 192 ff.; XP #8)

C. Reproductive Rights and the Law

Griswold v. Connecticut (p. 311); Roe v. Wade (XP #9)

Planned Parenthood of Southeastern Pennsylvania v. Casey (XP #10); Sunstein (XP #11)

Brock (XP #12)

LaFollette (XP #13)

Bork (XP#13.5); Holy Trinity v. U.S. (211); Scalia (p. 214); Smith v. U.S. (208);

Dworkin (p. 219); Heller (p. 224)

D. Freedom of Expression, Obscenity, Pornography, Religion, and the Law

Mill (XP #14)

Dworkin, G. (XP #15)

Feinberg (XP #16)

Village of Skokie v. National Socialist Party (XP #17)

Cohen v. California (XP#17.5); Feinberg (XP #18)

Dershowitz (XP #19)

Texas v. Johnson (p. 325); Snyder v. Phelps (329)

Delgado & Stefancic (XP #20); Hernandez v. Commonwealth of Virginia (XP #21)

Feinberg (p. 298); Reno v. American Civil Liberties Union (XP #22)

McCarthy (XP #23); Milgram (XP #24)

Kristol (XP #25)

American Booksellers Association v. Hudnut (p. 294); MacKinnon (p. 305)

Dershowitz (XP #26)

Department of Human Resources of Oregon v. Smith (XP #27); Wisconsin v. Yoder (XP #28); Carter (XP #29)

Macklin (XP #30); Dershowitz (XP #31); Dershowitz (XP #32); Newdow (web)

Minersville v. Gobitis (p. 323); Lukumi v. Hialeah (XP #33); Cases for Further Reflection (p. 335 ff.; XP #34)

***Equal Protection:** Tuan Anh Nguyen v. INS (399); Michael H (414); Balkin (418)

Loving v. Virginia (453); Sunstein (436); Jordan (441); Obergefell (web)

E. Punishment and the Death Penalty

Furman v. Georgia (XP #35); Gregg v. Georgia (p. 623)

Dershowitz (XP #36)

Van Den Haag (p. 578)

Bedau (584)

McCleskey v. Kemp (p. 592)

Kennedy (596)

Dershowitz (XP #37)

Appendix (XP); U.S. Constitution

Cases for Further Reflection (selection) (p. 368 ff.)

*As time allows: Appendix: Penry v. Lynaugh; Atkins v. Virginia; Roper v. Simmons;

Bowers v. Hardwick (XP #43; XP #44); Fuller (XP #45); Kerr (web)

Attendance, Excused Absences

Regular class attendance is expected. Attendance will be taken daily but no punitive attendance policy *per se* is in effect. Continual tardiness will not be tolerated. Without regular class attendance, success in this course is very difficult.

If assignments are going to be handed in late, this should be discussed with the instructor prior to the due date/exam date. The following reasons will be viewed as beyond the control of the individual and consequently will not cause the grade for a late paper/exam to be lowered:

- a. Death of a family member/or other significant person
- b. Extended hospitalization
- c. University sponsored events
- d. Jury duty/or being subpoenaed for court testimony

Appropriate, credible documentation is required for these exemptions.

Regarding religious holidays: It is the responsibility of the student to notify the faculty in writing during the first full week of the semester of their intention to be absent from class on their day(s) of religious observance if classes are held and if this causes the student to be absent on the day an assignment is due or is completed in class.

Late Assignments

Assignments turned in late *without* a validated excuse will be subject to a late penalty: Late assignments will be marked down *one* full grade if the instructor is notified in advance that the paper/exam will be late.

Late assignments will be marked down *two* full grades if the instructor is not notified in advance that the paper/exam will be late.

No assignments will be accepted (or make-up assignments scheduled) after the assignment has been reviewed in class and/or handed back to the students by the instructor. All course work must be turned in by the final exam date.

*Notification to the instructor that an assignment is going to be late should be in the form of a voicemail or an email.

*If you have an excused absence for the day that a paper is due, then you may hand in the paper when you come back to class, with no penalty, provided you have an excused absence covering the time period during which the paper is late.

*Given the pressures inherent in scheduling all the students in this course, class participation cannot be made up unless a documented excuse is provided (see above).

Paper Format

All papers should be typed or word processed, double-spaced, with a regular (12 point) font and no more than 1" margins. Please make sure your name, the number and title of the course, my name, and the date you are handing in the paper appear at the top of the first page. You may use a cover page if you wish, but do not use binders, paper clips, or any fastener other than a staple to join the pages. Your last name and page number should appear on all subsequent pages. *Your paper should include a copy of the Writing Checklist and Rubric. A copy of the Writing Checklist and Rubric appears at the end of this syllabus. This is to be filled out by the student prior to handing in the paper, and stapled behind the essay.

Submitting Your Paper

Papers are due at the beginning of class on the due date. Students take full responsibility for ensuring that any papers handed in outside of class reach me on time. Papers are not accepted via email, unless there is some special reason for this and prior arrangements are made with the instructor. It is strongly recommended that you keep all graded work until you receive your final grade.

Special Needs

Please notify me as soon as possible of any special learning needs you may have, so that I can make reasonable accommodations. If you have a special learning need and would like more support in dealing with it, you should probably visit the Disability Services Office. If you wish to complete assignments at the Disability Services Office, you must notify me during the first week of classes and provide the proper documentation.

Expectations

Appropriate behavior in class is expected. Do not distract the instructor or classmates by making noise during class. It is important that an attitude of respect for others' opinions is present at all times during class meetings. Disruptive behavior (such as interrupting others when they are speaking) will not be tolerated. Also, be courteous to the instructor and your classmates by arriving at class on time; if you need to leave class early, inform the instructor in advance. Only registered students for this class may attend; obtain prior permission from the instructor for guests. The instructor reserves the right to hold questions until the end of the class period to ensure that adequate time is available to review the material assigned for class. Please act appropriately: do not sleep or wear headphones or earbuds during class. Also, ensure that cellular phones or pagers will not disturb the class. **No texting in class. Cellular phones are to be either turned off or set to vibrate and are to be put away in a purse, backpack, etc.** Following these common sense rules will make the course more enjoyable and rewarding for everyone.

Do not cheat on assignments or plagiarize papers, and do not lie about absences, lateness, etc. I make it a point to detect, confront, and PENALIZE academic dishonesty. Acts of plagiarism will be reported to the Associate Dean, College of Arts and Sciences, and if it is determined that a violation of intellectual integrity has occurred, academic penalties may be imposed, including the penalty of receiving a failing grade for the course. When writing essays, resist the temptation to "borrow" material located on the Internet. It is simply understood that intellectual honesty requires that you document all sources that are used to complete your course work, but for the sake of completeness, the College Policy on Cheating/Plagiarism states (in part):

"One particular form of intellectual dishonesty is plagiarism (i.e. the representation of another's words, thoughts, or ideas as one's own). While it is expected that a student who is engaged in writing will utilize information from sources other than personal experience, appropriate acknowledgment of such sources is required. Plagiarism includes:

- (1) utilizing a direct quotation without citing the source
- (2) paraphrasing the ideas, interpretation, expressions of another without giving credit; and,
- (3) representing the thought of others as their own by failing to acknowledge or document sources.... (Student Handbook 2005-2006, p. 95; "Intellectual Integrity").

Intellectual Integrity Statement: SUNY Oswego is committed to Intellectual Integrity. Any form of intellectual dishonesty is a serious concern and therefore prohibited. The full policy can be found at <http://www.oswego.edu/integrity>

I have an open-door policy: please feel free to come by my office to discuss any concerns you have regarding this course. I reserve the right to make appropriate changes to the class readings and requirements as the course unfolds.

Grading Scale: (500 possible points)

A	90-100%	450-500 points
A-	88-89%	440-449 points
B+	86-87%	430-439 points
B	80-85%	400-429 points
B-	78-79%	390-399 points
C+	76-77%	380-389 points
C	70-75%	350-379 points
C-	68-69%	340-349 points

D+	66-67%	330-339 points
D	60-65%	300-329 points
D-	58-59%	290-299 points
Failing	below 58%	below 290 points

Citations (MLA) [to materials in xerox packet (XP)]

-Author Named In Parentheses

It is said best in the following: "If the court had applied a cost-benefit analysis, the issue would be a simple one" (Dershowitz 476).

Or

-Using Signal Phrase:

Alan Dershowitz wrote, "If the court had applied a cost-benefit analysis, the issue would be a simple one" (476).

Works Cited

Dershowitz, Alan. "Torture of Terrorists." *Shouting Fire: Civil Liberties in a Turbulent Age*. Ed. Alan Dershowitz. Boston: Little, Brown, 2002. 470-77. Print.

-Refer to front page of XP for bibliographic information-

Writing Checklist and Rubric

The purpose of this checklist is to provide a tool for self-evaluation and to clarify the expectations for written work in this course. Before submitting your paper, you will complete this checklist and attach it to your paper. In evaluating papers, I will consider the following qualities: accuracy, organization and clarity, thoroughness and development, and argument.

ACCURACY

- | | | |
|---|---|---|
| 1. Have I proofread my paper, eliminating grammatical and other surface errors? | Y | N |
| 2. Have I properly formatted the paper and ensured it is the proper length? | Y | N |
| 3. Have I accurately characterized the central issue? | Y | N |
| 4. Have I accurately represented the positions, arguments, or criticisms discussed? | Y | N |

CLARITY AND ORGANIZATION

- | | | |
|---|---|---|
| 5. Have I avoided using slang? | Y | N |
| 6. Have I avoided discussing extraneous material? | Y | N |
| 7. Have I expressed my ideas in clear prose? | Y | N |
| 8. Have I clearly explained my ideas and made them self-sufficient? | Y | N |
| 9. Have I ensured that the paper gets down to business quickly? | Y | N |
| 10. Have I stated the thesis of the paper in the first paragraph? | Y | N |
| 11. Have I unified and focused the paper on the stated thesis? | Y | N |
| 12. Have I provided logical links throughout the paper to support the thesis? | Y | N |

THOROUGHNESS AND DEVELOPMENT

- | | | |
|---|---|---|
| 13. Have I answered all parts of the assigned question? | Y | N |
| 14. Have I demonstrated knowledge of class materials and discussions? | Y | N |
| 15. Have I provided adequate bibliographic information? | Y | N |
| 16. Have I explained relevant background material? | Y | N |
| 17. Have I sufficiently developed the position I defend? | Y | N |

ARGUMENT

- | | | |
|---|---|---|
| 18. Have I avoided rhetorical questions? | Y | N |
| 19. Have I offered compelling support for my position? | Y | N |
| 20. Have I considered what my opponents may say? | Y | N |
| 21. Have I offered an important, original, and plausible thesis and argument? | Y | N |

