

Legal Studies 450:

Jurisprudence and Contemporary Issues

Spring 2017

T/R 1:00-2:15 PM

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Office hours: Tuesday, Thursday 2:30-4pm.

I. Course Objectives

The purpose of this course is to introduce and examine a number of fundamental questions about the nature and content of law. These can be divided into questions of *analytic* and *normative* jurisprudence. Some examples of questions in analytic jurisprudence are: What does it mean for something to be the law? What makes it the case that some things are a matter of law (e.g., that we drive on the right side of the road) and other things are not (e.g., that we place forks on the left side of the plate)? An aspect of this question is the relationship between law and morality: Are the dictates of evil regimes *law*? Another aspect of this question involves interpretation: Is the law exhausted by the meaning of words in constitutions and statutes?

Questions of normative jurisprudence concern the proper content of law. Some examples of questions in normative jurisprudence are: What should the law permit, prohibit, and promote? Some argue that the law should prohibit an action only if the action causes harm to others; is that a plausible principle? Can activity be legitimately prohibited even if there is widespread disagreement regarding whether the activity causes harm?

We will examine these questions by looking at a number of topics that are at issue in U.S. (and other nations') laws. These will include interpreting criminal law statutes, interpretations of the Patient Protection and Affordable Care Act, criminalization (is there any limit to the types of activities we can punish people for, and why or why not?); and property (what justifies property, and especially *intellectual* property rights).

Keeping in mind those lines of inquiry, the goals of this course are to:

1. Introduce some of the major issues in jurisprudence;
2. Critically examine a variety of approaches to understanding the nature and legitimate content of law; and,
3. Develop students' abilities to articulate and discuss complex issues and arguments surrounding important legal, social, and moral questions.

II. Required Texts

There are two sources for readings in this course:

1. Learn@UW. Most of the readings for this course will be posted on the Learn@UW (D2L) page for this course.
2. There is one book that we will read a large part of: Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010). There are multiple versions of this book (original is 2010, there's a revised edition from 2012). Each is fine for this course. There are many used versions around. More importantly, the UW library has an electronic version of the book that you can access (and save portions of) for free.

III. Assignments, Evaluation, and Grading

Your final grade will be based on two examinations, 2 short papers, regular written memos and responses, and class participation. In addition, your particularly active and thoughtful participation in class (particularly where it evinces careful reading of the course materials) can positively affect your grade, up to half a letter grade.

Participation – 10%

This not a large class, and it will work best if each of you is consistently engaged in discussion, and if that discussion is grounded in course readings. I will not take attendance initially. However, I expect you to attend most every meeting, and your participation grade will go down if you are not present. In addition, I expect that you will generally have something to say about the readings, and I will call students without warning.

NOTE: Attendance is very closely correlated with academic performance, so regardless of participation “points,” it is important to show up.

Memos – 20% total (5% each memo)

Responses – 10% total

You will write four short memos (roughly one page) on questions I pose about the course readings, and you will share those memos with the class. Each week in which you do not write a memo, you will respond to at least one of the posted memos. I will distribute more information about the memos and circulate a sign-up sheet for weeks in our second meeting.

Exams – 15 % each

The exams will be a combination of short-answer and essay questions. They will be designed to test your understanding of the material from the readings and class. I will provide a study guide about a week before each test, and the test questions will be based on the study guides. You will not be asked to provide novel or creative insights on the exams, but you will be expected to understand and explain difficult material from the readings and from class. The midterm is on **Tuesday, March 13** during class. The final is on **May 7**.

Papers – 15% each

You will write two short, analytic papers of roughly 4-5 pages. I will provide a further guidance on the paper in the coming weeks. You will have a limited range of topics, and the papers will not require outside research, though bringing in outside material will be appropriate in some cases. They are due on **March 2** and **April 20**.

Grade Scale

A	94 and above
AB	89-93
B	84-88
BC	79-83
C	70-78
D	60-69
F	59 and below

I round to the nearest whole point (hence, 93.5 is rounded to 94 and 93.49 is rounded to 93).

IV. Course Management

Office Hours

I will be in my office during scheduled office hours unless I inform you otherwise. I can generally talk after class ends as well. If you have a conflict with these times, please schedule an appointment.

Schedule and Due Dates

The exam and paper due dates are fixed; I only allow for paper extensions and exam rescheduling for extraordinary and university-approved excuses. The reading schedule, however, is subject to change, depending upon on how quickly we move through the readings.

Disability Resources

Any student who requires special arrangements for attending class, participating in discussion, or doing assignments should let me know within the first two weeks of classes, otherwise such arrangements may be difficult to accommodate. I encourage any student who has a learning disability or physical disability that affects learning to come speak to me and to visit the university's McBurney Center, and we will see what we can do to meet your needs.

Disruptions

Please avoid disruptions (arriving late, talking in class, texting, reading non-course materials, or packing to leave before the period ends), and please turn off cell phones. I strongly advise against using laptops in a class like this. You are much better off paying close attention and participating actively.

V. Academic Integrity

Quizzes and Examinations

Food and beverages are prohibited in the classroom during the tests. Students must remove caps, hats, and sunglasses. The quiz and examinations will begin promptly at the beginning of the period and end when the proctor calls time. Students must cease writing the moment the proctor calls time. After the proctor calls time, students receive no extra time to finish writing. Students who arrive late receive no extra time.

Academic Misconduct: Read this Closely

The overwhelming majority of students are hard working and honest about their schoolwork. The instructor has great respect for the effort students put into preparing for this course.

Unfortunately, there are occasional instances of academic misconduct ("cheating").

Part of the value of a degree from the University of Wisconsin-Madison lies in the standards of academic honesty and integrity maintained by the campus. To avoid academic misconduct, it is important that students understand how academic misconduct is defined in this course and the expectations the instructor has of each student.

Students have the right to expect that they and other students will be graded fairly, and students have rights of due process should they be accused of misconduct. Students also have an obligation to conduct their academic work with honesty and integrity according to University standards. Therefore, it is important that students:

- become familiar with the rules of academic misconduct;
- ask the instructor if you are unsure what behaviors constitute academic misconduct in a specific class or assignment;
- let your instructors know if you think you see incidents of misconduct;
- be aware that helping someone else to cheat is a violation of the rules and may result in misconduct charges against you.

The quizzes and all examinations are closed book. Students must remove and stow away everything from the desk, seat, floor, and area around them. Students must turn off and store cell phones and other electronic devices. If anyone sees papers, notes, readings (or any other materials), a cell phone, or any electronic/communicative device within a student's reach or area during the examination, then the instructor will assume that the student is cheating, and she will engage the academic misconduct process. Put another way: papers, notes, readings (or any other materials), a cell phone, or any electronic or communicative device within a student's reach or area during the examination is *prima facie* evidence of academic misconduct.

Academic Misconduct: What to Do if You See Someone Cheating

Honest students are rightfully distressed when they see cheating occur. Students may sometimes see behaviors that the instructor does not notice. Cheating threatens the integrity of the classroom, and cheating can affect the grade distribution scale.

Students should feel free to discuss their concerns and observations with the instructor. He will want to know about these concerns or observations, and he will decide whether or not to take action in or to take steps to prevent cheating in the future. The instructor may ask you if you would be willing to testify at a hearing (although you will not be forced to do so). If you still have concerns after talking with the instructor, you may consult with your Academic Dean or with staff in Student Advocacy and Judicial Affairs.

Students may help other students by warning them that cheating is a violation of the UW System Administrative Code and may result in severe consequences. The instructor and the University do impose disciplinary sanctions upon students that commit academic misconduct. The instructor vigorously pursues all academic misconduct cases. The rules about academic misconduct are located here:
<http://students.wisc.edu/saja/misconduct/UWS14.html>.

VI. Course Agenda and Readings

WEEK 1: JANUARY 17-19

INTRODUCTION, SOME FODDER FOR LATER

- Taylor Branch, "The Shame of College Sports"
- *Waldrep v. Texas Employers Insurance Association*
- Preview, **but don't read in full**: *O'Bannon v. NCAA* (2015)

PART I: WHAT IS LAW?

WEEK 2: JANUARY 24-26

A VIEW OF NATURAL LAW, AND A VIEW OF POSITIVISM

- Fuller, "Eight Ways to Fail to Make Law" A View of Natural Law
- Austin, "A Positivist Conception of Law" (excerpt)

WEEK 3: JANUARY 31 - FEBRUARY 2

ANOTHER VIEW OF POSITIVISM

- Hart, "Law as the Union of Primary and Secondary Rules"
- Dworkin, "Model of Rules I"
- *Riggs v. Palmer*

WEEK 4: FEBRUARY 7-9

LEGAL REALISM

- Holmes, Jr., "The Path of the Law"
- *Lochner v. New York* (excerpt)
- *National Federation of Independent Business v. Sebelius* (the "Obamacare" case), Parts I-III (pp. 7-45)

PART II: INTERPRETING THE LAW

WEEK 5: FEBRUARY 14-16

REALISM CONTINUED, AND ANOTHER VIEW...

- Frank, "Legal Realism"
- *State v. Quintana*
- Alexander, *The New Jim Crow*, Chapter 1

Optional:

- Leiter, "Constitutional Law, Moral Judgment, and the Supreme Court as Super-Legislature"

WEEK 6: FEBRUARY 21-23

INTERPRETING A CONSTITUTION

- Scalia, "Common-Law Courts in a Civil-Law System"
- Dworkin Response/Scalia Reply
- Sinnott-Armstrong and Brison, "A Philosophical Introduction to Constitutional Interpretation"

WEEK 7: FEBRUARY 28 - MARCH 2

INTERPRETING A CONSTITUTION, CONT'D

- *Yick Wo v. Hopkins*
- *Plessy v. Ferguson*
- *Bray v. Alexandria Women's Health Clinic*

FIRST PAPER DUE: March 2

PART III: CRIMINAL LAW

WEEK 8: MARCH 7-9

WHAT, IF ANYTHING, JUSTIFIES CRIMINALIZING CONDUCT?

- Duff, “Consequentialists, Retributivists, and Abolitionists”
- Feinberg, “The Expressive Function of Punishment”
- *U.S. v. Swartz* (indictment)
- Excerpts from U.S. Criminal Code

WEEK 9: MARCH 14-16

CATCH UP, REVIEW, **FIRST EXAM**

Exam: March 14 during class

- Husak, *Overcriminalization*, Chapter 2
- Alexander, *New Jim Crow*, Chapter 2

MARCH 21-23

SPRING BREAK

WEEK 10: MARCH 28-30

- Alexander, *New Jim Crow*, Chapters 3, 5

WEEK 11: APRIL 4-6

- Alexander, *New Jim Crow* (cont'd)
- Forman, Jr., “Racial Critiques of Mass Incarceration: Beyond the New Jim Crow”

PART IV: PROPERTY

WEEK 12: APRIL 11-13

- *Pierson v. Post* (excerpt)
- Locke, “Of Property”
- Nozick, “Locke’s Theory of Acquisition”
- Honoré, “Property, Title, and Redistribution”

WEEK 13: APRIL 18-20

PROPERTY, SPEECH, AND CRIMINAL LAW

- Waldron, “Two Worries about Mixing One’s Labour”
- *Pruneyard v. Robins*

Second paper due: April 20

PART V: INTELLECTUAL PROPERTY

WEEK 14: APRIL 25-27

- Hettinger, “Justifying Intellectual Property”
- *International News Service v. AP, A&M Records v. Napster; Diamond v. Chakrabarty*
- *O’Bannon v. NCAA* (excerpts)

WEEK 15: MAY 2-4

FULL CIRCLE: PROPERTY, INTELLECTUAL PROPERTY, AND ANALYTIC JURISPRUDENCE

- Cohen, “Transcendental Nonsense”

May 7, 5:05pm – 7:05pm, FINAL EXAM