

PHIL 385:
Philosophy of Law
Instructor: M.G. Piety
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1. REQUIRED TEXT

Jeffrey Brand, *Philosophy of Law: Introducing Jurisprudence* (Bloomsbury, 2013). This text is available as an ebook.

2. COURSE DESCRIPTION

This course is a general introduction to the philosophy of law, or what lawyers refer to as “jurisprudence.” It focuses on topics that concern both philosophers and legal scholars and concentrates on recent treatments of those topics. The topics include the nature of law and legal reasoning, the relation between law and ethics, criminal law, sentencing and punishment, constitutions, international law, and human rights.

3. THE PURPOSE OF THE COURSE

Law affects almost every aspect of our lives. The purpose of this course is to give students a better understanding of the nature of law and of how it influences both the experiences of individuals within a society as well as the influence it has on society as a whole. The purpose is also to help students prepare for careers in law, social policy, politics, social work, and criminal justice, to name just a few of the disciplines where a knowledge of law is important. Finally, the purpose is to help students better manage their own interactions with the legal system.

4. EXPECTED LEARNING

Students learn the most common issues in the philosophy of law such as the debate between legal naturalists and legal positivists, the difference between rules and principles, the function of punishment, the difference between civil and criminal law, constitutions and judicial review, the difference between adversarial and non-adversarial legal systems, and the relation between law and ethics,

They will also learn about their rights as individuals and what to do if they find themselves involved in a lawsuit. .

They will learn to read and to understand complex arguments that draw both on abstract reasoning and on work in the empirical sciences.

They will learn how to speak and write intelligibly and persuasively on the above topics.

They will learn to use this new knowledge and these new skills to better understand both themselves and others and to more effectively direct the course of their lives.

5. COURSE REQUIREMENTS

A. Class participation———30% (including participation in class discussions, as well as individual consultations with the instructor)

B. Bi-weekly journals———50%

C. Final-exam essay———20%

A. Participation

Students will receive one point for each post to the online class discussions for a maximum total of five points per week. Students are welcome to post more than five times to any discussion, but additional points will have no effect on their participation grade. In order to receive credit for a post to a discussion, the post must add to the discussion. That is, comments that only reiterate points that have already been made will not receive any credit. I may also occasionally give homework assignments that will be worth between 5-10 points each.

Students with documented disabilities who need course accommodations, have emergency medical information or require special arrangements should contact the instructor within the first two weeks of class. Verification of any special arrangements needs to be made through the *Office of Disability Services*, 3201 Arch Street, Suite 210. For further information visit <http://www.drexel.edu/oed/disabilityResources/>

Students are advised to refer to the provost's website for policies relating to adding, dropping and withdrawing from courses: http://www.drexel.edu/provost/policies/course_drop.asp

B. Bi-weekly journals

Students will be expected to keep bi-weekly journals where they record their thoughts on the readings up to the date of the journal entry. Those journals must be done as Microsoft Word documents and uploaded through the relevant link in Blackboard. Students who are unsure of how to do this must contact ITG@drexel.edu before uploading their assignments.

Although journals are less formal writing assignments than essays, students will still be expected to write in such a way that their writing would be understandable to a general reader. That means they should not write things such as “This chapter was confusing,” since a general reader would not know what “this chapter” referred to, but should write instead, “The chapter entitled “Aspects of Law and Legal Reasoning” of Jeffrey Brand’s *Philosophy of Law*:

Introducing Jurisprudence is confusing” or “The first chapter of Jeffrey Brand’s *Philosophy of Law: Introducing Jurisprudence* is confusing.” Also, the journal assignments will gradually take on a more formal structure as a means to the end of preparing students to write the essay that will be required instead of a final exam.

Finally, journals will be due by the end of the day on Fridays but the link for the submission of the journal will remain open until the end of the following Monday. Each journal will be worth twenty points. One point will be deducted, however, for every day a journal is late. No journals will be accepted after the link for their submission has been closed. That goes for other assignments as well. The links for assignments will remain open for several days past the deadline for their submission, but once the link has been closed it will no longer be possible to get any credit for the assignment.

C. Final-exam essay.

Students will be required to write 400-600 word argumentative essay on a topic they select themselves from among a list of topics discussed in the course. More information about the final will be distributed via Blackboard as the date for the final approaches.

WRITING, AND COMPUTING: WHERE TO GET HELP

Writing Skills

Students who wish help in developing their writing skills should visit the [Drexel Writing Center](#). The people at the Writing Center can help you organize your ideas and formulate them in ways that will be clear. They are trained in explaining, among other things, the structuring, outlining, developmental sequencing, and presentation of written summaries, argumentative essays and research papers. If you are insecure about your writing skills, or if you are unhappy with the feedback you receive on those skills, please visit the Writing Center.

Computing Skills

I assume that you are skilled in the use of word-processing applications and that you know how to use e-mail (please note: students are expected to use their Drexel email accounts). All issues relating to problems with email, etc., should be directed to Korman, not to the professor. Also, all issues relating to problems with submitting assignments through Blackboard should be directed to ITG@drexel.edu

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There are lots of great philosophical resources online. Two of the best are the [Stanford Encyclopedia of Philosophy](#) and [Epistemelinks](#).

ACADEMIC INTEGRITY

See http://www.drexel.edu/provost/policies/academic_dishonesty.asp

SCHEDULE:

The text for the course contains ten chapters, so we will read one chapter each week.

Week 1: Chapter 1: “Aspects of Law and Legal Systems”

1. The command theory
2. Critique of the command theory
3. Primary and secondary rules
4. H.L.A. Hart’s theory of law
5. Predictive theories
6. Rules and principles
7. Legal validity and sources thesis
8. The separability of law and morality
9. The authority of law
10. The rule of law.

Week 2. Chapter 2: “Courts and Legal Reasoning”

1. Is legal reasoning deductive?
2. Legal realism
3. Sources of law
4. Indeterminacy
5. Indeterminacy and critical legal studies
6. Hart on rule skepticism
7. Theories of law versus theories of adjudication

8. Right answers
9. Precedent

Week 3: Chapter 3: “Making, Justifying, and Evaluating Law”

1. Making law
2. Normative concepts for justifying and evaluating law
3. Moral evaluation of criminal law
4. Punishing omissions: Bad Samaritan Laws

Week 4: Chapter 4: “Law and Individual Obligation”

1. The duty to obey the law
2. Civil disobedience

Week 5: Chapter 5: “Private Law”

1. Constructive interpretation of legal doctrine
2. Property
3. Tort
4. Causation
5. Contract

Week 6: Chapter 6: “Criminal Law”

1. Elements
2. Conduct
3. Mens rea
4. Justification
5. Excuse
6. Inchoate offenses

Week 7: Chapter 7: Sentencing and Punishment

1. Sentencing
2. Defining punishment
3. Types of sentence
4. Reasons to sentence
5. Hybrid theory
6. Retribution
7. Defensive theories
8. Capital punishment

Week 8: Chapter 8: “Statutes”

1. Statutory interpretation

2. Intent versus understanding
3. Originalism
4. Nonoriginalism
5. Originalism and the evolution of meaning
6. Legislative intent
7. Obsolete statutes
8. Textualism or purposivism?
9. Illustration
10. Canons of construction

Week 9: Chapter 9: “Constitutions”

1. Constitutions and judicial review
2. The judicial review controversy
3. Constitutional interpretation
4. Case study: religious liberty

Week 10: Chapter 10: “International Law”

1. Analytical issues
2. Normative issues
3. Human rights
4. Relativism
5. Group rights and individual rights
6. Distributive justice
7. Secession and self-determination