

JURISPRUDENCE
COURSE INFORMATION AND SYLLABUS

Professor Colin Starger

cstarger@ubalt.edu
Office: ALS 503
410-837-4212

Administrative Assistant

Laurie Schnitzer
ALS 1112
lschnitzer@ubalt.edu
410-837-4689

Class Meeting Times and Location

Tuesday, Thursday 3-4:15pm. ALS 402.

Office Hours

Tuesday: 1:30-2:30pm, Thursday: 11am-12pm

Also, please drop by my office anytime – I am very often there and enjoy informal discussions. I am also very happy to make appointments via email to meet at other times.

Required Texts

- Chaim Perelman, *The Realm of Rhetoric* (William Kluback trans., 1982).
- Frederick Schauer & Walter Sinnott-Armstrong, *The Philosophy of Law: Classic and Contemporary Reading with Commentary* (1996).

GOALS AND LEARNING OUTCOMES

This course is designed to serve as a general introduction to jurisprudence – the philosophy of law. During the semester, we will consider the philosophical nature of law, legal reasoning and argument, legal rights, as well as justice and equality under the law. For theory, we will read a mix of classic and modern jurisprudential texts. Applying theory to practice, we will also engage in a series of case studies examining major Supreme Court majority and dissenting opinions that turn on deeper jurisprudential debates. Ultimately, we will explore the philosophical implications of understanding law as a rhetorical practice. By the end of this course, successful students will be able to: (1) explain the differences between the major historical schools of jurisprudence concerning the nature of law; (2) identify the major and minor premises of legal arguments and analyze legal debates using appropriate rhetorical vocabulary; (3) invent and defend arguments about the requirements of justice in legal disputes that reference and extend the themes of the course.

POLICIES

- 1. Attendance** – Regular class attendance is mandatory. Students who have more than five absences will not be eligible to complete the course. Please note that under this policy, there are no “excused” or “unexcused” absences (with the exception for religious holidays). Attendance is established by signing the class attendance sheet. A student who is more than 5 minutes late may stay for class but may not sign the attendance sheet and be counted as present for that day.
- 2. Preparation** – This class relies on everyone arriving fully prepared to participate in the day’s discussion. At the most basic level, this means completing the assigned reading. Prior to each class, I will distribute study questions that focus on particular aspects of the texts we are reading. I expect you to carefully consider these questions as they will usually form the basis of my Socratic method. Some of our readings will be challenging and I certainly do not expect that you will grasp every nuance. When I call on you to answer a question, getting answers “wrong” is entirely forgivable – and often there is no single “right” answer at all. On the other hand, class discussion is impoverished if we are not all familiar with the day’s texts and therefore “on the same page.” As a general rule, failing to read the day’s assignment is not forgivable.
- 3. Professionalism** – Learning cannot effectively take place in an environment that is unprofessional or uncivil. To that end, I expect that you will observe basic professional courtesies such as arriving on time and turning off your cell phone. Given our subject matter on focus on rhetoric, it is my hope that we can have lively class debates where all students feel comfortable participating and expressing their opinions. Respect for your colleagues is vital to fostering a healthy debate environment. At all times, remain mindful of the diversity of perspectives and experiences in our classroom and be respectful as you articulate your arguments. We need not agree on everything, but we do need to disagree professionally.

Note: Please contact me if something related to our class debates or discussions makes you feel uncomfortable or otherwise interferes with your ability to learn. I will make every effort to address any issues raised.
- 4. Computers + TWEN** – The use of laptops to take notes is permitted in our class. However, laptops must not be used to browse the Internet, check email, Tweet, and etc. I thus reserve the right to ban laptops if the temptations of the Internet cause disruptions or distractions. Meanwhile, each of you must enroll in the TWEN site for this course, which is available through Westlaw. Please regularly monitor the TWEN site for course updates, handouts. You will also be encouraged to post to the TWEN discussion boards.
- 5. Methods of Evaluation** –The final grade will be based on the following: Midterm (20%); Participation in class and in structured TWEN discussion forums (10%); Final (75%).

SYLLABUS – WEEKS 1-15

Please find below the reading assignments for the first 7 weeks of the semester. I reserve the right to modify and change these assignments if circumstances so require. For readings, please note that **Rhetoric** refers to the Perelman text, **Philosophy** refers to the Schauer & Sinnott-Armstrong text and **HO** means that a Handout will be made available on TWEN.

| Date | Unit I – What is Law? | Reading |
|---------------------|---|--|
| 1/10/17 (Tu) [1] | Introduction to Theories of Law | Philosophy: pp. 1-11 HO: Declaration of Independence |
| 1/12/17 (Th) [2] | Natural Law | Philosophy pp. 12-27 HO: <i>Summa Question 90</i> , (Weblinks) <i>DeWolfe v. Norman</i> (Weblinks) |
| Week 2 | | |
| 1/17/17 (Tu) [3] | Introduction to Rhetoric - <i>Logos, Ethos, Pathos</i> | Rhetoric: Chs. 1-2, 12-13 (pp. 1-20; 138-52) |
| 1/19/17 (Th) [4] | Legal Context for a Trump Presidency | Attend conference here at UB. No readings. Details TBA |
| Week 3 | | |
| 1/24/17 (Tu) [5] | Legal Positivism | Philosophy: pp. 29-49 |
| 1/26/17 (Th) [6] | Legal Realism and Critical Legal Studies | Philosophy: pp. 50-69 |

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| Week 4 | | |
| 1/31/17 (Tu) [7] | <i>Case Studies</i> -Fugitive Slave Laws -Right to Economic Liberty | Philosophy: pp. 107-115 HO: <i>Lochner v. New York</i> (edit) |
| Unit II – What is Legal Reasoning? | | |
| 2/2/17 (Th) [8] | Law as History, Law as Integrity | Philosophy: pp. 70-74; 90-100 HO: Berman, <i>The Historical Foundations of Law</i> |
| Week 5 | | |
| 2/7/17 (Tu) [9] | Premises in Law and Argument – Part I | HO: Dewey, <i>Logical Method and the Law</i> |
| 2/9/17 (Th) [10] | Premises in Law and Argument – Part II | Rhetoric: Chs. 3-4 (21-40) HO: MLK, “I Have a Dream” |
| Week 6 | | |
| 2/14/17 (Tu) [11] | Case study - Rhetoric and premises | HO: TBA |
| 2/16/17 (Th) [12] | <i>Contemporary Issues in Jurisprudence</i> - Student Choice | HO: TBA |
| Week 7 | | |
| 2/21/17 (Tu) [13] | Arguments based on Example, Analogy and Metaphor | Philosophy: pp. 163-165 Rhetoric: Chs. 9-10 (106-125) |
| 2/23/17 (Th) | ** MIDTERM EXAM ** | ** Covers Material from Weeks 1-7 ** |
| Week 8 | | |
| Unit III – The Problem of Precedent | | |
| 2/28/17 (Tu) | <i>Case Study:</i> Analogy in Current Law | HO: TBA |
| 3/2/17 (Th) [15] | Reasoning from Precedent | Philosophy: pp. 166-171 HO: <i>Coronado Oil v. Barnette</i> |

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| Week 9 | | |
| 3/7/17 (Tu) [16] | Case Studies in Stare Decisis | HO: <i>Payne v. Tennessee</i> (edit) HO: <i>Citizens United v. FEC</i> (edit) |
| Unit IV – The Structure and Content of Rights | | |
| 3/9/17 (Th) [17] | Structure of Rights | Philosophy: pp. 279-89; 295-304 |
| Week 10 | | |
| 3/14/17 (Tu) [18] | Right to Free Speech | Philosophy: pp. 354-61; 366-72 |
| 3/16/17 (Th) [19] | Case Studies in Free Speech | HO: <i>Abrams v. US</i> (edit) HO: <i>Synder v. Phelps</i> (edit) |
| *** | *** SPRING BREAK *** | *** No School 3/20 – 3/26 *** |
| Week 11 | | |
| 3/28/17 (Tu) [20] | Right to Privacy | Philosophy: pp. 403-412 pp. 416-421 |
| 3/30/17 (Th) [21] | Case Studies in Privacy | HO: <i>Olmstead v. United States</i> (edit) HO: <i>Lawrence v. Texas</i> (edit) |
| Week 12 | | |
| 4/4/17 (Tu) [22] | <i>Contemporary Issues in Jurisprudence II- Student Choice</i> | HO: TBA |
| Unit V – Justice and Equality | | |
| 4/6/17 (Th) [23] | What Is Justice? | Philosophy: pp. 493-504 |
| Week 13 | | |
| 4/11/17 (Tu) [24] | Case Study in Equality | HO: TBA |
| 4/13/17 (Th) [25] | Debates over Capital Punishment | Philosophy: pp. 731-60 |
| Week 14 | | |
| 4/18/17 (Tu) [26] | Case Study | HO: TBA |
| 4/20/17 (Th) [27] | Law and The Realm of Rhetoric | Rhetoric: Ch. 14 (153-62) |