

Course Outline

COURSE:	LAWS 4100C - Modern Legal Theory
TERM:	Winter 2015
PREREQUISITES:	2.0 credits from LAWS 2105, LAWS 2201, LAWS 2202, LAWS 2301, LAWS 2302, LAWS 2501, LAWS 2502
CLASS:	Day & Time: Mondays 8:35am – 11:25am Room: SA 313
INSTRUCTOR:	Professor Rueban Balasubramaniam
CONTACT:	Office: Loeb D583 Office Hrs: Wednesdays 2pm to 4pm by appointment only Telephone: 613-520-2600 ext 8809 Email: Rueban_Balasubramaniam@carleton.ca

Academic Accommodations

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material,

regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:

<http://www.carleton.ca/studentaffairs/academic-integrity/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://www.carleton.ca/law/student-resources/department-policies/>

COURSE DESCRIPTION

In this course, we examine the influential legal philosophy of H. L. A. Hart especially as set out in his influential book, *The Concept of Law*. In that work, Hart sets out a version of legal positivism, a jurisprudential school of thought associated with the thesis that there is no necessary connection between law and morality or the Separation Thesis. Hart claims that the Separation Thesis conveys a truth about the very idea or concept of law, a truth that emerges from a-moral, a-historical, and a-contextual inquiry. If Hart is right, then we should be skeptical about the ideal of the rule of law and reject the popular belief that the rule of law is a moral good that strives to discipline political power; we should be philosophical anarchists.

Please note that this is a seminar so you must actively participate in class discussions and demonstrate familiarity with the specified text. There is a very significant participation mark to reflect this requirement.

REQUIRED TEXTS

H. L. A. Hart, *The Concept of Law* (Oxford, Clarendon Law Series, 2012) available at Octopus books located at 3rd Avenue in the Glebe. Please cite the course code and my name when you purchase the book. All other readings will be posted on CuLearn.

EVALUATION

(All components must be completed in order to get a passing grade)

20 % Informed Class Participation.

Informed participation means that you must have read the relevant readings before coming to class and actively participate in class workshops and discussions in a way that demonstrates

thoughtfulness with respect to the material. Participation also implies your presence in class and there will be no alternative means to make up for lost participation marks due to absences. Finally, a seminar's success requires your cooperation so that the quality of your participation will directly affect the quality of the course in general.

20% Response Paper 1 – A Response Paper is a short critical essay of no longer than 1000 words (or about 4 double spaced pages) that constructs a critical analysis of a particular reading. **Response Paper 1 must analyze the essay by Hart, H L. A., “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593-629 and it is due on January 26.**

20% Response Paper 2 - A Response Paper is a short critical essay of no longer than 1000 words (or about 4 double spaced pages) that constructs a critical analysis of a particular reading. **Response Paper 2 must engage any aspect of Hart's notion of primary and secondary rules as discussed in Chapter 5 and 6 of his book and is due on March 2.**

40% Final Research Essay – Your final essay should analyze an aspect of Hart's theory or the theory in totality. Note that an analysis does not necessitate that you either agree or disagree with Hart. That is far too simplistic a view of what analysis requires and can often be artificial. You might start by trying to clarify an ambiguity in Hart's views or by trying to extrapolate the larger conclusions that Hart's theory may hold for a practical problem that interests you. In trying to do this, you will likely find your critical perspective. In this vein, there is a vast body of literature surrounding Hart's theory which you might look to in developing your paper. Therefore, it is in your interest to see me as soon as possible to figure out how best to go forward with the essay and in developing a suitable essay topic. **The essay is due on March 30.**

RULES GOVERNING ASSIGNMENTS AND EMAIL – PLEASE READ CAREFULLY

- a) All written work is to be submitted in class on the relevant due date. Late papers are to be submitted to the Law and Legal Studies Drop-box. I will treat the Department's date-stamp as conclusive evidence of the date of submission.
- b) No extensions will be granted. All late work will be penalized by 10 % per day. And, you will not receive any written comments from me for late work.
- c) Plagiarism is an academic offence and can lead to very serious consequences. Please familiarize yourself with Carleton's policies on plagiarism.
- d) You must keep an electronic copy of all assignments, though I do not accept emailed assignments.
- e) You can reasonably expect a 48-hour turnaround time on emails except over weekends and public holidays. Please exercise common sense when emailing me and remember that etiquette matters. Be sure that the question you're posing is one that you cannot easily answer yourself without taking reasonable steps.

SCHEDULE

- 1) **January 5** **Introductory Class**

- 2) **January 12** **Hart's Agenda**

H.L. A. Hart, "Positivism and the Separation between Law and Morals"
[1958] 71:4 Harvard Law Review 593-629.

- 3) **January 19** **What is Law?**

H.L. A. Hart, *The Concept of Law*, Chapter 1.

- 4) **January 26** **Hart's Critique of Austin's Command Theory**

H. L. A. Hart, *The Concept of Law*, Chapters 2, 3 and 4.

- 5) **January 31** **Hart's Theory of Social Rules**

H. L. A. Hart, *The Concept of Law*, Chapter 4.

- 6) **February 2** **Primary and Secondary Rules**

H. L. A. Hart, *The Concept of Law*, Chapters 5 and 6.

- 7) **February 9** **Formalism and Rule Scepticism**

H. L. A. Hart, *The Concept of Law*, Chapter 7.

- 8) **February 16** **No Class - Reading Week Break**

- 9) **February 23** **Justice and Morality**

H. L. A. Hart, *The Concept of Law*, Chapter 8.

- 10) March 2 Laws and Morals**

H. L. A. Hart, The Concept of Law, Chapter 9.
- 11) March 19 Fuller’s Critique**

‘Positivism and Fidelity to Law – A Reply to Professor Hart’ [1958]
71:4 Harvard Law Review 630
- 12) March 16 Dworkin’s Critique**

R. M. Dworkin, ‘The Model of Rules 1’ [1967-1968] 35 University of
Chicago Law Review 14-46.
- 13) March 23 Final Essay In-Class Review Workshop**
- 14) March 30 Final Essay is due in class**
- 15) April 5 No Class**