

## Course Outline

**COURSE:** LAWS 4100 A Modern Legal Theory

**TERM:** Winter 2008/09

**CLASS:** Day & Time: Friday, 8:30am – 11:30am  
Room: Tory Building, RM 431

**INSTRUCTOR:** Professor R. Rueban Balasubramaniam

**CONTACT:** Office: D487 Loeb Building  
Office Hrs: Thursdays between 3 and 5pm only.  
Telephone: 613-520-2600 ext 8809  
Email: Rueban\_Balasubramaniam@carleton.ca

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“Students with documented disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives your Letter of Accommodation no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by March 6, 2009 for April exams.” Also available at [http://www.carleton.ca/pmc/faculty/acom\\_statement.html](http://www.carleton.ca/pmc/faculty/acom_statement.html) . For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: [www.carleton.ca/equity](http://www.carleton.ca/equity)

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**COURSE DESCRIPTION**

Modern Legal Theory continues to focus on what is known as the ‘Hart-Dworkin’ debate. In general, the debate revolves around the question whether the concepts of law and the rule of law are moral concepts. At a more specific level, the debate deals with a variety of vexing subjects including the nature of legal reasoning, the juridical status of immoral laws and wicked legal systems, and even the very question of what it means to do legal philosophy. The purpose of this course is to familiarize ourselves with the main problems that animate the debate and to grasp the major moves made by each participant.

Since this is a seminar, its success requires your active and critical participation. You must demonstrate that you have read the relevant material by your questions and comments in class discussion and during in-class workshops. With respect the latter, we will work on how to closely read, analyze, and write about philosophical texts so that you develop the skills to grapple with the materials in this course. In addition, these workshops will give you a clear understanding of my expectations as to the quality of work I expect you to produce in fulfilling the course evaluations.

**REQUIRED TEXTS**

All required texts will be posted on Web CT.

## EVALUATION

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

### **20 % Informed Class Participation**

You are expected to read, make notes, and grapple with readings before coming to class and to bring a physical copy of the readings to class. During class, you must be prepared to participate in any and all in-class activities (from workshops to discussions to answering questions). Your failure to read beforehand will undermine your ability to effectively participate. Poor attendance, tardiness, and lack of preparation will seriously affect your overall participation mark.

### **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. A Response Paper is not a mere summary of the reading. You must make an argument about an aspect of the reading or the reading as a whole. **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 February 6.**

### **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. A Response Paper is not a mere summary of the reading. You must make an argument about an aspect of the reading or the reading as a whole. **Response Paper 2 must analyze the essay by Dworkin, R. M, Hard Cases, reprinted as Chapter 3 of *Taking Rights Seriously* (1977) and it is due on February 27.**

### **40% Final Research Essay**

Your Final Research Essay must try to take a position within the Hart-Dworkin debate. You are expected to do independent research for this essay so you must also use sources beyond the course materials (between 3-5 academic sources over and above the course materials) in the essay to build your arguments. Your essay must be properly referenced and footnoted. **The essay is due on April 3.**

## RULES GOVERNING ASSIGNMENTS AND EMAIL – PLEASE READ CAREFULLY

- a) No extensions will be granted. All late work will be penalized by 5 % per day.
- b) Each Response Paper must be handed in to me at the beginning of class on the day that it is due. You will not receive any written feedback or comments from me for Response Papers handed in after the beginning of class, whether handed in later in the class, later in the day by being dropped in the Law Department Drop Box, or any subsequent time in addition to the late penalty which will begin adding up if you do not hand in your Response Paper at the start of class on the day that it is due.
- c) The Final Research Essay should be handed in to the Law Department Drop-Box on the day that it is due.
- d) Plagiarism is an academic offence and can lead to very serious consequences. Please familiarize yourself with Carleton's policies on plagiarism.
- e) You must keep an electronic copy as backup of all assignments.
- f) I do not accept emailed assignments. You must hand in a physical copy.
- g) You can reasonably expect a 48 hour turnaround time on emails except over weekends or public holidays. Email communication should be reserved *only* for matters relating to the substantive aspects of the course materials, that is, course content. For communication on all other matters, you must make an appointment to see me in person or come to my office during office hours.

**SCHEDULE**

- 1) 9 January      **Introduction**
- 2) 16 January      **The Separation between Law and Morals [Critical Reading Workshop]**  
  
Hart, H L. A., "Positivism and the Separation between Law and Morals" [1958] 71:4 Harvard Law Review 593-629.  
  
Hart, H. L. A., *The Concept of Law*, Preface and Chapter 1.
- 3) 23 January      **Primary and Secondary Rules**  
  
Hart, H. L. A., *The Concept of Law*, Chapters 4, 5, and 6.
- 4) 30 January      **Legal Reasoning and Discretion [Response Paper Workshop]**  
  
Hart, H. L. A., *The Concept of Law*, Chapters 6 and 7.
- 5) 6 February      **The Model of Rules [RESPONSE PAPER 1 IS DUE]**  
  
Dworkin, R. M., "The Model of Rules I" and "The Model of Rules II" reprinted as Chapters 1 and 2 of Ronald Dworkin, *Taking Rights Seriously* (1977).
- 6) 13 February      **A Forum of Principle**  
  
Dworkin, R. M, Hard Cases, reprinted as Chapter 3 of *Taking Rights Seriously* (1977).
- 7) 20 February      **No Class due to Winter Break.**
- 8) 27 February      **The Interpretive Turn [RESPONSE PAPER 2 IS DUE]**  
  
Dworkin, R. M., *Law's Empire*, Chapters 1, 2, and 3.
- 9) 6 March,              **Law as Integrity [Constructing an Account Workshop]**  
  
Dworkin, R. M., *Law's Empire*, Chapters 6, and 7.
- 10) 13 March              **Inclusive Legal Positivism [Essay Writing Workshop]**  
  
Jules Coleman, "Negative and Positive Positivism" (1982) 11:1 Journal of Legal Studies 139-164.
- 11) 20 March              **Hart's Postscript**  
  
Hart, H. L.A., Postscript to *The Concept of Law*
- 12) 27 March              **Is Law and Integrated or Detached Concept?**  
  
Dworkin, R.M., "Hart's Postscript and the Character of Political Philosophy" (2004) 14: 1 Oxford Journal of Legal Studies 1.
- 13) 3 April **No Class. FINAL ESSAY IS DUE.**