

Course Outline

COURSE: LAWS 4100A Modern Legal Philosophy

TERM: Winter 2010-11

PREREQUISITES: LAWS

CLASS: Day & Time: Mondays, 8:35am - 11:25am
Room: Please check Carleton Central for room location

INSTRUCTOR: Professor Ratna Rueban Balasubramaniam
(CONTRACT)

CONTACT: Office: Loeb D487
Office Hrs: Mondays, 1:30-3:30pm by appointment
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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

In this course, we will focus on H. L. A. Hart's jurisprudence as set out in his classic book entitled *The Concept of Law*. In that book, 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 so that the law can equally serve morally good as well as immoral purposes. Hart argues 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. The upshot of Hart's analysis is that we should be skeptical about the ideal of the rule of law so that we should reject the popular belief that the rule of law is a moral good that we can meaningfully contrast with arbitrary rule.

REQUIRED TEXTS

H. L. A. Hart, *The Concept of Law*, 2nd edn. (Oxford, Oxford University Press, 1992) 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 Web CT.

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. Additionally, the quality of your participation directly affects the quality of the seminar as a shared intellectual enterprise between yourself and your colleagues as well as the instructor. As a member of this shared enterprise, you are under a duty to make a reasonable contribution to the class discussion. Finally, the quality of your participation in class will also influence my decision as to whether to write you a reference should you request one from me in the future. Therefore, it is in your interests to take participation seriously.

15% 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 or section of a book. **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 21.**

15% Response Paper 2 must engage any aspect of Hart’s notion of primary and secondary rules as discussed in Chapter 5 and 6 of *The Concept of Law* and is due on March 1.

10% 250-word abstract for Final Research Essay due on March 18.

40% Final Research Essay – Your final essay should analyze an aspect of Hart's theory or the theory in totality. You will find that there is a vast body of literature surrounding Hart's theory so that there are many avenues for potential research. 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 April 5.**

RULES GOVERNING ASSIGNMENTS, EMAIL, AND IN-CLASS CONDUCT – PLEASE READ CAREFULLY

- a) All written work is to be handed in at the Law Department Drop-Box on the relevant due date. I will treat the Law Department’s 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. 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.

- f) I will not tolerate in-class behaviors that do not contribute to the quality of the seminar, especially texting in class, facebooking and so on. Again, such behaviour will influence my judgment as to the quality of your participation mark and further influence my judgment as to whether I choose to write a reference for you in the future should you request one from me.

SCHEDULE

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| 1) January 3 | Introductory Class

In-class mini-lecture: The Legacy of H. L. A. Hart's Jurisprudence for Modern Legal Philosophy |
| 2) January 10 | 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 17 | What is Law?

H.L. A. Hart, <i>The Concept of Law</i> , Chapter 1. |
| 4) January 24 | Hart's Critique of Austin's Command Theory

H. L. A. Hart, <i>The Concept of Law</i> , Chapters 2 and 3. |
| 5) January 31 | Hart's Critique of Austin and Social Rules

H. L. A. Hart, <i>The Concept of Law</i> , Chapter 4. |
| 6) February 7 | Primary and Secondary Rules

H. L. A. Hart, <i>The Concept of Law</i> , Chapters 5. |
| 7) February 14 | The Foundations of a Legal System

H. L. A. Hart, <i>The Concept of Law</i> , Chapter 6. |
| 8) February 21 | Reading Week Break |

