

Course Outline

COURSE: LAWS 4100A

TERM: Fall & Fall/Winter 2011-12

PREREQUISITES: LAWS

CLASS: **Day & Time:** Monday, 8:30am-11:30am
 Room: Please check with Carleton Central for current room location

INSTRUCTOR: Rueban Balasubramaniam
(CONTRACT)

CONTACT: **Office:** Loeb D487
 Office Hrs: 1:00pm: 2:30pm BY APPOINTMENT ONLY.
 Telephone: 613-520-2600 ext 8809
 Email: Rueban_Balasubramaniam@carleton.ca

"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://www2.carleton.ca/pmc/students/accommodations> . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 7 March 2012 for April 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.

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 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 in class on January 22.**

20% Response Paper 2 must engage any Hart’s critique of Austin’s command theory set out in Chapters 2, 3. And 4 of *The Concept of Law* and is due in class on February 27.

40% Final Research Essay – Your final essay (12-15 double spaced pages) 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 in class 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 beginning of class on the relevant date.
- b) There are no extensions under any circumstances.
- c) Only late work is to be submitted at the Law Department Drop Box. All late work will be penalized by 10 % per day. And, you will not receive any written comments from me for late work. Finally, your lateness may impair my ability to return your work to you in a timely manner.
- 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 of all assignments. I do not accept emailed assignments.
- f) 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.

- g) 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.

RULES GOVERNING GRADE CHALLENGES

A detailed memo setting out my expectations about written work will be available on Web Ct. This memo is also the basis by which your work will be assessed. In the event that you disagree with a particular grade you receive, you must register your dissent in writing and justify your view by reference to the memo. I will use this written argument as a basis to decide if re-evaluation of the grade is appropriate. Note that this procedure works to your benefit since you will have a written record that you might utilize if you decide to engage in a formal grade challenge.

SCHEDULE

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| 1) January 8 | Introductory Class |
| 2) January 15 | 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 22 | What is Law?

H.L. A. Hart, <i>The Concept of Law</i> , Chapter 1. |
| 4) January 29 | Hart's Critique of Austin's Command Theory

H. L. A. Hart, <i>The Concept of Law</i> , Chapters 2 and 3. |
| 5) February 6 | Hart's Critique of Austin and Social Rules

H. L. A. Hart, <i>The Concept of Law</i> , Chapter 4. |
| 6) February 13 | Primary and Secondary Rules

H. L. A. Hart, <i>The Concept of Law</i> , Chapters 5. |

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| 7) February 20 | Reading Week Break |
| 8) February 27 | The Foundations of a Legal System
H. L. A. Hart, <i>The Concept of Law</i> , Chapter 6. |
| 9) March 5 | Formalism and Rule-Scepticism

H. L. A. Hart, <i>The Concept of Law</i> , Chapter 7. |
| 10) March 12 | Justice and Morality

H. L. A. Hart, <i>The Concept of Law</i> , Chapter 8. |
| 11) March 19 | Law and Morals
H. L. A. Hart, <i>The Concept of Law</i> , Chapter 9. |
| 12) March 26 | Final Essay Outline Review |
| 13) April 5 | Final Essay is Due |