

## Course Outline

COURSE:	LAWS 5100W
TERM:	Winter 2013
PREREQUISITES:	Either LAWS 3105 or LAWS 3101 (PHIL 3101) and LAWS 3102 (PHIL 3102), or permission of the Department.
CLASS:	Day & Time: Wednesday, 8:35am – 11:25am Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Rueban Balasubramaniam
CONTACT:	Office: C573 Office Hrs: Fridays, 3-4:30pm by appointment only Telephone: 613-820-5200 ext 8809 Email: Rueban_Balasubramaniam@carleton.ca

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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](mailto: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/>

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## **COURSE DESCRIPTION**

This is a graduate seminar in advanced legal philosophy. It will mainly focus on the Hart-Dworkin debate about whether the concepts of law and the rule of law are moral ideas. Their dispute continues to define the terrain of debate in contemporary legal philosophy and concerns a variety of related issues including the nature and limits of the rule of law, the nature of legal reasoning, and the question of methodology in legal philosophy. The aim of the course is to delve in depth into the disagreement between Hart and Dworkin through a close reading of the primary texts that set out their competing positions. Therefore, each class will involve 3 hour period of intense discussion and debate about the texts.

The two **required texts** are: H. L. A. Hart, *The Concept of Law*, 2<sup>nd</sup> ed, (Oxford, Oxford University Press, 1994) and Ronald Dworkin, *Law's Empire* (Oxford, Hart Publishing, 2004). Both texts are available at Octopus Books located at 3<sup>rd</sup> Avenue in the Glebe. I will supplement readings if necessary as the course progresses, depending on the nature of the discussion in class and depending on your interests.

### Course Evaluation

The principal assessment for this course will be a 20 – 25 page double spaced research paper engaging the Hart-Dworkin debate. My expectation is that the paper should be modeled after a scholarly article so it should aspire to be of a publishable quality. I will not prescribe a precise topic for the paper. The only requirement is that your paper engages the Hart-Dworkin debate. Such engagement may take a variety of forms, for example: a) you might choose to engage the debate on its own terms in deciding which view you prefer or you may introduce a different jurisprudential view that you think superior to theirs; b) you might use the Hart-Dworkin debate as analytic framework to analyze the limits of the rule of law in a state of exception or in wicked legal systems; c) you might choose to analyze a practical problem about the law with a using the Hart-Dworkin debate as an analytic framework with a view to arriving at a position within that debate. There are other possibilities. As you will see, the Hart-Dworkin debate has generated a vast body of literature.

The onus is on you to figure out what interests you and to locate materials salient to your concerns. My expectation is that you will provisionally settle on an issue and provide me with a brief abstract of about 300-500 words alongside an appropriate bibliography of relevant academic sources that you will hand in to me immediately following the Reading Week break. This means that you must do independent research that goes beyond the purview of the materials we engage in class. Come to me as early as possible to talk about your interests, and I can help you to locate suitable sources. A good rule of thumb is to try to link the Hart-Dworkin debate to something that already interests you and that you may already be researching.

In addition to the research essay, you will have to produce two Response Papers, short critical essays of no more than 4-5 double spaced pages. The aim of these papers is to get you to critically engage the material. I will warn you now that these papers are not easy to write; you have to be clear, concise, and analytical in a compressed space. These papers will allow me to gauge what to do in class in terms of pushing you to read the text closely and to construct coherent arguments. Importantly, these papers will also signal to you my expectations about the quality of work expected at the graduate level. Only your best Response Paper will count towards your final grade.

Lastly, there is a sizable participation mark. Participation means informed participation so you must come to class having read the materials, with your questions in mind, and be able to engage in discussion and debate; it is unlikely that you will be able to follow the discussion if you have not read the materials before coming to class. In this regard, you should suppose that both Hart and Dworkin are right and that any problem you detect in their views is resolvable by a close reading of the text. I do not say this because I believe you should blindly defer to their views or that they are never wrong. You are more likely to construct a reflective stance if you take the text seriously. And that will contribute to you developing a sound perspective about this debate.

Below is a breakdown of the course evaluations. Please take note of due dates and avoid unnecessary late penalties. You should also keep in mind that there are good reasons for such deadlines and your failure to meet them generates difficulties and inconveniences for others so that you are bound by a duty of reciprocity in respecting these deadlines. In this regard, you

should know that tardiness does not speak well to your professionalism as a scholar and at this stage; you should strive to develop a reputation as a professionally minded individual as you progress towards further graduate work or a job.

- 1) Response Paper 1 – 15% (due February 6) – Any aspect of our discussion about Hart's theory up to and including January 30.
- 2) Response Paper 2 – 15 % (due March 6) – Any aspect of Dworkin's essays on the Model of Rules or Hard Cases.
- 3) Final Essay – 50 % (due April 10).
- 4) Informed Participation – 20 %.

### **RULES GOVERNING ASSIGNMENTS AND EMAIL – PLEASE READ CAREFULLY**

- a) All late work will be penalized by 10 % per late day. In addition, the submission of late work impairs my ability to return your work to you on time. As well, I do not make comments on late work.
- b) All written work should be handed in at the Law Department Drop-Box) on the relevant due date.
- c) I will take the stamp on the essay as conclusive evidence of the time of submission.
- 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. Keep in mind that etiquette counts and please ask only questions you're sure you cannot find an answer to for yourself without taking reasonable steps.

### **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**

- 1) January 9      **Hobbes, Legal Positivism, and the Problem(s) of Liberal Legal Philosophy**  
Hart, H L. A., “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593-629.  
  
Optional Reading: *Concept of Law*, Preface, Chapter 1.
- 2) January 16      **Lon Fuller and the Ideal of Fidelity to Law**  
Lon L. Fuller, “Legal Positivism and the Ideal of Fidelity to Law” [1958] 71:4 Harvard Law Review 630 – 672.
- 3) January 23      **Primary and Secondary Rules and the Foundations of Legal Order**  
*Concept of Law*, Chapters 4, 5, and 6.
- 4) January 30      **Hart on Legal Reasoning**  
*Concept of Law*, Chapter 7.
- 5) February 6      **Hart on Law and Morality**  
*Concept of Law*, Chapter 8 and 9.
- 6) February 13      **Dworkin’s Critique - The Model of Rules.**  
Ronald Dworkin, “Model of Rules 1” reprinted as Chapter 1 of Ronald Dworkin, *Taking Rights Seriously* (1977).
- 7) February 20      **Reading Week Break**
- 8) February 27      **Hard Cases.**  
Ronald Dworkin, “Hard Cases,” reprinted as Chapter 3 of *Taking Rights Seriously* (1977).
- 9) March 6      **Law as an Interpretive Concept.**  
*Law’s Empire*, Chapters 1, 2, and 3.
- 10) March 13      **Law as Integrity.**  
*Law’s Empire*, Chapters 6, 7, and 10.  
Optional Reading: *Law’s Empire*, Chapters 8, and 9.

- 11) March 20      **Movie: The Conspiracy**  
Kristen Rundle, “The Impossibility of an Exterminatory Legality” (2009)  
University of Toronto Law Journal 65- 125.
- 11) March 27      **Hart’s Postscript**  
*Concept of Law*, Postscript
- 12) April 3        **Dworkin’s Reply**  
**FINAL ESSAY IS DUE IN CLASS**  
Ronald Dworkin, “Hart’s Postscript and the Point of Political Philosophy”  
(2004) 24(1) Oxford Journal of Legal Studies 1-      37.