

## Course Outline

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<b>COURSE:</b>	<b>LAWS 4100 A - Modern Legal Theory</b>
<b>TERM:</b>	<b>Fall 2024</b>
<b>PREREQUISITES:</b>	<b>LAWS 2908 and fourth-year Honours standing.</b>
<b>CLASS:</b>	<b>Day &amp; Time: Wednesdays, 8:35 am to 11:25 am</b> <b>Room: Please check Carleton Central for current Class Schedule</b> <b>Course is delivered in person; this is not an online course.</b>
<b>INSTRUCTOR:</b>	<b>Dr. R. Rueban Balasubramaniam</b>
<b>CONTACT:</b>	<b>Office Hrs: Mondays, 2:00–3:00 pm by Zoom and by appointment only</b> <b>Telephone: 613-520-2600 ext 8809</b> <b>Email: Rueban_Balasubramaniam@carleton.ca</b>
<b>BRIGHTSPACE:</b>	<b><a href="https://brightspace.carleton.ca/d2l/home/290234">https://brightspace.carleton.ca/d2l/home/290234</a></b>

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### CALENDAR COURSE DESCRIPTION

Realist and post-realist legal scholarship; emphasis on Canadian, American and British approaches. Topics include the Canadian treatise tradition, American legal realism, empirical approaches to legal problems, the sociological movement in law, critical and Canadian feminist legal scholarship, Marxian theories of law, normative economic theory.

### COURSE DESCRIPTION

The fundamental puzzle of modern legal theory is the puzzle of what makes law a source of binding obligation. This puzzle invites a consideration of the idea of legitimate legal authority. We will examine one leading perspective on this puzzle as articulated by H. L. A. Hart, perhaps the most influential philosopher of law in the English speaking world in the 20th century. As will become apparent, Hart's concerns are driven by a worry about the legitimacy of "wicked" law and questions about how to resist official abuses of power perpetrated in the name of the law. The course goes over Hart's major arguments and considers problems with these arguments with a view to figuring how far Hart illuminates the puzzle of legitimate authority.

**LEARNING OUTCOMES**

- To learn the skill of close and deep reading of a difficult theoretical text.
- To learn the skill of forming analytical arguments involving the close interpretation of texts and expressing these orally and in writing.
- To learn the skill of working under pressure, professionalism, and the ability to submit work to a stipulated deadline.

**REQUIRED TEXTS**

**All required texts will be posted on Brightspace.**

**EVALUATION**

Standing in a course is determined by the course instructor, subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

**All components must be successfully completed in order to get a passing grade.**

- 1) Kindly not the above condition: all elements of the course must be completed (attendance/participation/response papers/final essays) in order to receive a passing grade. Note as well that scanty attendance can severely undermine your final grade.
- 2) **Participation 20%:** You will be expected to do the reading before class and to participate in discussion about those readings in class. While attendance will be recorded, mere attendance is not enough to secure a participation mark. Everyone will be called upon to participate in class discussion so preparedness is key. Finally, as a general matter, there are no other ways to earn participation in the seminar; participation presumes presence and engagement within actual seminar discussion so if you miss class you lose the marks. Kindly also note that to facilitate your meaningful participation, I will issue a circular a few days before every class with pointed questions about the relevant text to consider. These will structure our class discussions so you can prepare by thinking about these questions. As well, I will issue periodic reports to the class about the quality of the seminar participation as we go along noting where things went well, where things went wrong and so on so that participation is not something that happens in a vacuum. That way you will have a tangible basis to evaluate your own participation within the seminar. Indeed, given that this is a seminar, the quality of our enterprise as seminar participants depends fundamentally on your meaningful participation. **Note that I will grant you two "free" missed classes with no penalty but for every subsequent missed class, you will lose roughly 1.4 marks per missed class. Therefore, consistent lack of attendance will be costly to your final grade.**

- 3) **Response Paper 1 20%** due October 10, 2024 – A Response Paper is a short critical essay that demonstrates a close reading analysis of a given text. In this case, the first essay will be on an aspect of the essay by Hart, H L. A., “Positivism and the Separation between Law and Morals” [1958] 71:4 Harvard Law Review 593-629.
- 4) **Response Paper 2 20% due November 6, 2024** – A Response Paper is a short critical essay that demonstrates a close reading analysis of a given text. In this case, the first essay will be on an aspect of the Hart’s theory of “primary and secondary rules” as laid out in Chapters 4 and 5 of H. L. A. Hart, The Concept of Law (Oxford University Press, 1961)
- 5) **Final Research Paper 40% due December 2, 2024** – 12-15 pages either utilizing or evaluating aspects of Hart’s theory drawing on 4-5 secondary scholarly sources as the basis for your arguments.
- 6) **KINDLY NOTE: ALL WRITTEN ASSIGNMENTS ARE TO BE SUBMITTED TO BRIGHTSPACE. I DO NOT ACCEPT EMAILED ASSIGNMENTS AS THESE RISK GETTING LOST.**

### LATE PENALTIES AND REQUESTS FOR EXTENSIONS

There are no late penalties because the expectation is that you will not submit work to me late. In general, I am also slow to grant extensions without exceptional justification. The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. For requests for short-term extensions, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/academic-consideration-coursework-form/>.

For more information regarding academic consideration for short-term incapacitation (illness, injury, or extraordinary circumstances beyond a student’s control), please visit the following link: <https://students.carleton.ca/course-outline/#academic-consideration-for-short-term-incapacitation>

### GRADE APPEALS

If you wish to appeal a grade, you must do so by email in writing to me within 48 hours of receiving a marked assignment. Kindly note that the reasons of the appeal must be relevant reasons and should engage the justification given for your grade. If there is a prima facie case for re-evaluating your paper, I will review the grade. But kindly note that upon re-evaluation there is also a chance that your grade could remain unchanged or that it may decline given that a re-evaluation will invite a deeper level of scrutiny than on the first round of marking.

For students who worry that your participation mark may not be very good (perhaps due to poor attendance), you may request a 1 hour closed book oral exam at the end of the semester where

the exam will involve questions about the major concepts and arguments in Hart's book where you may make up participation for up to 3 missed classes.

### **SCHEDULE**

- 1) Sept 4**                      **Introductory Class**
  
- 2) Sept 11**                    **Hart's Agenda**  
  
H.L. A. Hart, "Positivism and the Separation between Law and Morals" [1958] 71:4 Harvard Law Review 593-629.
  
- 3) Sept 18**                    **Hart's Agenda**  
  
H.L. A. Hart, "Positivism and the Separation between Law and Morals" [1958] 71:4 Harvard Law Review 593-629.
  
- 4) Sept 25**                    **What is Law?**  
  
H.L. A. Hart, *The Concept of Law*, Chapter 1.
  
- 5) Oct 2**                        **Hart's Critique of Austin's Command Theory**  
  
H. L. A. Hart, *The Concept of Law*, Chapters 2, 3 and 4.
  
- 6) Oct 9**                      **Hart's Theory of Social Rules**  
  
H. L. A. Hart, *The Concept of Law*, Chapter 4.
  
- 7) Oct 16**                     **Primary and Secondary Rules**  
  
H. L. A. Hart, *The Concept of Law*, Chapters 5 and 6.
  
- 8) Oct 23**                     **No class due to Reading Week.**
  
- 9) Oct 30**                     **Primary and Secondary Rules**  
  
H. L. A. Hart, *The Concept of Law*, Chapters 5 and 6.
  
- 10) Nov 6**                    **Formalism and Rule Skepticism**

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

**11) Nov 13**

**Justice and Morality**

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

**12) Nov 20**

**Justice and Morality**

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

**13) Nov 27**

**Laws and Morals**

H. L. A. Hart, *The Concept of Law*, Chapter 9.

**14) Dec 2**

**Final Paper is due**

### **DEPARTMENT POLICIES AND REGULATIONS**

*Please see the relevant regulations on the website for the Department of Law and Legal Studies.*

### **PLAGIARISM**

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);

- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one's own; and
- failing to acknowledge sources through the use of proper citations when using another's work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course's instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

### **STATEMENT ON STUDENT MENTAL HEALTH**

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you. For more information, please consult <https://wellness.carleton.ca/>

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, [https://studentcare.ca/rte/en/IHaveAPlan\\_CarletonUniversityUndergraduateStudentsCUSA\\_EmpowerMe\\_EmpowerMe](https://studentcare.ca/rte/en/IHaveAPlan_CarletonUniversityUndergraduateStudentsCUSA_EmpowerMe_EmpowerMe)
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

**ACADEMIC ACCOMMODATIONS**

Carleton is committed to providing academic accessibility for all individuals. You may need special arrangements to meet your academic obligations during the term. The accommodation request processes, including information about the Academic Consideration Policy for Students in Medical and Other Extenuating Circumstances, are outlined on the Academic Accommodations website ([students.carleton.ca/course-outline](https://students.carleton.ca/course-outline)).

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

**Pregnancy Obligation and Family-Status Related Accommodations**

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 about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

**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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>.

**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. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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).

**Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

**Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.

### **Academic Consideration for Medical and Other Extenuating Circumstances**

Due to medical and other extenuating circumstances, students may occasionally be unable to fulfill the academic requirements of their course(s) in a timely manner. The University supports the academic development of students and aims to provide a fair environment for students to succeed academically. Medical and/or other extenuating circumstances are circumstances that are beyond a student's control, have a significant impact on the student's capacity to meet their academic obligations, and could not have reasonably been prevented.

Students must contact the instructor(s) as soon as possible, and normally no later than 24 hours after the submission deadline for course deliverables. If not satisfied with the instructor's decision, students can conduct an "informal appeal" to the Chair of the department within three (3) working days of an instructor's decision. We have created a webform specifically for appeals to the Chair, which can be found here: <https://carleton.ca/law/application-for-review-of-refusal-to-provide-academic-consideration/>. *Note: This form only applies to LAWS courses and is not the same as a formal appeal of grade.* More information about the academic consideration can be found [here](#).