Course Description
This course concerns philosophical topics that arise in connection with particular areas of law. It offers a survey of some of the main issues in both criminal and private law, covering topics such as the justification of punishment, theories of tort law, the nature of contracts, reasonableness in the law, and the principles guiding the application of the law. The course will draw upon texts by philosophers and legal scholars as well as court opinions.

Course Objectives
- Become familiar with some of the main philosophical topics (and arguments) relating to the law.
- Critically evaluate philosophical texts. In particular, students should be able to identify, reconstruct, and evaluate arguments embedded in philosophical texts.
- Form and defend philosophical views on subjects in law.
- Write clear and well-reasoned philosophical papers.
- Engage in respectful yet vigorous philosophical conversation. Students will learn to present their own views clearly and concisely and provide support for their stance.

Required Texts
All readings will be available on-line. There is no required textbook.

Assignments and Grading
Class Participation 15%
Two Papers 25% and 30%
Final Exam 30%

I reserve the right to alter the percentages and add reading pop-quizzes if it appears that a significant portion of the class is not completing the assigned readings.

Papers:
Papers are to be submitted electronically via Sakai by 5pm on the date due. I will accept late papers, with the penalties listed below. More details will be provided closer to the due dates. While not required, I strongly encourage you to meet with me to discuss your paper.

Paper 1 due Oct. 18
Paper 2 due Nov. 29
Penalties for late papers:
Papers will be deducted a third of a letter grade for each day that it is late. For example, a B+ paper turned in at 9:30pm the day it was due would receive a B. If it was turned in the following day at 5:30pm, it would receive a B-. After 9 days, no papers will be accepted.

**Attendance:**
Attendance is mandatory. Absences due to religious observance, medical emergencies, or participation in university-sponsored events (i.e. athletics) will be treated as excused, and you will have an opportunity to earn participation credit for those days by submitting a 1-2 page, single-spaced writing on the readings missed. Unexcused absences will count against your grade. If you expect to miss one or two classes, please use the University absence reporting website [https://sims.rutgers.edu/ssra/](https://sims.rutgers.edu/ssra/) to indicate the date and reason for your absence. For your own benefit, I suggest looking at a classmate’s notes for the day missed. You are also welcome to discuss that day’s reading with me during office hours.

Please be on time. Three tardy arrivals count as an unexcused absence, and if you will be more than 20 minutes late, do not come to class.

**Extra Credit**
There are two kinds of extra credit assignments: homework assignments and movie/book reviews. You can receive credit for only one type.

Homework assignments: The template will be posted on Sakai, and you can complete 1 per month on a reading of your choice, due the day of the reading. You can earn 1 point on your final grade per assignment with the possibility of 2 if the work is exemplary.

Movie/Book reviews: Watch a movie or read a book that relates to a theme of the course (be sure to have it approved by me first). After watching/reading, write a 3-5 page double-spaced review that briefly summarizes the plot and then discusses how it raises (and resolves, if applicable) issues discussed in class. You can earn between 4 and 8 points on your final grade.

**Academic Integrity**
All suspected cases of cheating and plagiarism will be referred automatically to the Office of Student Conduct. Possible penalties include failing the course, suspension, or even permanent expulsion from Rutgers. See [http://academicintegrity.rutgers.edu/](http://academicintegrity.rutgers.edu/) for the University’s Policy on Academic Integrity and levels of violations and sanctions. I strongly advise you to familiarize yourself with this document. If it is determined that you willfully and intentionally engaged in plagiarism or cheating, you will receive no credit for the assignment in which you plagiarized.

**Other policies**
Please put away cellphones before class begins. If circumstances require you to be available to take a call (i.e. a family emergency), please let me know, put your phone on vibrate, and sit near the door so you will not disrupt class when you leave.

Laptops are allowed, but only as long as they do not become a distraction.
Reading List (Subject to Change)

WEEK ONE – Introduction and Rule of Law
Sept. 1: Introduction
Sept. 3: Rule of Law
  • Fuller, “8 ways to Fail to Make Law”
  • Hart, “Grudge Informers and the Rule of Law,”

WEEK TWO – Rule of Law
Sept. 8: No Class – Monday classes
Sept. 10: Principle of Legality and Rule of Lenity
  • Moskal v. United States
  • Keller v. Superior Court
  • Kahan on Lenity, excerpts from Taking Criminal Law Realistically

WEEK THREE – Criminal Law: Punishment
Sept. 15: Introduction
  • Hart, “Prologomena to the Principles of Punishment”
    o Section 2.1 only
Sept. 17: Retributivism
    o Sections 3 and 5 only
  • Kant, selections from Critique of Practical Reason and The Philosophy of Law
  • Dolinko, “Some Thoughts About Retributivism

WEEK FOUR – Criminal Law: Punishment
Sept. 22: Retributivism, a critique of and Expressivism
  • Dolinko, “Some Thoughts About Retributivism,” cont.
    o For other criticism, see Christopher’s “Deterring Retributivism,” in particular Parts IIA and IV.
  • Jean Hampton, “An Expressive Theory of Retribution
    o See also Fienberg, “Expressive Punishment”
Sept. 24: Deterrence
  • Bentham, selections
  • Farrell, “The Justification of General Deterrence”
WEEK FIVE – Criminal Law: Punishment and Defenses
Sept. 29: Punishment - Moral Luck
  • Lewis, “The Punishment that Leaves Something to Chance”
Oct. 1: Defenses - Introduction
  • Duff, “Understanding Defences”
  • Robinson, “Criminal Law Defenses,” Part 1

WEEK SIX – Criminal Law: Defenses
Oct. 6: Mistakes of Fact
  • MPC 2.02 and 2.04
  • Cases:
    o Morissette v. US
    o Regina v. Prince
    o US v. Feola
Oct. 8: Mistake of Law
  • Long v. State
  • People v. Marrero
  • State v. King
  • Cheek v. US

WEEK SEVEN – Criminal Law: Defenses and Reasonableness
  • Husak, “Mistake of Law and Culpability”
Oct. 15:
  • Westen, “Individualizing the Reasonable Person in Criminal Law”

*****Oct. 18: PAPER 1 DUE BY 5 PM*****

WEEK EIGHT – Civil Law: Torts
Oct. 20: Introduction
  • Coleman, “Theories of Tort Law” Section 1 only (can browse rest of article if like)
  • Hershovitz, “Harry Potter and the Trouble with Tort Theory”
  • Hershovitz, “Harry Potter and the Trouble with Tort Theory”

WEEK NINE – Civil Law: Torts
Oct 27: No Class (conference)
Oct. 29: Economic and Corrective Justice Theories
  • US v. Carroll Towing Company
  • Coleman, “Bilateralism”
WEEK TEN – Civil Law: Torts
Nov. 3: Civil Recourse Theory
  • Goldberg and Zipursky, “Torts as Wrongs” Parts I and VI
Nov. 5: Alternative to Corrective Justice
  • Keating, “Priority of Respect over Repair”

WEEK ELEVEN – Civil Law: Contracts
Nov. 10: Nature of Contracts
  • Shiffrin, “Is a Contract a Promise?”
Nov. 12: Nature of Contracts, cont.
  • Gilbert, “Is an Agreement an Exchange of Promises?”

WEEK TWELVE – Civil Law: Contracts and Negligence
Nov. 17: Cases
  • Williams v Walker-Thomas Furniture Company
  • In the Matter of Baby M
Nov. 19: Negligence
  • King, “The Problem with Negligence”

WEEK THIRTEEN – Other Topics in the Law: Consent
Nov. 24: Consent
  • Kleinig, “The Nature of Consent”
Nov. 26: No Class – Thanksgiving break

****Nov. 29: PAPER 2 DUE BY 5 PM****

WEEK FOURTEEN – Other Topics in the Law: Evidence
Dec. 1: Individual and Statistical Evidence
  • Thomson, “Liability & Individualized Evidence”
Dec. 3: Individual and Statistical Evidence
  • Enoch, Spectre & Fischer, “Statistical Evidence, Sensitivity & the Legal Value of Knowledge”

WEEK FIFTEEN – Review
Dec. 8: Spill-over
Dec. 10: Classes End – spill-over and review session for final