

Syllabus

Legal Studies 101-301: Introduction to Law and Legal Process
Honors Program

Prof. Eric Orts

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Classes: Tuesdays and Thursdays, 10:30 a.m. to noon, JMHH G94.

Texts: The following materials are required reading.

- Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* (Foundation Press, 6th ed. 2010) [paperback].
- Richard H. Fallon, Jr., *The Dynamic Constitution: An Introduction to American Constitutional Law* (Cambridge University Press 2004) [paperback].
- Tony Honoré, *About Law: An Introduction* (Oxford University Press 1995) [paperback].
- Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Harvard University Press 2009) [hardcover].
- Raymond Wacks, *The Philosophy of Law: A Very Short Introduction* (Oxford University Press 2006) [paperback].

Handouts: Supplementary handouts provided in class are also considered part of required course materials.

Course description: Legal Studies 101-301 provides an introduction to the study of law and legal process. As an honors course, it provides a more conceptual, broad-ranging, and experimental approach than the ordinary Legal Studies 101 course. The course critically explores the role of law in modern society, providing an overview of basic functional areas, including the nature of law and competing values that inform legal decision-making, an overview of the American legal system, a brief “mini-course” in the substantive law of contracts, and coverage of other selected topics of current legal interest. This

semester's course will focus particularly on the nature of U.S. constitutional law and legal interpretation.

Papers and Grading: There will be two short required papers and one final presentation/argument in class of a current issue in U.S. constitutional law. Each paper and the final presentation will count for approximately one-third of the final grade for the course. Students are required to discuss paper topics with the professor in advance (and get them approved) during office hours, by appointment, by e-mail or phone, or before/after class sessions.

Citations and Plagiarism: Students must give adequate citations for all sources quoted or used in writing papers. No specific form of citations in footnotes is required, as long as the source is identified sufficiently for it to be found and checked. Every paper must be the student's own work. *Any incident of plagiarism will be fully prosecuted through the usual channels.*

Class Participation: In addition to formal requirements, students are expected to have read and be prepared to discuss the material assigned for each class. Consistently excellent participation in class may be taken into account to increase a student's grade by one step (e.g., B+ to A-). Poor attendance or failure to participate regularly and knowledgeably in class discussion may be taken into account to reduce a student's final grade by one step.

Office hours: to be announced and by appointment.

Course Outline

Part One: Introduction to Law

1. Introduction to the course [Sept. 8]

review of syllabus and class expectations; discussion of approach of the course

introductory discussion questions: "What is law?" "What is 'the rule of law'?"

2. Introduction to reading a legal case [Sept. 13]

Handout: *State v. Henderson*, Slip Opinion, 2011 WL [Westlaw] 3715028 (Supreme Court of New Jersey, 2011).

discussion questions: "What are the facts of the case?" "What is the holding of the case?"

3. Introduction to the nature of law and its context [Sept. 15]

Honoré, pp. 1-34.

Schauer, pp. 1-35.

4. Introduction to legal reasoning [Sept. 20]

Schauer, pp. 36-123.

5. Introduction to jurisprudence I: natural law versus legal positivism [Sept. 22]

Honoré, pp. 97-108.

Wacks, pp. xii-39.

Handout: Lon Fuller, "The Case of the Speluncean Explorers," 62 *Harvard Law Review* 616 (1949).

6. Introduction to jurisprudence II: legal realism, critical legal studies, and other theories of law [Sept. 27]

Wacks, pp. 52-107

Schauer, pp. 124-47

Handouts in class: "The Problem of the Grudge Informer Revisited" [adapted from Lon Fuller, "The Problem of the Grudge Informer" in *The Morality of Law* (rev. ed. 1969), appendix, pp. 245-63].

7. Introduction to legal interpretation [Sept. 29]

Honoré, pp. 87-95.

Wacks, pp. 40-51.

Schauer, pp. 148-70.

8. Introduction to basic legal subjects I: property and contracts [Oct. 4].

Honoré, pp. 35-52.

Handout: *Pierson v. Post* (Supreme Court of New York 1805)

9. Introduction to basic legal subjects II: crimes and torts [Oct. 6].

Honoré, pp. 53-75.

Handout: *United States v. Carroll Towing* (U.S. Court of Appeals, 2d Circuit 1947)

First paper due in hard copy at beginning of class (with electronic copy sent to professor at e-mail address above) on Thursday, October 6 – 5 to 7 pages, double-spaced (page limit includes single-spaced footnotes or bibliography) – on a topic covered by or related to topics discussed in the Part One of the course and discussed with the professor in advance.

Part Two: Introduction to the Legal Process and Legal Reasoning

10. Introduction to legal process and procedures [Oct. 13]

Honoré, pp 77-86.

Schauer, pp. 171-201.

11. Introduction to evidence and burdens of proof [Oct. 18]

Schauer, pp. 203-34.

Part Three: Principles of Contract Law

12. The legal enforceability of agreements [Oct. 20]

Chirelstein, chs. 1 and 2, pp. 1-35.

13. Contract formation and bargaining: offer and acceptance; revocation and counter-offer [Oct. 25]

Chirelstein, ch. 3, pp. 36-80.

14. Defenses to contractual obligation I: Unfairness and Unconscionability [Oct. 27]

Chirelstein, ch. 4, pp. 81-100.

Handout: *Earl v. Saks & Co.* (Supreme Court of California 1951).

15. Defenses to contractual obligation II: interpretation [Nov. 1]

Chirelstein, ch. 5, pp. 101-23.

16. Defenses to contractual obligation III: mistake and impossibility [Nov. 3]

Chirelstein, ch. 7, pp. 166-88.

17. Contractual remedies [Nov. 8]

Chirelstein, ch. 8, 189-235.

Second paper due in hard copy at beginning of class (with electronic copy sent to professor at e-mail address above) on Thursday, November 10 – 5 to 7 pages, double-spaced (page limit includes single-spaced footnotes or bibliography) – on a topic covered by or related to topics discussed in the Parts Two and Three of the course and discussed with the professor in advance.

Part Four: Introduction to U.S. Constitutional Law

18. Introduction to constitutional law [Nov. 10]

Fallon, pp. xv-30.

19. Individual constitutional rights I [Nov. 15]

Fallon, pp. 31-90.

20. Individual constitutional rights II [Nov. 17]

Fallon, pp. 91-156.

21. Constitutional separation of powers [Nov. 22]

Fallon, pp. 157-206.

22. Selected structural issues in constitutional law [Nov. 29]

Fallon, pp. 207-77.

23. **Student Team Presentations/Arguments I** [Dec. 1]

[All legal topics to be discussed with professor in advance. Briefs may be submitted to support arguments with cases or references.]

24. **Student Team Presentations/Arguments II** [Dec. 6]

25. **Student Team Presentations/Arguments III** [Dec. 8]

Appendix: Prof's Bio

Prior to joining the faculty at the University of Pennsylvania in 1991, I worked as a lawyer for two years as a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City. While in law school at the University of Michigan (J.D.), I interned at the Legal Aid Society of Cleveland and served as an articles editor on the *Journal of Law Reform*. Other education and experience: Columbia University (J.S.D., Chemical Bank fellow in corporate social responsibility); New School for Social Research (M.A. in political science); Oberlin College (B.A. in government and minor in philosophy). I grew up in a small town near Martins Ferry, Ohio (about sixty miles down the Ohio River from Pittsburgh). I'm married and have one son and two step-daughters. My wife, Julie, works at Philabundance.

Here at Penn and Wharton, my teaching and research interests focus on corporate law, securities regulation, and environmental management. My primary appointment is as a professor in the Legal Studies and Business Ethics Department at Wharton, with a secondary appointment in the Management Department. I was named to an endowed chair as the Guardsmark Professor in 2003. I serve currently as director of the Initiative for Global Environmental Leadership (IGEL), as well as a co-academic director of the FINRA at Wharton Institute (an executive education program for regulatory and compliance professionals in the financial industry). I will be developing a new executive education course in sustainable business for 2012. Last year, I received an Excellence in Teaching award in the MBA program.

Other teaching and professional experience (mostly during sabbaticals or academic leaves): visiting professor at UCLA School of Law, University of Michigan Law School, Tsinghua University, Sydney Law School, and NYU School of Law; visiting Fulbright professor in the law department of the University of Leuven; and Eugene P. Beard Faculty Fellow at Harvard University's Center for Ethics and the Professions (and faculty fellow in the Center for Business and Government at the Kennedy School at Harvard).

Current research: recently published an article called "Climate Contracts" (*Virginia Environmental Law Journal*) and completing a book forthcoming in Oxford University Press called *Rethinking the Firm: Theories of the Business Enterprise*.