

Syllabus

**Legal Studies 101-301: Introduction to Law and Legal Process**

Honors Program

Prof. Eric Orts

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Classes: Mondays and Wednesdays, 10:30 to noon, Huntsman Hall G86.

Texts: The following materials are required reading. They are available at the Penn Book Center (34<sup>th</sup> and Sansom), online, or elsewhere.

- Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* (Foundation Press, 7<sup>th</sup> ed. 2013) [paperback] (Amazon: \$44; rental option also available).
- Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press 1998) [paperback] [Amazon: \$14; Kindle edition also available).
- David A. Strauss, *The Living Constitution* (Oxford University Press 2010) [hardcover] [Amazon online price: \$16; Kindle edition also available].
- Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Harvard University Press 2009) [paperback] (Amazon online price: \$37)
- George P. Fletcher and Steve Sheppard, *American Law in a Global Context: The Basics* (Oxford University Press 2005) [paperback] (Amazon online price: \$26)
- Raymond Wacks, *The Philosophy of Law: A Very Short Introduction* (Oxford University Press 2006) [paperback] (Amazon online price: \$10)

Handouts: Supplementary handouts provided in class or online by e-mail distribution 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 theories of legal interpretation.

Papers and Grading: There will be two short required papers and one final presentation/argument in class of a current case pending or recently decided by the U.S. Supreme Court. 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 and Legal Process

#### 1. Introduction to the course [Jan. 15]

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

introductory discussion questions: “What is law?” “What is the rule of law?”

[Note: No class on Monday, Jan. 20 – MLK Day]

#### 2. Introduction to reading a legal case [Jan. 22]

Handout: *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).

Handout: Reading Notes for *Citizens United*

*American Law in a Global Context*, appendix one.

discussion questions: “What are the facts of the case?” “What are the principal legal arguments on each side?” “What is the holding of the case?”

3. The nature of law and its context [Jan. 27]

*American Law in a Global Context*, preface and introduction, pp. vii-viii, 3-12.

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

4. Global division of law: common law and civil law systems [Jan. 29]

*American Law in a Global Context*, pt. I, chs. 1-3, pp. 15-21, 29-74 [omit *Scott v. Shepard*] and appendix two.

Schauer, ch. 6, pp. 103-23.

5. Legal reasoning and the use of precedents [Feb. 3]

*American Law in a Global Context*, pt. I, ch. 4, pp. 75-110.

Schauer, ch. 3, pp. 36-60.

6. Legal reasoning and the use of authorities and analogies [Feb. 5]

Schauer, chs. 4 and 5, pp. 61-102.

7. Jurisprudence I: natural law versus legal positivism [Feb. 10]

Wacks, introduction and chs. 1 and 2, pp. xii-39.

In-class handout and exercise: “The Case of the Speluncean Explorers” [adapted from Lon Fuller]

8. Jurisprudence II: legal realism, critical legal studies, and other theories of law [Feb. 12]

Wacks, chs. 4-6, pp. 52-107.

Schauer, ch. 7, pp. 124-47.

Handouts in class: “The Problem of the Grudge Informer Revisited” [adapted from Lon Fuller].

9. Legal interpretation [Feb. 17]

*American Law in a Global Context*, appendix three.

Wacks, ch. 3, pp. 40-51.

Schauer, ch. 8, pp. 148-70.

10. Legal process and procedures [Feb. 19].

*American Law in a Global Context*, pt. I, chs. 6 and 11; pt. III, ch. 26; pp. 132-49, 243-58, 502-24.

11. Legal process continued: finding, opinions, discretion, evidence and legal proof [Feb. 24]

Schauer, chs. pp. 171-234.

**First paper due in hard copy at beginning of class (with electronic copy sent to professor at e-mail address above) on Wednesday, February 26 – 5 to 7 pages, double-spaced and double-sided (page limit includes single-spaced footnotes or bibliography) – on a topic covered by or related to topics discussed in the course and discussed with the professor in advance.**

Part Two: Selected Substantive Topics (Mostly Contracts)

12. Property [Feb. 26]

*American Law in a Global Context*, pt. III, ch. 17, pp. 358-61, 367-75 [omit *Connecticut v. Heller* but include *Boomer v. Atlantic Cement*]

13. Crimes [Mar. 3]

*American Law in a Global Context*, pt. IV, chs. 27-29, pp. 526-90.

14. Torts (and arguments based on “economic efficiency”) [Mar. 5]

*American Law in a Global Context*, pt. III, chs. 22-23, pp. 440-71.

[Spring Break: Mar. 8-16]

15. Special class and guest lecturer (tentative date) [Mar. 17]

Aidan Synnott, litigation partner, Paul, Weiss Rifkind, Wharton, and Garrison

[topic and reading to come]

16. Introduction to Contracts: The Enforceability of Agreements [Mar. 19]

*American Law in a Global Context*, pt. III, ch. 19, pp. 395-98 (omit *Beahr v. Penn-O-Tex*),

413-16 (omit *Feinberg v. Pfeiffer*), 419-25.

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

17. Contract formation and bargaining: offer and acceptance; revocation and counter-offer [Mar. 24]

Chirelstein, chs. 3 and 4, pp. 36-81.

18. Defenses to contractual obligation I [Mar. 26]

*American Law in a Global Context*, pt. III, ch. 20, pp. 413-25 (omit *Shelley v. Trafalgar House*).

Chirelstein, ch. 4, pp. 82-103

19. Defenses to contractual obligation II [Mar. 31]

Chirelstein, ch. 7, pp. 170-92.

**Second paper due in hard copy at beginning of class (with electronic copy sent to professor at e-mail address above) on Wednesday, April 2 – 5 to 7 pages, double-spaced, double-sided (page limit includes single-spaced footnotes or bibliography) – on a topic covered by or related to topics discussed in the course and discussed with the professor in advance.**

Part Three: U.S. Constitutional Law and Supreme Court Moot Court Arguments

20. Constitutional text and judicial review [Apr. 2]

*American Law in a Global Context*, pt. II, chs. 5 and 6, pp. 111-49 (alright to skim constitutional text).

21. Federalism [Apr. 7]

*American Law in a Global Context*, pt. II, ch. 7, pp. 150-71.

22. Constitution as text and interpretation [Apr. 9]

Scalia, Scalia's main essay, pp. 3-48.

23. Scalia's critics and his response [Apr. 14]

Scalia, comments and response, pp 49-150.

24. Another view: Strauss's "living Constitution" [Apr. 16]

Strauss, introduction and chs. 1-3, pp. 1-48.

25. "Living Constitution" (continued) [Apr. 21]

Strauss, chs. 4-6, pp. 51-97.

**For student presentations: All legal topics to be discussed with professor in advance. Briefs may be submitted to support arguments with cases or references.**

26. **Student Team Presentations/Arguments I** [Apr. 23]

27. **Student Team Presentations/Arguments II** [Apr. 28]

28. **Student Team Presentations/Arguments III** [Apr. 30]

## 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 the U.S. Department of Defense. I also served as an articles editor on the *University of Michigan 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). After undergraduate college, I moved to New York City and worked as a paralegal/proofreader at Skadden, Arps.

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.

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).

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).

Recent research: *Business Persons: A Legal Theory of the Firm* (Oxford University Press 2013).