



**Law and Social Values
LGST 101**

Spring 2018

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[canvas site]

Class Times: Monday/Wednesday, 1:30 – 3:00
Tuesday/Thursday, 12:00 – 1:30
Tuesday/Thursday, 3:00 – 4:30

Office Hours: TBD

Course Description

This course will accomplish three goals. First, it will provide a basic introduction to U.S. legal doctrines and processes, with an emphasis on contracts, property, torts, and constitutional law. Much like a law school course, we will read legal opinions written by judges in order to get a sense for the common law method as well as many of the cornerstone doctrines in U.S. case law.

Second, this course will introduce many of the theoretical and normative questions and controversies surrounding the law, as both a concept and as a political institution. Do we have a duty to obey the law? If so, how does law get its authority over us? How can the actions or utterance of a group of people “make” law? Which people, or which institutions, have legitimate authority to make law, or to change it? We will see that, in many cases, these philosophical questions bear directly on the outcome of real-life cases and controversies. For example, do judges have the authority to enforce previously unrecognized rights in the U.S Constitution?

Finally, this course will provide excellent training in critical reasoning and analytical writing skills. Students are expected to come to class prepared to discuss the nuances and ambiguities of complex legal and theoretical texts. Together, we will develop our capacities for inquiry, skepticism, constructive criticism, and problem-solving.

Required Texts

A course pack will be available from study.net; supplemental texts will be available on the course website.

Exams and Grading

Grading will be based on a midterm (35%) and a final exam (50%), both of which will be in-class written exams. The remainder of the grade will be based on in-class participation, preparedness, and professionalism.

Class Format and Policies

This course will involve a combination of lecture, open discussion, and “Socratic method” questioning. That is, I will sometimes call on one or two students to help guide our discussion of a legal case or other assigned text. I understand that it may not always be possible to complete the reading before class. If you cannot finish an assignment, let me know in advance, and I will not call on you (max four times during the semester).

Note that electronic devices will not be permitted in class. Studies have shown that productivity and attention span decreases when students use electronic devices in class, or even have them available on their desk. (If special circumstances require that you have connectivity, please let me know in advance.)

I look forward to getting to know you, and invite you to coffee or lunch at some point during the semester.

Readings

Unit I: Introduction

1. Hard Cases

Obergefell v. Hodges (2015)

- selections from majority and dissent

Lon L. Fuller

- “The Case of the Speluncean Explorers” (1949)

Ronald Dworkin

- “Hard Cases” (1975)

2. Constitutional Law: Judicial Review

U.S. Constitution, Art. I, § 8; Art. III
Marbury v. Madison (1803)
Lopez v. United States (1995)
Raich v. United States (2005)

3. Sources of Law

H.L.A. Hart
- The Concept of Law (1961) [selections]
Ronald Dworkin
- Law as Interpretation (1982)
Antonin Scalia
- “Common-Law Courts in a Civil-Law System” (1995)
Jeremy Waldron
- “The Dignity of Legislation” (1995)
Frank Easterbrook
- Textualism and the Dead Hand (1998)
Robert C. Post and Reva B. Siegel
- “Democratic Constitutionalism” (2009)

4. Statutory Interpretation

Oliver Wendall Holmes
- The Path of the Law (1881) [selections]
Church of the Holy Trinity v. United States (1892)
H.L.A. Hart
- The Concept of Law (1961) Chapt. 7
Antonin Scalia
- A Matter of Interpretation (1997)

Unit II: Contracts

5. Contract as Promise

John Locke
- Second Treatise of Government (1689) [selections]
Charles Fried
- Contract as Promise (1981) [selections]
Raffles v. Wichelhaus (1864)
Hamer v. Sidway (1891)
Cobaugh v. Klick-Lewis (1989)

6. Void and Voidable Obligations

Sherwood v. Walker (1887)
Alaska Packers Association v. Domenico (1935)
Williams v. Walker-Thomas Furniture Co. (1965)

7. Specific Performance

Curtice Brothers Co. v. Catts (1874)
Jacob & Youngs v. Kent (1921)

8. Calculating Damages

Acme Mills & Elevator Co. v. Johnson (Ky. App. 1911)
Chicago Coliseum Club v. Dempsey (1932)
City of Rye v. Public Service Mutual Insurance Co. (1974)

9. State Action?

Shelley v. Kraemer (1948)
Louis Henkin
- “*Shelley v. Kraemer: Notes for Revised Opinion*” (1962)

10. Arbitration

“Arbitration Everywhere, Stacking the Deck of Justice”
(New York Times, Oct. 31, 2015)
Federal Arbitration Act (1925)
AT&T Mobility v. Concepcion (2011)
Epic Systems Corp. v. Lewis (likely 2018)

Unit III: Property

11. Introduction to Property

Rylands v. Fletcher (1868)
Pierson v. Post (1805)
Popov v. Hayashi (2002)
Arthur Ripstein
- “Force and Freedom” (2009) [selections]

12. Constitutional Law: Takings Clause

Nollan v. Cal. Coastal Commission (1987)
Lucas v. South Carolina Coastal Council (1992)
Kelo v. City of New London (2005)

13. Intellectual Property: Copyright and Patent

Campbell v. Acuff-Rose Music, Inc. (1994)
Bilski v. Kappos (2010) [majority opinion]
Richard Shell
- *Make the Rules Or Your Rivals Will* (2004) Chapter 1

13. Intellectual Property: File Sharing and Streaming

Sony v. Universal City Studios (1984)
MGM Studios v. Grokster (2005)
Viacom v. YouTube (S.D.N.Y. 2103)
(granting motion for summary judgment in favor of YouTube)
“*Viacom and YouTube Settle Suit Over Copyright Violations*”
(New York Times, March 18, 2014)

[Midterm Exam]

Unit IV: Torts

14. Intentional Torts

Vosburg v. Putney (1891)
Desnick v. ABC (1994)

15. Negligence

Williams v. Hays Martin v. Herzog (1894)
Baltimore & Ohio R.R. v. Goodman (1927)
Palsgraf v. Long Island Railroad Co. (1928)

16. Products Liability

Escola v Coca Cola (Cal.2d, 1944)
Grimshaw v. Ford Motor Company (Cal.App.3d 1981)
Philip Morris v. Williams (2007)

17. Rules versus Standards

Fred Schauer

- Thinking Like a Lawyer (2009) Chapter 10

Antonin Scalia

- "Rule of Law as Law of Rules" (1989)

Seana Shiffrin

- "Inducing Moral Deliberation" (2009)

Unit V: Constitutional Rights

18. Individual Rights

Ronald Dworkin

- "Taking Rights Seriously" (1977)

19. Free speech

U.S. Constitution, Amend. I

Schenck v. United States (1919)

West Virginia v. Barnette (1943)

Brandenburg v. Ohio (1969)

Cohen v. California (1971)

National Socialist Party of America v. Village of Skokie (1977)

Virginia v. Black (2003)

- Justice Thomas dissent

20. Race

U.S. Constitution, Amend. XIII, XIV, XV

Brown v. Board (1953)

Loving v. Virginia (1967)

McCleskey v. Kemp (1987)

Cooper v. Harris (2017)

21. Gender and the Right to Privacy

Roe v. Wade (1973)

Lawrence v. Texas (2003)

Complainant v. Foxx (E.E.O.C. July 15, 2015)

Robert C. Post and Reva B. Siegel

- "Roe Rage" (2007) [selections]

22. *Obergefell* Redux

Obergefell v. Hodges (2015)

Katie Eyer

- “*Brown* not *Loving*” (2015)

Micah Schwartzman, Richard Schragger and Nelson Tebbe

- “*Obergefell* and the End of Religious Reasons for Lawmaking” (2015)

23. Law and Religion

Employment Div. v. Smith (1990)

Hobby Lobby (2014)

Douglas NeJaime and Reva B. Siegel

- “Conscience Wars” (2015)

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (likely 2018)

[Final Exam; Date TBA]