

## LGST 101 LAW AND SOCIAL VALUE, SPRING 2018

**Instructor:** Prof. Julian Jonker  
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JMHH 699  
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**Section 002:** MW 12pm—1.30pm, JMHH 260

**Section 004:** MW 3pm—4.30pm, JMHH245

This course is an introduction to law and ethical debate about law. It places emphasis on understanding how lawyers reason, and the values to which their arguments appeal.

We will explore three important areas of the law: (a) tort law, (b) contract law, and (c) anti-discrimination law. These areas provide good case studies of how the law must mediate between our native moral judgments and the pressures of a complex economy and technological change.

### ASSESSMENT

The pedagogical aim of the course is to train your ability to understand and make arguments about the law. For that reason the main form of assessment is repeated written assignments. There will be no exams. There are many assignments, but they are all short.

#### **Grade composition:**

<b>Class participation</b>	<b>20%</b>
<b>7 response papers (between 1 and 4 pages long)</b>	<b>80%</b>

The response papers will be a mix of genres: some will ask you to summarize cases; some will ask you to solve hypothetical legal problems; some will ask you to summarize and discuss philosophical arguments about the law. Altogether you will write between 11 and 16 pages for the class, but they will be tightly focused and well rehearsed pages.

Students' grades will be based on competence, rather than on performance relative to the class. In past experience my students' grades tend toward a normal distribution around a B+, but the future is not always like the past.

## **CLASS PARTICIPATION**

Attendance is a minimum requirement for the class participation grade. But illness and other things do happen. You may miss three classes for any reason, and without needing to excuse yourself. After that every absence, regardless of whether you have an excuse or not, will have an impact on your participation grade.

In addition, your participation grade will be based on your participation in class discussion. I will cold call students, and the participation grade will be based on whether students can show that they have read and thought about the material. If you are unwilling to be called on during class you may turn your name tent face down. This will count as an absence, and once your three absences have been exhausted it will affect your participation grade as if you were unable to answer questions.

## **MATERIALS**

Prepare each reading before the class for which it is scheduled. It may be helpful to return to the reading after class to consolidate your understanding. Readings have been posted on the Canvas course site by Library Course Reserves. There will also be a study.net pack available.

Lecture slides will be posted on Canvas after the lecture. In addition, reading notes will often be posted on Canvas in advance of the lecture—these will tell you what to focus on and provide context where necessary.

## **CONSULTATION**

I will hold office hours every Wednesday, 4.30-5.30pm. You should also feel free to make an appointment outside this time by sending me an email with three times at which you are available.

I'll be participating in the Student-Faculty Meals program. Coming to lunch (or not) will have no effect on your grade, and I will have no agenda other than getting to know people. There is a sign up sheet on Canvas: please sign up! You may sign up as many times as you like; we'll go lunch once three students sign up. A maximum of seven students may sign up for any one lunch.

## INTRODUCTION

**Class 1 (Wednesday 10 January)                      Reading a case**

*Palsgraf v Long Island R. Co.*, 1928, 248 N.Y. 339, 162 N.E. 99.

Richard A. Mann and Barry S. Roberts, *Smith and Roberson's Business Law*, pp. 2—10.

**Class 2 (Wednesday 17 January)                      The common law**

Von Mehren and Murray, *Law in the United States*, 2nd ed., pp. 40—70.

### A. TORTS

**Class 3 (Monday 22 January)                      Overview**

Jay Feinman, *Law 101* 4th ed., Chapter 5.

**Class 4 (Wednesday 24 January)                      Negligence I**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., pp. 47—74, 143—165.

**RESPONSE PAPER 1 DUE: FRIDAY 26 JANUARY, 5PM**

**Class 5 (Monday 29 January)                      Negligence II**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., pp. 143—178.

**Class 6 (Wednesday 31 January)                      Causation**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., pp. 229-233;

Tony Honoré 'Necessary and sufficient conditions in tort law' in *Philosophical Foundations of Tort Law* (David G. Owen ed., 1995).

**Class 7 (Monday 5 February)**

**Palsgraf**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., pp. 309—345.

**Class 8 (Wednesday 7 February)**

**Damages**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., pp. 513—521, 536—555.

**RESPONSE PAPER 2 DUE: FRIDAY 9 FEBRUARY, 5PM**

**Class 9 (Monday 12 February)**

**Insuring against risk**

Richard Posner, *Economic Analysis of Law*, Chapter 6.

**Class 10 (Wednesday 14 February)**

**Liability without fault I**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., pp. 555—566, 851—891.

**Class 11 (Monday 19 February)**

**Liability without fault II**

Goldberg, Sebok, and Zipursky, *Tort Law*, 4th ed., 893—928.

**Class 12 (Wednesday 21 February)**

**Liability without fault III**

Ernest Weinrib, *The Idea of Private Law*, Chapter 7.

**RESPONSE PAPER 3 DUE: FRIDAY 23 FEBRUARY, 5PM**

**B. CONTRACTS**

**Class 13 (Monday 26 February)**

**Formation I**

Farnsworth et. al. *Contracts. Cases and Materials* 8th ed. (2013) pp. 125—138 ('The nature of assent'), 140—151 ('The offer'), 179—199 ('Revocation of offers').

**Class 14 (Wednesday 28 February)      Formation II**

Farnsworth et. al. *Contracts. Cases and Materials* 8th ed. (2013) pp. 31–48 ('Fundamentals of consideration'), 356–380 ('The pre-existing rule').

*Spring Break 3–11 March*

**Class 15 (Monday 12 March)      Formation III**

Lon Fuller, 'Consideration and form' 41 *Columbia Law Review* 799 (1941).

**Class 16 (Wednesday 14 March)      Formation IV**

Von Mehren and Murray, *Law in the United States* 2nd ed, chapter 3.

**RESPONSE PAPER 4 DUE: FRIDAY 16 MARCH, 5PM**

**Class 17 (Monday 19 March)      Unfairness**

Farnsworth et. al. *Contracts. Cases and Materials* 8th ed. (2013) pp. 387–403, pp. 490–500 ('Unfairness'), 522–535 ('Unconscionability').

**Class 18 (Wednesday 21 March)      Remedies**

Farnsworth et. al. *Contracts. Cases and Materials* 8th ed. (2013) pp. 639–657 ('Measuring expectation'), 674–687 ('Avoidability').

**Class 19 (Monday 26 March)      Efficient breach**

Gregory Klass, 'Efficient breach,' Chapter 18 of *Philosophical Foundations of Contract Law* (ed. Klass, Letsas, and Saprai, 2014).

**Class 20 (Wednesday 28 March)      Contract as promise I**

T M Scanlon 'Promises and contracts' in *The Difficulty of Tolerance* (2003).

**RESPONSE PAPER 5 DUE: FRIDAY 30 MARCH, 5PM**

**Class 21 (Monday 2 April)**

**Contract as promise II**

George Letsas & Prince Saprai, 'Mitigation, fairness, and contract law' in *Philosophical Foundations of Contract Law* (ed. Klass, Letsas, and Saprai, 2014).

**Class 22 (Wednesday 4 April)**

**Fair exchange**

P S Atiyah 'Contract and fair exchange' in *Essays on Contract* (1986);

John Rawls, *A Theory of Justice* revised ed., sections 3, 4, 11 (1999).

**Class 23 (Monday 9 April)**

**Good faith**

Daniel Markovits, 'Good faith as contract's core value,' Chapter 14 of *Philosophical Foundations of Contract Law* (ed. Klass, Letsas, and Saprai, 2014).

**C. ANTI-DISCRIMINATION LAW**

**Class 24 (Wednesday 11 April)**

**Equality and employment**

Leiter and Leiter, *Affirmative Action in Antidiscrimination Law and Policy*, 2nd ed., pp. 27–76.

**RESPONSE PAPER 6 DUE: FRIDAY 13 APRIL, 5PM**

**Class 25 (Monday 16 April)**

**Discrimination as an expressive wrong**

Deborah Hellman, *When is Discrimination Wrong?* ch. 1

**Class 26 (Wednesday 18 April)**

**Discrimination and disrespect**

Benjamin Eidelson, *Discrimination and Disrespect*, ch. 3

**Class 27 (Monday 23 April)**

**Equality and higher education**

Leiter and Leiter, *Affirmative Action in Antidiscrimination Law and Policy*, 2nd ed. pp. 131—169

**Class 28 (Wednesday 25 April)**

**Integration**

Elizabeth Anderson, *The Imperative of Integration*, ch. 7

**RESPONSE PAPER 7 DUE: FRIDAY 27 APRIL, 5PM**

**END**