

LGST 101 LAW AND SOCIAL VALUE (HONORS), SPRING 2019
PROVISIONAL SYLLABUS

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Section 301: MW 12pm—1.30pm (Honors), SHDH 1203

Office hours: W 2.30pm—3.30pm or by appointment, JMHH669

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) something else of your choice—perhaps anti-discrimination law. These areas will 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.

HONORS CLASS

The Honors section 301 differs from sections 001 and 002 in three ways. (1) There is more to do. We go over material more quickly, and there are additional readings which tend to take a more theoretical focus i.e. they consider the philosophical and economic underpinnings of the legal rules and principles we will be studying. (2) There are fewer but longer assignments. The assignments in 001 and 002 focus on legal drafting. There is a bit of this in 301 too, but there are also traditional argumentative essays focusing on your theoretical understanding. (3) There is some choice. You will notice that the reading list below is merely suggestive after Spring Break. That is because we will decide together what to cover. I suggest that we take a look at anti-discrimination law, but I will give you some other options.

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 several assignments, but they are all relatively short.

The assignments will be a mix of genres: one will ask you to summarize a case; one will ask you to solve a hypothetical legal problem; two will ask you to summarize and discuss philosophical and policy arguments about the law. Altogether you will write at most 23 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 a passing (C-) 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 and make it more likely that you do not receive a passing grade.

More importantly, 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 a particular class you may let me know in advance. 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.

<u>Grade composition (Honors):</u>	
Class participation	20%
Assignment 1 (1 page case summary, due 02/01)	15%
Assignment 2 (3-4 page tort memo, due 02/22)	15%
Assignment 3 (5-6 page argument analysis, due 03/22)	20%
Assignment 4 (10-12 page essay, due 05/03)	30%

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, 2.30-3.30pm. 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.

NB: The reading list is very likely to change during the course of the semester. Make sure that you are receiving Canvas notifications in order to keep up with changes.

INTRODUCTION

Class 1 (Wednesday 16 January) Overview

No reading

Class 2 (Wednesday 23 January) The common law

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

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

A. TORTS

Class 3 (Monday 28 January) Torts and Defenses

Mann and Roberts, *Smith and Roberson's Business Law*, pp. 126–136 and 147–160.

Goldberg and Zipursky, *Torts*, Chapters 3 & 4.

O'Brien v Cunard S.S. Co., Ltd. 28 N.E. 266 (1891)
Hackbart v Cincinnati Bengals, Inc. 435 F.Supp 352 (1977)
Hackbart v Cincinnati Bengals, Inc. 601 F.2d 516 (1979)
Koffman v Garnett, 574 S.E.2d 258 (2003)

Kenneth W. Simons, 'Assumption of risk and consent in the law of torts' 67 *B. U. Law Review* 213 (1987) [read only introduction and sections I, II.A, and V]

Class 4 (Wednesday 30 January) Duty of Care

Heaven v Pender, 11 QBD 503 (1883)
Winterbottom v Wright, 152 E.R. 402 (1842)
Thomas v Winchester, 6 N.Y. 397 (1852)
MacPherson v Buick Motor Co., 111 NE 1050 (N.Y. 1916)

Vaughan v Menlove, 132. E.R. 490 (1837)
The TJ Hooper, 53 F.2d 107 (S.D.N.Y. 1931)
Appelhans v MacFall, 757 N.E.2d 987 (Ill. App. 2001)

Byrne v Boadle, 159 E.R. 299 (1863)

Martin v Herzog, 126 N.E. 814 (N.Y. 1920)

ASSIGNMENT 1 DUE: FRIDAY 1 FEBRUARY, 5PM

Class 5 (Monday 4 February)

Reasonableness and Efficiency

Adams v Bullock, 125 N.E. 93 (N.Y. 1919)

United States v Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947)

Richard Posner, *Economic Analysis of Law*, Chapter 6 (ss. 6.5-6.8 and 6.14 required; the rest is optional).

Sturges v Bridgman (1879) LR 11 Ch D 852

Steven Shavell, *Foundations of Economic Analysis of Law*, Chapter 8.

Class 6 (Wednesday 6 February)

The Palsgraf criterion

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

Ernest Weinrib, *The Idea of Private Law*, Chapter 3.

Richard Posner, 'The concept of corrective justice in recent theories of tort law,' in Levmore and Sharkey *Foundations of Tort Law*, 2nd ed., pp. 28–35.

Class 7 (Monday 11 February)

“Causation”

Re Polemis & Furness, Withy & Co Ltd [1921] 3 KB 560

Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (Wagon Mound No. 1) [1961] 1 All ER 404

Hughes v Lord Advocate [1963] 1 All ER 705

Allbritton v Union Pump Company, 888 S.W.2d 833 (Tex.App. 1994)

Sindell v Abbott Laboratories, 26 Cal.3d 588 (Cal. 1980)

Class 8 (Wednesday 13 February)

Liability without Fault

Fiocco v Carver, 243 N.Y. 219 (1922)

Taber v Maine, 67 F.3d 1029 (2d. Cir., 1995)

Rylands v Fletcher [1868] All E.R. 1
Klein v Pyrodyne Corp., 810 P.2d 917 (Wash. 1991)

Escola v Coca Cola Bottling Co. of Fresno, 150 P.2d 437 (Cal. 1944)
Greenman v Yuba Products, Inc., 377 P.2d 897 (Cal. 1963)

Anderson v Owens-Corning Fiberglas Corp., 810 P.2d 549 (Cal. 1991)

B. CONTRACTS

Class 9 (Monday 18 February)

Formation I

Lucy v Zehmer, 84 S.E.2d 516 (Va. 1954)
Leonard v Pepsico, 88 F.Supp.2d 116 (S.D.N.Y. 1999)
Specht v Netscape Communications, 306 F.3d 17 (Ky. 2002)

Owen v Tunison, 158 A. 926 (Me. 1932)

Fairmount Glass Works v Crunden-Martin Woodenware Co., 51 S.W. 196 (Ky. 1899)

Mesaros v United States, 845 F.2d 1576 (Fed. Cir. 1988)
Yaros v Trustees of University of Pennsylvania, 742 A.2d 1118 (Pa. 1999)

Class 10 (Wednesday 20 February)

Formation II

ASSIGNMENT 2 DUE: FRIDAY 22 FEBRUARY, 5PM

Class 11 (Monday 25 February)

Dickinson v Dodds (1876) LR 2 Ch D 463
Hamer v Sidway, 27 N.E. 256 (N.Y. 1891)

Foakes v Beer [1884] UKHL 1, (1884) LR 9 App Cas 605
Alaska Packers' Association v Domenico, 117 F. 99 (1902)

De Cicco v Schweizer, 117 N.E. 807 (1917)

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

Class 12 (Wednesday 27 February)

Unfairness

Laidlaw & Co. v Organ, 15 U.S. 178

Swinton v Whitinsville Savings Bank, 42 N.E.2d 808 (Mass. 1942)

Kannavos v Annino, 247 N.E.2d 708 (1969)

Vokes v Arthur Murray, Inc., 212 So.2d 906 (1968)

Williams v Walker-Thomas Furniture Co., 350 F.2d 445 (1965)

Jones v Star Credit Corp., 298 N.Y.S.2d 264 (1969)

*Seana Shiffrin, 'Paternalism, unconscionability doctrine, and accommodation' 29
Philosophy & Public Affairs 205 (2000)

Spring Break 3–11 March

ASSIGNMENT 3 DUE: FRIDAY 22 MARCH, 5PM

ASSIGNMENT 4 DUE: FRIDAY 22 FEBRUARY, 5PM

During February I will put you to the choice of spending the rest of the semester on aspects of anti-discrimination law, or on aspects of products liability, and I will re-issue the syllabus at that point. Here are possible reading lists for each topic:

Anti-Discrimination Law

Plessy v Ferguson, 163 U.S. 537 (1896)

Brown v Board of Education of Topeka, 347 U.S. 483 (1954)

US v Carolene Products Co., 304 U.S. 144 (1938)

Griggs v Duke Power Co., 401 U.S. 424 (1971)

Washington v Davis, 426 U.S. 229 (1976)

Ward's Cove Packing Co. v Atonio, 490 U.S. 642 (1989)

Price Waterhouse v Hopkins, 490 U.S. 228 (1989)

Meritor Savings Bank v Vinson, 477 U.S. 57 (1986)

Oncale v Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

EEOC v Abercrombie & Fitch Stores, Inc., 135 S.Ct. 2028 (2015)

Metro Broadcasting, Inc. v FCC, 497 U.S. 547 (1990)

Adarand Constructors, Inc. v Peña, 515 U.S. 200 (1995)

Regents of the University of California v Bakke, 438 U.S. 265 (1978)

Grutter v Bollinger, 539 U.S. 306 (2003)

Gratz v Bollinger, 539 U.S. 244 (2003)

United Steelworkers of America v Weber, 443 U.S. 193 (1979)

Johnson v Transportation Agency, Santa Clara County, 480 U.S. 616 (1987)

Frederick Schauer, *Profiles, Probabilities, and Stereotypes* (2003) chapters 2 and 3
Benjamin Eidelson, *Discrimination and Disrespect* (2015) chapters 3 and 6
Karl Lippert-Rasmussen *Born Free and Equal?* (2014) chapters 6 and 11
Owen Fiss, 'Groups and the Equal Protection Clause' 5 *Philosophy & Public Affairs* 107 (1976)
Deborah Hellman, 'The Expressive Dimension of Equal Protection' 85 *Minnesota Law Review* 1 (2000)
Seana Shiffrin, 'Egalitarianism, Choice-Sensitivity, and Accommodation' in Wallace, Pettit, Scheffler, and Smith (eds) *Reason and Value* (2004) 270–302.
Sophia Moreau, 'In Defense of a Liberty-Based Account of Discrimination' in Hellman and Moreau (eds) *Philosophical Foundations of Discrimination Law* (2013) 71–86
Richard Arneson, 'Discrimination, Disparate Impact, and Theories of Justice' in Hellman and Moreau (eds) *Philosophical Foundations of Discrimination Law* (2013) 87–114
Michael Selmi, 'Indirect Discrimination and the Anti-Discrimination Mandate' in Hellman and Moreau (eds) *Philosophical Foundations of Discrimination Law* (2013) 250–268
Kwame Anthony Appiah and Amy Gutmann, *Color Conscious* (1996) 30–105.
Sally Haslanger, 'Gender and Race: (What) Are They? (What) Do We Want Them to Be?' 34 *Noûs* 31 (2000)
Jorge Garcia 27 'The Heart of Racism' *Journal of Social Philosophy* 5 (1996)
Joshua Glasgow 'Racism as Disrespect' 120 *Ethics* 64 (2009)
Elizabeth Anderson *The Imperative of Integration* (2010) chapters 4 and 5
Frank Pasquale, *The Black Box Society* (2015) chapter 4
Juan Elegido, 'The Ethics of Price Discrimination' 21 *Business Ethics Quarterly* 633 (2011)

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