

LGST 101 LAW AND SOCIAL VALUE (HONORS), SPRING 2020
SYLLABUS

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Section 301: TuTh 3–4pm (Honors), JMHH F36

Office hours: Tu 2–3pm 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 01/31)	15%
Assignment 2 (3-4 page tort memo, due 02/14)	15%
Assignment 3 (5-6 page argument analysis, due 03/20)	20%
Assignment 4 (10-12 page essay, due 04/29)	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.

* indicates that a reading is recommended for background.

INTRODUCTION

Class 1 (Thursday 16 January)

Overview

No reading

Class 2 (Tuesday 21 January)

The common law (1)

Feneff v New York Cent. & H.R.R. 89 N.E. 436 (1909)

Lombardo v D.F. Frangioso 269 N.E.2d 836 (1971)

Diaz v Eli Lilly & Co. 302 N.E.2d 555 (1973)

* 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.

Class 3 (Thursday 23 January)

The common law (2)

Nelson v Richwagen 95 N.E.2d 545

Ferriter v Daniel O'Connell's Sons, Inc. 413 N.E.2d (690)

A. TORTS

Class 4 (Tuesday 28 January)

The Reasonable Person

Vaughan v Menlove, 132 E.R. 490 (1837)

Winterbottom v Wright, 152 ER 402 (1842)

MacPherson v Buick Motor Co., 111 NE 1050 (N.Y. 1916)

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

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

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

Class 5 (Thursday 30 January)

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).

ASSIGNMENT 1 DUE: FRIDAY 31 JANUARY

Class 6 (Tuesday 4 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 (Thursday 6 February)

“Causation”

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

**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

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

Class 8 (Tuesday 11 February)

Liability without Fault

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

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

Klein v Pyrodyne Corp., 810 P.2d 917 (Wash. 1991)

Class 9 (Thursday 13 February)

Products Liability

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)

ASSIGNMENT 2 DUE: FRIDAY 14 FEBRUARY

B. CONTRACTS

Class 10 (Tuesday 18 February)

Mutual Assent

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)

Class 11 (Thursday 20 February)

Consideration

Hamer v Sidway, 27 N.E. 256 (N.Y. 1891)
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 (Tuesday 25 February)

Unfairness

Austin Instrument, Inc. v Loral Corp. 29 N.Y.2d 124 (1971)
Vokes v Arthur Murray, Inc., 212 So.2d 906 (1968)

**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)

Class 13 (Thursday 27 February)

Unfairness

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)

Class 14 (Tuesday 3 March)

Boilerplate

Nathan Oman, *The Dignity of Commerce* (2016) 133–59
*David A. Hoffman, 'Relational contracts of adhesion,' 85 *U Chicago Law Review* 1395 (2018)

Class 15 (Thursday 5 March)

Catch and Kill

David A. Hoffman and Erik Lampmann, 'Hushing contracts,' 97 *University of Washington Law Review* 165 (2019)

Spring Break 7–15 March

C. ANTI-DISCRIMINATION LAW

Class 16 (Tuesday 17 March)

14th Amendment

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)

Class 17 (Thursday 19 March)

Protected Traits (1)

syllabus of *Metro Broadcasting, Inc. v FCC*, 497 U.S. 547 (1990)
syllabus of *Adarand Constructors, Inc. v Peña*, 515 U.S. 200 (1995)
syllabus of *Grutter v Bollinger*, 539 U.S. 306 (2003)
Ginsburg J's dissent in Gratz v Bollinger, 539 U.S. 244 (2003)

**Regents of the University of California v Bakke*, 438 U.S. 265 (1978)
**Korematsu v U.S.*, 323 U.S. 214 (1944)
**Trump v U.S.*, No. 17-965 (2018)

ASSIGNMENT 3 DUE: FRIDAY 20 MARCH

Class 18 (Tuesday 24 March)

Protected Traits (2)

NB Readings subject to change
EEOC v R.G. & G.R. Harris Funeral Homes (2018)
Zarda v Altitude Express, Inc. 883 F.3d 100 (2018)
Evans v Georgia Hospital, 850 F.3d 1248 (2017)

Class 19 (Thursday 26 March)

Disparate Treatment (1)

McDonnell Douglas Corp. v Green, 411 U.S. 792 (1972)
Price Waterhouse v Hopkins, 490 U.S. 228 (1989)

**Texas Dept of Commercial Affairs v Burdine*, 450 U.S. 248 (1981)
**Desert Palace v Costa*, 539 U.S. 90 (2003)

Class 20 (Tuesday 31 March)

Disparate Treatment (2)

Hazelwood School District v U.S. 433 U.S. 299 (1977)

**International Brotherhood of Teamsters v U.S.*, 431 U.S. 324 (1977)

**Wal-Mart Stores Inc. v Dukes*, 564 U.S. 338 (2011)

Class 21 (Thursday 2 April)

Protected Traits (3)

NB Readings subject to change

Etsitty v Utah Transit Authority 502 F.3d 1215 (2007)

Whitaker v Kenosha Unified School District 858 F.3d 1034 (2017)

**Grimm v Gloucester County School Board* 302 F.3d 730 (2018)

**Trump v Jane Doe 2*, No. 18-677 (2019)

Class 22 (Tuesday 7 April)

Disparate Impact

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

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

**Texas Dept of Housing v ICP*, 135 S.Ct. 2507 (2015)

Class 23 (Thursday 9 April)

BFOQ

Dothard v Rawlinson, 433 U.S. 321 (1977)

International Union, UAW v Johnson Controls, Inc., 499 U.S. 187 (1991)

Class 24 (Tuesday 14 April)

Sexual Harassment

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

Vance v Ball State University, 570 U.S. 421 (2013)

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

Class 25 (Thursday 16 April)

Accommodation

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

Class 26 (Tuesday 21 April)

Ban the Box

El v SEPTA, 479 F.3d 232 (2007)

*Amanda Agan and Sonja Starr, 'Ban the box, criminal records, and racial discrimination: a field experiment,' *Quarterly Journal of Economics* 133(1) (2018): 191–235

Class 27 (Thursday 23 April)

Big Data

Solon Barocas & Andrew D. Selbst, 'Big data's disparate impact,' 104 *California Law Review* 671 (2016)

Class 28 (Tuesday 28 April)

Recap

ASSIGNMENT 4 DUE: WEDNESDAY 29 APRIL

END