

LGST 101 LAW AND SOCIAL VALUE, SPRING 2022
SYLLABUS

Instructor: Assistant Professor Julian Jonker
Legal Studies and Business Ethics
JMHH 699
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Section 001: MW 8.30am
Section 002: MW 10.15am

Office hours: W 12-1pm 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.

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

In the past the participation grade was based on attendance and cold calling, which students at first disliked but grew to like. Since this is the first time I teach post-pandemic, I look forward to formulating the participation policy with you in our first class together.

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.

Lecture slides will be posted on Canvas after the lecture. Recordings of the lectures will also be posted. In addition, very brief 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.

<u>Grade composition:</u>	
Class participation	20%
Assignment 1 (1 page case summary, due 01/28)	15%
Assignment 2 (3-4 page tort memo, due 02/11)	15%
Assignment 3 (5-6 page argument analysis, due 03/18)	20%
Assignment 4 (10-12 page essay, due 04/27)	30%

CONSULTATION

I will hold office hours in person every Wednesday, 12-1pm. You may attend these to discuss whatever you like. 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'm happy to meet in person or on zoom.

In the past I participated in the Student-Faculty Meals program. I look forward to discussing with you in our first class the best post-pandemic substitute for this way of getting to know you informally.

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 (Wednesday 12 January) **Overview**

No reading

Class 2 (Monday 17 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 (Wednesday 19 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 (Monday 24 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 (Wednesday 26 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 28 JANUARY

Class 6 (Monday 31 January)

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 (Wednesday 2 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 (Monday 7 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 (Wednesday 9 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 11 FEBRUARY

B. CONTRACTS

Class 10 (Monday 14 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 (Wednesday 16 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 (Monday 21 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 (Wednesday 23 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 (Monday 28 February)

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 (Wednesday 2 March)

Catch and Kill

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

Spring Break 5–13 March

C. ANTI-DISCRIMINATION LAW

Class 16 (Monday 14 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 (Wednesday 16 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 Hawaii*, No. 17-965 (2018)

ASSIGNMENT 3 DUE: FRIDAY 18 MARCH

Class 18 (Monday 21 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 (Wednesday 23 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 (Monday 28 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 (Monday 30 March)

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 (Monday 4 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 (Wednesday 6 April)

BFOQ

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

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

Class 24 (Monday 11 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 (Wednesday 13 April)

Accommodation

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

Class 26 (Monday 18 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 (Wednesday 20 April)

Big Data

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

Class 28 (Monday 25 April)

Review

Class 29 (Monday 27 April)

Review

ASSIGNMENT 4 DUE: WEDNESDAY 27 APRIL

END