

# **LGST 1010 LAW AND SOCIAL VALUE, SPRING 2023**

## **SYLLABUS**

**Instructor:** Assistant Professor Julian Jonker  
Legal Studies and Business Ethics  
JMHH 669  
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**Section 003: MW 8.30am, JMHH F45**

**Office hours: W 10-11am 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) 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.

### **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 by written assignment and verbal presentation. 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 policy arguments about the law. Altogether you will write at most 22 pages for the class, and some of this will be collaborative; but they must be concise and compelling 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**

The participation grade is based partly on attendance, but mostly on cold calling. Some students are anxious about the cold calling, but we start gently and in the past nearly everyone has come to see it as a fair form of assessment and an important skill to develop.

### **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 sometimes 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 in person every Wednesday, 10-11am. 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.

#### **Grade composition:**

<b>Class participation</b>	<b>20%</b>
<b>Assignment 1</b> (1 page case summary, due 01/27)	<b>10%</b>
<b>Assignment 2</b> (4-6 page tort memo, due 02/17)	<b>20%</b>
<b>Assignment 3</b> (10-15 page moot brief, due 03/24 or 03/31)	<b>25%</b>
<b>Moot</b> (presentation, 4/06 - 4/26)	<b>25%</b>

**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, but not required.

## INTRODUCTION

### **Class 1 (Wednesday 11 January)**

#### **Overview**

No reading

### **Class 2 (Wednesday 18 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 (Monday 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 (Wednesday 25 January)**

#### **Introduction**

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

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

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

**ASSIGNMENT 1 DUE: FRIDAY 27 JANUARY**

**Class 5 (Monday 30 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)

**Class 6 (Wednesday 1 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).

**Class 7 (Monday 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 8 (Wednesday 8 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 9 (Monday 13 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 10 (Wednesday 15 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 17 FEBRUARY**

**B. CONTRACTS**

**Class 11 (Monday 20 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 12 (Wednesday 22 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 13 (Monday 27 February)      Unfairness (1)**

*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 14 (Wednesday 1 March)      Unfairness (2)**

*Williams v Walker-Thomas Furniture Co.*, 350 F.2d 445 (1965)  
*Jones v Star Credit Corp.*, 298 N.Y.S.2d 264 (1969)

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

***Spring Break 4—12 March***

**C. ANTI-DISCRIMINATION LAW**

**Class 15 (Monday 13 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 16 (Wednesday 15 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)

**Class 17 (Monday 20 March)**

**Protected Traits (2)**

*Bostock v Clayton County, Georgia* 590 U.S. \_\_ (2020)  
  
\**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 18 (Wednesday 22 March)**

**Disparate Treatment**

*McDonnell Douglas Corp. v Green*, 411 U.S. 792 (1972)  
*Price Waterhouse v Hopkins*, 490 U.S. 228 (1989)  
  
\**Texas Dept of Commecial Affairs v Burdine*, 450 U.S. 248 (1981)  
\**Desert Palace v Costa*, 539 U.S. 90 (2003)  
\**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)

**PLAINTIFFS' COMPLAINTS DUE: FRIDAY 24 MARCH**

**Class 19 (Monday 27 March)**

**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 20 (Wednesday 29 March)**

**BFOQ**

*Dothard v Rawlinson*, 433 U.S. 321 (1977)  
*International Union, UAW v Johnson Controls, Inc.*, 499 U.S. 187 (1991)

**DEFENDANTS' ANSWERS DUE: FRIDAY 31 MARCH**

**Class 21 (Monday 3 April)**

**Sexual Harassment**

*Meritor Savings Bank v Vinson*, 477 U.S. 57 (1986)  
syllabus of *Vance v Ball State University*, 570 U.S. 421 (2013)  
*Oncale v Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)

**Class 22 (Wednesday 5 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 23 (Monday 10 April)**

**Moots 1**

**Class 24 (Wednesday 12 April)**

**Moots 2**

**Class 25 (Monday 17 April)**

**Moots 3**

**Class 26 (Wednesday 19 April)**

**Moots 4**

**Class 27 (Monday 24 April)**

**Moots 5**

**Class 28 (Wednesday 26 April)**

**Moots 6**

**END**

