Division of Continuing Education

Ryerson University

Fall 2012

CPHL612-310 Syllabus

Professor: Dr. Victoria I. Burke

Course Time: 18:30-21:30 Wednesdays

Course Location: KHE221

Professor Email: [victoria.burke@ryerson.ca](mailto:victoria.burke@ryerson.ca)

**Philosophy of Law**

This introductory course in the philosophy of law will examine standard theories concerning the nature of law, as well as significant legal cases. We will examine such issues as how law should be applied, the nature of legal interpretation, the natural or political basis of law, the difference between rules and principles, and the difference between law and morality. What types of considerations are involved when judges determine the outcome of legal cases? How does legal reasoning work? What do judges do in practice? We will explore competing theories of law, such as natural law, positivism, realism, naturalism, and “law as integrity.” We will examine an array of specific legal cases and their outcomes. We will consider aspects of the way the body of North American law appears to have evolved over the last century through specific Supreme Court decisions in landmark cases in both Canada and the United States. We will examine crucial legal issues concerning civil disobedience, the nature of the adversary system, freedom of expression, abortion, euthanasia, gay marriage, criminal intent, negligence, religion and law, aboriginal intellectual property rights, animal rights, environmental protection, international law, and bias in the criminal justice system. We will discuss the way in which feminist legal theorists and critical race theorists have influenced the received concept of law over the past fifty years. We will also examine the idea of a legal “precedent” and its uses in legal decision-making. Through theory and application, students enrolled in CPHL612-310 will gain an understanding of the importance of the rule of law to democracy, as well as an understanding of the current state of the law as an evolving body that is, in Ronald Dworkin’s words, “a novel with many authors” being worked on by lawyers and judges throughout the system.

**Required Texts:**

Culver, Keith, Editor. *Readings in the Philosophy of Law*. Peterborough, ON: Broadview Press. ISBN: 978-1-55111-810-9 (available in bookstore)

Materials for Download from Blackboard site

Photocopy Packet (available in the bookstore by September 19)

**Information on Cases**: A few of the cases are discussed in the textbook. For those not discussed in the textbook or the assigned readings, the Supreme Courts (both US and Canada) have websites explaining all their decisions. Also, Wikipedeia is generally reliable with regard to sketches of the cases, which will be discussed in much greater detail in class.

**Course Requirements:** Students will be assessed on the basis of one short conceptual analysis paper (3-4 pages), a term paper in which the student will apply one theoretical model to a specific legal case (7-8 pages), class participation, and a comprehensive final examination.

**Distribution:**

Legal Theory Analysis: 20% (3-4 pages 750-1000 words)

Term Paper: 35% (7-8 pages 1800-2000 words)

Comprehensive Final Examination: 35%

Class Participation: 10%

**Guidelines for submitting written work:** The essay must be submitted on white 8.5 x 11 paper, typed double-spaced. Students must keep a copy of their work for their own files in case the paper should become lost. If the paper becomes lost (by the student, the department secretary, or the Instructor), it is the student's responsibility to be able to replace it. Papers may *not* be submitted electronically via e-mail or by fax. Students will be penalized 10% per day for every day that the paper is late. For footnoting or citation style: use Chicago Manual of Style, MLA Style, or APA Style. Any of the standard style sheets is fine, as long as you are consistent. I will post a style guide on the Blackboard site for your convenience.

**Readings and Lectures:** Students should read the assigned material prior to class, and should bring the texts to class as class may involve careful and close examination of the readings. Students will be assessed on the basis of their comprehension and synthesis of both the reading material and the class presentations.

**A Note on the Readings for Unit** I: The legal theory readings for Unit I (some of which date back to the early twentieth century) are extremely dry and long, given the core content of what they intend to convey. For this reason, I have listed many of them as recommended, not required, reading. I recommend that you read Culver’s introductions to each section in the textbook in Unit I thoroughly, read the first and last sections of each article and skim the rest. When it comes time to write your essays, you can read the articles on which you choose to focus more thoroughly in preparation for the writing your papers. All these articles will be discussed in great detail in class.

**Email:** Theoretical questions will not be answered on email. Students must make use of class time and office hours to have their questions answered. Only short administrative questions will be answered on email. You can expect and answer within 48 hours.

**Ecologically friendly writing assignments:** In the interest of maintaining an ecologically sound course, cover sheets are not required on the assignments. Put your name and student number at the top of the first page and start the essay one quarter of the way down the page. Do not include a bibliography. External sources are not permitted on the analysis papers, and it is presumed you are using the course texts. Put the page citation for references in brackets within the text after the quotation. Example: (Fraser, Rethinking Recognition, 234). Recently some students have been using slightly off-white recycled paper rather than brilliant white paper. This is encouraged. It is encouraged for students to use recycled paper.

**Deadlines:** The deadlines for the two essay assignments are October 17, 2012, and November 21, 2012. 10% will be subtracted from the student’s grade for every day that the paper is late. Medical Documentation is required to turn in assignments late without penalty.

**Blackboard:** This course will have a Blackboard site where all handouts will be posted. Please check the Blackboard site regularly for announcements. The Powerpoint Presentations will also be posted on the Blackboard site.

**Course Schedule**

**Unit I: Legal Theories**

WEEK 1:

**September 12: Course Introduction; the Adversary System; Civil Disobedience**

Readings: Dworkin, “On Not Prosecuting Civil Disobedience” [PDF Download from Blackboard site]

Recommended Reading: Martin Luther King, “Letter From A Birmingham Jail” [in the public domain on the WWW]

WEEK 2

**September 19: Natural Law & Positivism**

Required Readings: Hart, “Positivism and the Separation of Law from Morals,” Culver, pp. 97-119

Recommended Readings: Aquinas, “Treatise on Law,” pp. 31-45; Finnis, *Natural Law and Natural Rights*, pp. 46-73; Hart, “Law as the Union of Primary and Secondary Rules,” pp. 120-130 (all three in Culver)

WEEK 3

**September 26: Law as Integrity**

Required Readings: Post, “Stare Decisis: The Uses of Precedent,” pp. 103-113 (photocopy); Dworkin, “The Model of Rules I,” Culver, pp. 148-168; Dworkin, “Integrity in Law,” Culver, pp. 169-185

Recommended Reading: Cornell, “The Institutionalization of Meaning” [PDF Download from Blackboard site]

Cases: *Riggs v. Palmer* (1889 ruling that murderers cannot inherit from those that they murder; case shows for Dworkin that more is involved in “following” the law than the application of rules)

*Planned Parenthood of Southeastern Pennsylvania v. Casey*, [505 U.S. 833](http://en.wikipedia.org/wiki/Case_citation) (1992) (US Supreme Court case upholding *Roe v Wade* on abortion as precedent—example of the use of precedent)

WEEK 4

**October 3: Realism & Naturalism**

Required Readings: Holmes, “The Path of the Law,” Culver, pp. 197-201; Leiter, “Toward a Naturalized Jurisprudence” [PDF Download from Blackboard site]

Recommended Readings: Frank, “Preface to the Sixth Printing,” & “Legal Realism,” Culver, pp. 202-207

Case: *Lochner v. New York* (1905 A banker wanted to work more than the allowed 60 hours per week)

October 6-12 Fall Study Week (Chang School Closure & No Classes)

**Unit II: Cases & Issues**

WEEK 5

**October 17: Individual Liberty & Its Limits: Free Speech & Same-Sex Marriage**

Required Readings: Sumner, “Hate Speech and Charter Rights” (photocopy); Mill, *On Liberty*, Culver, pp. 258-270; Smith, “Feminist Jurisprudence and the Nature of Law,” Culver, pp. 218-226

Recommended Reading: Delgado, “About Your Masthead: A Preliminary Inquiry Into The Compatibility of Civil Rights and Civil Liberties,” Culver, pp. 236-247

Cases: *Lawrence v. Texas* (2003 US Supreme Court case: anti-sodomy legislation overruled)

*Griswald v. Connecticut* (1965 privacy rights upheld: US case that is an important precedent for *Roe vs. Wade* legalizing abortion in 1973)

[*Halpern et al. v. Canada*](http://en.wikipedia.org/wiki/Halpern_v._Canada_%28Attorney_General%29) 95 C.R.R. (2d) 1 (Ontario Superior Court, July 12, 2002) In Canada, 8 provinces legalized gay marriage one-by-one through the courts until Parliament passed a bill in 2005 legalizing it nationwide.

*R. v. Keegstra* (a high school teacher makes anti-Semitic remarks to his students and is convicted of hate speech in Canada 1988)

*R. v. Andrews* (the publishing and distribution of a white supremacist periodical—conviction of hate speech in Canada 1988)

\*Short Theory Paper due on this date

WEEK 6

**October 24: Individual Liberty & Its Limits: Abortion & Euthanasia**

Required Readings: Mill, Smith & Delgado, cont’d.

Cases: *Roe v. Wade* (US legalization of abortion 1973)

*Griswald v. Connecticut* (landmark 1965 privacy rights case & precedent for *Roe)*

*R. v Morgentaler* (1988 Canadian Supreme Court case affirming women’s right to not be obstructed in seeking an abortion)

*Taylor v. B.C. Attorney General* (2012 B.C. Supreme Court decision upholding right of ALS patient to physician assisted suicide; the federal government has announced that it will appeal this to the Supreme Court of Canada)

*Rodriguez v. B.C. Attorney General* (1993 Canadian Supreme Court decision denying right of ALS patient to physician-assisted suicide)

WEEK 7

**October 31: Intellectual Property**

Required Readings: Coombe, “Intellectual Property, Human Rights & Indigenous Knowledge” [PDF Download from Blackboard site]; Posner, “Intellectual Property,” pp. 495-500 (photocopy)

Optional (of possible interest—not in photocopy packet or on website): John Locke on “property” in *The Second Treatise of Government* (1689)

Cases: *Apple vs. Samsung* (2012 California jury trial ruling that Samsung’s smart phones infringed on Apple’s patents – Samsung had used technology that Apple invented for the iPhone and iPad, such as the “touch to zoom” feature); the California ruling was contradicted a week later by a Japanese court that ruled that there had been no patent infringement by the South Korean company; the suit is being weighed by a dozen countries

*Google vs. Authors’ Guild* (still pending US: Google wants to scan and publish excerpts of all of the world’s books on the internet where they will be publicly searchable, most of these books are under copyright)

*Prometheus Laboratories v. Mayo Clinic* (US 2012 Supreme Court decision: natural processes cannot be patented)

WEEK 8

**November 7: Multiculturalism; Religion & Law**

Readings: Nussbaum, “Fearing Strangers Again: The Alleged Muslim Threat,” *Liberty of Conscience*, pp. 346-353; Nussbaum,”Toward an ‘Overlapping Consensus’?” *Liberty of Conscience*, pp. 354-363 (photocopies)

Cases:

*Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* (2006 US Supreme Court case on the use of hallucinogenic tea in religious ceremony)

*Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47 (Canadian Supreme Court case regarding religious use of condominium balconies)

*Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6 (Canadian Supreme Court case regarding the Sikh kirpan in the public schools)

*Miller vs. Jenkins* (2012 US divorced lesbian custody battle: born-again Christian and ex-lesbian claims that exposure to lesbianism is against her religion--does not want her daughter from lesbian marriage exposed to ex-spouse—2012 still pending)

*A.C v Manitoba Attorney General* (2009 Canadian Supreme Court); high court ruled that a minor (14-year-old) must submit to a blood transfusion—against her religion and wishes

WEEK 9

**November 14: Contract; Criminal Law; Responsibility**

Required Readings: Duff, “Choice, Character, and Action,” Culver, pp. 328-348; McCloskey, “Convicting the Innocent,” pp. 294-301[PDF Download From Blackboard site]

Cases: *McCleskey v. Kemp* (racial bias in sentencing US)

*Stone v. Bolton* (UK Foreseeable Risk)

*R. v. Shivpuri* (1986 Canadian case regarding criminal intent)

WEEK 10

**November 21: Environmental Law & Animal Rights**

Required Readings: Goff, “Due Process and the Nova Scotia Herbicide Trial,” pp. 131-136; Versteeg, “The Conflict Between Law and Science,” pp. 136-148; Sunstein, “Can Animals Sue?” pp. 251-262. (all photocopies)

\*Term Paper due on this date

Cases:

*American Legal Defense Fund v. Espy* (challenging the legal definition of “animal”)

*Japan Whaling Association v. American Cetacean Society* (The question of whether an organization defending animal rights has legal “standing” to sue on behalf of a non-human animal)

*Animal Legal Defense Fund v. Glickman* (The question of whether mistreatment of animals in a zoo conflicts with the right to pleasing aesthetic experience of the zoo)

*Palmer et. al. v. Nova Scotia Forest Industries* (1982-1983 Canadian herbicide case)

WEEK 11

**November 28: International Law**

Required Readings: Koskenniemi, “The Politics of International Law,” pp. 393-413; MacCormick, “On Sovereignty and Post-Sovereignty,” 414-425(both in Culver)

Recommended Readings: Grotius, “Prolegomena,” pp. 369-378; Hart, “International Law,” pp. 379-392 (both in Culver)

Cases: *United States v. La Jeune Eugenie* (African Slave Trade case 1822)

*The Military Tribunal at Nuremburg (*Holocaust case 1945-6)

WEEK 12

**December 5: Review for Final Exam** (study guide for the final exam will be posted prior to this date)

WEEK 13

**December 12: Comprehensive Final Exam** (during regularly scheduled class period)

**Articles Available For Download From Blackboard Site:**

Coombe, Rosemary J., “Intellectual Property, Human Rights & Sovereignty: New Dilemmas of International Law Posed By The Recognition of Indigenous Knowledge and the Conservation of Biodiversity.” 6 *Indiana Journal of Global Legal Studies* 59 (1998-1999).

Cornell, Druscilla. “Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation.” 136 *University of Pennsylvania Law Review* 1135 (1987-1988)

Dworkin, Ronald, ‘On Not Prosecuting Civil Disobedience.” *New York Review of   
Books*. June 16, 1968.

Leiter, Brian. “Rethinking Legal Realism: Toward a Naturalized Jurisprudence.” *Texas Law Review*. Vol 76, No. 2 (December 1997).

McCloskey, James. “Convicting the Innocent.” *Criminal Justice Ethics*. Vol. 8, No. 1 (Winter/Spring 1989)

**Bibliography for Photocopy Packet (in hardcopy form sold in the bookstore)**

Goff, Colin. “Due Process and the Nova Scotia Herbicide Trial.” *Canadian Issues in Environmental Law and Policy*. Eds. Allan Greenbaum, Ron Pushchak, and Alex Wellington (Concord, ON: Captus Press, 2009), 131-136. ISBN 978-1-55322-201-9; 455 pp.

Nussbaum, Martha C. *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality*. (New York: Basic Books, 2008), 346-363. ISBN-13: 978-0-465—05164-9; 406 pp.

Posner, Richard A. “Intellectual Property.” *Readings in the Philosophy of Law*. Edited by John Arthur and William H. Shaw. (New York: Prentice Hall, 2010), 495-500. ISBN-13: 978-0-205-070809-3; 643 pp.

Post, C. Gordon. “Stare Decisis: The Uses of Precedent.” *Readings in the Philosophy of Law*. Edited by John Arthur and William H. Shaw. (New York: Prentice Hall, 2010), 103-112. ISBN-13: 978-0-205-070809-3; 643 pp.

Sumner, L.W. “Hate Propaganda and Charter Rights.” *Ethical Issues: Perspectives for Canadians*. (Peterborough, ON: Broadview Press, 2009), 478-492.ISBN-13: 978-1551118741; 816 pp.

Sunstein, Cass. “Can Animals Sue?” *Animal Rights: Current Debates and New Perspectives*. Edited by Cass R. Sunstein and Martha C. Nussbaum. (Oxford: Oxford University Press, 2004), 251-262. ISBN-13: 978-19-530510-4; 337 pp.

Versteeg, Hajo. “The Conflict Between Law and Science.” *Canadian Issues in Environmental Law and Policy*. Eds. Allan Greenbaum, Ron Pushchak, and Alex Wellington (Concord, ON: Captus Press, 2009), 136-148. ISBN 978-1-55322-201-9; 455 pp.

Accommodation

a. You must inform me of any situation which arises during the semester which may have an adverse effect upon their academic performance; you must request any necessary considerations (e.g. medical or compassionate), or accommodations [e.g. religious observance, disability (should be registered with the Access Center), etc.] according to policies and well in advance. Failure to do so will jeopardize any academic appeals.

b. Medical Certificates – medical certificates for deadlines, tests and exams missed due to illness must be provided. (See the policy for the details and www.ryerson.ca/rr/medical.pdf for the certificate). Such documents should normally be submitted within 3 working days of a missed assignment, test or exam.

c. Religious Observance – requests are to be made formally within the first two weeks of class. (See www.ryerson.ca/acadcouncil/current/pol150.pdf )

d. Regrading and Recalculation – Must be requested within 10 working days of the return of the graded assignment to the class. These are not grounds for an appeal, but are matters for discussion between the student and the instructor.

Academic Conduct – Refer to www.ryerson.ca/acadcouncil/current/pol60.pdf:

Policy 60 - Student Code of Academic Conduct: The code of academic conduct will be rigorously enforced.

Student E- Mail Account - Refer to www.ryerson.ca/acadcouncil/current/pol157.pdf

Policy 157 - Establishment of Student E-Mail Accounts for Official University Communication - Since faculty will be able to get a complete e-mail list from CCS for each class, it is important that students know that they are to obtain and maintain a Ryerson Matrix e-mail account.

Recording: Video Recording of class sessions is prohibited; Audio Recordings require the permission of instructor