

San José State University
Department of Philosophy
Phil. 195: Seminar in Philosophy of Law

Course and Contact Information

Instructor:	William H. Shaw
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Office Hours:	MW 2:00-2:50 and by arrangement
Class Days/Time:	MW 3:00-3:15
Classroom:	DMH 149B

Course Description

An acquaintance with legal philosophy is an important part of what it means to be an informed citizen and an educated person. This is because the law permeates every sphere of society. It surrounds us from birth—guiding, restricting, and sometimes punishing us. But what exactly is law? When is it valid? What connection, if any, is there between our legal duties and the requirements of morality? How does the law differ from other social institutions? How should an understanding of law shape our conception of society and of ourselves as citizens? These and related questions have intrigued and troubled thinkers throughout the ages.

The seminar will be pursuing in greater depth some of the issues examined last semester in Phil. 155 (Philosophy of Law). After exploring the nature of legal reasoning, the seminar turns to the central question of jurisprudence—the nature of law itself—examining, in particular, the relationship between moral facts and social facts and the role of force and coercion in the law. In the final part of the semester, we will examine legal cases chosen by students in the seminar.

Course Goals

Like other philosophy courses, this course endeavors to improve students' ability to write cogently, to think critically and independently, and to read and analyze philosophical arguments and issues. In addition, it tries to challenge you to reflect more philosophically on law, society, and the relation of the individual to both.

Textbooks

Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Harvard University Press, 2009) ISBN 978-0-674-06248-1

Scott J. Shapiro, *Legality* (Harvard University Press, 2011) ISBN 978-0-674-72578-2

Frederick Schauer, *The Force of Law* (Harvard University Press, 2015) ISBN 978-0-674-36821-7

The books can be purchased (new or used) or rented through the Spartan Bookstore.

Course Requirements and Assignments

SHORT ESSAYS. Beginning February 8, each week that we are reading the three course books, you will be required to write a 1–1.5 page (double-spaced) essay on the assigned reading for that week. In your essay, you are to explain and comment on some issue, question, or topic that is raised in that week's reading and that interests you—criticizing, defending, or developing your own ideas about something in the reading assignment. (When discussing Schauer's *Thinking Like a Lawyer*, one possibility is to read one of the cases he mentions and discuss how it illustrates the point he is making.) The point of the writing assignments is to encourage you to read the assignments carefully and to think critically about them. They are not research papers.

Essays are due in class on Monday (except for the week following Spring Break), but you can write about the assigned reading for either Monday or Wednesday of that week. Altogether there are nine short essay assignments. I expect these essays, like all your writing, to be free from grammatical, syntactical, spelling, and other mechanical errors. *Assignments must be submitted in person on the day they are due. I do not accept late papers, and missed assignments cannot be made up.* However, in determining your grade for this part of the course, I will drop your two lowest grades. (Any writing assignments that you submit beyond the minimum of seven will count in your favor when I determine your class involvement grade [see below].)

MID-TERM EXAM. There will be a take-home mid-term exam due on the Monday after Spring Break. I will give you instructions about it later in the semester.

CLASS PRESENTATIONS/ESSAYS. During the final weeks of the course, each student will present an essay to the class. The essay should discuss some aspect of the topic you plan to write your term paper on. (See below.) Essays should be typed and approximately five pages long. You must distribute copies of your essay to me and to the rest of the class the week before it is to be discussed.

On the following Monday, the other students will bring to class critical, written comments on it and on the other essays to be presented and discussed that week. Comments on each paper should be at least two typed paragraphs long, and students should bring one copy of them for the presenter and one copy for me. I will allot 20 to 25 minutes for your presentation and for class discussion of it.

TERM PAPER. You are to write a well-organized, argumentative essay based on a legal case (or group of cases) of your own choosing. I can give you some suggestions about cases, but you need to pick one that interests you and that provides ample material for discussion. (If you change your mind after your class presentation and wish to write about a different case, that's o.k.) Essays should be typed, double spaced, and approximately 10 pages long. They are due in my mailbox in the philosophy department office by 5:00 p.m. on Friday, May 20.

More specifically: **(1)** You are to explain what the case or cases are about, the positions of the different judges, and the legal rules, principles, precedents, or reasoning that underlie their reasoning. **(2)** You are to explain and defend your view of the case. **(3)** Finally, you are to identify and discuss some issue raised by the case that you find

interesting or important and that relates to the philosophy of law. What the issue is will depend on the case and on what you find interesting about it. The issue you discuss could pertain directly to the court's reasoning, or it could be some broader issue that is implicit in the case. The topic may be something discussed in class or in our readings this semester, but you are free to pursue any issue that you think is significant or interesting from the point of view of philosophy of law.

CLASS INVOLVEMENT. Because this is a seminar and not a lecture course, class discussion plays an important role in it. Each week we will be analyzing and assessing the assigned reading for that day, and exploring the various philosophical issues it raises. Dialogue and discussion are central to philosophy, but they presuppose that you have studied (i.e., read, re-read, and taken notes on) the material that is being discussed. Because of this, I put the highest priority on attendance and preparation for class. I expect you always to come to class (with the book we are discussing) and to come having read and studied the assignment for that day and prepared to talk about it.

Class involvement counts for 20% of your grade. In addition, if you are on the borderline between two grades, your class involvement will determine which grade you receive. In determining your grade for this part of your course, I take into account your attendance, your preparation for class, and the quality of your participation. Missing a class means receiving a F for class involvement for that day.

SJSU classes are designed such that in order to be successful, it is expected that students will spend a minimum of forty-five hours for each unit of credit (normally three hours per unit per week), including preparing for class, participating in course activities, completing assignments, and so on. More details about student workload can be found in [University Policy S12-3](http://www.sjsu.edu/senate/docs/S12-3.pdf) at <http://www.sjsu.edu/senate/docs/S12-3.pdf>.

[University policy F69-24](http://www.sjsu.edu/senate/docs/F69-24.pdf) at <http://www.sjsu.edu/senate/docs/F69-24.pdf> states, "Students should attend all meetings of their classes, not only because they are responsible for material discussed therein, but because active participation is frequently essential to insure maximum benefit for all members of the class. Attendance per se shall not be used as a criterion for grading."

Grading Policy

Your semester grade is a function of the following factors:

Short Essays	30%
Mid-Term grade	12.5%
Class Presentation Essay	12.5%
Comments on other presentations	5%
Term Paper	20%
Class Involvement	20%

Note that "All students have the right, within a reasonable time, to know their academic scores, to review their grade-dependent work, and to be provided with explanations for the determination of their course grades."

See [University Policy F13-1](http://www.sjsu.edu/senate/docs/F13-1.pdf) at <http://www.sjsu.edu/senate/docs/F13-1.pdf> for more details.

Classroom Protocol

I want your undivided attention in class; therefore, I do not allow laptops to be used. Taking notes is always a good idea, but do it on paper and then enter them into your computer later when you can revise and expand on them and add your notes on the reading.

University Policies

General Expectations, Rights and Responsibilities of the Student

As members of the academic community, students accept both the rights and responsibilities incumbent upon all members of the institution. Students are encouraged to familiarize themselves with SJSU's policies and practices pertaining to the procedures to follow if and when questions or concerns about a class arises. To learn important campus information, view [University Policy S90-5](http://www.sjsu.edu/senate/docs/S90-5.pdf) at <http://www.sjsu.edu/senate/docs/S90-5.pdf> and SJSU current semester's [Policies and Procedures](http://info.sjsu.edu/static/catalog/policies.html), at <http://info.sjsu.edu/static/catalog/policies.html>. In general, it is recommended that students begin by seeking clarification or discussing concerns with their instructor. If such conversation is not possible, or if it does not address the issue, it is recommended that the student contact the Department Chair as the next step.

Dropping and Adding

Students are responsible for understanding the policies and procedures about add/drop, grade forgiveness, etc. Add/drop deadlines can be found on the current academic year calendars document on the [Academic Calendars webpage](http://www.sjsu.edu/provost/services/academic_calendars/) at http://www.sjsu.edu/provost/services/academic_calendars/. The [Late Drop Policy](http://www.sjsu.edu/aars/policies/latedrops/policy/) is available at <http://www.sjsu.edu/aars/policies/latedrops/policy/>. Students should be aware of the current deadlines and penalties for dropping classes.

Information about the latest changes and news is available at the [Advising Hub](http://www.sjsu.edu/advising/) at <http://www.sjsu.edu/advising/>.

Consent for Recording of Class and Public Sharing of Instructor Material

[University Policy S12-7](http://www.sjsu.edu/senate/docs/S12-7.pdf), <http://www.sjsu.edu/senate/docs/S12-7.pdf>, requires students to obtain instructor's permission to record the course and the following items to be included in the syllabus:

- “Common courtesy and professional behavior dictate that you notify someone when you are recording him/her. You must obtain the instructor's permission to make audio or video recordings in this class. Such permission allows the recordings to be used for your private, study purposes only. The recordings are the intellectual property of the instructor; you have not been given any rights to reproduce or distribute the material.”
 - It is suggested that the greensheet include the instructor's process for granting permission, whether in writing or orally and whether for the whole semester or on a class by class basis.
 - In classes where active participation of students or guests may be on the recording, permission of those students or guests should be obtained as well.
- “Course material developed by the instructor is the intellectual property of the instructor and cannot be shared publicly without his/her approval. You may not publicly share or upload instructor generated material for this course such as exam questions, lecture notes, or homework solutions without instructor consent.”

Academic integrity

Your commitment, as a student, to learning is evidenced by your enrollment at San Jose State University. The [University Academic Integrity Policy S07-2](http://www.sjsu.edu/senate/docs/S07-2.pdf) at <http://www.sjsu.edu/senate/docs/S07-2.pdf> requires you to be honest in all your academic course work. Faculty members are required to report all infractions to the office of Student Conduct and Ethical Development. The [Student Conduct and Ethical Development website](http://www.sjsu.edu/studentconduct/) is available at <http://www.sjsu.edu/studentconduct/>.

Campus Policy in Compliance with the American Disabilities Act

If you need course adaptations or accommodations because of a disability, or if you need to make special arrangements in case the building must be evacuated, please make an appointment with me as soon as possible, or see me during office hours. [Presidential Directive 97-03](http://www.sjsu.edu/president/docs/directives/PD_1997-03.pdf) at http://www.sjsu.edu/president/docs/directives/PD_1997-03.pdf requires that students with disabilities requesting accommodations must register with the [Accessible Education Center](#) (AEC) at <http://www.sjsu.edu/aec> to establish a record of their disability.

Accommodation to Students' Religious Holidays (Optional)

San José State University shall provide accommodation on any graded class work or activities for students wishing to observe religious holidays when such observances require students to be absent from class. It is the responsibility of the student to inform the instructor, in writing, about such holidays before the add deadline at the start of each semester. If such holidays occur before the add deadline, the student must notify the instructor, in writing, at least three days before the date that he/she will be absent. It is the responsibility of the instructor to make every reasonable effort to honor the student request without penalty, and of the student to make up the work missed. See [University Policy S14-7](http://www.sjsu.edu/senate/docs/S14-7.pdf) at <http://www.sjsu.edu/senate/docs/S14-7.pdf>.

Student Technology Resources (Optional)

Computer labs for student use are available in the [Academic Success Center](http://www.sjsu.edu/at/asc/) at <http://www.sjsu.edu/at/asc/> located on the 1st floor of Clark Hall and in the Associated Students Lab on the 2nd floor of the Student Union. Additional computer labs may be available in your department/college. Computers are also available in the Martin Luther King Library. A wide variety of audio-visual equipment is available for student checkout from Media Services located in IRC 112. These items include DV and HD digital camcorders; digital still cameras; video, slide and overhead projectors; DVD, CD, and audiotape players; sound systems, wireless microphones, projection screens and monitors.

SJSU Peer Connections (Optional)

Peer Connections' free tutoring and mentoring is designed to assist students in the development of their full academic potential and to inspire them to become independent learners. Peer Connections tutors are trained to provide content-based tutoring in many lower division courses (some upper division) as well as writing and study skills assistance. Small group and individual tutoring are available. Peer Connections mentors are trained to provide support and resources in navigating the college experience. This support includes assistance in learning strategies and techniques on how to be a successful student. Peer Connections has a learning commons, desktop computers, and success workshops on a wide variety of topics. For more information on services, hours, locations, or a list of current workshops, please visit [Peer Connections website](http://peerconnections.sjsu.edu) at <http://peerconnections.sjsu.edu> for more information.

SJSU Writing Center (Optional)

The SJSU Writing Center is located in Clark Hall, Suite 126. All Writing Specialists have gone through a rigorous hiring process, and they are well trained to assist all students at all levels within all disciplines to become better writers. In addition to one-on-one tutoring services, the Writing Center also offers workshops every semester on a variety of writing topics. To make an appointment or to refer to the numerous online resources offered through the Writing Center, visit the [Writing Center website](http://www.sjsu.edu/writingcenter) at <http://www.sjsu.edu/writingcenter>. For additional resources and updated information, follow the Writing Center on Twitter and become a fan of the SJSU Writing Center on Facebook. (Note: You need to have a QR Reader to scan this code.)



SJSU Counseling and Psychological Services (Optional)

The SJSU Counseling and Psychological Services is located on the corner of 7th Street and San Carlos in the new Student Wellness Center, Room 300B. Professional psychologists, social workers, and counselors are available to provide confidential consultations on issues of student mental health, campus climate or psychological and academic issues on an individual, couple, or group basis. To schedule an appointment or learn more information, visit [Counseling and Psychological Services website](http://www.sjsu.edu/counseling) at <http://www.sjsu.edu/counseling>.

Phil 195: Seminar in Philosophy of Law, Spring 2016, Course Schedule

Course Schedule

February 1: Introduction

LEGAL REASONING

February 3: *Thinking Like a Lawyer*, pages 13–44

February 8: *Thinking Like a Lawyer*, pages 44–84; writing assignment #1

February 10: *Thinking Like a Lawyer*, pages 103–123

February 15: *Thinking Like a Lawyer*, pages 148–170, 188–202; writing assignment #2

February 17: *Thinking Like a Lawyer*, pages 203–233

THE NATURE OF LAW

February 22: *Legality*, Chpt. 1; writing assignment #3

February 24: *Legality*, Chpt. 2

February 29: *Legality*, Chpt. 3; writing assignment #4

March 2: *Legality*, Chpt. 4

March 7: *Legality*, Chpt. 6; writing assignment #5

March 9: *Legality*, Chpt. 7

March 14: *Legality*, pages 240–241, 267–281; 307–312 (top); writing assignment #6

March 16: *Legality*, Chpt. 14

COERCION AND THE LAW

March 21: *The Force of Law*, pages 1–10, 15–31; writing assignment #7

March 23: *The Force of Law*, pages 31–56

March 28: Spring Break

March 30: Spring Break

April 4: TAKE HOME MID-TERM due

April 6: *The Force of Law*, Chpts. 5 and 6; writing assignment #8

April 11: *The Force of Law*, Chpt. 7; writing assignment #9

April 13: *The Force of Law*, Chpts. 10 and 11

- • first group submits class-presentation essays

CLASS PRESENTATIONS

April 18: first group presentations begin; everyone else turns in comments

April 20: presentations continue • • second group submits essays

April 25: second group presentations begin; everyone else turns in comments

April 27: presentations continue • • third group submits essays

May 2: third group presentations begin; everyone turns in comments

May 4: presentations continue • • fourth group submits essays

May 9: fourth group presentations begin; everyone turns in comments

May 11: presentations continue

May 15 (Sunday) at 1:00 p.m. at Professor Shaw's house: Final Class and CLASS PARTY

May 16 (Monday): no class meeting

May 20 (Friday): TERM PAPERS are due in my mailbox by 5:00 p.m.