

**San José State University**  
**College of Humanities and the Arts**  
**Philosophy Department**  
**Phil 155 Philosophy of Law**  
**Fall 2015**

**Course and Contact Information**

<b>Instructor:</b>	William H. Shaw
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<b>Office Hours:</b>	MW 9:45-10: and 1:30-2:00 T 12:00-1:00
<b>Class Days/Time:</b>	TR 10:30-11:45
<b>Classroom:</b>	BBC 203
<b>Prerequisites:</b>	Three units of philosophy or upper-division standing

**Course Description**

Catalogue description: “Theories of the nature of law, legal reasoning, and morality. Philosophical issues in criminal, civil, and constitutional law.”

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.

This course is an attempt to wrestle with some challenging philosophical questions posed by the law. Some of these questions are age-old problems; others are contemporary issues or issues specific to our legal system. We begin by discussing the obligation to obey the law, the meaning and significance of the rule of law, and the ethics of lawyers in an adversarial system. We then examine the nature of legal reasoning, the use of precedents, the interpretation of statutes, and conflicting approaches to Constitutional adjudication. After that, we go on to explore different theories of law, both classical and contemporary—in particular, natural law, legal realism, and positivism—and to take up some basic philosophical issues that arise in contemporary criminal and civil law—

for example, the nature of criminal responsibility, the rights of defendants, the concept of negligence, the limits of tort liability, and the sometimes conflicting goals of contract and property law.

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.

## Learning Outcomes

1. Display an understanding of the nature of the rule of law, of the adversary system, and of our obligation to obey the law.
2. Display an understanding of some of the basic features of legal reasoning, including stare decisis and the use of precedent.
3. Demonstrate an understanding of some competing views of constitutional interpretation, especially as illustrated in particular cases.
4. Demonstrate an understanding of the debate between positivism and natural law, especially as represented in the theories of Hart and Dworkin.
5. Demonstrate an understanding of mens rea and the basic principles of criminal liability.
6. Identify some of the key philosophical issues involved in tort, property, and contract law.

Examinations and writing assignments are designed to assess students' achievement of these outcomes.

## Required Texts/Readings

The required textbook is John Arthur and William. H. Shaw, eds., *Readings in Philosophy of Law*, 5<sup>th</sup> ed. (Prentice-Hall 2010; isbn-10: 0-205-70809-9; isbn-13: 978-0-205-70809-3). This book is out of print and not available at the Spartan bookstore, but you can purchase it or rent it at Amazon.

## Course Requirements and Assignments

### Course Requirements

#### 1. WRITING ASSIGNMENTS

During the semester, there will be fourteen short writing assignments, each concerning some issue or issues in the reading for that day. Due dates are marked by an \* on the course outline. I will give you specific instructions for each assignment ahead of time. These assignments must be typed, but they will be only one-to-two pages long. The point of these regular writing assignments is to encourage you to think carefully and for yourself about the material you are reading. We will often discuss the assignments in class, and you may be called upon to present what you have written. *I do not accept late assignments, and missed assignments cannot be made up.* However, in determining your final grade for this part of the course, I will average your ten highest writing assignment grades (thus, dropping your four lowest grades).

#### 2. EXAMINATIONS

There will be three exams during the semester and a final examination. The exams are intended to test your mastery of, and your ability to reflect critically on, the assigned readings and classroom discussions. The exams will be

mostly short-answer with some objective questions although they may also have an essay component. The final exam may be a take-home exam. I'll give you more information about the exams later.

### 3. CLASS INVOLVEMENT

This is a relatively small class, and class discussion will play an important part of it. Each class meeting we will be analyzing and assessing the assigned readings, and exploring the various philosophical issues they raise. 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. For these reasons, I put the highest priority on attendance and preparation for class. I expect you always to attend class (with your textbook) and to come having read carefully the assignment for that day and prepared to discuss it.

Class involvement counts for 10% 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. If you miss more than three classes, the highest grade you can hope to achieve for this part of the course is a B.

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>.

*“Students are strongly encouraged to take courses to satisfy GE Areas R, S, and V from departments other than their major department. Passage of the Writing Skills Test (WST) or ENGL/LLD 100A with a C or better (C- not accepted), and completion of Core General Education are prerequisite to all SJSU Studies courses. Completion of, or co--- registration in, 100W is strongly recommended. A minimum aggregate GPA of 2.0 in GE Areas R, S, & V shall be required of all students.” See [University Policy S14-5](http://www.sjsu.edu/senate/docs/S14-5.pdf) at <http://www.sjsu.edu/senate/docs/S14-5.pdf>.*

### **Semester Grade**

Your semester grade will thus be a function of the following factors:

- Weekly Writing Assignments (45%)
- Three Exams (10% each)
- Final Examination (15%)
- Class Involvement (10%)

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**

#### **Laptop Policy**

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 re-vise and expand on them and add your notes on the reading.

## Attendance Contest

Students in the class are invited to participate in the attendance contest. You are not required to participate; the contest is purely voluntary. To win the contest (there can be more than one winner), you must have perfect attendance. This means that you have (a) missed no classes, (b) been on time to every class, and (c) been in class for the whole period. It's called a "contest," in part, because there are no excuses whatsoever. No matter how good the reason, if you have to miss class, then you don't have perfect attendance and can't win the contest. (I realize that an element of luck enters into this; that's another reason for calling it a "contest.")

## 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. See University Policy S90-5 at <http://www.sjsu.edu/senate/docs/S90-5.pdf>. More detailed information on a variety of related topics is available in the SJSU catalog, at <http://info.sjsu.edu/web-dbgen/narr/catalog/rec-12234.12506.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 serve to address the issue, it is recommended that the student contact the Department Chair as a next step.

### Dropping and Adding

Students are responsible for understanding the policies and procedures about add/drop, grade forgiveness, etc. Refer to the current semester's Catalog Policies section at <http://info.sjsu.edu/static/catalog/policies.html>. Add/drop deadlines can be found on the current academic year calendars document on the Academic Calendars webpage at [http://www.sjsu.edu/provost/services/academic\\_calendars/](http://www.sjsu.edu/provost/services/academic_calendars/). The Late Drop 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 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>, 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](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](http://www.sjsu.edu/aec) (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, a campus-wide resource for mentoring and tutoring, strives to inspire students to develop their potential as independent learners while they learn to successfully navigate through their university experience. You are encouraged to take advantage of their services which include course-content based tutoring, enhanced study and time management skills, more effective critical thinking strategies, decision making and problem-solving abilities, and campus resource referrals.

In addition to offering small group, individual, and drop-in tutoring for a number of undergraduate courses, consultation with mentors is available on a drop-in or by appointment basis. Workshops are offered on a wide variety of topics including preparing for the Writing Skills Test (WST), improving your learning and memory, alleviating procrastination, surviving your first semester at SJSU, and other related topics. A computer lab and study space are also available for student use in Room 600 of Student Services Center (SSC).

Peer Connections is located in three locations: SSC, Room 600 (10th Street Garage on the corner of 10<sup>th</sup> and San Fernando Street), at the 1st floor entrance of Clark Hall, and in the Living Learning Center (LLC) in Campus Village Housing Building B. 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 Services (Optional)**

The SJSU Counseling Services is located on the corner of 7<sup>th</sup> Street and San Fernando Street, in Room 201, Administration Building. Professional psychologists, social workers, and counselors are available to provide 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 Services website](http://www.sjsu.edu/counseling) at <http://www.sjsu.edu/counseling>.

## Course Number / Title, Semester, Course Schedule

List the agenda for the semester including when and where the final exam will be held. Indicate the schedule is subject to change with fair notice and how the notice will be made available.

### Course Schedule

Week	Date	Topics, Readings, Assignments, Deadlines
1	Aug. 20	INTRODUCTION: LAW AND SOCIETY Introduction
1	Aug 25	Plato, "Crito," p. 54
2	Aug 27*	Fuller, "The Problem of the Grudge Informer," p. 40 [supplementary reading: Hart, "Grudge Informers...", p. 38]
2	Sept 1	Dicey, "Rule of Law and the English Constitution," p. 22 Raz, "The Rule of Law and Its Virtues," p. 32 to middle of p. 36 only
3	Sept 3*	Freedman, "Lawyers' Ethics in an Adversary System," p. 1 [supplementary reading: Langbein, "An Alternative to the Adversary System," p. 10]
3	Sept 8	LEGAL REASONING Schauer, "Rules—in Law and Elsewhere" (handout) Who Is A Drunk Driver? <i>Kentucky v. Whit</i> , p. 93
4	Sept 10*	"Use" of a Firearm: <i>Smith v. United States</i> , 94
4	Sept 15	Post, "Stare Decisis: The Use of Precedent," p. 103
5	Sept 17*	Cases Interpreting the Mann Act: <i>Caminetti v. United States</i> , <i>Mortensen v. United States</i> , and <i>Cleveland v. United States</i> , p. 81 [supplementary reading: Levi, "A Case Study in Interpretation: The Mann Act," middle of page 79 to end only]
5	Sept 22	Can a Murderer Inherit? <i>Riggs v. Palmer</i> , p. 98
6	Sept 24	<b>First Exam</b>
6	Sept 29	CONSTITUTIONAL INTERPRETATION The Due Process Clause: <i>Rochin v. California</i> , p. 126 Dworkin, "'Vague' Constitutional Clauses," p. 123
7	Oct 1	Scalia, "Interpreting the Constitution," p. 132 Dworkin, "A Response to Scalia," p. 138
7	Oct 6*	The Second Amendment: <i>District of Columbia v. Heller</i> , p. 144 [supplementary reading: Posner, "In Defense of Looseness," p. 151]
8	Oct 8*	Free Speech at School: <i>Morse v. Frederick</i> , p. 603
8	Oct 13	THE NATURE OF LAW Blackstone, "Blackstone's Commentaries," p. 169 [supplementary reading: Aquinas, "Summa Theologica," p. 163 (Questions 90, 92, and 95 only)]
9	Oct 15*	Austin, "The Province of Jurisprudence Determined," p. 173 [supplementary reading: Hart, "Positivism and the Separation of Law ...," §2 only, pp. 196-198]
9	Oct 20*	Frank, "Realism and the Law," p. 186
10	Oct 22	Hart, "Law as the Union of Primary and Secondary Rules," p. 202

Week	Date	Topics, Readings, Assignments, Deadlines
		Dworkin, "The Model of Rules," pp. 208-211 only (on "Positivism")
10	Oct 27*	Dworkin, "The Model of Rules," pp. 211-215 only Dworkin, "Natural Law Revisited," p. 218
11	Oct 29	<b>Exam 2</b>
11	Nov 3*	CRIMINAL LIABILITY Survival on a Lifeboat: <i>The Queen v. Dudley and Stephens</i> , p. 360 Brandt, "The Principles of Criminal Law," pp. 365 to bottom of p. 367 only
12	Nov 5	Drunkenness: <i>People v. Koerber</i> , p. 384 The Battered Wife Syndrome: <i>State v. Leidholm</i> , p. 388 Rape, Consent, and Mens Rea: <i>Regina v. Morgan</i> , p. 391
12	Nov 10*	Executing Mentally Retarded Murderers: <i>Atkins v. Virginia</i> , p. 416
13	Nov 12	Wilkey and Sachs, "A Debate on the Exclusionary Rule," p. 309
13	Nov 17*	THE LAW OF TORTS Prosser, "Negligence," pp. 427 to 432 only Foreseeable Risk: <i>Stone v. Bolton</i> , p. 435 Negligence and Due Care: <i>Palsgraf v. Long Island Railroad Co.</i> , p. 446
14	Nov 19	A Duty to Rescue? <i>Yania v. Bigan</i> , <i>Farwell v. Keaton</i> , and <i>McFall v. Shimp</i> , p. 471
14	Nov 24	<b>Exam 3</b>
15	Dec. 1*	CONTRACTS AND PROPERTY Cohen, "Property and Sovereignty" (§5 "Limitations of Property Rights," pp. 492-494 only); <i>Kelo v. City of New London</i> , p. 507
15	Dec 3*	Cohen, "The Basis of Contract" (§ 3 "Contract and Sovereignty," pp. 520-522) Unconscionable Contracts, <i>Williams v. Walker-Thomas Furniture Co.</i> , p. 527 Surrogate Mother Contracts, <i>In the Matter of Baby M</i> , p. 529
16	Dec 8	catch-up and review
Final Exam	Dec 16	BBC 203 at 9:45 a.m.

*It's possible the schedule may change. If so, you will be notified in class or by email.*