

San José State University
Department of Philosophy
PHIL 155 Philosophy of Law, Fall 2018

Course and Contact Information

| | |
|-------------------------|--------------------------|
| <i>Instructor:</i> | Rebecca Chan |
| <i>Office Location:</i> | FOB 207 |
| <i>Telephone:</i> | (408) 924-1376 |
| <i>Email:</i> | rebecca.s.chan@sjsu.edu |
| <i>Office Hours:</i> | T 3-5, or by appointment |
| <i>Class Days/Time:</i> | T/R 12:00-1:15 |
| <i>Classroom:</i> | Sweeney Hall 241 |
| <i>Prerequisites:</i> | None |

Course Description

This course is a rigorous but enjoyable introduction to topics in the philosophy of law such as:

- (i) Why do we have laws?
- (ii) At what types of goods (e.g., fairness, liberty, wealth) should the law aim?
- (iii) What are the philosophical and non-philosophical rationales behind particular laws?
- (iv) Are we ever obligated to follow (or oppose) the law?

We'll engage these topics primarily by looking at various answers to them as well as the legal and philosophical arguments for those answers. By the end of the course, you should be able to understand arguments for and against various answers to the questions above; support your own answers to these questions with reasoned reflection; and apply your analytical skills to other subjects.

Assessment in the class will be based on discussion, presentations, written work, and creative projects.

Learning Outcomes

Upon successful completion of this course, students will be able to:

- (1) Understand different positions on the topics discussed and the arguments for those positions.
- (2) Critically analyze these arguments.
- (3) Advance your own views and support them with cogent arguments.

Readings

Please do the readings before the day for which they are assigned. 'C' is compulsory, 'R' is recommended, and 'E' is enthusiast. The categories are what they sound like. Readings are available online at the course website: on [Canvas Learning Management System course login website](http://sjsu.instructure.com) at <http://sjsu.instructure.com>.

Requirements and Assignments

Participation (20%)

Activities: Philosophy is an activity that we do, and actually doing philosophy is the best way to learn how to do philosophy. We'll do various in class activities geared towards learning how to do philosophy, and you'll credit for participating in them. (Note: You must be in class to participate.)

Discussion: It's important to note that discussion is more than just speaking up; it requires carefully thinking through issues and engaging with peers, often by listening to, supporting, clarifying, or justifying their comments. Doing philosophy well is not solely about contributing your own ideas, but cultivating the ideas of others. Our discussions should reflect both critical analysis and the creation and strengthening of ideas. Lastly, discussion is a joint venture that works best when everyone contributes. A good target for our class is to have everyone contribute 1-2 times a week.

Exam (15%)

Comprehension and application of general principles are two fundamental philosophical and legal skills. This exam based on the first unit is designed to give you the opportunity to demonstrate your mastery of these two skills. It contains a mix of multiple choice, short answer, true/false, and matching questions. A study guide with practice questions will be distributed prior to the exam. **The date of the exam is R 9/13.**

Case Brief (15%)

A case brief is written by an attorney and advocates for a particular position. Your goal for this assignment is to present your own position on the second unit's culminating case. The position must be supported by an argument, and can draw on the material we discuss in the unit. Further details forthcoming. **Due R 10/11 before the start of class.**

Podcast (15%)

This is an opportunity to creatively engage with what you've learned during the second unit in the form of a podcast. The podcast should cover the culminating case in the second unit. You may do this assignment individually or in groups of 2-3 people. Podcasts should be approximately 7-12 minutes; the lower time range is most appropriate for individual projects, and the upper time range is most appropriate for groups of 3. Further details forthcoming. **Due R 11/1 before the start of class.**

Court Opinion (15%)

A court opinion is written by a judge to explain the court's decision. It assesses the arguments for the various sides, explains the general principle (or rule) that the court thinks is applicable, explains why that principle is applicable, and then applies it to the case to issue a ruling. You'll write an opinion for the fourth unit's culminating case. Further details forthcoming. **Due T 11/20 at 11:59 pm PST.**

Final Project (20%)

The final project is your chance to produce a perfected version of a podcast, case brief, or court opinion on the fifth unit's culminating case. The relevant rubric applies, but with higher standards. Proposals for alternative projects that demonstrate mastery of the material and accomplishment of the course learning outcomes will be considered. **Due during the final exam period, F 12/14 9:45am-12:00pm.**

Final Evaluation

The final evaluation is your final project, due during the final exam period, F 12/14 9:45 am-12:00pm.

Grading Information

- Grades are based on the requirements and assignments above in accordance to the weights specified.
- Late work is accepted but penalized if you consult with me ahead of time.
- The grading scale is as follows: 100≥A+≥97, 97>A≥93, 93>A-≥90, 90>B+≥87, etc.

Classroom Protocol

Please arrive on time. Our class is primarily discussion and activity based, so please come prepared to participate (as specified above).

Electronic Devices Policy

Electronic devices are permitted but must be silent. Do not distract others with your devices.

University Policies

Per University Policy S16-9, university-wide policy information relevant to all courses, such as academic integrity, accommodations, etc. will be available on Office of Graduate and Undergraduate Programs' [Syllabus Information web page](http://www.sjsu.edu/gup/syllabusinfo/) at <http://www.sjsu.edu/gup/syllabusinfo/>

PHIL 155 / Philosophy of Law, Fall 2018, Course Schedule*

*Course schedule and readings are subject to change.

| Week | Date | Topics, Readings, Assignments, Deadlines |
|------|--------|--|
| 1 | T 8/21 | Introduction Syllabus (C) |
| 1 | R 8/23 | Unit 1: At what does the law aim? The Buried Bodies Case , podcast from Radiolab (C) |
| 2 | T 8/28 | <i>Legal Positivism</i> Austin, <i>The Province of Jurisprudence Determined</i> , Lecture 1 (C) Hart, "Positivism and the Separation of Law and Morals" (E) |
| 2 | R 8/30 | <i>Natural Law and Intrinsic goods</i> Aquinas, <i>Treatise on Law</i> , Q91, Q94 (C) Ross, "What things are good?" (C) Dworkin "The Model of Rules" (R) Honoré, "The Dependence of Morality on Law" (E) |
| 3 | T 9/4 | <i>Wealth Maximization</i> Posner, "The Economic Approach to Law", excerpts (C) Cooter & Ulen, <i>Law and Economics</i> , Introduction (C) Dworkin, "Is Wealth a Value?" (R) |
| 3 | R 9/6 | <i>Coordination and Convention</i> Friedman, "A Positive Account of Property Rights" (C) Dougherty, "Moral Indeterminacy, Normative Powers, and Convention" (R) |
| 4 | T 9/11 | Catch up/Review |
| 4 | R 9/13 | Exam |
| 5 | T 9/18 | Unit 2: Equal Protection and Race <i>Intro to Equal Protection</i> |
| 5 | R 9/20 | <i>Race Based Classification</i> <i>Floyd et al. v. City of New York</i> <i>Korematsu v. US</i> |
| 6 | T 9/25 | <i>Racial Blindness</i> "Object Anyway", More Perfect Podcast (C) <i>Batson v. Kentucky</i> (E) "The Lasting Legacy of the Boston Busing Crisis", The Atlantic (R) Anderson, "Racial Integration as a Compelling Interest" (E) |

| Week | Date | Topics, Readings, Assignments, Deadlines |
|------|---------|---|
| 6 | R 9/27 | <i>Affirmative Action</i> Pojman, “The Moral Status of Affirmative Action” Thomson, “Preferential Hiring” Simon, “Preferential Hiring: A Reply to Judith Jarvis Thomson” |
| 7 | T 10/2 | <i>Implicit Bias and AA</i> Saul, “Scepticism and Implicit Bias” |
| 7 | R 10/4 | No Class |
| 8 | T 10/9 | <i>Gratz v. Bollinger</i> (R) <i>Fisher v. University of Texas</i> (C) <i>Culminating Case</i> : Asian students and Ivy Leagues schools |
| 8 | R 10/11 | Case Brief Due Before Class Unit 3: Prosecutorial Discretion <i>Intro to Prosecutorial Discretion</i> |
| 9 | T 10/16 | <i>Oyler v. Boles</i> <i>US v. Steele</i> <i>US v. Goodwin</i> <i>People v. Kail</i> <i>US v. Armstrong</i> |
| 9 | R 10/18 | <i>Against Prosecutorial Discretion</i> Crummett, “A Republican Argument Against Prosecutorial Power” (C) |
| 10 | T 10/23 | Guest Speaker |
| 10 | R 10/25 | <i>Prosecutorial Reform</i> Readings TBA |
| 11 | T 10/30 | Podcast Assignment: Our DA/AG Catch Up/Review |
| 11 | R 11/1 | Unit 4: People’s Choice Potential topics: punishment, intellectual property, legal persons, freedom of expression |
| 12 | T 11/6 | TBA |
| 12 | R 11/8 | TBA |
| 13 | T 11/13 | TBA |
| 13 | R 11/15 | TBA |
| 14 | T 11/20 | Court Opinion Due 11:59 pm No Class |
| 14 | R 11/22 | Thanksgiving Break- No Class |
| 15 | T 11/27 | Unit 5: When should we (dis)regard the law? <i>Jury Nullification</i> Huemer, <i>The Problem of Political Authority</i> , excerpt (C) <i>US v. Dougherty</i> |
| 15 | R 11/29 | <i>Jury Nullification, cont.’d</i> “Null and Void”, Radiolab , especially ~26:30 (C) Butler on 60 Minutes (R) “Study Looks at Bias in Celebration Penalty Calls”, NYT (R) Butler, “Racially Based Jury Nullification: Black Power in the Criminal Justice System” (R) |
| 16 | T 12/4 | <i>Civil Disobedience</i> Thoreau, “Civil Disobedience” Rawls, <i>A Theory of Justice</i> , Sec. 53-58 King, Jr., “Letter from Birmingham Jail” <i>Clay v. US</i> |

| Week | Date | Topics, Readings, Assignments, Deadlines |
|------------|-----------------------|--|
| 16 | R 12/6 | <i>Philosophical Anarchism</i> Simmons, "Philosophical Anarchism" Huemer, <i>The Problem of Political Authority</i> , Ch. 8-13 |
| Final Exam | F 12/14 9:45-12:00 | Final Projects Due |