

University of Florida
Philosophy of Law
EUS 4930/INR 4931
Spring 2024

COURSE INFORMATION:

Instructor: Prof. Alexander Panayotov, Ph.D.

Email: apanayotov@ufl.edu

Course Location: MAT 0004

Course Time: Monday 1:55-2:45 PM, Wednesday 1:55-2:45 PM, and Friday 1:55-2:45 PM

Office Location: Turlington Hall 3343

Office Hours: Friday 10:50-12:50 (in person), Monday 10:45-11:45 AM (Zoom), and by appointment

“Thoughts without content are empty, intuitions without concepts are blind.”
Immanuel Kant

COURSE DESCRIPTION:

What is law? Is law different from morality? Why? Why do people obey the law? Is the command of a robber different from that of a legitimate authority? Philosophy of law tries to answer these questions. It is a rich and profound subject. We will encounter the classical legal philosophers: H.L.A. Hart, Hans Kelsen, Joseph Raz, John Finnis, Lon Fuller, and Ronald Dworkin. We will debate some of the most pressing topics in legal philosophy: the nature of law, the relationship between law and morality, the obligation to obey the law, and the problems of interpretation. This list is by no means exhaustive. But the course will give you the tools to analyze and frame complex legal arguments. You will learn how to work with legal rules, interpretative techniques, and rhetorical strategies. You will move from your everyday understanding of legal rules to a general, more abstract, understanding of the nature of law. You will master textual, contextual, and interdisciplinary approaches to legal inquiry. In short, you will learn how to reflect on the nature of law, authority, and order.

The course will be organized around the most important book of legal philosophy: H.L.A. Hart's *“The Concept of Law”*. Even though it was written as a primer for British undergraduate students, it quickly became the center of every philosophical discussion about the nature of law. Hart's versatile writing style, original answers to thorny philosophical questions, and clear exposition of the nature of law are the main reasons that make this book suitable for undergraduate classes and highbrow philosophical colloquia alike. I will introduce you to the intellectual climate that influenced Hart, especially his exposure to the ordinary language philosophy and the work of J.L. Austin. Hart embraced Austin's claim that *“a sharpened*

awareness of words to sharpen our perception of the phenomena” and deployed it in the course of his book. Hart’s ideas will also be viewed as a matter of theory construction. You will learn how Hart’s embrace of a particular mode of theorizing affected his claims about the nature of law. By doing this, you will explore how the theory construction enables and constrains the types of substantive claims that scholars make in law, philosophy, and social science. In particular, you will learn how the mode of theorizing highlights the difference between Hart’s theory of law and the one proposed by one of his main interlocutor, Hans Kelsen. As a result, you will learn how to construct, understand, and reflect upon legal theoretical claims.

You will encounter different styles of analysis and argumentation. Understanding these styles might prove challenging. Because of this, be prepared to discuss them during the class. The class discussion is a deliberative exercise: you are expected to contribute to it because everyone will benefit from a vigorous exchange of ideas. In addition, please respect your colleagues’ views because we will study problems open to multiple interpretations. Don’t forget that collegiality and tolerance are virtues not vices.

LEARNING OBJECTIVES:

Students in this course will:

- Explore the foundations of legal philosophy
- Learn how to articulate, construct, and justify legal arguments
- Refine their writing, editing, and presentation skills

COURSE TEXTS:

1. Brian H. Bix, “*Jurisprudence: Theory and Context*”, 9th edn [hereinafter *JTC*] (Carolina Academic Press, 2023). Please check carefully and don’t buy previous editions of the book.
2. H.L.A. Hart. *The Concept of Law*, 3rd edn. (Oxford University Press, 2012) [hereinafter *CL*]. Please check carefully and don’t buy previous editions of the book.
3. Additional readings will be posted on the Canvas web site.

EXAMINATIONS AND ACADEMIC HONESTY:

- I will not be able to change exams’ parameters and presentation dates except in the following cases: a medical emergency, which must be properly documented, and a death in the immediate family.
- Absences from class must be properly documented. An absence without proper documentation will be counted as an unexcused one. Two or more unexcused absences will result in lowering of your attendance and participation grade.
- Depending on our progress, there might be changes in the schedule. You will be notified of all changes in advance.
- No extra credit assignments will be offered.
- Please note that UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given

nor received unauthorized aid in doing this assignment.” The Honor Code (<http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor in this class. Please note that this is a research-intensive course. Because of this, plagiarism and other forms of academic dishonesty will not be tolerated. Students are required to read, understand, and abide by the University of Florida Academic Honesty policy. The policy can be found here: <https://sccr.dso.ufl.edu/process/student-conduct-code/>. All violations of the said policy will be reported in accordance with the process outlined in it.

- The requirements in the syllabus are consistent with the UF grading policy. The policy can be found here: <https://catalog.ufl.edu/UGRD/academic-regulations/grades-grading-policies/>

GRADE CONCERNS:

If a student disagrees with her grade, she must outline her concerns in writing within 48 hours of receiving the grade. I will not accept grade concern statements after the expiration of the 48-hour period. The statement must contain a reasoned claim backed by textual evidence. After evaluating the merit of the claim, I will do one of the following: 1) increase the grade; 2) lower the grade; or, 3) leave the grade unchanged. The student will be notified about my decision within a reasonable time frame and the grade will be adjusted accordingly. Please note that this policy will not be applicable to the final paper and the overall final grade.

ATTENDANCE:

- Please be advised that class attendance is mandatory. I reserve the right to revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (two or more absences).
- Arrive on time. I reserve the right to lower your attention and participation grade in cases of systematic tardiness. I define systematic tardiness as “three or more late arrivals to class.”
- Do not leave early. If you leave early three or more times, I reserve the right to lower your attention and participation grade.
- Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

INCOMPLETES:

Incompletes will be granted under exceptional circumstances. A student who wants to receive an incomplete must: (1) inform the professor 10 (ten) days prior to the last day of class and (2) provide a written explanation about the reasons necessitating the incomplete. These reasons must be properly documented. In addition, the student must provide a written plan for finishing the missing work. The student must complete the work during the following semester. Failure to complete the work will result in an E.

COURSE EVALUATIONS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/> . Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/> . Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

ACCOMMODATIONS:

Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the disability Resource Center by visiting disability.ufl.edu/students/get-started. It is important for students to share their accommodation letter with their instructor and discuss their access needs, as early as possible in the semester.

Faculty can expect to receive a student's accommodation letter within the first 3 weeks of classes; however, if a student registers with the DRC later in the semester faculty are still obligated to facilitate accommodations. Neither faculty nor administrators may independently deny a request for accommodation that is approved by the Disability Resource Center.

Students are also advised to explore the opportunities offered by the UF Disability Resource Center. The Center is located at 001 Reid Hall, web page: <https://disability.ufl.edu/#> .

COUNSELING AND WELLNESS CENTER:

Contact information for the Counseling and Wellness Center: <http://www.counseling.ufl.edu/cwc/Default.aspx>, 392-1575; and the University Police Department: 392-1111 or 9-1-1 for emergencies.

RECORDINGS:

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To "publish" means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the

same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

RESPONSIBILITIES:

- Ensure that you have a reliable access to Canvas because it will be used extensively throughout the semester. Note that you will be responsible for printing or viewing the assigned material.
- Read the materials in advance and in the order indicated in the syllabus.
- Turn off your cell phones **before** coming to class.
- Restrict the use of electronic devices to class-related activities, e.g., note-taking or article reading.
- Please do not eat in class. Drinks in closed containers are permitted.
- Please note that I will call people in class. This means that it's your responsibility to be prepared at all times. I reserve the right to lower your participation grade if you are unprepared.

GRADE SCALE:

A	94-100
A-	90-93
B+	87-89
B	84-86
B-	80-83
C+	77-79
C	74-76
C-	70-73
D+	67-69
D	64-66
D-	60-63
E	0-59

ASSIGNMENTS AND DEADLINES:

DUE DATE	ASSIGNMENT	DESCRIPTION	WEIGHT
	Attendance and participation	Please note that attendance is mandatory. Participation is an essential ingredient for your success in the course. I reserve the right to revise your grade one grade step up (e.g. A- to A) to reward your meaningful and regular class participation. I also reserve the right to revise your grade one grade step down (e.g. B+ to B) for systemic unexcused absences from class (two or more absences). I will consider revising the grade one grade step down (e.g. B+ to B) for systemic tardiness (three or more late arrivals). I will not revise grades upwards to reward regular attendance. Do not leave early. If you leave early three or more times, I reserve the right to lower your attention and participation grade.	10%
12-Feb-2024	Précis	The précis is a one-page summary of an important jurisprudential concept. I will post three concepts on Canvas and you will have to select one of them. The précis will have to be 1'' margin all around, Times New Roman font, size 12, single line spacing. You may cite course materials or external sources — books, articles, judicial decisions or primary documents — related to the concept. All sources must be properly cited in a bibliography, which will not be counted toward the page requirement. I will deduct 10 points for a proposal submitted after the deadline and prior to 11:59 PM on February 13 th . I will not accept submissions after that and no points will be awarded for this assignment.	10%
21-Feb-2024 – 28-Feb-2024 11:59 pm	Midterm (take-home exam)	The midterm will consist of one essay question and one short answer. The short answer should not exceed five sentences. The answer should not exceed 6 double-spaced pages. The additional requirements for the essay question are: 1'' margin all around, Times New Roman font, size 12. Your answers should reflect the assigned readings and the class discussions. I will deduct 10 points for a proposal submitted after the deadline and prior to 11:59 PM on February 29 th . I will not accept submissions after that and no points will be awarded for this assignment.	40%
19-Apr-2024 – 26-Apr-2024	Final Exam (take-home exam)	The final exam will consist of two questions and one short answer. The short answer should not exceed five sentences. The answer should not exceed 6 double-	40%

		spaced pages and a total of 12 double-spaced pages. The additional requirements for the essay question are: 1'' margin all around, Times New Roman font, size 12. Your answers should reflect the assigned readings and the class discussions. I will deduct 20 points for an answer submitted after the deadline and prior to 11:59 PM on April 28 th . I will not accept submissions after that and no points will be awarded for this assignment. Your answers should reflect the assigned readings and the class discussions. The final exam will cover all materials studied throughout the semester.	
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SUBMISSIONS: All assignments should be submitted via the Canvas course page. Please note that each student is responsible for the timely submission of her assignments. I will not send reminders for overdue assignments.

IMPORTANT DATES:

- **February 12th:** Precis due
- **February 28th:** Midterm due
- **April 26th:** Final Exam due

TOPICS AND READINGS:

PART ONE: INTRODUCTION

"I would rather have questions that can't be answered than answers that can't be questioned."
Richard Feynman

Date	Subject	Readings
08-Jan-2024	Introduction	1. <i>JTC</i> : 3-9
10-Jan-2024	What is Conceptual Analysis?	1. <i>JTC</i> : 11-28
12-Jan-2024	What is Legal Theory?	1. <i>CL</i> 1-17

PART TWO: THE NATURE OF LAW

"The purpose of law is to prevent the strong always having their way."
Ovid

Date	Subject	Readings
17-Jan-2024	Laws, Commands, and Orders I	1. <i>CL</i> 18-25
19-Jan-2024	Laws, Commands, and Orders II	1. <i>JTC</i> 31-37
22-Jan-2024	The Variety of Laws	1. <i>CL</i> 26-49
24-Jan-2024	John Austin: The Command Theory of Law	1. Brian Bix, "John Austin" in <i>The Stanford Encyclopedia of Philosophy</i> (Spring 2023 edition), pp.1-9 [Canvas]
26-Jan-2024	Hart and Austin: The Command Theory of Law and Its Demise	1. <i>CL</i> 50-78 2. <i>JTC</i> 37-39
29-Jan-2024	A New Beginning: The Union of Primary and Secondary Rules	1. <i>CL</i> 79-99
31-Jan-2024	How to Create a Legal System? The Rule of Recognition and Its Importance I	1. <i>CL</i> 100-110
02-Feb-2024	How to Create a Legal System? The Rule of Recognition and Its Importance II	1. <i>CL</i> 110-123
05-Feb-2024	How to Create a Legal System? The Rule of Recognition and Its Importance III	1. <i>JTC</i> 40-43
07-Feb-2024	Hans Kelsen and the Pure Theory of Law I	1. <i>JTC</i> 55-63
09-Feb-2024	Hans Kelsen and the Pure Theory of Law II	1. Hans Kelsen, "What is the Pure Theory of Law?" (pp.269-276) [Canvas]
12-Feb-2024	Hans Kelsen and the Pure Theory of Law III	1. Stanley L. Paulson, "Kelsen on Legal Interpretation", pp. 136-152 [Canvas]

14-Feb-2024	Natural Law I	1. <i>JTC</i> 65-76 2. John Finnis, “ <i>What is the Philosophy of Law?</i> ”, pp.133-142 [Canvas]
16-Feb-2024	Natural Law II	1. <i>JTC</i> 77-82
19-Feb-2024	Natural Law III	1. Lon Fuller, “ <i>Positivism and Fidelity to Law: A Reply to Professor Hart</i> ”, pp.630-672 [Canvas]
21-Feb-2024	Review Session	There are no readings for this class.
23-Feb-2024	Hart on Formalism and Rule-Skepticism I	1. <i>CL</i> 124-141 2. <i>JTC</i> 44-46
26-Feb-2024	Hart on Formalism and Rule-Skepticism II	1. <i>CL</i> 141-154
28-Feb-2024	Hart on Formalism and Rule-Skepticism III	1. H.L.A. “ <i>The Nightmare and the Noble Dream</i> ”, pp. 969-989 [Canvas]

PART THREE: LAW AND INTERPRETATION

We feel as if we had to repair a torn spider’s web with our fingers”
Ludwig Wittgenstein, “*Philosophical Investigations*”, §106

Date	Subject	Readings
01-Mar-2024	Ronald Dworkin and the Interpretative Theory of Law I	1. <i>JTC</i> 83-96
04-Mar-2024	Ronald Dworkin and the Interpretative Theory of Law II	1. Ronald Dworkin, “ <i>Law as Interpretation</i> ”, pp.529-550 [Canvas]
06-Mar-2024	The Meaning of Meaning: Law and Statutory Interpretation I	1. <i>JTC</i> 139-150
08-Mar-2024	The Meaning of Meaning: Law and Statutory Interpretation II	1. <i>Smith vs. United States</i> , pp. 223-247 [Canvas]

PART FOUR: LAW, JUSTICE AND MORALITY

“Ius est ars boni et aequi”
(*Law is the art of the good and the equitable*) *Celsus, “Digests”, 2nd ct. AD*

Date	Subject	Readings
18-Mar-2024	Law and Justice I	1. <i>CL</i> 155-167
20-Mar-2024	Law and Justice II	1. <i>CL</i> 167-184

22-Mar-2024	Law and Justice III	1. <i>JTC</i> 101-113
25-Mar-2024	Law and Justice IV	1. John Rawls, “ <i>Justice as Fairness: Political not Metaphysical</i> ”, pp. 223-251 [Canvas]
27-Mar-2024	Law and Morality I	1. <i>CL</i> 185-212
29-Mar-2024	Law and Morality II	1. <i>JTC</i> 151-159
01-Apr-2024	Law and Morality III	1. Ursula Le Guin, “ <i>The Ones Who Walk Away From Omelas</i> ”, pp. 1-4 [Canvas] 2. US Department of Justice, Office of the Legal Counsel “ <i>Memorandum from August 1st, 2002</i> ”, pp. 1-18 [Canvas]
03-Apr-2024	The Postscript: Hart and Dworkin Yet Again	1. <i>CL</i> 254-278

PART FIVE: THE OBLIGATION TO OBEY THE LAW

“Right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.”

Thucydides “History of the Peloponnesian War”, 4th ct. BC

Date	Subject	Readings
05-Apr-2024	Is There an Obligation to Obey the Law?	1. <i>JTC</i> 161-168
08-Apr-2024	Joseph Raz and the Service Conception of Authority	1. Kenneth Ehrenberg, “ <i>Joseph Raz’s Theory of Authority</i> ”, pp.1-11 [Canvas]

PART SIX: MODERN APPROACHES TO LEGAL THEORY

Philosophers make imaginary laws for imaginary commonwealths, and their discourses are as the stars, which give little light because they are so high.”

Francis Bacon

Date	Subject	Readings
10-Apr-2024	American Legal Realism	1. <i>JTC</i> 173-183
12-Apr-2024	Critical Legal Studies Law and Literature	1. <i>JTC</i> 211-215 2. <i>JTC</i> 231-236
15-Apr-2024	Historical Jurisprudence	1. Robert E. Rodes, “ <i>On the Historical School of Jurisprudence</i> ”, pp.165-184 [Canvas]

17-Apr-2024	Law and Economics	1. <i>JTC</i> 185-210
19-Apr-2024	Legal Process, Pragmatism, Postmodernism, and Other Approaches	1. <i>JTC</i> 247-259
22-Apr-2024	The Future of Legal Philosophy	1. Thomas Bustamante, César Serbena and Natalina Stamile, “ <i>Interview with Professor Gerald Postema</i> ”, pp.1-11 [Canvas]
24-Apr-2024	Review Session	There are no readings for this class.

USEFUL LINKS:

1. Stanford Encyclopedia of Philosophy: <https://plato.stanford.edu/> . This is a comprehensive resource that will serve you well during the semester.
2. Brian Bix’s web page: <https://www.law.umn.edu/profiles/brian-bix>. Bix is a prolific author and exponent of legal philosophy.

USEFUL BOOKS (OPTIONAL):

LEGAL WRITING	Bryan A. Garner, “ <i>Legal Writing in Plain English</i> ” 2nd edn. (The University of Chicago Press, 2013)
LEGAL REASONING (BEGINNER)	Joel P. Trachtman, “ <i>The Tools of Argument: How the Best Lawyers Think, Argue, and Win</i> ” (CreateSpace Independent Publishing Platform, 2013)
LEGAL REASONING (ADVANCED)	Antonin Scalia and Bryan A. Garner, “ <i>Reading Law: The Interpretation of Legal Texts</i> ” (West Publishing, 2012) Edward H. Levi, “ <i>An Introduction to Legal Reasoning</i> ”, (The University of Chicago Press, 2013)
SOCIOLOGY OF LAW	Roger Cotterrell, “ <i>The Sociology of Law: An Introduction</i> ” 2 nd edn.(Oxford University Press, 2005)
PHILOSOPHY OF LAW (COLLECTIONS)	Denis Patterson (Ed.) “ <i>Philosophy of Law and Legal Theory: An Anthology</i> ” (Wiley-Blackwell, 2003)
PHILOSOPHY OF LAW (COLLECTIONS)	Coleman & Shapiro (Eds.) “ <i>The Oxford Handbook of Jurisprudence and Philosophy of Law (Oxford Handbooks)</i> (Oxford University Press, 2004)