Course Syllabus
Philosophy of Law
PHIL 461, Fall, 2011

Instructor: Dr. Matt Zwolinski
Office Hours: 11:30 – 2:00 PM (MF)
Office: F167A
Course Website: http://pope.sandiego.edu
Phone: 619-260-4094
Email: mzwolinski@sandiego.edu

Required Books:
Alan Wertheimer, Consent to Sexual Relations (CSR)
Other Readings on Electronic Reserve at Copley Library (ER)

Core Requirements: This course fulfills the Core Curriculum requirement for a non-ethics, non-logic philosophy course

Content:

This course is designed to sharpen our philosophic understanding of the law. It is divided into two parts. The first part is a survey of some of the most important theories of analytic jurisprudential thought, including Natural Law Theory, Legal Realism, Hart’s Positivism, and Dworkin’s Interpretivism. Analytic jurisprudence deals with the conceptual analysis of law. We will examine the following sorts of questions: What is the law? How is it different from other systems of norms, such as morality? Is law identical with the words of some set of statutes? Which ones? (How do we know which ones?) What role do judges play in the creation of law? Or do they merely apply it?

The second part of the course will deal with questions of normative jurisprudence. Specifically, we will be interested in the kinds of circumstances in which the law may justifiably be used to restrict individual liberty. Questions we will examine include: can the law justifiably interfere with a person’s freedom for his or her own good? What does it mean for an individual to consent to something, such as a sexual encounter? Does the presence of coercion undermine valid consent? Does the presence of deception? Intoxication? Finally, can the law justifiably be used to prohibit exploitation? Are payday loan centers exploitative? Is prostitution?

A Caution:

This is an upper-division philosophy course, not a “pre-law” course. The subject of our investigation is the law, but the method of our investigation is analytic philosophy. Our focus will be on the careful reading, analysis, and presentation of arguments, largely via the method of rigorous conceptual analysis. These are skills which will serve you well in law school, but you should also be aware of the significant differences between the philosophical and legal approaches to problems. In short, you should keep in mind two points:

1) You need to know how to “do” philosophy in order to do well in this class. There aren’t any formal prerequisites for this course. But you will find it very difficult if you have not had at least Introduction to Philosophy and/or some sort of Ethics. Talk to me if this is a concern.

2) Don’t take this course for the wrong reasons. If you don’t like doing philosophy for its own sake, you’re probably in the wrong place. Taking a few extra practice LSATs will help you in your law school applications a lot more than a mediocre grade in this course.
Course Requirements:
Philosophical readings are dense and difficult. It will probably take longer than you expect to read them once, and it will probably be necessary to re-read most pieces at least once to come to an adequate understanding of the material. You should expect to spend at least six hours per week outside of class time reading and re-reading the material. If you do this, you will have a much easier time with the quizzes, and with the short writing assignments, which should probably take up at least an additional five to six hours each in preparation time.

- **Quizzes** – I will give 5-10 unannounced, multiple-choice quizzes over the course of the semester. The purpose of these quizzes is to test your completion and comprehension of the day’s reading assignment, and to encourage attendance at class. Three things to note about them:
  - First, quizzes are given at the very beginning of class. You will not be allowed extra time to take them if you are late, and you will not be allowed to make them up if you miss them. So it is to your advantage to show up and be seated on time every day.
  - Second, you will receive a zero for any quiz that you miss, for any reason. However, at the end of the semester, I will drop your two lowest quiz scores. So missing a quiz will not destroy your grade. But you will have a better chance of excelling in the course if you show up regularly.
  - Finally, these quizzes are very difficult, so it is vital that you read the material carefully and in advance of class. Read the material actively, with pen (or computer) in hand to take notes. And feel free – encouraged, even – to come to office hours any time to discuss any difficulties you might be having with the readings or the quizzes.

- **Papers** – I will assign three writing assignments over the course of the semester.
  - **Short Papers:** The first two will be relatively short – no less than two and no more than three pages (typed, double-spaced, 1 inch margins and normal fonts) in length. I will assign a topic for these papers which will involve two tasks: 1) reconstructing an argument or arguments from one or more of the readings we have covered in class, and 2) providing an original critical evaluation of that/those argument(s). These papers are short not to make life easy for you but in order to force you to think carefully about what is essential to an argument and what is not. I will grade these papers with an eye to detail and conceptual rigor. Expect to be challenged.
  - **Term Paper:** Your final writing assignment will be longer – between 10 and 12 pages (typed, double-spaced, 1 inch margins and normal fonts) in length. For this paper, you will be free to choose any topic within the field of legal philosophy, but you are encouraged to choose something we have covered in our readings or class discussion. Your paper must be both argumentative and philosophical. It will be argumentative in that the primary purpose of your paper is to defend some thesis regarding a controversy in the field (rather than merely to issue a “book report” about what so-and-so said about such-and-such). It will be philosophical in that both the question you try to answer and the methodology you use in answering it will fall squarely within the discipline of philosophy (rather than, say, sociology, psychology, or history). This paper will be due on the day of your scheduled final. Since it will be submitted electronically via Turnitin.com (see below), you do not need to come in to campus for our final exam period.
  - **Topic Proposal:** You will be expected to clear your topic with me in advance, by submitting to me an approximately ½ - 1 page proposal no later than November 21st. This proposal should state the subject of your paper (what debate or question will you be looking at), a rough version of your thesis (what position will you be arguing for), and a preliminary list of sources that you will be consulting. These sources must include at
least three philosophic books or articles that we have not covered in class. Philosophic articles means journal articles or book chapters – internet sites do not count, except those that have specifically approved by me.

- **Late papers:** Papers are due on Turnitin.com (see below) at the beginning of the class period on the day indicated on the schedule below. Late papers will be penalized 5 percentage points for each 24 period following the date and time at which the paper is due, without exception.

- **Writing Workshop:** The last day of class (Dec 12th) will be devoted to peer-evaluation of your term papers. You will be expected to bring to class a completed draft of your paper, which you will exchange with one other student in the class. You will provide the other student with feedback on his/her paper, using a handout I will provide as guidance. You grade will be determined by your success in bringing a completed draft to class, and on the quality of the feedback you provide to your fellow student.

- **Participation** – Philosophy is best learned through active conversation with others. It is therefore important that you be a regular participant in classroom discussions. Ideally, you will be sufficiently engaged with the material to contribute to these discussions spontaneously and voluntarily. As an additional stimulus, however, I will call randomly on students to answer questions in class. If you cannot answer a question satisfactorily (due to lack of preparation or absence), your class participation grade will be affected. Students may ask at any time to be informed of their current class participation grade.

**Your Grade**

Each activity in this class is worth a certain number of points. Your grade will be determined based on a straight (un-curved) analysis of percentage of points earned vs. total points.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quizzes 5-10 @ 5 points each</td>
<td>25-50</td>
</tr>
<tr>
<td>2 Short Papers @ 20 points each</td>
<td>40</td>
</tr>
<tr>
<td>Term Paper Topic Proposal:</td>
<td>5</td>
</tr>
<tr>
<td>Writing Workshop:</td>
<td>10</td>
</tr>
<tr>
<td>Term Paper:</td>
<td>40</td>
</tr>
<tr>
<td>Participation</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total Points:</strong></td>
<td>130-155</td>
</tr>
</tbody>
</table>

A+   97 - 100%
A    93 - 96.9
A-   90 - 92.9
B+   87 - 89.9
B    83 - 86.9
B-   80 - 82.9
C+   77 - 79.9
C    73 - 76.9
C-   70 - 72.9
D+   67 - 67.9
D    63 - 66.9
D-   60 - 62.9
F    59.9 or below
Learning Outcomes
By the end of this course…
- Students should be able to describe, in essay form, the main tenets of the major jurisprudential theories such as positivism and natural law theory.
- Students should be able to articulate these theories’ understanding of what law is (positive jurisprudence), and what law ought to be (normative jurisprudence).
- Finally, students should be able to critically evaluate these theories in take-home essays.

Academic Integrity
You are expected to know and follow University Policies on cheating and plagiarism. See the Code of Academic Integrity. Outside research is a good thing in a philosophy paper. Just cite it! If it is determined that you have cheated, you will fail the course and I may recommend that you be expelled from the University.

USD subscribes to a service called Turnitin.com. Turnitin.com is a web-based application that compares the content of submitted papers to the Turnitin.com database and checks for textual similarities. All required papers for this course may be subject to submission to Turnitin.com for textual similarity review and to verify originality. All submitted papers will be included as source documents in the Turnitin.com reference database solely for the purpose of detecting textual similarities and verifying originality. Each student is responsible for submitting his or her papers in such a way that no identifying information about the student is included. A student may not have anyone else submit papers on the student’s behalf to Turnitin.com. A student may request in writing that his or her papers not be submitted to Turnitin.com. However, if a student chooses this option, the student may be required to provide documentation in a form required by the faculty member to substantiate that the papers are the student’s original work.
Schedule for PHIL 461: Philosophy of Law  
Fall, 2011  
Professor Zwolinski

KEY DATES AT A GLANCE
Sept 5 - Labor Day: no class  
Sept 26 - WA1 Due  
Oct 14 - Fall Holiday: no class  
Oct 31 - WA2 Due  
Nov 21 - Term Paper Topic Proposal Due  
Nov 23-25 - Thanksgiving Break: no class  
Dec 12 - Writing Workshop  
Dec 19 - Term Paper Due at 11:00 AM

Schedule of Readings

Part 1 – Analytic Jurisprudence – The Nature of Law

Week 1 (Aug 31 – Sept 2) – Introduction  
Required Reading: Lon Fuller – The Purple Shirts (ER)

Week 2 (Sep 5-9) – Natural Law Theory  
Required Reading: Thomas Aquinas: *Summa Theologica* (ER)  
No class Monday September 5 (Labor Day)

Week 3 (Sept 12-16) – Legal Positivism  
Required Reading: John Austin: *The Province of Jurisprudence Determined* (ER)  
HLA Hart, “Law as the Union of Primary and Secondary Rules” (ER)

Week 4 (Sept 19-23) – Legal Positivism Continued and Legal Realism  

Week 5 (Sept 26-30) – Dworkin’s Interpretivism  
Required Reading: *Riggs v Palmer* (ER), Ronald Dworkin, “Integrity in Law” (ER)  
WA1 Due, September 26

Part 2 – Normative Jurisprudence – Moral Issues in the Criminal Law

Week 6 (Oct 3-7) – The Moral Obligation to Obey the Law  
Required Reading: Plato, “Crito,” M.B.E. Smith, “Is there a *Prima Facie* Obligation to Obey the Law”? (ER)

Week 7 (Oct 10-14) – Moral Limits on the Criminal Law – Part 1, The Harm Principle  
Required Reading: John Stuart Mill, “The Liberal Argument from *On Liberty,”* (ER)  
No class Friday October 14 (Fall Holiday)
Week 8 (Oct 17-21) – Moral Limits on the Criminal Law – Part 2, Paternalism
Required Reading: Feinberg, “Legal Paternalism” and Goodin, “Permissible Paternalism: Saving Smokers from Themselves” (ER)

Week 9 (Oct 24-28) – Consent to Sexual Relations, Part 1: Consent
Required Reading: Wertheimer, Chapters 6-7: “The Value of Consent,” and “The Ontology of Consent” (CSR)

Week 10 (Oct 31-Nov 4) – Consent to Sexual Relations, Part 2: Rape and Coercion
Required Reading: Dressler, “Rape,” (ER) and Wertheimer, “Coercion” (CSR)
WA2 Due, October 31

Week 11 (Nov 7-11) – Consent to Sexual Relations, Part 3: Deception and Intoxication
Required Reading: Wertheimer, “Deception,” and “Intoxication” (CSR)

Week 12 (Nov 14-18) – Exploitation and the Law, Part 1: Exploitation and Unconscionability
Required Reading: Wertheimer, “Overview,” and “Unconscionable Contracts” (ER)

Week 13 (Nov 21) – Exploitation and the Law, Part 1, continued
Term Paper Topic Proposal Due, November 21st

Required Reading: Mayer, “Payday Loans and Exploitation,” Zwolinski, “The Ethics of Price Gouging” (ER)

Week 15 (Dec 5-9) – Exploitation and the Law, Part 3: Prostitution
Required Reading: Nussbaum, “‘Whether From Reason or Prejudice’: Taking Money for Bodily Services,” DeMarneffe, “A Paternalistic Case for Prostitution Laws” (ER)

Week 16 (Dec 12) – Writing Workshop

December 19th, 11:00 AM – Term Papers due via Turnitin.com