

**PHILOSOPHY 338**  
**PHILOSOPHICAL PROBLEMS IN THE LAW**

**Instructor:** Donald Hubin  
e-mail: hubin.1@osu.edu  
<http://www.cohums.ohio-state.edu/philo/people/Faculty/hubin.1/>  
337N University Hall  
292-2505  
M 2:30 – 3:30, Th 9:30 – 10:30  
and by appointment

**Grader:** Makoto Suzuki  
e-mail: suzuki.42@osu.edu  
214 University Hall  
292-3663

**Texts:**

*Philosophical Problems in the Law (Third Edition)*, edited by David M. Adams, Wadsworth Publishing Company (abbreviated 'PPL' below).

**Course Outline and Readings:**

- I. The Nature of Law and Legal Reasoning
  - A. Introduction: The Problem of the Grudge Informers  
Readings: PPL 186-190, PPL 1-15
  - B. What is Law?  
Readings: PPL 16-45
  - C. Classical Theories of Law  
Readings: PPL 46-51
    1. Classical Natural Law Theory  
Readings: PPL 52-54
    2. Classical Legal Positivism  
Readings: PPL 54-59
    3. 20<sup>th</sup> Century Legal Positivism  
Readings: PPL 59-58
    4. 20<sup>th</sup> Century Natural Law Theory  
Readings: PPL 69-75
  - D. Modern Theories of Law
    1. Legal Realism  
Readings: PPL 75-89
    2. Natural Law Revisited  
Readings: PPL 90-96
    3. Legal Realism  
Readings: PPL 82-96
    4. Critical Legal Studies  
Readings: PPL 97-99, PPL 104-116
  - E. Legal Reasoning and the Constitution  
Readings: PPL 142-175

## II. Individual Liberty and the Limits of Legal Coercion

- A. Legal Moralism:  
Readings: PPL 193-212
- B. Political Speech and “Hate Speech”  
Readings: PPL 220-244  
Texas v. Johnson
- C. Pornography & Obscenity  
Readings: PPL 245-270

These topics are subject to change based on the interests of the class. Near the end of the first part of the class, I'll survey the class to see what topics are of most interest.

### Course Requirements:

There will be one midterm exam and a final exam. The midterm will be after Part I of the course outline and will constitute 35% of your course grade. (The date of the midterm will be announced in class at least one week in advance.) The final exam, which will be on the day and time set by the University (Monday, June 9 from 11:30 p.m. to 1:18 p.m.), will be comprehensive but will emphasize material since the midterm. It will also constitute 35% of your course grade. The remaining 30% of your grade will be based on a short paper (8-10 pages).

The paper is to be a critical analysis of one or more of the arguments presented in the class or readings. Suggestions for paper topics will be handed out early in the course. You are not only invited, but encouraged to select a paper topic not on the list of suggestions, but this should be done in consultation with me to ensure that the topic and approach is appropriate for the course. A rough draft of the paper is due on Wednesday, May 14. This draft will not be graded but will be returned with comments and suggestions for revision. The final draft of the paper is due in class on Wednesday, June 4. Although the rough draft will not be graded, there will be a penalty of one full letter grade on the final draft if no rough draft was submitted.

### Academic Misconduct

The University understands academic misconduct to include “any activity which tends to compromise the academic integrity of the institution, subvert the educational process” (“Procedures of the Committee on Academic Misconduct”, Sept. 1989). With respect to this course, examples include, but are not limited to, such actions as cheating on exams and submitting a term paper written by another. No one should be unclear about whether *these* are wrong, but students are sometimes not clear about what constitutes plagiarism. ‘Plagiarism’ is defined by the University to be “the representation of another’s works or ideas as one’s own; it includes the unacknowledged word for word use and/or paraphrase of another person’s work, and/or the inappropriate unacknowledged use of another person’s ideas”. There should be no misunderstanding about word for word transcriptions or simple paraphrases—these *must* be acknowledged through proper citations. It is sometimes not clear, though, when simply using the ideas of another requires citation. This is especially true in the context of a course, in which one is, presumably acquiring fundamental ideas of a subject matter from the text or the instructor. Certain ideas are “in the public domain”, so to speak; they are ideas used by everyone working in the field, and do not require citation. Other ideas are such that their origin needs to be acknowledged. It is sometimes difficult for beginning students to distinguish these. It is helpful to remember that what is at issue is whether the failure to acknowledge a source would tend to misrepresent the idea as your own. The failure to acknowledge your source for a distinction between recklessness and negligence, for example, would not tend to misrepresent the distinction as your own since it is a distinction that anyone working in the field will draw in some way or other. To offer a *specific* account of this distinction that is offered by another without citing the source could easily tend to misrepresent the account as your own. It is clearly better to err on the side of over-acknowledgment in cases in which one is in doubt.

I view academic misconduct of any sort as a *very* serious violation of University requirements. University rules provide for extremely serious sanctions for academic misconduct, and I will, as I am required to do, forward any cases of suspected misconduct to the Committee on Academic Misconduct.