

Course description: Criminal Law, Tort Law, Property Law, and Contract Law are foundational areas in jurisprudence, and they happen to be the subjects covered during the first year of a typical law school curriculum. The objective of this course is to examine the philosophical underpinnings of these four areas of “common law,” which will include examining prominent legal cases from each area. While many of these cases are covered in the law school setting, the focus of this course will be on the philosophical analysis and moral evaluation of the law. Before getting to the four areas noted above, we’ll begin with a general discussion of liberalism, constitutional law, and the “Hart-Dworkin Debate.”

Readings: All assigned readings will be posted on the course Collab site. Unless otherwise noted, you are responsible for reading (before class) only the *first* item listed for each day on the schedule below. All other material will be covered in class.

Required written work

- *Examinations* (80%): There will be four in-class examinations that are worth 20% each.
 - The examinations will be primarily noncritical and will test your understanding of material covered in both the readings and class. However, each exam will include at least one question that asks for a critical response.
 - All examinations will be open book and note.
- *Class expert* (20%): You will sign-up to be the class expert for one class meeting; this consists of helping brief cases/essays and bringing to class at least four discussion questions (in writing).
- *Participation and attendance:*
 - *Participation:* The course will involve quite a bit of discussion and small group activities. If you end up with a borderline grade, then active participation over the course of the semester may tip the balance in your favor. On the other hand, poor participation may tip the balance the other way. Active participation means bringing questions/comments to each class, responding to my questions, and participating in the discussion and small group activities.
 - *Attendance:* You are expected to attend all the classes, but you will be permitted two absences without penalty (you do not need to provide an excuse). Additional absences will result in a reduction of your overall grade.

Office hours: By appointment: lwh8ra@virginia.edu

General policies

- *Laptops/phones:* You may use a laptop in class to take notes or view readings, but do not text or otherwise use your phone/computer in class.
- *Email:* Philosophy can be difficult to discuss via email, and so you should generally use email only as a tool to set up a one-on-one meeting or phone call. If circumstances do not permit this, then you may ask course-related questions via email (lwh8ra@virginia.edu). I do not discuss grades via email, but I’m happy to go over a graded paper/exam with you in person.

Schedule of topics and readings**Introduction: Liberalism, Constitutional Law, and the Hart-Dworkin Debate**

- **May 18:** Introduction and “America’s Post-Crash Constitution,” Ganesh Sitaraman
- **May 19:** “Property is the New Privacy: The Coming Constitutional Revolution,” Suzanna Sherry (review of Richard Epstein’s *The Classical Liberal Constitution*)
 - Judicial review: *Marbury v. Madison*
 - Supreme Court authority: *Martin v. Hunter's Lessee*
 - Religious belief, freedom, and action: *Reynolds v. United States*
- **May 20:** “An Unapologetic Defense of The Classical Liberal Constitution: A Reply to Professor Sherry,” Richard Epstein
 - Police power and due process: *Lochner v. New York*
 - Congressional Power and the Commerce Clause: *NLRB v. Jones & Laughlin Steel Corp.* and *W.Coast Hotel Co. v. Parish*
 - Footnote Four and judicial scrutiny: *United States v. Carolene Prods. Co.*
 - Commerce vs. taxation: *National Federation of Independent Business v. Sebelius*
- **May 21:** “The ‘Hart-Dworkin’ Debate: A Short Guide for the Perplexed,” Scott J. Shapiro
 - Equal protection: *Brown v. Board of Education of Topeka*
 - Privacy: *Griswold v. Connecticut* and *Roe v. Wade*
 - Substantive due process: *Lawrence v. Texas*
 - Judicial discretion: *Henningsen v. Bloomfield Motors*
 - Theoretical disagreements: *Tennessee Valley Authority v. Hill*
- **May 22: EXAM 1 (covering May 18-21 material)**

Contracts

- **May 25:** Holiday (no class)
- **May 26: Consideration as a basis for enforcing promises:**
 - “Is a Contract a Promise,” Seana Valentine Shiffrin
 - Contracts and promises: *Batsakis v. Demotsis*
 - Promise or performance bargained for in exchange: *Hamer v. Sidway*
 - Non-bargains: *Kirksey v. Kirksey*
 - Promise as consideration: *Wood v. Lucy, Lady Duff-Gordon*
- **May 27: Contract formation:**
 - Assent: *Lucy v. Zehmer* (read before class)
 - Offers: *Owen v. Tunison* and *Harvey v. Facey*
 - Acceptance: *International Filter v. Conroe Gin*
 - Withdrawal: *Dickinson v. Dodds*
- **May 28: Policing the bargain and remedies for breach:**
 - Mutual mistake: *Sherwood v. Walker*
 - Unconscionability: *Williams v. Walker-Thomas Furniture Co.* (read before class)
 - Expectation, restitution, and reliance interests: *Sullivan v. O’Connor*
 - Unforeseeability as limitation on damages: *Hadley v. Baxendale*
 - Incomplete/defective performance: *Peevyhouse v. Garland Coal & Mining Co.*
 - Public policy: *Shaheen v. Knight* and *In re Baby M*
- **May 29: EXAM 2 (covering May 26-28 material)**

Property

- **June 1: Establishing entitlements:**
 - “Private Property,” Daniel Attas
 - Does possession equal ownership? *Pierson v. Post* and *Keeble v. Hickeringill*
 - Occupancy and sovereignty: *Johnson v. M'Intosh*
 - Adverse possession: *Belotti v. Bickhardt*
 - Rights and remedies: *Geragosian v. Union Realty Co.*
- **June 2: Public control of land use:**
 - “Taxation, Redistribution and Property Rights,” Peter Vallentyne
 - Regulatory takings: *Penn Central Transportation Co. v. New York City*
 - Total takings: *Lucas v. South Carolina Coastal Council*
 - Eminent domain: *Kelo v. City of New London*

Torts

- **June 3: Civil wrongs, intentional torts, and defenses:**
 - Civil wrongs and battery: *Vosburg v. Putney* (read before class)
 - Intent: *Garrett v. Dailey* (read before class)
 - Consent: *Mohr v. Williams*
 - Necessity: *Vincent v. Lake Erie Transp. Co.*
 - Reasonableness: *Katko v. Briney*
- **June 4: Negligence and causation:**
 - “Proximate Cause in the Law of Torts,” Benjamin C. Zipursky
 - Reasonable person: *Vaughan v. Menlove*
 - Duty, care, and Andrews’ dissent: *Palsgraf v. Long Island Railroad*
 - Foreseeability: *Overseas Tankship v Morts Dock and Engineering* (“Wagon Mound 1”)
 - Directness: *Re Polemis & Furness, Withy & Co Ltd*
 - Risk rule: *Larrimore v. American National Insurance Co.* (and proximate cause handout)
- **June 5: EXAM 3 (covering June 1-4 material)**

Criminal Law

- **June 8: The principle of guilt:** “The Voluntary Act Requirement,” Gideon Yaffe
 - Justifications: Self-defense and *State v. Wanrow*
- **June 9: Actus reus:** “The Story of *Robinson*,” Erik Luna
 - Discussion of “Silk Road” case
 - Discussion: Corporations, Individuals, and Deferred Prosecution
- **June 10: Mens rea:** “The Story of Staples...” Joseph E. Kennedy
 - Excuses: Insanity and *Clark v. Arizona*
 - Excuses: Entrapment and *Jacobson v. United States*
 - Legal excuse theories handout and *Regina v. Prince*
- **June 11: Criminal Procedure:**
 - Privacy: “*Katz v. United States: The Limits of Aphorism*,” David A. Sklansky
 - Privacy and *Hoffa v. United States*
 - Reasonableness and *Terry v. Ohio*
- **June 12: FINAL EXAM (covering June 8-11 material)**