

# PHILOSOPHY 638

## PHILOSOPHY OF LAW

**Instructor:** Don Hubin  
**Address:** 337N University Hall  
**Hours:** M & Tu 2:30 – 3:30 and by appointment  
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**Phone:** 292-2505 (Office) and 292-7914 (Department Office)

**Course Description:** This course will be an *exploratory seminar* focusing on constitutional interpretation and adjudication. By calling this course an “exploratory seminar” I mean to convey several things about both the structure and the content of the class. First, more so than in most undergraduate classes, we will be working *together* to examine the issues on which the course will focus. Second, while I have given us some starting material, the content and organization of the course is not fully settled. We will retain some freedom to move in any of several different directions. The nature of the course will result in somewhat different, and I think more strenuous, demands being placed on participants. Passive learning will not work. Conscientious, timely reading and active involvement in the course material is essential for the success of the course and for your success in the course.

**Texts:** *The Tempting of America*, Robert H. Bork  
*A Matter of Interpretation*, Antonin Scalia  
*Democracy and Distrust*, John Hart Ely  
*On Reading the Constitution*, Laurence Tribe and Michael Dorf  
(Other readings as assigned)

### Partial Course Outline and Readings:

To be announced

### Course Requirements:

Students in this course are required to do all of the reading in a timely manner, to actively engage in independent research on topics connected with the course and to participate constructively in classroom discussions. Assignments, proposed due dates (subject to change *with* notice) and grading weights are as follows:

Assignment	Proposed Due Date	Grading Weight
Active Class Participation	January 3 through March 10	10%
Short Paper (2-3 pages)	January 25 (tentative)	10%
Take-Home Midterm Exam	February 8 (tentative)	20%
Short Paper (2-3 pages)	February 20 (tentative)	10%*
Rough Draft of Term Paper	February 27 (tentative)	See below
Term Paper	March 12, by midnight	30%
Take-Home Final Exam	March 14, by midnight	20%

The rough draft of the term paper will be returned with comments, criticisms and suggestions for revision. Though this draft will not be graded, a penalty of one full grade point will be assessed on the final draft if no rough draft was submitted.

\*This assignment was cancelled. I will base your overall grade on the other assignments only—in effect, redistributing this 10% of your grade over the other assignments in proportion to their present weights.

### **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” (“Committee on Academic Misconduct Procedures and Rules”, 7/15/2004 < <http://oaa.osu.edu/coam/procedures.pdf>>). 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 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 natural law theory and legal positivism, 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.

### **Disability Services:**

Students with disabilities that have been certified by the Office of Disability Services will be appropriately accommodated. They should inform me as soon as possible of their needs. The Office of Disability Services is located in 150 Pomerene Hall, 1760 Neil Avenue; telephone 292-3307, TDD 292-0901; <http://www.ods.ohio-state.edu/>