

SYLLABUS FOR JURISPRUDENCE, LAW 3933, WINTER SEMESTER



We recognize and respectfully acknowledge that all UNB course interactions take place on unsundered and unceded traditional lands of Wolastoqiyik.

Instructor:	Maria Panezi	Class Days:	Tuesdays and Thursdays
Email:	mpanezi@unb.ca	Time:	10:00-11:30
Phone:	(506) 458 6025	Class Location:	Room 15
Office Location:	204	Office Hours:	By appointment (I am generally available at the hours I am not teaching)

COURSE DESCRIPTION:

This is an upper year course. It serves as an introduction to fundamental questions regarding the nature of law, justice and the particular feature of legal arguments. As it is meant as an introduction to these issues, the course does not require prior exposure to legal theory, philosophy of law, legal history or legal sociology. The class will focus in introducing central themes in the development of the highly influential US and UK centric legal theory canon, mostly oriented around adjudication and legal argument, with emphasis on the positivism/natural law debate.

Through the study of jurisprudence and application to contemporary case studies, students will cover part of the so-called Analytical Jurisprudence. They will learn to read materials critically, to understand the crucial interaction between the common law and legal theory, to pinpoint the issues raised, to understand the arguments, theoretical accounts and decisions made, to appreciate the moral, economic, and political claims underlying arguments and decisions.

COURSE OVERVIEW: The course first explores the relationship between legal theory and legal education. Then, the course proceeds to an introduction to the debate of Justice and Law. The third part explores the “Trolley dilemma” and modern day applications as an extension of the law, morality and justice debate. The fourth part explores utilitarianism and economic risk analysis in law. The fifth and sixth part introduces and discusses the debate between positivism and natural law, or law and morals. The seventh part explores another approach to the interface between positivism, law and morals, from the standpoint of scientific and technological approaches. Finally, the course concludes with a discussion of the role of Jurisprudence in a practicing lawyer’s life. There are 4 sessions where we will watch two films in class and subsequently discuss it and their relation to jurisprudence (see Intermezzi).

REQUIRED MATERIALS:

All materials will be made available for registered students on D2L. The syllabus contains links to articles that students can access through their university account. **There is no textbook for this course. Students are responsible for accessing the materials for each session.**

LIBRARY RESERVE MATERIALS:

A few of books have been put on reserve in the library. You are welcome to consult any of them. They can be found here: <https://web.lib.unb.ca/reserves/index.php/viewReserves/55978>

ONLINE MATERIALS:

Online course materials can be found in Desire2Learn (D2L/Brightspace), UNB's online Learning Management System. You can access D2L through the MyUNB portal for to all UNB services (<https://my.unb.ca/group/mycampus/home>) or directly at <https://lms.unb.ca/>.

LEARNING OUTCOMES:

This course aims at familiarizing students with basic readings in legal theory, exploring legal arguments developed by well-known theorists throughout the 20th century as well as allowing students who are interested in pursuing interdisciplinary approaches to their legal studies to immerse themselves in relevant materials.

Competency levels on these outcomes may vary. To achieve the outcomes, you need to meet all course expectations, including honouring all course policies, regular class attendance, and completing all assigned work in good faith and on time.

EVALUATION

Students are evaluated based on a final exam. A list of potential exam questions will be distributed approximately halfway through the term to all students. The exam question(s) will be chosen from that list. Students are welcome to debate the exam questions with each other, however, the exam has to be **exclusively** the product of each student's own work **during the day and the time of the exam.** **ABSOLUTELY NO COLLABORATION IS ALLOWED WHEN YOU WRITE YOUR EXAMS. All answers MUST be the product of your own work. The exam will have a word limit.**

COURSE POLICIES

- You are expected to be present and participate in each session.
- All class slides and handouts will be uploaded on D2L. Everyone will have access to these as well as all materials uploaded on D2L.
- It is critical that you read all the materials in order to participate in class discussion.
- I will try to respond to your emails as soon as possible. I am generally available for office hours at all times when I do not teach another course. Please email me if you need an appointment

SERVICES FOR STUDENTS WITH DISABILITIES

If you have a disability of any type (physical, mental, learning, medical, chronic health, sensory; visible or invisible) please consult the Associate Dean, Catherine Cotter early in the term. Depending on the nature of the issue, the Associate Dean may refer you to the Student Accessibility Centre, which will assess your disability and the accommodations you may need. **For this process to unfold, in each term there is a deadline, normally two weeks before the end of classes, to request accommodations due to disability, after which assistance will only be granted for the following term.** The Faculty of Law and the University are committed to supporting students with disabilities, but you must be proactive and timely in requesting accommodation. You may also wish to consult the Student Accessibility Centre's (SAC) website for more information about the services available:

<http://www.unb.ca/fredericton/studentservices/academics/accessibility/index.html>.

CLASS COPYRIGHT

If you wish to distribute course handouts or other similar materials provided, you must obtain my written consent beforehand. Otherwise, all such reproduction is an infringement of copyright and is absolutely prohibited and subject to academic penalties (see Academic Offences below). In the case of private use by students with documented disabilities, my consent will not be unreasonably withheld.

COURSE TOPICS AND READINGS

Below is the intended schedule and topics covered, together with page numbers. It is subject to change in the event of extenuating circumstances and to ensure better student learning. I will notify you if and when changes are made by email **and** in D2L.

Course Structure and Readings:

1. **Why are we here? The syllabus**
 - a. **Session 1- Tuesday, January 11:** Introduction
2. **Legal Education, The Law Student and Jurisprudence**
 - a. **Session 2- Thursday, January 13:**
 - i. Llewellyn, Karl N. Excerpt from *Bramble Bush* (pages 130-140) [PDF](#).
 - ii. Gilmore, Grant. "What is a law School." *Conn L. Rev.* 15 (1982) <https://heinonline.org/HOL/P?h=hein.journals/conlr15&i=19>
 - b. **Session 3- Tuesday, January 18:**
 - i. Llewellyn, Karl N. "On what is wrong with so-called legal education." *Colum. L. rev.* 35 (1935): 651 <https://heinonline.org/HOL/P?h=hein.journals/clr35&i=739>
 - ii. Young, Kathrynne. "A Law School State of Mind" in *How to Be Sort of Happy in Law School* (p.107-116) *Stan. Univ. Press.* [PDF](#).
3. **Law and Justice: a question as old as Plato**
 - a. **Session 4- Thursday, January 20:** What is Justice?
 - i. Plato. "The Republic Book I" excerpts in *The Collected Dialogues of Plato* (p. 575-86) Edited by Edith Hamilton & Huntington Cairns. *Princeton Univ. Press.* [PDF](#).
 - ii. Cairns, Huntington. "Plato's Theory of law". *Harv. L. Rev.* (1942) 56:3. <https://www.jstor.org/stable/1334860?origin=crossref&seq=1>
 - b. **Session 5- Tuesday, January 25:** Rules of the State and Divine Justice
 - i. Sophocles. *Antigone* (verses 425-462) (442 B.C.E). Translated by R. C. Jebb. <http://classics.mit.edu/Sophocles/antigone.html> [PDF](#)
 - ii. Plato. "Crito" in *The Collected Dialogues of Plato* (p. 35-9) Edited by Edith Hamilton & Huntington Cairns. *Princeton Univ. Press.* [PDF](#)
 - iii. Hitz, Zena. "Plato on the Sovereignty of Law." In *A Companion To Greek And Roman Political Thought* (2009) <https://onlinelibrary.wiley.com/doi/pdf/10.1002/9781444310344#page=387>
4. **The Trolley Problem and its twists**
 - a. **Session 6- Thursday, January 27:** Thomson, Judith Jarvis. "The Trolley Problem" *Yale L. Journal* 94.6 (1985): 1395-1415. <http://www.jstor.com/stable/796133>
 - b. **Session 7- Tuesday, February 1:** The Trolley Problem with a Twist
 - i. Marshall, Aarian. "Lawyers, Not Ethicists, Will Solve the Robocar 'Trolley Problem'" *WIRED* (2017). <https://www.wired.com/2017/05/autonomous-vehicles-trolley-problem/>

- ii. Lin, Patrick. "The Ethics of Autonomous Cars". *The Atlantic* (2013). <https://www.theatlantic.com/technology/archive/2013/10/the-ethics-of-autonomous-cars/280360/>
 - iii. Wu, Stephen S. "Autonomous vehicles, trolley problems, and the law." *Ethics Inf Technol* 22, 1–13 (2020). <https://doi.org/10.1007/s10676-019-09506-1>
 - iv. Wolkenstein, Andreas. "What has the Trolley Dilemma ever done for us (and what will it do in the future)? On some recent debates about the ethics of self-driving cars" *Ethics and Information Technology* (2018) 20:163–173. <https://doi.org/10.1007/s10676-018-9456-6>
5. **Some accounting: Happy People; Damages**
- a. **Session 8- Thursday, February 3:** How many are happy?
 - i. Bentham, Jeremy. "Chapter 1: The Principle of Utility" in *An Introduction to the Principles of Morals and Legislation* (2017), p. 1-14. <https://www.earlymoderntexts.com/assets/pdfs/bentham1780.pdf>
 - ii. Mill, John Stuart. "Chapter 2: What Utilitarianism Is" in *Utilitarianism* (1863). <https://www.utilitarianism.com/mill2.htm>
 - iii. Kahneman, Daniel. "Objective Happiness" in *Well-Being: Foundations of Hedonic Psychology*. <http://usd-apps.usd.edu/coglab/schieber/hedonomics/pdf/Kahneman-1999.pdf>
 - b. **Session 9- Tuesday, February 8:** Counting how much it will cost us if x number dies?
 - i. *Grimshaw v Ford Motor Co.* (1981) 119 Cal. App. 3d 757. <https://caselaw.findlaw.com/ca-court-of-appeal/1835119.html>
 - ii. Viscusi, W. Kip. "Corporate Risk Analysis: A Reckless Act?" *Stan. L. Rev.* (2000): 52: 547-598. <https://heinonline.org/HOL/P?h=hein.journals/stflr52&i=567>
6. **Herculian tasks: How do can we be judges?**
- a. **Session 10- Thursday, February 10:** Some Realism
 - i. Holmes, Oliver Wendell. "The path of the law." *Harv. L. Rev.* 110.5 (1997): 991-1009. <https://heinonline.org/HOL/P?h=hein.journals/hlr10&i=479>
 - b. **Session 11- Tuesday, February 15:** Kelsen and Analytical Jurisprudence
 - i. Kelsen, Hans. "Pure Theory of Law and Analytical Jurisprudence, The." *Harv. L. Rev.* 55 (1941): 44. <https://heinonline.org/HOL/P?h=hein.journals/hlr55&i=100>
 - c. **Session 12- Thursday, February 17:** Some Hard Cases
 - i. *The Queen v Dudley and Stephens* (1884). High Court. [PDF](#).
 - ii. Radbruch, Gustav. "Statutory lawlessness and supra-statutory law (1946)." *Oxford Journal of Legal Studies* 26.1 (2006): 1-11. <https://doi.org/10.1093/ojls/gqi041>
 - d. **Session 13- Tuesday, February 22:** But let's stay Positive...
 - i. Hart, Herbert Lionel Adolphus. "Positivism and the Separation of Law and Morals." *Harv. L. Rev.* 71 (1957): 593. <https://heinonline.org/HOL/P?h=hein.journals/hlr71&i=625>
 - e. **Session 14- Thursday, February 24:** ...or... not?
 - i. Fuller, Lon L. "Positivism and fidelity to law--A reply to Professor Hart." *Harv. L. Rev.* 71 (1957): 630. <https://heinonline.org/HOL/P?h=hein.journals/hlr71&i=662>

INTERMEZZO 1

Session 14: Film in class: The Big Short

Session 15: Discussion of film: Who deserves a bailout? And why?

7. Back to the Herculean tasks

- c. **Session 16:** But what is Law- again?
 - i. Dworkin, Ronald. "What is Law?" in *Law's Empire* (1986) p. 1-44. [PDF](#).
- d. **Session 17:** More Hard Cases
 - i. Dworkin, Ronald. "Hard cases." *Harv. L. Rev.* 88 (1974): 1057 <https://heinonline.org/HOL/P?h=hein.journals/hlr88&i=1077>
- e. **Session 18:** A look at a Hard Case :Free Speech in the US, social media and the public private divide
 - i. Text of the US Constitution, First Amendment. <https://constitution.findlaw.com/amendment1.html>
 - ii. *Packingham v. North Carolina - 137 S. Ct. 1730 (2017)* 582 <https://caselaw.findlaw.com/us-supreme-court/15-1194.html>
 - iii. Twitter Inc. "Permanent suspension of @realDonaldTrump". Friday, 8 January 2021. https://blog.twitter.com/en_us/topics/company/2020/suspension.html
 - iv. Bollinger, Lee C. "The Skokie Legacy: Reflections on an "Easy Case" and Free Speech Theory" *Michigan L. Rev.* 80.4 (1982): 617-633. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=4183&context=mlr>

8. But is there a method? Some logic? A formula to decide?

- a. **Session 19: Let's try logic first**
 - i. Dewey, John. "Logical method and law." *Cornell LQ* 10 (1914): 17. <https://heinonline.org/HOL/P?h=hein.journals/clqv10&i=91>
 - ii. Gilmore, Grant. "Law, Logic and Experience." *Howard LJ* 3 (1957): 26. <https://heinonline.org/HOL/P?h=hein.journals/howlj3&i=46>
- b. **Session 20: Now let's try science:**
 - i. Greene, Joshua, & Cohen, Jonathan. "For the law, neuroscience changes nothing and everything". *Phil. Trans. R. Soc. Lond. B* (2004). <https://royalsocietypublishing.org/doi/pdf/10.1098/rstb.2004.1546>
 - ii. Huang, Peter. "Authentic Happiness, Self Knowledge & Legal Policy" in *Minnesota Journal of Law, Science & Technology* (2008) 9:2. <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1265&context=mjlst>
- c. **Session 21: What about psychology?**
 - i. Charles Darwin, "Disdain-Contempt-Disgust-Guilt-Pride, etc.-Helplessness-Patience-Affirmation and Negation" *The Expression of the Emotions in Man and Animals* (University of Chicago Press, 1965) online: <https://doi.org/10.1017/CBO9780511694110.013>
 - ii. Jiayang Fan, "The Gatekeepers Who Get to Decide What Food is 'Disgusting'" *The New Yorker* (May 10, 2021), online: <https://www.newyorker.com/magazine/2021/05/17/the-gatekeepers-who-get-to-decide-what-food-is-disgusting>.
 - iii. Martha C Nussbaum, "Disgust and our Animal Bodies" *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton University Press, 2006), online: <https://login.proxy.hil.unb.ca/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=53697204&site=ehost-live&scope=site>
 - iv. Paul Rozin, Jonathan Haidt, & Clark R McCauley, "Disgust" *Handbook of Emotions* (The Guilford Press, 2000), [PDF](#).

- v. William Ian Miller, “Darwin’s Disgust” *The Anatomy of Disgust* (Harvard University Press, 1998), online:
<https://ebookcentral.proquest.com/lib/unb/reader.action?docID=3300627&ppg=15>.

d. Session 22: Now let’s try the robots- and guess what, we are back to our trolley problems:

- i. Zglinski, Jan. “Rules, Standards and the Video Assistant Referee in Football” in *Sport, Ethics, and Philosophy* (2020).
<https://www.tandfonline.com/doi/full/10.1080/17511321.2020.1857823>
- ii. Artificial Intelligence and National Security, Congressional Research Service
<https://fas.org/sgp/crs/natsec/R45178.pdf>
- iii. CIFAR. “Pan-Canadian Artificial Intelligence Strategy” <https://perma.cc/E5PF-LDL2>
- iv. Department of Finance Canada. “Growing Canada's Advantage in Artificial Intelligence” (2017) <https://perma.cc/KTB4-HS3U>

INTERMEZZO 2

Session 23: Film in class: The 10th District Court

Session 24: Discussion of film: What are we really up against?

9. The Lawyer and Jurisprudence

Session 25: Where from here?

- i. Young, Kathryn. “Designing your Post-Law School Life” in *How to Be Sort of Happy in Law School* (p.251-62) *Stan. Univ. Press*. PDF.
- ii. Seligman, Martin E. P. et al. “Why Lawyers are Unhappy” *Cardozo Law Review* (2001): 23. <https://ojs.deakin.edu.au/index.php/dlr/article/view/268/272>

TECHNICAL SUPPORT

Information Technology Services (ITS) Help Desk can be reached by phone (506.453.5199), email (helpdesk@unb.ca), or visited in person at the Harriet Irving Library Learning Commons.

ACADEMIC ADVISING

For academic advising information and assistance, please speak to the Associate Dean, Catherine Cotter.

ACADEMIC OFFENCES

Academic offences include, but are not limited to, plagiarism, which includes:

1. quoting verbatim or almost verbatim from any source, regardless of format, without acknowledgement;
2. adopting someone else’s line of thought, argument, arrangement, or supporting evidence (such as, statistics, bibliographies, etc.) without indicating such dependence;
3. submitting someone else’s work, in whatever form (essay, film, workbook, artwork, computer materials, etc.) without acknowledgement; and
4. knowingly representing as one’s own work any idea of another.

For more information, see the Undergraduate Calendar, *University Wide Academic Regulations, Regulation VIII.A*, or visit: <http://go.unb.ca/tlsPb0XX5> . **It is your responsibility to know the regulations.**

Please note that the provincial law societies, including the Law Society of New Brunswick and the Law Society of Ontario, require applicants for admission to disclose whether allegations of academic misconduct were made against them during their post-secondary studies. Accordingly, a law student who is implicated in an academic offence, even if he or she graduates from law school, may have difficulty becoming a lawyer. Also note that many law school instructors are lawyers and as such have a professional obligation to report to the Law Society dishonesty that may interfere with a person's ability to practice law.