Course Guide 2016-17

PHIL10166: Philosophy of Law

Course Organiser: Martin Smith (Martin.Smith@ed.ac.uk)
5.08 (DSB) Office Hour: Tuesday 2-3

Course Secretary: Sam Bell (philinfo@ed.ac.uk)

Department of Philosophy
School of Philosophy, Psychology and Language Sciences
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1. Course Aims and Objectives

This course will introduce students to a number of topics and questions in contemporary philosophy of law. There will be particular emphasis on the ways in which philosophy of law overlaps and interacts with legal theory and with branches of philosophy such as epistemology, ethics and political philosophy. Topics to be covered in the course will include the aim of the criminal justice system, the presumption of innocence, standards of legal proof and the rights of defendants. The course will also examine various different legal categories of evidence such as eyewitness testimony, character evidence, forensic evidence and hearsay. Finally, the course will also cover some topics of particular contemporary interest such as ‘cold hit’ DNA convictions and the corroboration rule in Scots law.

2. Intended Learning Outcomes

On completion of this course, students will:

1. Acquire a detailed understanding of a selection of central theories and arguments from contemporary philosophy of law, and will demonstrate this understanding in discussions and essays.
2. Be able to critically assess and compare some principal contemporary arguments and positions in the philosophy of law and to deploy these arguments for themselves.
3. Improve their ability to analyse complex arguments and concepts and to critically dissect arguments and will apply these abilities to topics in the philosophy of law.

3. Seminar Times and Locations

Fridays 2:10pm – 4pm, Dugald Stewart Building Room 1.20

Please note that in addition to the seminars themselves, there will be further opportunities to speak with the course organiser. In particular, you can drop in during his pre-arranged weekly office hours, or else contact him directly to ask a question or arrange a meeting.

4. Seminar Content and Readings

Note: The papers listed below are either freely available online or can be accessed online through the library, using your University ID. Most of the books and edited volumes on the list are also available online through the library – the exceptions, marked with an asterisk, have been placed on short loan.
**Week 1: A Fair Trial/The Presumption of Innocence**

Core Reading:


Further Reading:


**Week 2: What is ‘Beyond a Reasonable Doubt’?**

Core Reading:


Further Reading:

Week 3: Fixing the Standard of Proof

Core Reading:


Further Reading:


Week 4: The Puzzle of Statistical Evidence

Core Reading:


Further Reading:


Week 5: Character Evidence

Core Reading:


Further Reading:

Week 6: The Purpose of the Criminal Trial

Core Reading:

Further Reading:

Week 7: Excluding Evidence/Hearsay

Core Reading:

Further Reading:

Week 8: DNA Evidence

Core Reading:
Further Reading:


**Week 9: Probability in Court**

Core Reading:


Further Reading:

- Barker, M. (2016) ‘Connecting applied and theoretical Bayesian epistemology: Data relevance, pragmatics and the legal case of Sally Clark’ *Journal of Applied Philosophy*
- Kaye, D. ‘The admissibility of “probability evidence” in criminal trials’ *Jurimetrics* v26(4), pp343-346

**Week 10: Eyewitness Testimony**

Core Reading:


Further Reading:

General Reading

There is no set textbook for this course. Rather, as the above reading list suggests, students will be expected to consult and draw upon a range of diverse sources in legal theory, epistemology, moral philosophy, psychology and elsewhere. Having said this, many of the course topics are covered in Larry Laudan’s *Truth, Error and the Criminal Law* (particularly topics 1, 2, 3 and 7). This book is also an excellent example of one of the general themes of this course – namely, approaching questions about criminal procedure through the lens of epistemology – and makes for excellent background reading. This book can be accessed online through the library using your University ID.

The Stanford Encyclopedia of Philosophy entry on ‘The Legal Concept of Evidence’ by Hock Lai Ho also provides a useful introduction to many of the topics we will cover (particularly topics 2, 3, 4, 5 and 7). It is freely available online and can be accessed here: https://plato.stanford.edu/entries/evidence-legal/


The PhilPapers website (http://philpapers.org/) provides a comprehensive directory of philosophical books and articles that are available online, organised by topic. The works on evidence and proof in the law, many of which are related to the topics covered in this course, can be found here: https://philpapers.org/browse/evidence-and-proof-in-law. The more general philosophy of law list, broken down into various sub-topics can be found here: https://philpapers.org/browse/philosophy-of-law Finally, Google scholar, (http://scholar.google.com/) is another resource that is worth a look.