Course Guide (2021/22)

PHIL10185: Epistemology and Evidence Law

Course Organiser: Martin Smith (Martin.Smith@ed.ac.uk)

Course Secretary: Ann-Marie Cowe (philinfo@ed.ac.uk)

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

This course applies theories and ideas from contemporary epistemology to questions and puzzles in the law of evidence – that branch of the law concerned with the proof of facts in legal proceedings. Topics to be covered include the presumption of innocence, the beyond a reasonable doubt standard of proof, sentencing and punishment, character evidence, forensic evidence and eyewitness testimony. The course may also cover, in any given year, topics of particular contemporary interest – such as the use of biometric evidence in criminal prosecution, and the ‘corroboration rule’ and ‘not proven’ verdicts distinctive of Scots law.

2. Intended Learning Outcomes

On completion of this course, students will:

1. Demonstrate a detailed understanding of a selection of central topics and theories in epistemology and evidence law.

2. Critically assess and compare arguments in epistemology and evidence law and deploy these arguments for themselves.

3. Analyse complex arguments and concepts.

4. Write and discuss with greater clarity, rigour and structural transparency and develop appropriate research skills in philosophy.

3. Seminars

Seminars will take place on Fridays from 11.10-13.00 in room 1.20 in DSB. Seminars will usually consist of a one-hour lecture, followed by one hour of discussion. Lecture sides will be made available on LEARN prior to each lecture.

4. Background Reading (or Viewing)

There is no set textbook for this course. Rather, 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 8). This book also provides an excellent illustration of the central theme of this course – namely, approaching questions about criminal procedure through the lens of epistemology – and makes for valuable 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, 5, 6 and 8). It is freely available online and can be accessed here: https://plato.stanford.edu/entries/evidence-legal/

There are many excellent documentaries which touch upon issues to be covered in this course. Here are two: https://en.wikipedia.org/wiki/O.J.:_Made_in_America, https://en.wikipedia.org/wiki/The_Staircase

5. Seminar Content and Readings

Almost all of 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: Punishment

Core Reading:


Additional Reading:


**Week 5: The Puzzle of Statistical Evidence**

Core Reading:


Further Reading:


**Week 6: Character Evidence**

Core Reading:


Further Reading:


Week 7: The Purpose of the Criminal Trial

Core Reading:


Further Reading:


Week 8: Excluding Evidence/Hearsay

Core Reading:


Further Reading:

Week 9: DNA Evidence

Core Reading:


Further Reading:


Week 10: Eyewitness Testimony/Corroboration

Core Reading:


Further Reading:

- See also: https://www.bbc.co.uk/news/magazine-27290883
6. Assessment

This course is assessed by two essays and a participation component.

1. A 1500 word midterm essay, due at 12 noon on Thursday the 21st of October (40%).

2. A 2500 word final essay, due at 12 noon on Thursday the 9th of December (55%).

3. Participation (5%).

All essays must be submitted via LEARN – for any problems or queries concerning essay submission, please contact the course secretary. A list of essay questions, for both the midterm and final essays will be made available on LEARN. The participation mark will be based on essay plans and/or meetings – more details about this will be provided at the beginning of the course.