Course Guide (2019/20)

PHIL10185: Epistemology and Evidence Law

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

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

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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. Seminar Times and Locations

Mondays 11:10pm – 1pm, Dugald Stewart Building Room 3.10

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. 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

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: 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