PHIL10166: Philosophy of Law

Course Organiser: Martin Smith (Martin.Smith@ed.ac.uk)
5.08 (DSB) Office Hour: Friday 1-2

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 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 presumption of innocence, standards of legal proof, the justification of punishment, and the rights of defendants. The course will also examine legal, ethical and epistemological questions concerning various 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 in 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, Library Teaching Room 1.07

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 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 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