Introduction to Legal Studies

Legal 250 – Spring 2005 • Professor Thomas Hilbink
Tuesday and Thursday, 2:30 – 3:45 p.m.
137 School of Management
www.umass.edu/legal/Hilbink/250

This course explores the ways law shapes society and society shapes law. It takes as a starting point the belief that law does not simply exist on its own, independent of influences by people, politics, and social institutions. Rather, law reflects the context in which it is made and used. Further, we will look at many forms of law. Law is not simply what is in leather-bound tomes in a lawyer’s office. Law is not simply what the U.S. Supreme Court says. Law is constituted in many forms and places: on the streets, in individual exchanges, in cultural practices, on television. Over the course of the term, the course will explore definitions and concepts of law, the forms law takes and the forums in which it is shaped, the different ways that people understand law and the legal system, the ways injuries and disputes are understood and mediated, the goals and purposes of trials, and the concept and importance of rights in the United States and elsewhere.
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Office Hours:
I cannot stress enough how helpful and important office hours can be. Please take advantage of these times to clarify any questions you have about the course, to further discuss materials of interest, or to better understand class assignments
• Professor Hilbink
  Thursdays 11 to 1 and by appointment
• Kemi George
  Wednesdays 3-5
• Amanda Kirk
  Tuesdays & Thursdays 11-12

Schedule for Major Assignments
March 2\textsuperscript{nd}, in-class examination
April 17\textsuperscript{th}, first paper due by noon to 110 Gordon Hall
May 12\textsuperscript{th}, final paper due by noon to 110 Gordon Hall

Deadlines for Other Materials
Written Class Participation
Written responses to class participation questions must be turned in (in class) within a week after the class for which the questions were written

Extra Credit Assignments
Written responses to extra credit lectures and events must be turned in (in class) within a week after the event.
Course Readings

I have gone to great effort to choose a set of readings that are interesting, help explain fundamental concepts covered in the course, or provide material to spur class debate and discussion. I cannot claim that every reading satisfies all three goals. There may be what some consider too much reading. After looking over the syllabus, if you think you can’t or won’t do the reading, now is the time to look elsewhere for a class. This is not meant to scare you, just to make you aware that completing the readings will be essential to getting a good grade in this course. None of the assignments or exams will entail outside research thus allowing you to concentrate on that which you will have before you in three sources:

Books
• Bonsignore et al., Before the Law (8th edition, 2006)
  o Available at Jeffrey Amherst Bookstore downtown.
    • NOTE: I recommend purchasing the 7th edition of Before the Law which is a few years old and can be had for cheap. Note, however, that if you do purchase the 7th edition, you will be responsible for determining the pagination of reading assignments.
• Ewick and Silbey, The Common Place of Law (1998)
  o Available at Jeffry Amherst Bookstore. You may be able to find used copies of this book for sale online as well. Try abebooks.com or alibris.com for starters. However, don’t wait until the last minute to get the book. Last term some students waited until a few days before the final and found they couldn’t get a copy.

Course Reader
• Available at Collective Copies downtown. Call first to be sure they have copies ready for pick-up: 256-6425

Website
• I maintain a website for this course on which I have posted readings. The schedule below lays out which readings are on the website.
• The web address is: http://www.umass.edu/legal/Hilbink/250/readings.htm

All non-website reading materials will be on reserve at the library as well.

Course Objectives
• Develop a deeper understanding of the many faces of law, how law is shaped, how people think about law, the role of law in society, the intersection of law and politics, etc.
• Develop strong logical and critical thinking skills
• Improve analytical and persuasive writing skills
Course Requirements and Expectations

Requirements

• Timely completion and understanding of assigned readings
• Informed and thoughtful class participation
• One in-class examination
• One 3-4 page paper
• One 4-5 page paper

Expectations

I expect you to spend twice as much time out of class in preparation for class sessions as you do in class. Thus, with class taking 2 1/2 hours per week, you should be spending five hours working on the course outside of class. This is an average, of course. It will not always take you 5 hours per week to do readings and prepare for discussion, but it will likely require more time when papers are due.

Before you decide that 7 1/2 hours per class is ridiculous, note that if you are a full-time student taking five classes, this means you are still spending less than 40 hours per week on class attendance and preparation. That’s 37 1/2 hours – still less than a full-time job.

Grading

Grades will be computed on a 100 point scale broken down as follows:

• Class Participation 15 points
• In-class Exam 20 points
• First Paper 25 points
• Final Paper 40 points
• Extra Credit 0-6 points

Grades are totaled at the end of the semester and scaled according to the person with the highest point total in the course. I do not use a simple 95="A" percentage, thus do not assume that if you get a 10/20 on the first exam that you are failing. Last term the grade breakdown was:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>91-100</td>
</tr>
<tr>
<td>A-</td>
<td>81-90</td>
</tr>
<tr>
<td>B+</td>
<td>76-80</td>
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<tr>
<td>B</td>
<td>71-75</td>
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<tr>
<td>B-</td>
<td>66-70</td>
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<td>C+</td>
<td>56-65</td>
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<td>C</td>
<td>51-55</td>
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<td>C-</td>
<td>41-50</td>
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<td>D</td>
<td>31-40</td>
</tr>
<tr>
<td>F</td>
<td>0-30</td>
</tr>
</tbody>
</table>

Note that last term’s grade breakdown will not necessarily determine how grades are distributed this term. I create the scale once I see the grade breakdown at the term’s conclusion.

Class Participation

1) In-class Participation

Despite the fact that this is a big course, class participation remains important. In fact, it is what makes this class fun and interesting (at least for me). You all have different ways of
thinking about the material and sharing those points of view will, I hope, make you think about how else you might think about the issues. Class participation can come in many forms. Insightful, informed comments that show engagement with the lecture, discussion, and readings are the most obvious form. Merely spouting-off with uninformed opinions unconnected to the readings will not help you, however. Such comments generally show that you haven’t been doing the reading, so if you aren’t prepared for class, stay quiet (unless called on). You may, of course, ask questions to help clarify readings or comments I make in lectures. I understand that speaking in class – particularly in front of over one hundred people – is difficult for some people. If this is the case, you can come to office hours (mine or the TAs) to discuss class materials. We will keep records of such visits.

2) Written Participation

You can submit written comments to me if you are too shy to talk or can’t make it to class for some reason. Respond in writing to the questions I distribute for each class. I’ve posted “model” written participation on the course website.

3) Web Discussion

Another option is to post comments and participate in discussions on the WebCT bulletin board (go to https://webct.oit.umass.edu/). A substantive comment (see the first paragraph on class participation for a definition) on WebCT will be treated the same as a comment in class.

Grading Class Participation

Last term I merely counted the number of valuable contributions made by students in class and the top students (in this category) had fifteen points. Thus, you can figure that things will be the same this term. You must distribute your participation more or less evenly across the length of the term. Thus, you may earn up to five points for participation in the each “unit” of the class (unit one: classes 1-8; unit two: classes 11-19; unit three: classes 20-27).

Papers

I warn you at the outset (and you may have heard from others) that I am a demanding grader, particularly on papers. Why? You are college students. If you don’t graduate with good writing skills, you might as well not be here at all (see the article I’ve included at the front of the reader if you don’t believe me). For those involved with the law, good writing is the difference between getting a job and not, between winning a case or not. Writing is the central form of communication in the law, and thus I emphasize it here.

What do I expect? Observation of basic rules of grammar, syntax, and style to begin with. But in addition, you should turn in well-structured, well-corrected papers that clearly state a thesis, defend that thesis with supporting arguments and evidence from the readings, and demonstrate an understanding of the complexities of the issues we are dealing with the course. I have asked the bookstore (Jeffrey Amherst) to order copies of Kate Turabian’s book on writing. It includes a guide to citation as well which you will be expected to follow in writing your papers.
Rare are the students who can complete an acceptable paper begun the night before it is due, so keep up with the readings as we go and give adequate time to reflect, outline, draft, and rewrite all papers. I will facilitate this for you by giving a great deal of lead time, distributing writing assignments far in advance of their due dates.

Due dates are strict. Because I give lead time in distributing assignments, I will grant extensions only in cases of documented illness or death in the family. Penalties for late papers will be laid out in the paper prompts.

Plagiarism and Other Forms of Academic Dishonesty

I have zero tolerance for plagiarism. Aside from the clichés about cheaters only cheating themselves, I think plagiarists are beyond contempt and should be treated as such. If you are caught plagiarizing you will automatically receive an F for the entire course and I will pursue disciplinary proceedings to the fullest extent allowed by University Policy. If you are unclear as to what constitutes plagiarism, consult the University Policies in the University Catalog (I’ve provided a link on the course website). If you still aren’t sure, talk to me. If you’re writing a paper and think something might be plagiarism, assume it is. Knowing the law of plagiarism and other forms of academic honesty is your responsibility. Ignorance of the law is no excuse.

Extra Credit

You may earn up to six points of extra credit in this course by attending talks/events related to law & society scholarship that will be presented around the Five College area this spring. You must then write two-page reflection papers on the substance of the talk/event and relate it to themes and issues in the course. You may earn up to 3 points per paper. Do not simply write a summary of the talk (or article). I want you to discuss the substance of the talk, your reactions to it, and most importantly how you see the talk relating to themes in the course. In short, your paper should demonstrate that you can take the ideas discussed in class and apply them in a different context.

UMass Law & Society Initiative

The UMass Law & Society Initiative will host three talks this spring. Important figures in the field of Law & Society will give talks to faculty and students and If you cannot attend the talk, I will make available an article of the speaker’s that you can read and write a reflection on.

February 23rd

Professor Dan Gordon, “The headscarf and freedom of religion in modern France”

March 2nd

Professor Malcolm Feeley, “The Vanishing Female Criminal”

April 27th

Professor Lisa Hilbink, “Judges for Democracy: Law and politics in post-authoritarian nations”
Other Events

Last term students approached me with suggestions of other talks to add to this list. I am open to suggestions. If there is a talk you would like to attend that you think is germane to the issues discussed in this class, please bring me a flyer, email, or other description of the event with time and place so that I may decide whether or not to include it on this list.
Class Schedule
(subject to revision)

1. January 31st
   Introduction: What do we talk about when we talk about law?
   - Reader

   Course Unit One

2. February 2nd
   Thinking Critically about Law
   - In-class handout & website

3. February 7th
   What is the Basis of Law?
   - Before the Law
     - “Why the Haves Come Out Ahead,” pp. 81-89
     - “Law and Popular Will,” pp. 151-53
     - Romer v. Evans, pp. 174-79
   - Reader
     - Leviticus 19, p. 3
     - Catharine MacKinnon, “A Rally Against Rape,” pp. 5-7

4. February 9th
   Why Do People Obey the Law?
   - Before the Law
     - “Law and Authority,” pp. 158-63
     - “Letter from Birmingham Jail,” 251-55
   - Reader
     - Tom Tyler, “Why do people obey the law?” pp. 9-21

5. February 14th
   How Do People Think About Law?
   - The Common Place of Law, chapter two (pp. 15-32)

6. February 16th
   How Do People Think About Law?
   - The Common Place of Law, chapter four (pp. 57-107)
7. February 23rd
How Do People Think About Law?
• The Common Place of Law, chapter five (pp. 108-64)

8. February 28th
How Do People Think About Law?
• The Common Place of Law, chapter six (pp. 165-220)

9. March 2nd
Pre-exam Review and Questions

10. March 7th
In-Class Exam

Course Unit Two

11. March 9th
How Do We Think About Blame and Payback?
• Before the Law
  • “The Transformation of Disputes by Lawyers,” pp. 500-02
• Website
  • Felstiner, Sarat, and Abel, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…”

12. March 14th
Who Should Decide Who Gets Payback?
• Before the Law
  • “Transformation of American Law,” pp. 475-76
  • “The Not-so-quiet Revolution,” pp. 478-81
• Reader

13. March 16th
Can the Law Heal All Wounds?
• Reader
  • Sally Bermanzohn, “Through Survivor’s Eyes,” pp. 47-70

14. March 28th
Is there a Better Way to Decide?
• Website
  • Eric Feldman, “Blood Justice: Courts, Conflict, and Compensation in

15. March 30th

Trials and Truths: What Do We Expect?
• Before the Law
  • “The ‘Fight’ Theory,” pp. 375-80
• Website

16. April 4th

Trials and Truths: Can Trials Establish Non-Legal Truths?
• Reader
  • Garry Wills, Under God (New York: Simon & Schuster, 1990), pp. 71-81

17. April 6th

Crime and Punishment: Where is Truth in the Criminal Trial?
• Before the Law
  • “I Have Nothing to do with Justice,” pp. 381-94
• Reader
  • Jeffrey Toobin, “Killer Instincts,” The New Yorker, January 17, 2005, pp. 95-104
• Website
  • “The Criminal Lawyer’s ‘Different Mission’”

18. April 11th

Crime and Punishment: How Should We Punish People?
• Reader
  • Daniel Brook, “The Problem of Prison Rape,” Legal Affairs (March/April 2004), pp. 113-18
• Website

19. April 13th

Crime and Punishment: Should the State Kill?
• Guest Lecturer: Dr. Aaron Lorenz
• Website
Course Unit Three

20. April 18\textsuperscript{th}

Does the Law Rule?

- Before the Law
  - “The Rule of Law Versus the Order of Custom,” pp. 232-45
- Website
  - Joseph Raz, “The Rule of Law and Its Virtue”

21. April 20\textsuperscript{th}

What Do You “Have” When You “Have a Right...”??

- Reader
- Website
  - Mary Ann Glendon, Rights Talk

22. April 25\textsuperscript{th}

Do Rights Make a Difference?

- Before the Law
  - Florida v. Bostick, pp. 293-300
- Reader
  - Brown v. Board of Education, pp. 129-36
  - Charles Payne, “‘The Whole United States is Southern!’” pp. 137-43

23. April 27\textsuperscript{th}

Conflicting Rights: Pornography

- Before the Law
  - Harris v. Forklift Systems, pp. 203-08
- Reader
  - Nadine Strossen, “Positive Aspects of Pornographic Imagery,”
    Defending Pornography, pp. 143-55
- Website
  - Catharine MacKinnon, Only Words, pp. 155-75

24. May 2\textsuperscript{nd}

Crime and Punishment: Keeping an Eye on You

- Before the Law
25. **May 4th**  
**Life (and law) During Wartime**  
- **Reader**  
  - *Korematsu v. United States*, pp. 157-68  

26. **May 9th**  
**Life (and law) During Wartime**  
- **Reader**  
  - Jenny S. Martinez, “José Padilla and the War on Rights,” *Virginia Quarterly Review*, vol. 80(4), 219-24  
- **Website**  
  - Associated Press, “Nearly Half in U.S. say Muslim civil liberties should be restricted,” December 18, 2004

27. **May 11th**  
**Life (and law) During Wartime**  
- **Website**  
  - Readings on NSA surveillance, TBA