UPDATED January 8, 2014

Classroom: Hazel 332
Meeting Times: Mons., Weds. 10:00 a.m. – 11:15 a.m.
Exam: take-home

Office hours and whereabouts

My office is on the fourth floor, in the faculty suite, Room 420. My phone number is (703) 993-8247. My email address is eclaeys@gmu.edu. The course also has a TWEN site, and I am reachable on the discussion board of that site.

This semester, I will hold office hours Mon. and Wed. mornings, 11:15 a.m. to noon. These are “walk-by” hours, meaning that I do not have any other appointments during them and you are free to come in to my office without appointment. However, I am happy to schedule appointments if you have a conflict during office hours or if you prefer for other reasons.

Cancellations and make-up classes

At this time, I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium and on the door of Hazel 332, and I will send an email to the class. If I do need to cancel class, I will run three other, later classes as 2-hour sessions from 10 to 11:50 (and cancel office hours on the days that I do this).

Class reading

On most class days, the reading will run 15-20 pages per 75-minute session. On several occasions, however, the reading will go as high as 30 pages. (Especially when I assign cases or discussions of legal materials.)

To help you read ahead, this syllabus forecasts the reading I anticipate covering for the entirety of the course. However, this forecast is not a promise but a projection. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor.
Class expectations

I hope this class runs itself as a seminar; if it doesn’t, I’ll do my best to conduct the class Socratically. The class won’t succeed on either model if you don’t do the reading—and do it actively, in preparation to discuss, question, and/or argue with me or fellow-students.

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day.

If you miss more than 6 class hours (the equivalent of 4 classes), I will not seat you for the examination and I will give you a “forced withdraw” grade for the course.

With one exception, this is a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, have a personal emergency, &c. You do not need to let me know in advance that you will be absent (and I prefer not to be notified), but by the same token I will not excuse absences in general. I will not enforce the attendance policy, however, if the GMU Provost’s office designates the day a day of observance for a religion and you certify to me that you are a member of that religion. Consistent with the GMU Provost’s Guidelines: “It is the obligation of students to provide faculty, within the first two weeks of the semester, with the dates of major religious holidays on which they will be absent, and the dates for which they are requesting an excused absence for participation in any university-sponsored activity scheduled prior to the start of the semester, and as soon as possible otherwise.”

I expect you to prepare for class. If I call on you and you are unprepared, that counts as an absence for 45 minutes (i.e., ½ of one of your 4 class absences, or 1/8 of the total time you may be absent without going over the maximum time limit). If you are unprepared and wish to avoid getting called on, please notify me before the beginning of class and I will mark you for a 22-minute absence (1/4 of a class, or 1/16 of the total time allowable).

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.

Recording classes

I reserve all rights in my class lectures, presentations, and discussions. As a general rule, I prefer that classes not be recorded. However, I will grant permission in specific cases when a student can demonstrate a special need. For example, as noted above, if you are missing class to observe a religious holiday I will allow you to make arrangements to have a classmate record class. If you think you have such a need, please ask and we can discuss. If you prefer to ask anonymously, please contact Annamaria Nields, Associate Dean of Students, and she can ask me on your behalf.
Grading

The grade for this class will be based solely on a take-home examination. I anticipate—meaning, I forecast now, reserving to change my mind later—that you will have a 6,000-word limit. I also anticipate (with the same built-in contingencies) that you will be able to take the exam at your convenience over a 1-week period running from the first day after the review session until the end of the exam period. (I hope to schedule the review session during the school reading period.)

Course materials

The assigned casebook is


On at least 6 class days—clustered especially at the BEGINNING of the semester—we’ll read from materials I assign. I will make supplemental readings available in hard copy at the beginning of the semester.

Supplemental readings will also posted online, on the class TWEN site, in the page for ‘Supplemental Readings.’ Hardcopies will be available on the 4th floor, in the entry area for the faculty offices along the side of Hazel Hall facing Founders’ Hall. (This area connects to the catwalk over the Records Office on the 3d floor, and it has ‘407’ in numbers on the glass entryway.) Susan Birchler, one of the faculty secretaries, has a desk in this area. Supplements will NOT be available from Ms. Birchler BUT RATHER on the workdesk OPPOSITE Ms. Birchler’s desk. If you have any trouble getting copies of the readings, please email me and copy my faculty secretary, Ms. Kha (ykha@gmu.edu).

Course reading

‘Himma’ assignments refer to page ranges from the course textbook, Himma, *The Nature of Law*.

‘Supp.’ assignments refer to page ranges in the course supplement, and specifically the page ranges hand-written on the photocopied version of the supplement.

All assignments in the course supplement will be available on the course TWEN site, in the subfolder for ‘class readings’, individually broken out. Most **but not all** of the electronic copies of the readings will have the page ranges handwritten on the hard-copy version of the supplement.
1) Monday, January 6

Problems in Jurisprudence: concrete examples (I)

*Hinman v. Pacific Air Transport* (9th Cir. 1936). (Supp. pp. 1-5.)


2) Wednesday, January 8

Problems in Jurisprudence: concrete examples (II)

All of today’s readings are available in the course supplement and also on TWEN, under the subfolder for ‘class readings.’


3) Monday, January 13

Problems in Jurisprudence: concrete examples (III)

Supp. no. 2, pp. 58-64. These materials are called “English and Colonial Attitudes toward Slavery”. They include excerpts from Germantown Protest Against Slavery (1688), South Carolina Slave Code (1740), Blackstone, *Commentary on the Laws of England* (1766), and *Somersett’s Case* (K.B. 1772).


4) Wednesday, January 15


No class Monday, January 20. (In observance of the Martin Luther King, Jr. holiday.)
5)-6) Wednesday January 22 and Monday January 27.

Classical Natural Law Theory.


7)-8) Wednesday January 29 and Monday February 3

Early Legal Positivism

Himma pp. 29-49

9) Wednesday February 5

Himma pp. 50-67

10)-11) Monday February 10 and Wednesday February 12

Dworkin’s Critique of Positivism

Himma pp. 68-91


12) Monday February 17

The New Natural Law Theory

Himma pp. 92-105.

13) Wednesday February 19

Neoclassical Natural Law Theory

Himma pp. 105-20.

14) Monday February 24

Strong Natural Law Theory
Himma pp. 120-27.

Dworkin’s Third Theory (start)

Himma pp. 128-36.

15)-16) Wednesday February 26 & Monday March 3

Continue and complete Dworkin’s Third Theory

Himma pp. 136-66.


17)-18) Wednesday March 5 & Monday March 18

Criteria of Validity: Contemporary Positivism

Himma pp. 167-95.

19) Wednesday March 20

Criteria of Validity: The Rule of Recognition

Himma pp. 205-20.

20) Monday March 24

Criteria of Validity: Recognition and Planning

Himma pp. 220-35.

21) Wednesday March 26

Criteria of Validity: Is the Rule of Recognition a Conventional Legal Rule?

Himma pp. 235-51.

22) Monday March 31
Inclusive and Exclusive Legal Positivism
Himma pp. 252-70.

23)-24) Wednesday April 2 & Monday April 7
The Problem of Legal Obligation
Class 23: Natural Law Solutions
Class 24: Positivist Solutions, and Law as a Point of View
Himma pp. 359-79.

25)-28) Wednesday April 9, Monday April 14, Wednesday April 16, and Monday April 21
The Methodology of Conceptual Analysis
Class 25: Introduction, and Descriptive Jurisprudence
Himma pp. 484-502.
Class 26: More on Descriptive Jurisprudence, and a Critique of It
Himma pp. 503-18.
Class 27: Normative Jurisprudence
Himma pp. 524-40.
Class 28: Naturalized Jurisprudence, and Skepticism about Conceptualism
Himma pp. 546-52, 559-65.