

CURRICULUM PROPOSAL COVER SHEET
University-Wide Undergraduate Curriculum Committee

LSC Use Only
Number <u>137</u>
Action <u>Approved</u>
Date <u>10-11-90</u>

UWUCC Use Only
Number _____
Action _____
Date _____

I. TITLE/AUTHOR OF CHANGE
 COURSE/PROGRAM TITLE PH 450 Philosophy of Law
 DEPARTMENT Philosophy & Religious Studies
 CONTACT PERSON Dr. Vincent J. Ferrara

** Note Slightly Revised description.*

II. THIS COURSE IS BEING PROPOSED FOR:
 _____ Course Approval Only
 _____ Course Approval and Liberal Studies Approval
X Liberal Studies Approval only (course previously has been approved by the University Senate)

III. APPROVALS

Sharon Montgomery 5-4-90
 Department Curriculum Committee

Sharon Montgomery 5-4-90
 Department Chairperson

College Curriculum Committee

College Dean*

Chad [Signature]
 Director of Liberal Studies
 (where applicable)

Provost
 (where applicable)

*College Dean must consult with Provost before approving curriculum changes. Approval by College Dean indicates that the proposed change is consistent with long range planning documents, that all requests for resources made as part of the proposal can be met, and that the proposal has the support of the university administration.

IV. TIMETABLE

Date Submitted
 to LSC _____
 to UWUCC _____

Semester/Year to be
 implemented _____

Date to be published
 in Catalog _____

GENERIC SYLLABUS
ELECTIVE ONLY

I. CATALOGUE DESCRIPTION

PH 450 Philosophy of Law

3 credits
3 Lecture Hours

An examination of the nature of law and its relationship to such questions as morality, obligation, judicial review, justice, rights, punishment, liberty. The course combines philosophical theory with consideration of selected court cases to develop a philosophical and legal understanding of law and its place in society.

II. Course Objectives

1. To introduce students to the range of philosophical issues connected with law, and to consider some of the interrelationships between laws, ethics, and political theory.

2. To illustrate the impact of law in everyday life through such questions as paternalism, racial and gender equality.

3. To enable students to think critically about the nature of law, its related problems, and ethical, social, political, and legal issues.

4. To develop critical skills in reading philosophical and legal material related to law.

5. Where appropriate and feasible, to differentiate between western and non-western systems of law.

III. Course Outline*

Text: Philosophy of Law, 3rd edition, edited by Joel Feinberg and Hyman Gross, Wadsworth, 1986

An Introduction to Legal Reasoning, Edward H. Levi, The University of Chicago Press, 1949

Other examples of possible book length readings are: Lon Fuller, The Morality of Law; Legal Fictions; H.L.A. Hart, The Concept of Law; Law, Liberty. and Morality; Philip Soper: A Theory of Law; John Hart Ely: Democracy and Distrust; Benjamin N. Cardozo: The Nature of the Judicial Process; The Growth of the Law; Roberto Mangabeira Unger: The Critical Legal Studies Movement.

Introduction

Outline of Text Sections w/commentary on problems raised

- (1) Law itself
- (2) Liberty
- (3) Justice
- (4) Responsibility
- (5) Punishment

A. Introduction

1. Nature and value of jurisprudence; kinds of law; tradition of law; characteristics of the western legal tradition; non-western legal traditions
2. Schools of jurisprudence
 - a. Natural Law and neo-natural law: Thomas Aquinas; Lon Fuller; Ronald Dworkin
 - b. Historical school: F. von Savigny
 - c. Positivism:
 - [i] imperative theory of Hobbes
 - [ii] analytical jurisprudence: John Austin; Wesley Newcomb Hohfeld; H.L.A. Hart
 - d. American Legal Realism: John Chipman Gray; Oliver Wendell Holmes; Karl Llewellyn; Jerome Frank
 - e. Vienna School: Hans Kelsen
 - f. Scandinavian school: Alf Ross; Frede Castberg; Alex Hagerstrom; Karl Oliversrone
 - g. The Critical Legal Studies Movement: Roberto Mangabeira Unger
3. Problems in the Philosophy of Law
4. Nature and Validity of Law in four main theories: natural law; positivism; American legal realism; critical legal studies

B. Law and Morality

1. Natural Law, Kantianism, Utilitarianism
2. Hart, Fuller, Devlin, Dworkin
3. Selected cases

C. Obligation and Law

1. Plato: Crito
2. Hobbes: Leviathan; De Cive
3. Locke: Second Treatise on Government
4. Philip Soper: Theory of Law

D. Judicial Review

1. John Hart Ely, Democracy and Distrust
2. Robert H. Bork, "Neutral Principles and Some First Amendment Problems," 47 Indiana Law Review (1971)
3. George C. Christie, "Objectivity in the Law," 78 Yale Law Journal (1969)
4. Ronald Dworkin, Taking Rights Seriously; A Matter of Principle; Law's Empire
5. Alexander Hamilton, Federalist 78
6. Marbury v. Madison 2 L.Ed. 60 (1803)
7. Possible guest lecturer

- E. Liberty
 - 1. John Stuart Mill, On Liberty
 - 2. Cohen v. California 408 U.S. 15 (1971)
 - 3. Joel Feinberg, Limits to the Free Expression of Opinion
- F. Paternalism
 - 1. Rolf Sartorius, Paternalism
- G. Privacy
 - 1. Types
 - 2. Two-fold meaning of privacy
 - 3. Value of privacy
 - 4. Warren and Brandeis, "The Right to Privacy," 4 Harvard Law Review (1890)
 - 5. Selected law articles
 - 6. Selected privacy cases
- H. Rights
 - 1. History, concept, types, properties
 - 2. Sources in Dworkin, Finnis, Lyons, Tuck, Hohfeld
- I. Justice
 - 1. Plato, Aristotle, Rawls, Nozick, del Vecchio
 - 2. Themes: nature of justice; justice and compensation; justice and contract; discrimination and reverse discrimination
- J. Philosophical Issues in Law: a normative approach
 - 1. procedural law
 - 2. contract law
 - 3. tort and property law
 - 4. criminal law
- K. Responsibility
 - 1. idea of responsibility
 - 2. responsibility and causation
 - 3. selected court cases
 - 4. fault
- L. Punishment
 - 1. theories of punishment
 - 2. selected court cases
 - 3. punishment and rehabilitation

*NOTE: The above outline covers traditional topics, but would vary according to the instructor

IV. Evaluation Methods

- 1. traditional examinations of an objective and/or essay type
- 2. research papers; book reports
- 3. class presentations
- 4. analysis of court cases illustrating concepts

V. Required Textbooks: varies with instructor

- 1. Any of a number of anthologies, e.g., Joel Feinberg and Hyman Gross, Philosophy of Law, 3rd edition.
- 2. Selected court cases from Supreme Court, Federal and State courts.
- 3. Selected articles from law journals put on reserve

4. Handouts and outlines of material not readily available.
5. One full length book (not a textbook) will be required reading.

VI. BIBLIOGRAPHY*

Anita Allen: Uneasy Access: Privacy for Women in a Free Society, 1988.

P.S. Atiyah, Promises, Morals, and Law, Oxford, 1981

Michael D. Bayles, Principles of Law, A Normative Analysis, Reidel, 1987

Beccaria, On Crimes and Punishments, Macmillan, 1987

Harold J. Berman, Law and Revolution, The Formation of the Western Legal Tradition, Harvard University Press, 1983

Gerald Dworkin, The Theory and Practice of Autonomy, Cambridge, 1988

Ronald Dworkin, Taking Rights Seriously, Harvard University Press, 1978; A Matter of Principle, Harvard University Press, 1985; Law's Empire, Harvard University Press, 1986

John Hart Ely, Democracy and Distrust: A Theory of Judicial Review, Harvard University Press, 1980

Charles Fried, Contract as Promise: A Theory of Contractual Obligation, Harvard, 1981

Lon Fuller, The Morality of Law, revised edition, Yale University Press, 1964

H.L.A. Hart, The Concept of Law, Oxford University Press, 1981

Edward H. Levi, An Introduction to Legal Reasoning, The University of Chicago Press, 1949

Philip Soper, A Theory of Law, Harvard University Press, 1984

Roberto Mangabeira Unger, The Critical Legal Studies Movement, Harvard University Press, 1986

Jeremy Waldron, Theories of Rights, Oxford, 1984

LIBERAL STUDIES COURSE APPROVAL FORM

About this form: Use this form only if you wish to have a course included for Liberal Studies credit. The form is intended to assist you in developing your course to meet the university's Criteria for Liberal Studies, and to arrange your proposal in a standard order for consideration by the LSC and the UWUCC. If you have questions, contact the Liberal Studies Office, 353 Sutton Hall; telephone, 357-5715.

Do not use this form for technical, professional, or pre-professional courses or for remedial courses, none of which is eligible for Liberal Studies. **Do not** use this form for sections of the synthesis course or for writing-intensive sections; different forms will be available for those.

PART I. BASIC INFORMATION

A. For which category(ies) are you proposing the course? Check all that apply.

LEARNING SKILLS

- First English Composition Course
- Second English Composition Course
- Mathematics

KNOWLEDGE AREAS

- Humanities: History
- Humanities: Philosophy/Religious Studies
- Humanities: Literature
- Fine Arts
- Natural Sciences: Laboratory Course
- Natural Sciences: Non-laboratory Course
- Social Sciences
- Health and Wellness
- Non-Western Cultures
- Liberal Studies Elective

B. Are you requesting regular or provisional approval for this course?

- Regular** **Provisional** (limitations apply, see instructions)

C. During the transition from General Education to Liberal Studies, should this course be listed as an approved substitute for a current General Education course, thus allowing it to meet any remaining General Education needs? yes no

If so, which General Education course(s)? PH 101, 120, 221, 222

Liberal Studies Form -- 2

PART II. WHICH LIBERAL STUDIES GOALS WILL YOUR COURSE MEET? Check all that apply and attach an explanation.

All Liberal Studies courses must contribute to at least one of these goals; most will meet more than one. As you check them off, please indicate whether you consider them to be primary or secondary goals of the course. [For example, a history course might assume "historical consciousness" and "acquiring a body of knowledge" as its primary goals, but it might also enhance inquiry skills or literacy or library skills.] Keep in mind that no single course is expected to shoulder all by itself the responsibility for meeting these goals; our work is supported and enhanced by that of our colleagues teaching other courses.

Primary Secondary

A. Intellectual Skills and Modes of Thinking:

- 1. Inquiry, abstract logical thinking, critical analysis, synthesis, decision making, and other aspects of the critical process. X _____
- 2. Literacy--writing, reading, speaking, listening _____ X
- 3. Understanding numerical data _____ _____
- 4. Historical consciousness _____ X
- 5. Scientific inquiry _____ _____
- 6. Values (ethical mode of thinking or application of ethical perception) X _____
- 7. Aesthetic mode of thinking _____ X

B. Acquiring a Body of Knowledge or Understanding Essential to an Educated Person

_____ _____

C. Understanding the Physical Nature of Human Beings

_____ _____

D. Certain Collateral Skills:

- 1. Use of the library _____ X
- 2. Use of computing technology _____ _____

PART III. DOES YOUR COURSE MEET THE GENERAL CRITERIA FOR LIBERAL STUDIES? Please attach answers to these questions.

- A. If this is a multiple-section, multiple-instructor course, there should be a basic equivalency (though not necessarily uniformity) among the sections in such things as objectives, content, assignments, and evaluation. Note: this should not be interpreted to mean that all professors must make the same assignments or teach the same way; departments are encouraged to develop their courses to allow the flexibility which contributes to imaginative, committed teaching and capitalizes on the strengths of individual faculty.

What are the strategies that your department will use to assure that basic equivalency exists? Examples might be the establishment of departmental guidelines, assignment of responsibility to a coordinating committee, exchange and discussion of individual instructor syllabi, periodic meetings among instructors, etc.

cf. explanation

- B. Liberal Studies courses must include the perspectives and contributions of ethnic and racial minorities and of women wherever appropriate to the subject matter. **If your attached syllabus does not make explicit that the course meets this criterion, please append an explanation of how it will.**

cf. explanation

- C. Liberal Studies courses must require the reading and use by students of at least one, but preferably more, substantial works of fiction or nonfiction (as distinguished from textbooks, anthologies, workbooks, or manuals). **Your attached syllabus must make explicit that the course meets this criterion.**

[The only exception is for courses whose primary purpose is the development of higher level quantitative skills; such courses are encouraged to include such reading, but are not expected to do so at the expense of other course objectives. If you are exercising this exception, please justify here.]

cf. explanation

- D. If this is an introductory course intended for a general student audience, it should be designed to reflect the reality that it may well be the only formal college instruction these students will have in that discipline, instead of being designed as the first course in a major sequence. That is, it should introduce the discipline to students rather than introduce students into the discipline. **If this is such an introductory course, how is it different from what is provided for beginning majors?**

cf. explanation

E. The Liberal Studies Criteria indicate six ways in which all courses should contribute to students' abilities. To which of the six will your course contribute? Check all that apply and attach an explanation.

- 1. Confront the major ethical issues which pertain to the subject matter; realize that although "suspended judgment" is a necessity of intellectual inquiry, one cannot live forever in suspension; and make ethical choices and take responsibility for them.
- 2. Define and analyze problems, frame questions, evaluate available solutions, and make choices
- 3. Communicate knowledge and exchange ideas by various forms of expression, in most cases writing and speaking.
- 4. Recognize creativity and engage in creative thinking.
- 5. Continue learning even after the completion of their formal education.
- 6. Recognize relationships between what is being studied and current issues, thoughts, institutions, and/or events.

PART IV. DOES YOUR COURSE MEET THE CRITERIA FOR THE CURRICULUM CATEGORY IN WHICH IT IS TO BE LISTED?

Each curriculum category has its own set of specific criteria in addition to those generally applicable. The LSC provides copies of these criteria arranged in a convenient, check-list format which you can mark off appropriately and include with your proposal. **The attached syllabus should indicate how your course meets each criterion you check. If it does not do so explicitly, please attach an explanation.**

CHECK LIST -- LIBERAL STUDIES ELECTIVES

Knowledge Area Criteria which the course must meet:

- Treat concepts, themes, and events in sufficient depth to enable students to appreciate the complexity, history, and current implications of what is being studied; and not be merely cursory coverages of lists of topics.
- Suggest the major intellectual questions/problems which interest practitioners of a discipline and explore critically the important theories and principles presented by the discipline.
- Allow students to understand and apply the methods of inquiry and vocabulary commonly used in the discipline.
- Encourage students to use and enhance, wherever possible, the composition and mathematics skills built in the Skill Areas of Liberal Studies.

Liberal Studies Elective Criteria which the course must meet:

- Meet the "General Criteria Which Apply to All Liberal Studies Courses."
- Not be a technical, professional, or pre-professional course.

Explanation: Appropriate courses are to be characterized by learning in its broad, liberal sense rather than in the sense of technique or professional proficiency. For instance, assuming it met all the other criteria for Liberal Studies, a course in "Theater History" might be appropriate, while one in "The Craft of Set Construction" probably would not; or, a course in "Modern American Poetry" might be appropriate, while one in "New Techniques for Teaching Writing in the Secondary Schools" probably would not; or, a course on "Mass Media and American Society" might be appropriate, while one in "Television Production Skills" probably would not; or, a course in "Human Anatomy" might be appropriate, while one in "Strategies for Biological Field Work" probably would not; or, a course in "Beginning French" might be appropriate, while one in "Practical Methods for Professional Translators" probably would not.

PART II. Liberal Studies Goals:

A1. The study of law requires three skills: interpretive reading; reasoning; clear and precise writing. The student will be introduced into the second by means of selected court cases which illustrate the use of principles to reach reasonable, but debatable conclusions. The student is also shown that in law decisions must be made even in the hardest of cases, and that conclusions must be drawn using available principles and facts. The student will also discuss the competing theories of law and their effect on actual decision making. Finally, the themes of paternalism, rights, liberty, etc. involve a substantial level of critical analysis, synthesis, decision making.

A2. The second skill required for this course is the ability to read interpretively, and write clearly and precisely. Class discussions will require clarity of speech.

A4. Historical consciousness will be developed to the extent that theories functioning during different periods of time will be considered.

A6. Value questions are central to a discussion of law which must adjudicate among competing value claims, e.g., rights of parties; state and individual, privacy issues, etc. The student is shown how values play a role in both procedure and substantive legal matters. The role of value in contract, criminal, tort, or civil cases is also considered. A normative consideration of law is also found in the areas of the lawyer-client relationship, professionalism, and legal ethics.

B. Acquiring a Body of Knowledge or Understanding Essential to an Educated Person

Law, with philosophy, formed the essential education of the medieval student. Its role in a democratic society is no less significant. Law affects individuals in all aspects of their lives, and the study of law opens the student to a wide range of intersocial relationships: individuals with other individuals; individuals and groups; groups and other groups.

D1. The course will require use of the library for collateral reading in court cases, and for research in conjunction with a term project.

PART III. General Criteria

A. Basic equivalency of all sections of this course would be assured by the following process. All instructors who have taught this course during the previous academic year and summer or intend to teach the course the following academic year will meet at the conclusion of the spring semester. They will review this document, including the generic syllabus. They will exchange individual syllabi and then will discuss whether or not they are adequately meeting the specific goals and criteria approved for this course and outline herein. Any problems or conflicts would be brought to the attention of the entire department for resolution.

B. The course can easily accomodate this liberal studies requirement since recent legal changes have emphasized racial/ethnic/women questions. The theme of minorities in a majoritarian society has been constant in American law for the last 90 years, and questions of privacy, discrimination, equal rights have been dominant in the last 30 years.

C. Most readings are primary sources. Some are anthologies containing articles and/or selections by major philosophers or legal scholars. Required readings will include at least one booklength work by a major figure. Some court cases are monograph length and would fulfill the Liberal Studies criterion. Examples of such court cases are: Furman v. Georgia; Griswold v. Connecticut; Roe v. Wade. Examples of booklength readings are: Examples of possible book length readings are: Lon Fuller, The Morality of Law; Legal Fictions; H.L.A. Hart, The Concept of Law; Law, Liberty. and Morality; Philip Soper: A Theory of Law; John Hart Ely: Democracy and Distrust; Benjamin N. Cardozo: The Nature of the Judicial Process; The Growth of the Law; Roberto Mangabeira Unger: The Critical Legal Studies Movement.

D. We do not have introductory major courses as such. This course meets all the requirements of a Liberal Studies "mandated" course except that it is a little more intense and demands a little more reading and comprehension ability. It would, therefore, be an ideal course for the better students at IUP. If a student can fulfill a requirement at a higher level should (s)he be required to take a lower level course?

E1. cf. syllabus

E2. cf. syllabus

E3. This would be accomplished through class discussion, oral reports, shared research.

E4. This would be accomplished through recognition of applied principles to specific court cases.

E5. The study of law provides the student with a background against which political and career decisions could be made.

E6. Cases studied and application to current events would accomplish this.

PART IV. Curriculum Category

1. This course fulfills the criteria selected. It does not consider either the mathematical or the aesthetic.

2. The course considers non-western traditions marginally and would be contingent on the instructor's acquaintance with non-western legal systems.