Note: As has been explained in prior communications, Ph.D. students will take an exam that is tailored to satisfy the requirements of the Preliminary Examination and therefore that is different from the standard exam in both its process and its content.

COURSE OBJECTIVES

This course is designed to familiarize students with the major shifts in legal thought from the late 19th century through the start of the 21st century. Students will work toward identifying the major movements in American jurisprudence and understanding what work a particular analytical approach is doing in the relevant scholarship. A subquestion of particular importance for us will relate to “interpretation,” a term intended in two senses. First, we will analyze the modes of interpretation associated with each school of thought by examining primary and secondary sources. We will learn how framing one’s methodological question may require fidelity to a particular form of interpretation. Second, we will attend closely to our own modes of interpretation, learning to identify different strands of jurisprudence by reading case law, statutes, and other materials that form the object of traditional legal scholarship, in parallel with explicitly jurisprudential texts. Highlights include legal positivism; legal realism; law and literature; and critical legal studies, including critical race theories and feminist studies. Ph.D. students who enroll in the course are required to take the Preliminary Examination at the end of the quarter, and in so doing they will satisfy the final requirement for this course. JD and other non-Ph.D. students who enroll will take a standard four-hour examination at the end of the quarter.

COURSE STRUCTURE

The course is structured by general topic, with each week focusing on one movement or sub-movement in American jurisprudence. Class discussion will focus on theories and background materials from or on a given school of thought. An important theme running through the course is how these different schools of legal thought have played out in the arena of tort law. Using this substantive field as a
backdrop against which to analyze jurisprudence allows us to canvas a body of law that has long existed but that has undergone many philosophical and doctrinal changes. Tort law is, moreover, in many respects a quintessentially American law, given its emphasis on money damages, its fairly easy access for plaintiffs, and its intense politicization by proponents of tort reform and their opponents. Indeed, foreign observers are often surprised by the idiosyncrasies of American tort law, suggesting its plausibility as a test case for ways that American legal thought has taken unique and distinctive shape. Tort law encapsulates many important questions of justice, efficiency, and legal-regime design. Seeing jurisprudential theories play out in the context of tort law helps students see beyond the rarefied terrain of jurisprudential texts to what is ultimately at stake.

**COURSE SKILLS**

The course provides students with theoretical backgrounds in the major schools of American legal thought. This will equip students to understand the nature and sources of legal arguments made in scholarship as well as in advocacy. It also enables students to understand the weaknesses of arguments' claims and structures, thus providing the tools necessary to rebut and critique different approaches to the law. Though the class requires engagement with an applied problem every week, the nature of the experiential learning in this classroom is more philosophical than practical. It invites students to examine their intuitions, their morals, and their views about how these personal values can or should affect the law, if at all. It also provides exposure to tort law's underlying theories, justifications, and major developments.

**COURSE POLICIES**

**ATTENDANCE & MAKEUP CLASSES**

Students must attend all classes. Students must bring the day's reading assignment to class. I will not podcast except under exceptional circumstances. If documented illness or other extenuating circumstances arise, students are responsible for

(a) contacting me, in advance of class if possible, and
(b) getting notes from classmates before the next class, if possible, and
(c) touching base with me about whether anything additional may be required.

**GRADING**

40%: Participation, including one or two ten-minute presentations (the number of presentations will depend on final course enrollment)
60% Examination
**Participation**

Students are expected to participate regularly. Participation should reveal students’ familiarity with course materials assigned for the day. I will ‘cold-call’ students during any class, at any time, beginning on the first day of class, whenever necessary. However, I will do so in order to invite students to discuss the materials, not to challenge or test them. In other words, the method may seem unfriendly, but its execution will not be. Frequently, I will call upon a subsequent student to comment upon or pick up from a prior student’s response. Please listen to and respect the diversity of viewpoints among your colleagues. Students may also voluntarily participate. Students will also sign up for one or two 10-minute presentations (with the number of required presentations depending on final course enrollment). We will take a 7-10 minute break during each class.

Please note this class should feel like a graduate seminar, not a first-year law class. Accordingly, the reading load is not light, though it is rich and rewarding. Learn the art of skimming, where material gets extraneous or seems repetitive; learn the art of close reading, where material seems to focus on the heart of the matter or speaks to other readings from the syllabus. Not all the materials you read are of equal importance on every one of their pages. Figuring this out is, to some extent, a judgment call, but practicing that judgment helps prepare you for the high volumes of reading you will encounter in the life of the law, whether in the academy or in practice.

**Course Website**

You are responsible for checking the course web site for updates to the syllabus as well as supplemental cases, statutes or articles I may post there. If I use Power Point slides during class, I will post them to the course web site *after* class, if they contain substantive material; illustrations or photographs will typically not be posted.

**Recordings**

Students may not make audio or video recordings of class sessions.

**Laptop Usage**

Laptops may be used only for note-taking. I will ask students to put screens down during moments reserved for discussion. The use of the internet at any time during class is expressly forbidden except in cases in which I indicate otherwise. I adopt a strict view of laptop usage in part out of respect for those classmates trying to pay attention. Please see the excepted language from the *Faculty Laptop Policy*, appended to this syllabus.
DISABILITY-RELATED NEEDS

To request accommodations due to a disability, please contact Disability Resources for Students (DRS), # 448 Schmitz Hall, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please make an appointment to see me so we can discuss any accommodations you might need in this class.

REQUIRED TEXTS:

• JURISPRUDENCE: CLASSICAL AND CONTEMPORARY: FROM NATURAL LAW TO POSTMODERNISM, 2D Ed., (2002) ROBERT L. HAYMAN, NANCY LEVIT, RICHARD DELGADO, EDs. (“HLD”)
• GRANT GILMORE, THE AGES OF AMERICAN LAW (1977)
• ALL OTHER READINGS POSTED TO COURSE WEBSITE
  o Class website: https://canvas.uw.edu/courses/849982

Note: Please print & bring all assigned materials to class.
Schedule of Readings

**Week 1: Natural Law**
9/23 M: Introduction to the course; Introduction to Natural Law
Martha Minow, *Archetypal Legal Scholarship: A Field Guide*
HLD 1-10; 18-30; 39-41; 253-256 [Lochner v. New York, 198 U.S. 45 (1905)]
Murphy v. Steeplechase Amusement Co., 250 N.Y. 479 (1929)

9/25 W: Natural Law, Continued
HLD 41-54
Rylands v. Fletcher, L.R. 3 H.L. 330 (1868)
Lon L. Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949)

**Week 2: Positivism**
9/30 M: Introduction to Positivism and Formalism
HLD 74-112
Riggs v. Palmer, 115 N.Y. 506 (1889)
Gilmore, 19-40: skim for background only

10/2: W: Positivism and Other Perspectives on the Law of Rescue
84 TEX. L. REV. 653 (2006)

**Week 3: Natural Rights vs. Positivism**
10/7 M: Positivism and Formalism, Continued
HLD 112-147; 262-264
United States v. Kirby, 74 U.S. (7 Wall.) 482 (1868)

10/9 W: The Hart-Fuller Debate
Fuller, Lon L., *Positivism and Fidelity to Law — A Reply to Professor Hart*, 71 HARV. L. REV. 630 (1958)
Week 4: Legal Realism
10/14 M: Introduction to Legal Realism and Instrumentalism
HLD 156-208
Gilmore, 41-67

10/16 W: Legal Realism, Continued
HLD 209-253
Gilmore, 68-98

Week 5: Legal Realism in Context
10/21 M: Legal Realism and Products Liability Law
Escola v. Coca-Cola Bottling Co., 24 Cal. 2d 453, 462
Greenman v. Yuba Power Products, 59 Cal. 2d 57 (1963)
William L. Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099 (1960)
Gilmore, 99-111

10/23 W: Legal Realism and the Landowner Duty
Rowland v. Christopher, 443 P.2d 561 (1968)

Week 6 Law and Economics
10/28 M: Introduction to the Jurisprudence of Law and Economics
HLD: 299-316; 323-338; 348-352; 371-379

10/30 W: Law and Economics in Tort Law
HLD: 380-401

Week 7 Critical Legal Studies; Feminism; Critical Race Theory
11/4 M: Introduction to Critical Legal Studies (“CLS”) and Feminism
HLD: 402-421; 436-451
Dillon v. Legg, 68 Cal.2d 728 (1968)

11/6 W: Feminism and Critical Race Theory
HLD: 613-650; 660-664; 674-680; 696


**Week 8: Law and Literature**

*11/11 M: No Class: Veterans Day Holiday*

*11/13 Law and Literature*

HLD: 451-472; 479-498; 517-520

Desmond Manderson, “Two Turns of the Screw,” in *The Hart-Fuller Debate in the Twenty-First Century* (ed. Peter Cane)(To Be Posted)

Henry James, *The Turn of the Screw* (1898)(To Be Posted)

**Week 9: Ongoing Debates in Legal Interpretation**

*11/18 Textualism, Intentionalism, Purposivism*


Church of the Holy Trinity v. United States, 143 U.S. 457 (1892)

*11/20 W: Readings TBD*

**Week 10: Review/TBD**

*11/25 M: Readings TBD*

*11/27 W: No Class: Thanksgiving*

*12/2 M: No Class*

*12/4 W: No Class*
APPENDIX

Excerpt from Approved Faculty Laptop Policy:

Faculty members may:

• Restrict types of [laptop] use - a faculty member can tell students that they may only use laptop computers to take notes and not for any other purpose.

• Minimize distracting effect on other students - a faculty member can require students to mute their computers and to set them up before class begins in order to avoid distracting other students.

• Regulate where students using laptops may sit - a faculty member can require students using a laptop to sit in the front row(s) of the classroom (both so that other students and the faculty member can police their use of the laptop for legitimate purposes).

• Punish a failure to comply with the restrictions on laptop use – if a student violates a faculty member's use-of-laptop policy (such as by using it to surf the internet instead of taking notes), the faculty member can ban the student from using the laptop in class for the remainder of the year.