

Law 300: Concepts in American Law (Fall 2013)

Professor Ronald Garet

Tuesdays and Thursdays, 2:00-3:20, Law School room 130

Only "PPL" and "Law, History & Culture" majors may enroll in this course.

Required textbook and photocopied reader

Students are required to purchase both the course textbook and the course reader.

- The textbook is Frederick Schauer, Thinking Like a Lawyer (Harvard University Press, 2009).
- The course reader is a set of supplementary photocopied materials, which will be available for purchase at CopyVision in the basement (lower level) of the Law School building, room 18 on **Friday, August 23**. CopyVision accepts cash, check or credit card. The purchase price is \$15 cash and \$16.50 for check or credit card.

A PDF of the first week's readings in the Photocopied Reader is available:

[Here](#)

In a typical week, we will read a chapter of the textbook together with cases and other materials in the course reader. Each week's reading assignments will be posted in the table of assignments (scroll down this webpage).

I will use this webpage rather than Blackboard to post information to you. Plan to visit this webpage at least once a week, so you can access up-to-date assignments and posted copies of handouts and other course resources.

Calendar of exercises and exams

Written exercise #1 <u>Assigned:</u> Tuesday, September 17 <u>Due:</u> Tuesday, September 24 <u>Returned:</u> Thursday, October 3	Written exercise #2 <u>Assigned:</u> Thursday, October 17 <u>Due:</u> Thursday, October 24 <u>Returned:</u> Thursday, October 31	Written exercise #3 <u>Assigned:</u> Thursday, November 7 <u>Due:</u> Thursday, November 14 <u>Returned:</u> Thursday, November 21
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In-class midterm: Tuesday, October 8. The midterm exam will be closed-book and closed notes. It will include multiple choice questions and short answer questions. (I will post to the website some examples of the kinds of questions that will be on the midterm.)

Final exam: Thursday, December 12, 2:00-4:00. The final exam will be closed-book and closed notes. It will include multiple choice questions and short answer questions.

Syllabus

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1. Required texts

Students are required to purchase both the course textbook and the course reader.

- The textbook is Frederick Schauer, Thinking Like a Lawyer (Harvard University Press, 2009).
- The course reader is a set of supplementary photocopied materials, which is available for purchase in CopyVision in the basement (lower level) of the Law School building, room 18. The purchase price is \$15 cash and \$16.50 for check or credit card.

In a typical week, we will read a chapter of the textbook together with cases and other materials in the course reader. Reading assignments are posted in the table of assignments (scroll down this webpage).

2. Office hours and lunches

I am looking forward to talking together - in class discussions, during office hours, and at lunches.

- Office hours. I will be in my office, room 452 of the Law School, for office hours on most Tuesdays and Thursdays after class, 3:30-5:00. No appointment is needed. Should you have a conflict with those hours, please send me email at rgaret@law.usc.edu and we will arrange a time to meet.
- Lunches. I will circulate sign-up sheets for several lunches. These are “bring your own lunch” events, where five or six of us can talk with one another about issues of interest.
- Lituo Huang office hours. My teaching assistant, third-year law student Lituo Huang, will hold regular office hours on Tuesdays, 3:30-4:30, in the Law School Café. Should you have a conflict with those office hours, send email to Lituo at lituo.huang.2014@lawmail.usc.edu and she will arrange another time to meet with you.

3. Class preparation and study

Please come to class each day prepared to discuss that day’s assigned readings. You may find it helpful to read a whole week’s assignment once through, then reread each day’s assignment before class. When reading a case, always annotate it (marking up the text, writing marginal notes, writing a short outline) so that you can answer the following questions. What are the facts? What court is hearing the case? (Is it a trial court or an appellate court? If the case is before an appellate court, what was decided in the court(s) below?) Which party is bringing suit, and which is being sued? What issue or issues has the court undertaken to decide? What decision has the court reached on that issue or on those issues? What reasons has the court advanced in support of its conclusions? If there are additional opinions, such as concurrences or dissents, how do those opinions differ from the majority’s argument and analysis?

When we discuss a case in class, you will find it helpful to have your marked-up copy of the case in front of you, so that you can refer to the text (and to your notes on it) in response to a question or as evidence to support an argument or interpretation you wish to advance.

4. Learning goals

- You will develop an introductory ability to read cases critically. This includes an ability to identify and state issues (questions of law and questions of fact); state the facts and procedural posture of the case, and explain why these are relevant to the issues; state a decision’s holding and disposition. Reading cases critically also includes being able to model or diagram the structure of a legal argument; identify the argument’s assumptions, and the evidence on which the argument relies; and point out weaknesses in the argument, including possible objections that have not been answered.
- You will develop your capacity for reason-giving by observing (and responding to) reasons for legal conclusions in several domains of the law, including statutory interpretation, common law, and constitutional law.
- You will develop an introductory ability to notice how claims about history, culture, society, politics, morality, personality, and other elements of the human condition, are asserted and contested in the course of legal reasoning.

5. Teaching method and class participation

- I do not do much lecturing in class; the introductory “lectures” are mostly contained in the assigned readings (textbook and reader). Most of the class hours are devoted to discussion of issues - to uncovering the questions that surface when lawyers try to predict how legal decision-makers will decide these issues, and to working through the reasons that lawyers give when trying to be persuasive about how these issues should be resolved. As to some of the topics under discussion, reasonable minds can and do differ. In many ways, what we are learning to do is to carry out a certain kind of reasonable disagreement (named “legal reasoning”) within the language and framework of the rule of law.
- Accordingly, you should come to class each day prepared to be a participant. Even if at a moment in class I am talking with a student other than yourself, play along with the dialogue and consider whether you agree or

disagree with your classmate, and with me. Actively thinking through the issues is far more important than passively observing or taking notes.

6. Reasonable disagreement and mutual respect

Disagreements (even reasonable disagreements) about what the law means, and about what result the law demands or permits given some set of facts, can implicate our sense of right and wrong and our convictions about the meaning and worth of our lives. We will find ways to have reasoned disagreements, and make reasoned arguments, precisely at the many points in which the application of the law to the facts exposes unresolved issues and touches nerves. We will try to be good friends to one another by offering arguments and counter-arguments in such a way that disagreement becomes a sign of respect. As William Blake wrote, “Opposition is true friendship.”

7. The “Socratic method”

- I will use the principal method of law school instruction, the so-called “Socratic method.” This means that in a typical class session, I will “cold call” on a student and ask him or her one or more questions about the case that we have read. The questions I ask are meant to stimulate the reason-giving process. Accordingly, if I follow up on your initial answer by asking you another question or by offering an objection, or by testing your answer with a hypothetical scenario, I am not commenting adversely on your answer. Instead, I am investigating the ground and implications of the position you are taking.
- If, at any time, you are feeling uncomfortable with some subject under discussion, or for any other reason you would prefer not to be called on in class on a given day or days, please let me know before class begins (e.g., by sending me an email). I will always honor that request. You do not need to explain why you would prefer not to be called on.
- Though the so-called “Socratic method” can cause some anxiety, I use this method despite that effect, not because of it. I use this method to model and stimulate legal reasoning – especially to model the kind of legal reasoning that takes place at oral argument in appellate courts, when judges ask counsel to explain which interpretations of the law are plausible (and of those interpretations, which is best and why).

8. Bases of evaluation

Written exercises: 30% of course grade

There will be three written exercises, which together comprise 30% of the course grade. The exercises are fact-pattern essay questions, in which you are given some facts and some law (such as a statute) and asked to state the issue, analyze it, and suggest how it should be decided. You are to answer the question in a short essay (two or three pages). The purpose of these exercises is to provide occasions for applying what you are learning. Because the craft of writing an answer to a fact-pattern essay question is for many of us a new one, your lowest grade among the three exercises will be disregarded. (In other words, the written exercise component of your course grade will consist of an average of your two highest scores among the three written exercises.) Unless I have granted an extension in advance, written exercises submitted after their due dates will not satisfy course requirements.

Midterm: 25% of course grade

The midterm exam will be closed-book and closed notes. It will include multiple choice questions and short answer questions.

Final exam: 30% of course grade

The final exam will be closed-book and closed notes. It will include multiple choice questions and short answer questions.

Class participation: 15% of course grade

Students are expected to read each assignment carefully and critically, and to contribute to class discussion. (See §§5, 6, and 7, above.)

Grading scale

Although Law 300 is offered by the USC Law School and taught by a member of the USC Law School faculty, you will receive transcript grades that conform to the College grading scale: A = 4.0, A- = 3.7, B+ = 3.3, B = 3.0, B- = 2.7, C+ = 2.3, etc. At the Law School, we have a more granulated grading scale, represented in the following table:

4.1	A+
4.0	A
3.9	A
3.8	A
3.7	A-

3.6	A-
3.5	A-
3.4	B+
3.3	B+
3.2	B
3.1	B
3.0	B
2.9	B-
2.8	B-
2.7	B-
2.6	C+
2.5	C+
2.4	C
2.3	C-
2.2	C-
2.1	C-
2.0	D

Another difference between Law School and College grading is that at the Law School, all instructors must conform their grades to a normalized curve. In large classes at the Law School, the median is set at 3.3, which (as you can see from the above table) is a B+. When they receive their grades, law students (especially those with good math skills) can readily see whether their performance placed them in the top quartile, second quartile, third quartile, or bottom quartile.

We are not subject to a normalization constraint in Law 300. Nonetheless, when I return grades to you (for example, after the midterm), I will tell you what the median score was and also the score thresholds for the top quartile and third quartile. I do this to help you understand how you are doing relative to your classmates. TA Lituo Huang and I are always available to answer your questions, review your work, and help you do better and better. When I return your written work to you, you see grades to one or two decimal places, such as 4.1, 3.4, 2.95, 2.7, etc. At the end of the semester, I convert your cumulative grade into your Law 300 transcript grade as follows:

If your cumulative course grade is:	Then your College transcript grade is:
Greater than or equal to 3.75	A (4.0)
3.55-3.74	A- (3.7)
3.25-3.54	B+ (3.3)
2.95-3.24	B (3.0)
Less than or equal to 2.94	B- (2.7)

Though the work of legal reasoning is difficult and demanding, experience demonstrates that Law 300 students are capable of doing it very well. Over the first three years of the course's existence (2011 and 2012), no student has earned below a B-, and about half of the students have earned an A or A-. We will grow together in our powers of legal reasoning! Do not hesitate to ask questions, whether in class discussion, in office hours, or via email. Work out your lines of reasoning carefully and clearly, consider alternative positions seriously, and question your assumptions. Set your sights high, and Lituo Huang and I will do all that we can to help you realize your goals.

9. University policies

Academic integrity.

In our legal reasoning, we try to respect one another as reasonable persons who are moral agents and who are accountable for our actions. We assent to fair rules for our shared enterprise of learning "Concepts in American Law." General principles of academic honesty include the concept of respect for the intellectual property of others, the expectation that individual work will be submitted unless otherwise allowed by an instructor, and the obligations both to protect one's own academic work from misuse by others as well as to avoid using another's work as one's own. All students are expected to understand and abide by these principles. Scampus, the Student Guidebook, contains the Student Conduct Code in Section 11.00,

<http://web-app.usc.edu/scampus/1100-behavior-violating-university-standards-and-appropriate-sanctions/>

while the recommended sanctions are located in Appendix A:

http://web-app.usc.edu/scampus/wp-content/uploads/2010/08/appendix_a2010.pdf

Students with Disabilities.

USC adheres to a non-discrimination policy; see

http://www.usc.edu/dept/publications/cat2010/about_catalogue/nondiscrimination_policy.html

Any student requesting academic accommodations based on a disability is required to register with Disability Services and Programs (DSP) each semester. A letter of verification for approved accommodations can be obtained from DSP. Please be sure the letter is delivered to me as early in the semester as possible. DSP is located in STU 301 and is open 8:30 a.m.-5:00 p.m., Monday through Friday. The phone number for DSP is (213) 740-0776.

10. Other policies.

Class begins promptly. Since late arrivals cause a distraction to fellow students, please be on time. Do not enroll in this course if a conflict in your schedule will prevent you from being in your seat, with the day's assigned case open before you on your desk, by 2:00 each Tuesday and Thursday.

No audiotaping or recording of any kind is permitted. If you must miss class due to illness or comparable reason, please let me know (in advance if possible), so I may assist you with the material that you miss.

Thank you! Welcome to Law 300. It is a privilege to be your teacher.

Table of assignments
Schauer = Frederick Schauer, Thinking Like a Lawyer
PR = Photocopied Reader

Class #	Date	Reading assignments	Handouts	Exercises	Other
1	Tues, Aug 27	Schauer ch. 1, <i>Introduction: Is there legal reasoning</i> , pp. 1-12 PR, <i>Ronald Dworkin on law and chess</i> , pp. 1-5 PR, <i>Smith v. United States</i> , pp. 5-14 PR, <i>Notes and questions on Smith v. United States</i> , pp. 14-19 Note: discussion of the <u>Smith</u> case will continue on Thursday			PDF of first week's PR assignment
2	Thurs, Aug 29	PR, <i>Smith v. United States</i> , pp. 5-14 PR, <i>Notes and questions on Smith v. United States</i> , pp. 14-19 PR, <i>Stating issues and holdings at different levels of generality</i> , pp. 19-23			
3	Tues, Sept 3	Schauer ch. 2, <i>Rules -- in law and elsewhere</i> , pp. 13-35 PR, <i>In the matter of Blanchflower</i> , pp. 23-30 Note: discussion of the <u>Blanchflower</u> case will continue on Thursday			
4	Thurs, Sept 5	Continue discussion of PR, <i>In the matter of Blanchflower</i> , pp. 23-30 PR, Note on overinclusiveness and underinclusiveness, pp. 30-31			
5	Tues, Sept 10	PR, <i>The legal syllogism</i> , pp. 32-55			
6	Thurs, Sept 12	PR, <i>Statutes and common law rules</i> , pp. 56-57 PR, <i>Garratt v. Dailey</i> , pp. 57-61 PR, <i>Notes and questions on Garratt v. Dailey</i> , pp. 61-64			
7	Tues, Sept 17	PR, <i>Garratt v. Dailey</i> , pp. 57-61 (continued) PR, <i>Notes and questions on Garratt v. Dailey</i> , pp. 61-6r (continued) Review PR, <i>The legal syllogism</i> , pp. 32-55		Written exercise #1 assigned (distributed in class)	
8	Thurs, Sept 19	Schauer ch. 3, <i>The practice and problems of precedent</i> , pp. 36-60 PR, <i>Notes on precedent</i> , pp. 65-69 PR, <i>Boyd v. Coca Cola Bottling Co.</i> , pp. 70-72 PR, <i>Notes and questions on Boyd</i> , pp. 72-73			
9	Tues, Sept 24	PR, <i>Boyd v. Coca Cola Bottling Co.</i> , pp. 70-72 PR, <i>Notes and questions on Boyd</i> , pp. 72-73 PR, <i>Liggett & Myers Tobacco Co. v. Cannon</i> , pp. 74-78		Written exercise #1 due (submitted in class)	

Class #	Date	Reading assignments	Handouts	Exercises	Other
		PR, <i>Notes and questions on L&M Tobacco</i> , p. 78 PR, <i>Crigger v. Coca Cola Bottling Co.</i> , pp. 79-81 PR, <i>Notes and questions on Crigger</i> , pp. 81-82 PR, <i>Pillars v. R. J. Reynolds Tobacco Co.</i> , pp. 82-84 PR, <i>Notes and questions on R. J. Reynolds</i> , p. 85			
10	Thurs, Sept 26	PR, <i>Pillars v. R. J. Reynolds Tobacco Co.</i> , pp. 82-84 PR, <i>Notes and questions on R. J. Reynolds</i> , p. 85 PR, <i>Crigger v. Coca Cola Bottling Co.</i> , pp. 79-81 PR, <i>Notes and questions on Crigger</i> , pp. 81-82 PR, <i>Macpherson v. Buick Motor Co.</i> , pp. 85-98 PR, <i>Notes and questions on Macpherson</i> , 98-101			
11	Tues, Oct 1	PR, <i>Macpherson v. Buick Motor Co.</i> , pp. 85-98 (continued) PR, <i>Notes and questions on Macpherson</i> , 98-101 (continued) PR, <i>Dworkin, How law is like literature</i> , pp. 101-106 PR, <i>Notes and questions on Dworkin</i> , pp. 106-110			
12	Thurs, Oct 3	Schauer ch. 6, <i>The idea of the common law</i> , pp. 103-123 Review written exercise #1		Written exercise #1 returned (in class)	
13	Tues, Oct 8	No reading assignment. In-class midterm.			
14	Thurs, Oct 10	Schauer ch. 11, <i>Law and fact</i> , pp. 203-218 PR, <i>Introduction to the concepts of law and fact</i> , pp. 111-117 PR, <i>Assessments built into perception and description</i> , pp. 117-125 (be prepared to discuss <i>Smith v. Bocklitz</i>)			In making transportation plans, please be aware that USC is playing a home game in the Coliseum this afternoon / early evening.
15	Tues, Oct 15	PR, <i>Cognitive psychology: seeing the gun that isn't there</i> , pp. 125-138 PR, <i>Cognitive psychology: hindsight bias</i> , pp. 138-144			
16	Thurs, Oct 17	PR, <i>Legal narrative: framing choices and the characters of those who choose</i> , pp. 144-177		Written exercise #2 assigned (distributed in class)	
17	Tues, Oct 22	Schauer ch. 12, <i>The burden of proof and its cousins</i> , pp. 219-233 PR, <i>Sufficiency of the evidence</i> , pp. 178-195 (be prepared to discuss <i>State v. Rusk</i>)			
18	Thurs, Oct 24	Continue discussion of <i>State v. Rusk</i> , PR 178-195		Written exercise #2 due (submitted in class)	
19	Tues, Oct 29	PR, <i>Culture and judgment</i> , pp. 196-217. (We will discuss testimony, evidence, perception and criteria in the <i>Mashpee</i> case. In preparation for class, complete a legal syllogism worksheet. Model the argument structure of the <i>Mashpee</i> decision, beginning with the relevant text of the Nonintercourse Act and concluding with the jury's finding that the Mashpee were not a tribe.			
20	Thurs, Oct 31	Schauer ch. 4, <i>Authority and authorities</i> , pp. 61-84 PR Supp pp. 1-10, Tarr, <i>The federal and state court systems</i> , especially the section on "The federal courts today."		Written exercise #2 returned (in class)	

Class #	Date	Reading assignments	Handouts	Exercises	Other
		PR, Authority concepts in law and legal reasoning, PR pp. 218-222			
21	Tues, Nov 5	PR, Cover, <i>Justice Accused</i> , pp. 222-228 PR, Finkelman, <i>Legal ethics and fugitive slaves</i> , pp. 229-257 PR, <i>Notes and questions on Legal ethics and fugitive slaves</i> , pp. 257-258 PR, <i>Frederick Douglass</i> , pp. 258-261			
22	Thurs, Nov 7	PR, <i>Introduction to Dred Scott</i> , pp. 261-266 PR, <i>Dred Scott v. Sandford</i> , pp. 267-279 PR, <i>A dialogue about the constitutional issues in Dred Scott</i> , pp. 279-282		Written exercise #3 assigned (distributed in class)	
23	Tues, Nov 12	Schauer ch. 9, <i>The judicial opinion</i>, pp. 171-187 Continue discussing the <i>Dred Scott</i> case, PR pp. 267-279 PR, <i>Constitutional interpretation</i> , pp. 282-284 PR, <i>For further thought about the Dred Scott case</i> , pp. 285-287 PR, <i>The authority of the Constitution</i> , pp. 287-291			
24	Thurs, Nov 14	Schauer ch. 8, <i>The Interpretation of Statutes</i>, pp. 148-170 PR, <i>Church of the Holy Trinity v. United States</i> , pp. 291-301 PR, <i>Notes and questions on Church of the Holy Trinity</i> , pp. 301-305		Written exercise #3 due (submitted in class)	
25	Tues, Nov 19	Schauer ch. 7, <i>The challenge of legal realism</i>, pp. 124-147 PR, Llewellyn, <i>The Bramble Bush</i> , pp. 305-310 PR, <i>Does life experience legitimately inform legal judgment</i> , pp. 310-322			
26	Thurs, Nov 21	PR, <i>Does life experience legitimately inform legal judgment</i> , pp. 310-322 (discussion continued) PR, <i>The "no-no boys," Kuwabara, and "conduct that shocks the conscience,"</i> pp. 323-339 PR Supp pp. 11-33, Muller, <i>Free to die for their country</i>		Written exercise #3 returned (in class)	
27	Tues, Nov 26	Schauer ch. 10, <i>Making law with rules and standards</i>, pp. 188-202 PR, Note: choosing between rules and standards, p. 345 PR Supp pp. 34-65, <i>Vance v. Ball State University</i> . Be prepared to discuss <i>Vance</i> and the review exercises (PR Supp pp. 62-65).			
	Thurs, Nov 28	Class does not meet (Thanksgiving)			
28	Tues, Dec 3	PR, <i>The ideal of the rule of law</i> , pp. 346-363			
29	Thurs, Dec 5	PR, <i>How Law accommodates or invites its own subversion</i> , pp. 364-403			

Final exam: Thursday, December 12, 2:00-4:00 [location]