

Law 300: Concepts in American Law
Spring 2021
Professor Felipe Jiménez

Schedule

Class meetings: Monday and Wednesday
2:00 PM to 3:50 PM

Class location: Online

Contact Details

Office: Room 423, Gould School of Law

Email: fjimenez@law.usc.edu

Office hours: Tuesday and Thursday,
1:00 PM to 2:00 PM

Assistant: LaKisha Coleman, lcoleman@law.usc.edu, Room 405

Course Description

Law 300 is a course about the fundamental concepts of law and legal systems. It invites you to reflect on law and its status as a social practice from the outside, and to learn about the internal perspective of lawyers and judges who are responsible for giving legal reasons for deciding legal issues. The course combines theoretical questions about law and legal systems in general with more specific questions about particular areas of law. It also combines readings in legal theory with the review of actual legal decisions. You will be expected to analyze and think critically about these cases and materials, respond in class to questions that prompt you to apply your growing legal reasoning and theoretical skills, and discuss with classmates difficult and contested questions of law, morality, and policy. The central aim of the class is to help you to begin thinking about law as a constitutive part of our social world, about the central discussions in legal theory, and about the ways in which these discussions touch upon and intersect with more specific issues in central areas of law, such as contracts, property, constitutional law, and international law.

Prerequisite(s), co-requisite(s), or recommended preparation:

None.

Required Materials (e.g., textbooks or other)

None. All materials will be provided by me.

Learning Objectives

Students who attend the seminar throughout the semester and satisfactorily complete the assignments required in the section below, will be able to:

- Formulate theoretical claims about law, legal reasoning, and the legal system.
- Analyze and evaluate theoretical claims about law, legal reasoning, and legal systems.
- Understand some of the basic concepts of legal theory and legal practice.
- Have a basic grasp of the practice of legal reasoning across diverse areas of substantive law.

Description and Assessment of Assignments

Grading for this course will depend on three components:

- Short papers (40%).
- Class participation (15%).
- Final exam (45%).

Short papers. Throughout the semester, you will need to submit three single-spaced, two to three-page papers about any specific issue(s) raised by, discussed in, or connected to the readings, according to the following schedule:

By midnight of

February 12: paper regarding any topic covered in sections 1-6.

March 5: sections 7-11.

April 2: sections 12-20.

For grading, I will drop the lowest scoring paper. Only the two highest scoring papers will be considered for your evaluation.

I will not accept late papers, except in cases of illness or some other emergency situation. If you find yourself in this position, please let me know as soon as you are able to do so.

Class attendance and participation . You must attend every class, barring sickness or special excuse, in which case you should inform me of your absence prior to the class you will miss.

The participation component is pass/fail. During the semester, I will call upon you randomly to discuss the topics or readings of that class. As long as you are able to contribute whenever I ask you to discuss the topics or readings, you will get credit for this component. You can only fail this component if you are not prepared to talk about the topics or readings at all.

I realize that occasionally something comes up that prevents you from being fully prepared. If you find yourself in this position, please let me know prior to the class for which you aren't prepared.

Final exam. This is the central graded component of the course. It will include two essay questions on one or more of the topics of the semester. The exam will be open-book.

Grading Breakdown

See above.

Course-specific Policies

You are expected to engage in substantive discussion respectfully and as would be expected in a professional environment.

Regular and punctual attendance is expected.

Office Hours

- In normal years, I have scheduled, open office hours. Because we will be online, this year my office hours will be by appointment.
- Whenever you need to meet, just email me and we will set a time and date, typically Tuesday or Thursday sometime between 1:00 PM and 2:00 PM, for a 20-minute appointment.
- Please take advantage of my office hours. This is a resource for you, and you should use it! Feel free to bring any questions, concerns, and comments you have about the course.
- You are also always welcome to email me with any questions, concerns, and comments you have.

Disability Accommodations

If you are entitled to a disability accommodation, please email your accommodation letter to undergraduate@law.usc.edu. Please do not give it to me or discuss your disability or accommodation with me, unless those who respond to the email you send to undergraduate@law.usc.edu ask you to do so.

Below is the tentative schedule of readings for the course. Please note that readings might vary throughout the semester.

Schedule (all readings are available [here](#))

Date	Section	Topic	Mandatory Readings	Optional Readings
I. Law in General				
January 20	1.	Introduction 1: Modern Legal Systems	<ol style="list-style-type: none"> 1. JOHN MERRYMAN AND ROGELIO PÉREZ-PERDOMO, THE CIVIL LAW TRADITION, ch. I and V. 2. Ralf Michaels, "American Law," in <i>Elgar Encyclopedia of Comparative Law</i> 	<ol style="list-style-type: none"> 1. Geoffrey Samuel, "Common Law," in <i>Elgar Encyclopedia of Comparative Law</i>
January 25	2.	Introduction 2: What is Law?	<ol style="list-style-type: none"> 1. John Austin, extract from THE PROVINCE OF JURISPRUDENCE DETERMINED (originally 1832; Cambridge UP, 1995) 2. H.L.A. HART, THE CONCEPT OF LAW (Oxford UP, 1971), Ch. 3: Variety of Laws 	<ol style="list-style-type: none"> 1. JEREMY BENTHAM, OF LAWS IN GENERAL (originally 1782; Athlone Press, 1970), extract
January 27	3.	Law and Morality 1: The Natural Law Tradition	<ol style="list-style-type: none"> 1. MARTIN LUTHER KING, LETTER FROM A BIRMINGHAM JAIL (1963) 2. THOMAS AQUINAS, SUMMA THEOLOGICA (1274), extract 3. JEREMY BENTHAM, ANARCHICAL FALLACIES (1793) 	<ol style="list-style-type: none"> 1. John Finnis, Natural Law and Natural Rights, ch. 1. 2. Amalia Amaya, Virtue and Natural Law, in <i>Research Handbook on Natural Law Theory</i> (2019)
February 1	4.	Law and Morality 2: Hart v. Fuller	<ol style="list-style-type: none"> 1. H.L.A. Hart, <i>Positivism and the Separation of Law and Morals</i>, 71 HARVARD LR 593 (1958), selections 2. Lon Fuller, <i>Positivism and Fidelity to Law: A Reply to Hart</i>, 71 HARVARD LR 630 (1958), selections 	

February 3	5.	Law and Morality 3: Dworkin	1. Ronald Dworkin, <i>Hard Cases</i> , 88 HARVARD LAW REVIEW 1057 (1975), selections	1. Ronald Dworkin, <i>The Model of Rules</i> , 35 UNIVERSITY OF CHICAGO LR 14 (1967), selections
February 8	6.	Legal Realism	1. Felix Cohen, <i>Transcendental Nonsense and the Functional Approach</i> , 35 COLUMBIA LAW REVIEW 809 (1935), selections. 2. Oliver Wendell Holmes, <i>The Path of the Law</i> 10 HARVARD LAW REVIEW 457 (1897)	1. Extract from JEROME FRANK, <i>LAW AND THE MODERN MIND</i> (Brentano, 1930), selections.
II. Legal Reasoning				
February 10	7.	Introduction to Legal Reasoning	1. Frederick Schauer, <i>Thinking Like a Lawyer</i> , Introduction	1. Emily Sherwin, <i>A Defense of Analogical Reasoning in Law</i>
February 17	8.	Law and Rules	1. John Rawls, <i>Two Concepts of Rules</i>	1. Frederick Schauer, <i>Playing by the Rules</i> , selections
February 22	9.	The Common Law 1	1. Frederick Schauer, <i>Thinking Like a Lawyer</i> , Ch. 6, pp. 103-123 2. <i>Riggs v. Palmer</i> , 22 N.E. 188 (N.Y. 1889).	
February 24	10.	The Common Law 2	1. Frederick Schauer, <i>Thinking Like a Lawyer</i> , Ch. 3, pp. 36-60 2. <i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 505 U.S. 833 (1992)	
March 1	11.	Statutory Interpretation	1. Kenneth Shepsle, "Congress is a They Not an It," 12 <i>International Review of Law and Economics</i> 239-256 (1992)	1. Andrei Marmor, extract from <i>LAW AND INTERPRETATION</i> (Oxford UP, 1995) 2. John Manning, <i>Second-Generation Textualism</i> , 98 CALIFORNIA LAW REVIEW 1287 (2010).

				3. <i>Bostock v. Clayton County</i> , 590 U.S. (2020) (selections)
III. Constitutional Law and Theory				
March 3	12.	Constitutional Law and Judicial Review	<ol style="list-style-type: none"> 1. <i>Marbury v. Madison</i>, 5 U.S. (1 Cranch) 137 (1803), short extract 2. Lawrence Solum, Legal Theory Lexicon: The Counter-Majoritarian Difficulty (https://lsolum.typepad.com/legaltheory/2012/09/legal-theory-lexicon-the-counter-majoritarian-difficulty.html) 	1. The Federalist Papers, No. 78 (Hamilton) (1788).
March 8	13.	Constitutional Interpretation	<ol style="list-style-type: none"> 1. Antonin Scalia, <i>Originalism: The Lesser Evil</i>, 57 U. Cin. L. Rev. 849 (1989) 2. Ronald Dworkin, THE MORAL READING OF THE CONSTITUTION (NY Review of Books, 1996) 	
March 10	14.	Constitutional Law and Democratic Theory	1. Jeremy Waldron, Law and Disagreement, selections	1. Niko Kolodny, Rule Over None II: Social Equality and the Justification of Democracy
IV. Law in Particular				
March 15	15.	Private Law: Property	<ol style="list-style-type: none"> 1. Thomas Merrill and Henry Smith, The Oxford Introductions to U.S. Law: Property 2. Cheryl Harris, Whiteness as Property 	1. Harold Demsetz, Towards a Theory of Property Rights
March 17	16.	Private Law: Contracts	1. <i>Wood v. Lucy, Lady Duff-Gordon</i> , 222 N.Y. 88, 118 N.E. 214 (1917)	2. Seana Shiffrin, The Divergence of Contract and Promise
March 22	17.	Private Law: Torts	1. John Goldberg and Benjamin Zipursky, The Oxford Introductions to U.S. Law: Torts	1. Guido Calabresi, The Cost of Accidents

			2. Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99 (1928).	
March 24	18.	Criminal Law	1. Anthony Duff, The Realm of Criminal Law 2. Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness	
March 29	19.	Administrative Law	1. Goldberg v. Kelly, 397 U.S. 254 (1970)	
March 31	20.	International Law	1. Oona Hathaway, Between Power and Principle: An Integrated Theory of International Law	1. Anthony D'Amato, It's a Bird, It's a Plane, It's Jus Cogens 2. Eric Posner, Liberal Internationalism and the Populist Backlash
V. Law and Political Morality				
April 5	21.	The Rule of Law	1. Joseph Raz, The Rule of Law and its Virtue (1979). 2. Margaret Jane Radin, Reconsidering the Rule of Law, 69 B.U. L. Rev. 781 (1989).	
April 12	22.	Law and (In)Justice	1. Jeremy Waldron, Does Law Promise Justice 2. Katharina Pistor, The Code of Capital	
April 14	23.	Law, Public Reason, and Public Violence	1. John Rawls, <i>Political Liberalism</i> , Lecture VI 2. Raff Donelson, <i>Blacks, Cops, and the State of Nature</i> , 15 OHIO ST. J. CRIM. L. 183 (2017)	
April 19	24.	Law, Economics, and Efficiency	1. Ronald H. Coase, <i>The Problem of Social Cost</i> , 3 JOURNAL OF LAW AND ECONOMICS 1 (1960)	1. Lewis Kornhauser, The Economic Analysis of Law, Stanford Encyclopedia of Philosophy
April 21	25.	Feminist Jurisprudence	1. Robin West, <i>Jurisprudence and Gender</i> , 55 UNIV OF CHICAGO LR 1 (1988)	1. Catharine A. MacKinnon, <i>Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence</i> , 8 SIGNS 635 (1983)

April 26	26.	Law, Rights, and Race	<ol style="list-style-type: none"> 1. Patricia Williams, from THE ALCHEMY OF RACE AND RIGHTS (Harvard UP, 1992) 	<ol style="list-style-type: none"> 1. Kimberlé Williams Crenshaw, Race Liberalism and the Deradicalization of Racial Reform, 130 HARV. L. REV. 2298 (2017) 2. State v. Mann, 13 N.C. 263 (1829)
April 28	27.	Political Obligation and Civil Disobedience	<ol style="list-style-type: none"> 1. Candice Delmas, Civil Disobedience, Philosophy Compass 2. Walker v. City of Birmingham 388 U.S. 307 (1967) 	<ol style="list-style-type: none"> 1. ROBERT COVER, JUSTICE ACCUSED (1975), extract

Statement on Academic Conduct and Support Systems

Academic Conduct

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, policy.usc.edu/scientific-misconduct.

Support Systems

Student Health Counseling Services – (213) 740-7711 – 24/7 on call
engemannshc.usc.edu/counseling

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

National Suicide Prevention Lifeline – 1 (800) 273-8255 – 24/7 on call
suicidepreventionlifeline.org

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Relationship and Sexual Violence Prevention Services (RSVP) – (213) 740-4900 – 24/7 on call
engemannshc.usc.edu/rsvp

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

Office of Equity and Diversity (OED) | Title IX – (213) 740-5086
equity.usc.edu, titleix.usc.edu

Information about how to get help or help a survivor of harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following protected characteristics: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

Bias Assessment Response and Support – (213) 740-2421
studentaffairs.usc.edu/bias-assessment-response-support

Avenue to report incidents of bias, hate crimes, and microaggressions for appropriate investigation and response.

The Office of Disability Services and Programs – (213) 740-0776
dsp.usc.edu

Support and accommodations for students with disabilities. Services include assistance in providing

readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

USC Support and Advocacy – (213) 821-4710
studentaffairs.usc.edu/ssa

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

Diversity at USC – (213) 740-2101
diversity.usc.edu

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

USC Emergency – UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call
dps.usc.edu, emergency.usc.edu

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

USC Department of Public Safety – UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call
dps.usc.edu

Non-emergency assistance or information.

Help with Basic Needs

<https://studentbasicneeds.usc.edu/>

If you are experiencing food insecurity

<https://studentbasicneeds.usc.edu/resources/food-insecurity/>

If you are experiencing housing insecurity

<https://studentbasicneeds.usc.edu/resources/housing-insecurity/>

If you are experiencing financial insecurity

<https://studentbasicneeds.usc.edu/resources/financial-insecurity/>

If you need help procuring technology to perform coursework remotely

<https://studentbasicneeds.usc.edu/resources/technology-assistance/>

We realize attending classes online and performing coursework remotely requires access to technology that not all students may possess. If you need resources to successfully participate in your classes, such as a laptop or internet hotspot, you may be eligible for the University's equipment rental program. To apply, please fill out this form (see link above) and our Student Basic Needs team will partner with you to evaluate your options.