

JURISPRUDENCE – 2011

1. INTRODUCTION

Overview

Jurisprudence is a self-standing semester course in the Penultimate year of the LLB degree.

The purpose of the course is to give the students a basic grounding in the central themes of legal philosophy. This will involve examining the major schools of jurisprudence, and introducing the students to the core legal debates that have preoccupied legal philosophers from the early days of civilization to modern times. The course will also focus on how these debates have impacted, and continue to impact, on the legal system in South Africa. The course is designed to serve certain generic purposes: to stimulate critical thought and debate about law as a social and political entity, and to provide a philosophical basis from which the students may better understand the rationales behind the existence, structure and content of the “black-letter” laws that are studied in other legal courses. The course should also give the students an opportunity to think carefully about the values that ought to underpin a country’s legal system, and in particular to see how certain philosophical approaches to law have shaped the way our South African society and its legal system has arranged itself, both in the present and the past.

Credit Value

10 Credits.

Assumptions of Prior Learning

In order successfully to complete this course, students need to be able to:

- Be capable of writing and communicating in coherent English.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library.
- Be capable of independent learning.
- Read, analyse and extract principles from textbooks and other source material.
- Have a working knowledge of legal referencing conventions, and to be able to apply these to their written work.

2. OUTCOMES

Critical Outcomes

Students will be able to:

- (a) identify and solve problems.
- (b) organise and manage themselves and their work load.
- (c) collect, analyse and evaluate information from various sources, as well as information conveyed in the classroom environment.
- (d) communicate effectively in class debate and written assignments.

Intended Specific Outcomes

The Jurisprudence course is designed so that students successfully completing this course should be able to achieve the following outcomes. The student should be able to:

- (a) Understand, explain and evaluate the major schools of legal philosophy.
- (b) Understand, explain and evaluate some of the major jurisprudential debates that have preoccupied legal philosophers.
- (c) Understand how certain philosophical approaches to law have shaped the way our South African society and its legal system has arranged itself in the past.
- (d) Think critically about law as a social and political entity, particularly in the context of contemporary debates about law in modern South African society.
- (e) Understand more clearly the reasons behind the existence, structure and content of the black-letter laws that are studied in other legal courses.

3. TEACHING METHODS

The course will be presented by means of *viva voce* lectures. There is no comprehensive handout for the course, and students will be expected to take their own notes during class. In lectures, only a broad explanatory overview of leading jurisprudential theories will be given. Students will be expected to read extensively to consolidate and develop their understanding of the topics that are covered in the course. Students will also be expected to debate the merits of the various jurisprudential issues in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards. Lectures are compulsory. A student may not miss more than three lectures without excuse. There are no tutorials in this course.

4. COURSE CONTENT

Introduction to natural law

Legal positivism

- Nature and origins
- John Austin and the Command Theory of Law
- Kelsen and the Pure Theory of Law
- Law as a system of rules: HLA Hart's Concept of Law

The re-birth of natural law

- Law and morality: the Hart/Fuller debate
- John Mitchell Finnis

The theory of Ronald Dworkin

American Realism and Critical Legal Studies

Rights and Wesley Newcombe Hohfeld

Selected legal topics of contemporary philosophical interest, particularly in the South African context (these will vary from year to year).

5. RESOURCES

Students will be expected to expand upon the material discussed in lectures by reading relevant passages from some of the leading general texts on Jurisprudence.

There is a prescribed text for the course, which is:

Johnson, Pete, du Plessis *Jurisprudence — A South African Perspective* (Butterworths, 2001)

Other recommended texts are:

JG Riddall *Jurisprudence* (2ed; Butterworths, 1999)

Hilaire McCoubrey and Nigel White *Textbook on Jurisprudence* (4ed; Blackstone Press, 2003)

RWM Dias *Jurisprudence* (5th ed; Butterworths, 1985)

MDA Freeman *Lloyd's Introduction to Jurisprudence* (7th ed; Sweet and Maxwell, 2001)

JW Harris *Legal Philosophies* (2ed; Butterworths, 1997)

Adrienne Van Blerk *Jurisprudence: An Introduction* (Butterworths, 1996)

Christopher Roederer and Darrel Moellendorf *Jurisprudence* (Juta, 2004)

Students are also encouraged to browse through the shelves in the library, and familiarise themselves with the Faculty's holdings. This will stand them in good stead when research is undertaken for assignments.

6. STUDENT ASSESSMENT

Specific Outcomes (On completion of this course, the student should be able to:)	Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to:)	Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)
Understand, explain and evaluate the major schools of legal philosophy.	<ul style="list-style-type: none"> - Describe and explain the principles of classical natural law theory, as viewed through the eyes of certain leading philosophers. - Describe and explain the principles of legal positivism, as viewed through the eyes of certain leading philosophers. - Describe and explain the re-birth of natural law theory, as viewed through the eyes of leading philosophers. - Describe and explain the philosophies behind the school of American Realism and the school of Critical Legal Studies. - Evaluate critically the advantages and disadvantages of any of these particular approaches to law. - Compare and contrast the different schools of legal philosophy. 	<ul style="list-style-type: none"> - Write essays in which the principles and features of the various schools of jurisprudence are discussed and critically evaluated. - Write essays in which one school of jurisprudence is compared and contrasted with another. - Write essays in which one philosopher's approach to law is compared and contrasted with another.
Understand, explain and evaluate some of the major jurisprudential debates that have preoccupied legal philosophers.	<p>Discuss critically the Hart/Fuller debate as to whether law and morality are intrinsically interlinked.</p> <ul style="list-style-type: none"> - Discuss critically the Hart/Devlin debate about whether it is the task of the criminal law to enforce morality. <p>Discuss critically the debate about how the process of legal adjudication occurs.</p> <ul style="list-style-type: none"> - Discuss constructive and deconstructive attitudes to law. 	Write essays in which these debates are discussed and critically analysed.
Understand how certain philosophical	- Discuss critically the impact	Write an essay in which the

approaches to law have shaped the way our South African society and its legal system has arranged itself in the past.	of the various philosophical approaches on the South African legal system, particularly in respect of the record and role of the South African judiciary under apartheid.	debate on the record and role of the South African judiciary is discussed, from various philosophical perspectives.
Think critically about law as a social and political entity, particularly in the context of contemporary debates about law in modern South African society.	<ul style="list-style-type: none"> - Identify the relevant principles of legal philosophy that may underpin issues of legal and social debate in South Africa. - Critically and logically discuss the relevant principles. - Apply these principles to discussions about issues of contemporary legal interest in South African society. - Propose potential solutions to these debates, which are grounded in firm jurisprudential foundations. 	Write essays in which contemporary issues of legal interest in South Africa are critically analysed from a philosophical perspective, and solutions are proposed to the problem that are logically argued, and grounded in relevant philosophical theory.
Understand more clearly the reasons behind the existence, structure, value and content of the black-letter laws that are studied in other legal courses.	<ul style="list-style-type: none"> - Identify and explain the philosophy behind the existence of various particular laws and legal structures. - Discuss the way in which one's philosophical starting point may determine how one understands the meaning and content of various laws and legal structures. 	Write essays in which a particular legal rule, principle, doctrine or institution is explained in its philosophical context.

Assessment Strategy

The final mark for the course is comprised of the following components:

Examination: out of 60 marks.

Class work: out of 40 marks.

Total: 100 marks.

Assignments

There are two major assignments in this course, which are submitted towards the end of the third and fourth terms respectively. In these assignments, students will be expected to discuss a particular jurisprudential issue, and relate the theory to a contemporary issue of interest to South African society. The assignments should be approximately 3000 words in length, and will have to be thoroughly researched, and correctly referenced and presented. Each assignment counts 50% of the class-mark component of the course. The assignments are compulsory.

Examination

One two-hour paper will be written in November. The examination will be out of 60 marks. There will be several 30-mark questions on the paper, of which the student will have to choose two to answer. The questions will generally require students to be able to explain the nature and content of the theories about law that were examined in the course. The examination is compulsory. An external examiner assesses the quality of both the examination paper and the students' answers.

7. EVALUATION

This course is evaluated as part of the global evaluation of LLB courses conducted at the end of each semester.