

Fall Semester, 2014  
Instructor: Jeff Horty

PHIL 858: Legal Reasoning  
Syllabus Version #3  
October 2, 2014

*Logic (we may say) is generalized jurisprudence.*  
– Stephen Toulmin

*A satisfactory theory of legal reasoning requires and is required by a satisfactory theory of law.*  
– Neil MacCormick

## Description

This is an interdisciplinary course drawing on material from the separate fields of logic, artificial intelligence and law, and legal theory. The specific goals are: first, to understand and, I hope, advance recent work on formal models of legal reasoning; second, to explore the bearing of this work on more traditional issues in legal theory; and third, to explore the extent to which models of legal reasoning, and legal argument, can help us understand reasoning and argument more generally. We will focus special attention on common law reasoning, but will consider other topics as well: statutory reasoning and interpretation, proportionality, evidence, argument schemes, and burden of proof. Toward the end of the course, we will consider the connections between theories of legal reasoning and theories of reasoning in applied ethics.

## Time and place

Monday, 1:00 - 3:30, Skinner 1116

## Contact information

Office: Skinner 1101. Office phone: I don't use my office phone. Cell phone: 301-408-8963, and you're very welcome to call my cell phone. Email: horty@umiacs.umd.edu. Office hours: I'll let you know my exact office hours once they've sorted themselves out, but probably all of Thursday afternoons.

## Course materials

The materials listed include, not only the central readings for each topic, which you should read, but background, related, and additional material, which you may want to read but don't have to. These lists will be refined as the course progresses.

I will make available electronic copies of all papers from the central readings, and many from the additional readings. I haven't ordered any books for the course, but we can talk about which it may be worthwhile for you to buy. All books from the central readings will be placed on reserve in the library, or made available in some other way. (I will give you a manuscript version of my own book, so you don't have to buy it; but if you do feel like buying it, I'll refund to you 10% of the purchase price, which is what Oxford gives me.)

## Course work

The requirement for students who want credit for the course is written research work—which can take the form of a single extended paper, prepared as if for submission to a journal, or two or three shorter papers, prepared as if for submission to conferences. I will pass out a list of suggested topics, and of course, you are welcome to pick your own, though I'd like you to consult with me. Please let me know how you plan to satisfy the written work requirement by the middle of the semester. I'm very happy to work with you on drafts.

The course will be run as a seminar, and everyone attending, students and auditors, will have to help present some of the material. For the most part, I'll try to present the technical work myself and then hope to rely on others to present much of the non-technical work, though this may shift around a bit.

## Course topics

Here is a tentative, initial list. The list will be undergoing revision throughout the term (be sure to check the version number on the syllabus).

### 1. Background

#### (a) Legal theory

Readings: Dworkin [30], Dworkin [32, Section 4], Hart [43], Raz [85]

Background, related, and additional material: Dworkin [31], Dworkin [34], Hart[44], Leiter [57], Shapiro [100]

#### (b) Legal theorists on legal reasoning

Readings: Alexander and Sherwin [5, Introduction and Chapter 1], Schauer [97, Chapters 1 and 2]

Background, related, and additional material: Alexander and Sherwin [4], MacCormick [62], Schauer [95], Spellman and Schauer [109]

#### (c) Legal theorists on defeasibility

Readings: Finkelstein [36], Hart [42], Schauer [94], Schauer [99], Tur [115]

Background, related, and additional material: Beltrán and Ratti [10], Chapman [25], Hage [41], Marmor [65], MacCormick [64], Schauer [98]

#### (d) Defeasible logics

Readings: Horty [48, Chapters 1, 2, and 5], Pollock [72], Pollock [73, Chapters 1 through 3], Prakken and Vreeswijk [84], Toulmin [112, Introduction and Chapter 3]

Background, related, and additional material: Dung [29], Loui [60], Prakken [77], Prakken and Horty [79], Reiter [87]

### 2. Common law reasoning

#### (a) Some examples

Readings: Ashley [7, Chapters 2 and 3], Burton [23, Introduction and Chapters 1 through 4], Levi [58, Sections I and II]

- (b) Legal theorists on common law reasoning
  - Readings: Alexander [3], Alexander and Sherwin [5, Chapters 2, 3, and 4], Lamond [55], Raz [86, Chapter 10], Schauer [97, Chapter 3 and 6]
  - Background, related, and additional material: Burton [24], Eisenberg [35], MacCormick [63], Perry [71], Simpson [104], Wasserstrom [117]
  - (An interesting dialog, leading to Simpson [104]: Montrose [66], Montrose [67], Simpson [101], Montrose [68], Simpson [102], Goodhart [39], Simpson [103])
- (c) Case-based reasoning: HYPO, CATO, CABARET
  - Readings: Aleven and Ashley [2], Ashley [6], Rissland and Skalak [91], Skalak and Rissland [105], Skalak and Rissland [106]
  - Background, related, and additional material: Aleven [1], Ashley [7, Chapter 9], Bench-Capon [11], Bench-Capon and Rissland [13], Rissland and Ashley [90]
- (d) Logical models
  - Readings: Holton [45], Horty [47], Horty [49], Prakken and Sartor [80]
  - Background, related, and additional material: Horty [46], Horty [50], Horty and Bench-Capon [51], Prakken and Sartor [83], Roth and Verheij [92], Loui and Norman [61]
- (e) Values, teleology, coherence
  - Readings: Berman and Hafner [16], Bench-Capon [12], Bench-Capon and Sartor [14], Hage [40], Prakken [75]
  - Background, related, and additional material: Bench-Capon and Sartor [15],
- (f) Goodhart and material facts
  - Readings: Goodhart [38], Branting [19], Branting [21], Cross and Harris [27]
  - Background, related, and additional material: Branting [20]
- (g) Analogy
  - Readings: Alexander and Sherwin [5], Brewer [22], Lamond [56], Posner [74], Schauer [96], Sunstein [111], Spellman [107], Spellman [108], Weinreb [118]
  - Background, related, and additional material: Bartha [8]

### 3. Further topics

- (a) Statutory reasoning
  - Readings: Alexander and Sherwin [5, Part 3], Schauer [97],
  - Background, related, and additional material: Zurek and Araszkiwicz [119]
- (b) Proportionality
  - Readings: Chapman [26], Sartor [93]
- (c) Evidence
  - Readings: Bex *et al.* [18], Bex [17], Prakken [76], Prakken [78]
  - Background, related, and additional material: Di Bello [9]
- (d) Presumption
  - Readings: Prakken and Sartor [81], Ullman-Margalit [116]
  - Background, related, and additional material: Prakken and Sartor [82]

(e) Applied ethics

Readings: Iltis [52], Richardson [88]

Background, related, and additional material: DeGrazia [28], Gert *et al.* [37], Jonsen [53], Jonsen and Toulmin [54], Little [59], Paulo [70], Paulo [69], Richardson [89], Strong [110], Toulmin [113], Toulmin [114],

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