

Honors Seminar V: Aesthetics, Values, and Authority
Western Legal Tradition
Florida International

University – The Honors College

I. Instructor

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Office Hours: By Appointment

II. Text

a. Required

- Helene **Shapo**, et al., *Writing and Analysis in the Law*, Foundation Press (2013), 5th Edition. ISBN-10: 1609302729 | ISBN-13: 9781609302726.
- Andrew J. **McClurg**, *1L of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School*, (2013) 2nd Edition. ISBN-10: 0314283056 | ISBN-13: 978-0314283054.
- **Case law, articles from academic journals, and other reading assignments:**
Will be provided free of cost in digital format to students throughout the term.

b. Optional

- *The Blue Book: A Uniform Citation System*, (May 15, 2013) ISBN-10: 0692400192 | ISBN-13: 978-0692400197.
- Richard M. Fischl and Jeremy Paul, *Getting to Maybe: How to Excel on Law School Exams*. ISBN-10: 0890897603 | ISBN-13: 978-0890897607.
- Mark Herman, *The Curmudgeon's Guide to Practicing Law*. ISBN-10: 1590316762 | ISBN-13: 978-1590316764.
- Steven J. Harper, *The Lawyer Bubble: A Profession in Crisis* (2013). ISBN-10: 0465058779 | ISBN-13: 978-0465058778.

III. Course Description

This course is designed to survey and examine legal theory, reasoning, and written advocacy. Together we will examine the history and philosophy of law, legal reasoning, written

and verbal analysis of cases, and effective legal writing. We will study what it means to “think like a lawyer” and be an advocate for your client or cause.

We will explore legal philosophy, theory, and logical reasoning in order to develop an understanding of what law is, what its origins are, and how and why it evolves and changes over time. Together we will think deeply and critically about the complex problems associated with governing people and behavior. Our hope is to create an atmosphere that encourages the lively exchange of ideas, promotes vigorous debate, and is respectful of well-founded and thoughtful opinions.

After we’ve explored the question “What is law”, we will transition to a discussion of modern western legal education: the history of American legal education, the Socratic method, the problems with modern legal education. Students will apply the theoretical knowledge learned in the first half of the course to analysis of U.S. case law. In order to analyze case law, you will be given an introduction to the practical tools necessary to succeed in law school (reading, writing, speaking, etc.). We will begin a survey of the topics that are covered in the first year of American law schools (property, contracts, constitutional law, criminal law, etc.) and finish our survey during the Spring semester.

IV. Structure

This course is conceived as a full-year course, but is divided into semesters for scheduling and grading purposes.

V. Expectations

I expect every student to be prepared for class and ready to read, write, and participate in class discussions. The practice of law requires lots of reading, writing, and critical thinking. I expect you to read and be prepared to discuss (verbally and sometimes in writing) complex subjects for each and every class.

VI. Grades

Your grade will be determined as follows:

- Attendance and participation will make up 25% of your grade,
- Periodic homework and in-class assignments will make up 25% of your grade,
- A mid-term exam will make up 25% of your grade, and
- A final exam will make up 25% of your grade.

The grading scale is as follows: 90-100 = A; 80-89 = B; 70-79= C; 60-69= D; and ≤ 59 = F.

Writing assignment requirements will be discussed in detail during the semester but generally will have to be typed, double-spaced, 12-point font, with 1 inch margins, properly cited, and submitted on time.

Please note: You may have two excused absences per semester; every additional absence will affect your final participation grade and if absences are excessive, it may cause you to fail the course entirely.

Students found guilty of academic misconduct, which includes plagiarism, will receive an F in the course and will be subject to further disciplinary action. For more information on what constitutes plagiarism and a short quiz, see <https://www.indiana.edu/~tedfrick/plagiarism/index2.html>

Florida International University is a community dedicated to generating and imparting knowledge through excellent teaching and research, the rigorous and respectful exchange of ideas and community service. All students should respect the right of others to have an equitable opportunity to learn and honestly to demonstrate the quality of their learning. Therefore, all students are expected to adhere to a standard of academic conduct, which demonstrates respect for themselves, their fellow students, and the educational mission of the University. All students are deemed by the University to understand that if they are found responsible for academic misconduct, they will be subject to the Academic Misconduct procedures and sanctions, as outlined in the Student Handbook.

Misconduct includes: Cheating – The unauthorized use of books, notes, aids, electronic sources; assistance from another person with respect to examinations, course assignments, field service reports, class recitations; or the unauthorized possession of examination papers or course materials, whether originally authorized or not. Plagiarism – The use and appropriation of another’s work without any indication of the source and the representation of such work as the student’s own. Any student who fails to give credit for ideas, expressions or materials taken from another source, including Internet sources, is responsible for plagiarism.

VII. Class Schedule¹

The Western Legal Tradition class will be held weekly on Thursdays, from 6:20 p.m. to 8:30 p.m. in room CP 115, unless the class is relocated to accommodate a class fieldtrip. Students will be given notice of the time, date, and location of class field trips, so that they may prepare accordingly. Students are expected to arrive on time to class, whether located on or off campus.

The following table summarizes the topics that may be explored during the course, and the assignments that student’s are expected to complete.

¹ Your instructor reserves the right to adjust the class schedule (topics, assignments, etc.) as necessary throughout the semester.

<u>Date</u>	<u>Topic</u>	<u>Assignment due</u>
8/25	<p>I. Introductions</p> <ul style="list-style-type: none">a. Surveyb. Student introductions to the class <p>II. From 1754 BCE to modern day: organizing barbarians fighting for scraps.</p> <ul style="list-style-type: none">a. How things are today: common law versus civil law.b. What is the Western Legal Tradition?c. Group Discussion: What is the role of the law in society? What is law?	<p>Reading assignments:</p> <ul style="list-style-type: none">• Reading assignments on blackboard<ul style="list-style-type: none">○ Common law vs. civil law primer Harold J. Berman, <i>The Western Legal Tradition in a Millennial Perspective: Past and Future</i>, 60 La. L. Rev. (2000), pp. 739-752, http://digitalcommons.law.lsu.edu/lalrev/vol60/iss3/3<ul style="list-style-type: none">▪ Be prepared to engage in a group discussion on the law review article. <p>Writing homework:</p> <ul style="list-style-type: none">• Do you agree with Berman’s assumption that an understanding of Western legal tradition is important to modeling the future of the law? Draft a response, no more than two pages, to the question. Please apply the following format to all writing for this class: 12 point font, times new roman font, 1 inch margins, and double space. Your response will be due in class on 9/1.
9/1	<p>III. From 1754 BCE to modern day: organizing barbarians fighting for scraps.</p> <ul style="list-style-type: none">a. Finish group discussion: What is the role of the law in society? What is law?b. Hamarabi's code (codifying the law),c. Church of Rome (resisting outside control),d. The Magna Carta	<p>Submit take home writing assignment</p> <p>Reading assignments:</p> <ul style="list-style-type: none">• Reading assignments on blackboard<ul style="list-style-type: none">○ Harold J. Berman, <i>The Western Legal Tradition in a Millennial Perspective: Past and Future</i>, 60 La. L. Rev. (2000), remainder of the article○ Kathryn E. Slanski, “The Law of Hammurabi and Its Audience,” <i>Yale Journal of Law and the Humanities</i>, Vol. 24: Iss 1, Article 3 (2012),

<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1377&context=yjlh>

- Read [The Magna Carta](#) and [related article](#) on its 800th anniversary

9/8 **IV. From 1754 BCE to modern day: organizing barbarians fighting for scraps.**

- a. The Protestant revolution
- b. The English revolution
 - i. Leviathan

Readings assignments:

- Reading assignments on blackboard.
 - TBA

9/15

V. From 1754 BCE to modern day: organizing barbarians fighting for scraps.

- a. The French revolution
 - i. The Social Contract
 - ii. The Napoleonic code
- b. Bringing it all together: What would a world without law look like?
 - i. Samples
 - 1. from popular culture
 - 2. from literature
 - 3. from the news
 - ii. Groups discussion

Reading assignments:

- Reading assignments on blackboard.
 - TBA

9/22

VI. Our founding: the evolution of law in the United States

- a. Survey
 - i. Declaration of independence
 - ii. U.S. Constitution
 - iii. The Federalist papers
 - iv. Karl Marx
- b. Class discussion. How does the law in the U.S. differ from other countries? What, if anything, makes us special?

Readings Assignments:

- Reading assignments on blackboard.
 - TBA

9/29	<p>VII. Our founding: the evolution of law in the United States</p> <ul style="list-style-type: none">a. Legal positivism (the law as science) vs. natural law theoryb. Class discussion. What is the difference between natural law theory and positivism? Which is better? What is Justice? What is Law? What are Morals? Are they the same? What is Positivism? What is natural law theory? Discuss the shortcomings of legal reasoning and “thinking like a lawyer”	<p>Reading assignments:</p> <ul style="list-style-type: none">• Reading assignments on blackboard.<ul style="list-style-type: none">○ H.L.A.Hart, Positivism and the Separation of Law and Morals, Harvard Law Review, Vol 71, No. 4 (Feb. 1958), 593-629 http://www.umiacs.umd.edu/~horty/courses/readings/hart-1958-positivism-separation.pdf○ Jonathan Brett Chambers, Legal Positivism: An Analysis (2011), http://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1080&context=honors.
10/6	<p>VIII. Finishing up survey of western legal tradition</p> <p>IX. Mid-term</p>	<p>Reading assignments:</p> <ul style="list-style-type: none">• Reading assignments on blackboard.<ul style="list-style-type: none">○ TBA
10/13	<p>X. From theory to practice.</p> <ul style="list-style-type: none">a. Thrown in the deep end: mock law school classb. Be prepared to discuss the reading materials in detail. Expect to be cold called by the professor. <p>XI. Learning the law</p> <ul style="list-style-type: none">c. Modern American legal education	<p>Reading assignments:</p> <ul style="list-style-type: none">• Reading assignments on blackboard<ul style="list-style-type: none">○ <i>Hamdi v. Rumsfeld</i>○ <i>Dassey v. Dittmann</i>• McClurg, pp. 1-3, 93-114 (Ch. 7, The Socratic Method) <p>Assignment:</p> <ul style="list-style-type: none">• Watch The Paper Chase (1973)• Write no more than one page summarizing or critiquing the movie. Which character do you identify with? Write the name of the character you identify with in the top right hand corner of your essay.
10/20	<p>XII. A real introduction to modern American legal education (your own pair of floaties)</p> <ul style="list-style-type: none">a. Class discussion. Digesting the mock law school class simulation.	<p>Reading assignments:</p> <ul style="list-style-type: none">• <i>Dassey v. Dittman</i> (con't); <i>Hamdi v. Rumsfeld</i> (con't)• Shapo, pp. 1-28.

- b. Modern American legal education continued
 - c. Understanding jurisdiction
 - d. How to read a case (*see* briefing table)
- McClug, pp. 33-57 (Ch. 3, Fear Factor: the Top Five Law Student Worries), 174-204 (Ch. 11, Case-Briefing)
- Brief
- *Hamdi v. Rumsfeld*
 - *Dassey v. Dittman*
-

10/27

XIII. A real introduction to modern American legal education (your own pair of floaties): How to read, write, and speak like a lawyer

- a. How to read a case (continued)
- b. Writing about the law
 - i. CREAC
 - ii. The Blue Book
- c. Talking like a lawyer
 - i. Bringing it all together: discussing *Hamdi* and *Dassey* in the context of what we've learned so far.

Reading assignments:

- Reading assignments on blackboard.
 - TBA
- Shapo, pp. 34-40 (B. Citation to Provide Attribution and Avoid Plagiarism), pp. 54-88

Writing Assignments:

- Submit briefs
-

11/3

XIV. A real introduction to modern American legal education (your own pair of floaties): How to read, write, and speak like a lawyer

- a. Talking like a lawyer (continued)
 - a. Small group presentations
- b. American legal education
 - a. Is it broken?
- c. Stress management

Reading assignments:

- Reading assignments on blackboard.
 - Jeff Schmitt, Here's How Law School Grads Would Fix Law School, Fortune Magazine (July 26, 2016), <http://fortune.com/2016/07/26/heres-how-law-school-grads-would-fix-law-school/>.
 - Rosa Flores and Rose Marie Arce, Why are lawyers killing themselves?, CNN, <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>.
 - McClug, pp. 59-92 (Ch. 5, The First-Year Curriculum: What to Expect) 342-363 (Maintaining Well-Being)
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11/10

XV. TBA

Reading assignments:

- Reading assignment on blackboard.
 - TBA
-

11/17

- XVI.** Swimming towards the deep end: property Reading assignments:
- Reading assignment on blackboard.
 - TBA

11/24

No class

12/1

- XVII.** Swimming towards the deep end: property Reading assignments:
- Reading assignment on blackboard.
 - TBA

12/8

Final exam

VIII. Honors College Requirements and Policies

Your registration in this course functions as your acceptance of and compliance with the Honors College policies for students and the FIU Code of Academic Integrity.

a. Honors Citizenship Requirements

Beginning in Fall 2014, Honors College students are required to accumulate at least 20 citizenship points each academic year (Fall and Spring) by attending Honors College activities. Students attending only one semester (Fall or Spring) are required to accumulate 10 citizenship points. See <http://honors.fiu.edu/academics/policies/citizenship/>.

b. Student Portfolios

The Honors College will be using a portfolio method to assess students' learning outcomes. The portfolio allows for maximum flexibility in gauging student learning. Students decide (with instructor consultation) what "artifacts" or assignments to include for consideration in their portfolios to demonstrate successful achievement of each of five key student learning outcomes over the 4-year Honors experience. See www.honors.fiu.edu/portfolios.

c. Academic Misconduct Procedures and Penalties

In The Honors College, the term "honor" refers both to academic accomplishment and character. Students in Honors should therefore adhere to and be held to the highest standards of personal academic accountability. Academic dishonesty in any form, including plagiarism, is antithetical to the very definition of being an Honors student at FIU. Consequently, an Honors College student found responsible for academic misconduct will be dismissed from the College.

An Honors faculty member may bring charges of academic misconduct against an Honors student if the faculty member suspects plagiarism or other forms of academic misconduct. The

faculty member will decide whether to pursue informal resolution, file formal resolution charges, or take no further action, and will follow the procedures outlined in the Honors College website (<http://honors.fiu.edu/academics/policies/>), and the Academic Misconduct Procedures, available at <http://www.fiu.edu/~oabp/misconductweb/1acmisconductproc.htm>.

Please refer to the following documents for additional information:

- FIU Code of Academic Integrity – <http://www.fiu.edu/~dwyere/academicintegrity.html>,
- FIU Honors College Student Handbook – <http://honors.fiu.edu/handbook0910.html>, and
- FIU Honors College Plagiarism Policy – http://honors.fiu.edu/current_policy_plagiarism.html.

d. Religious Observances

Every effort will be made, where feasible and practical, to accommodate students whose religious practices coincide with class requirements or scheduling. Please make sure to notify your instructor *at the beginning of the semester* of which dates you will be absent or any anticipated problems with completing course work.

e. Physical, Mental and Sensory Challenges

Every effort will be made, where feasible and practical, to accommodate students who are so challenged. Should you require accommodations, contact the Disability Resource Center, if you have not done so already.