

LGST 482 Jurisprudence



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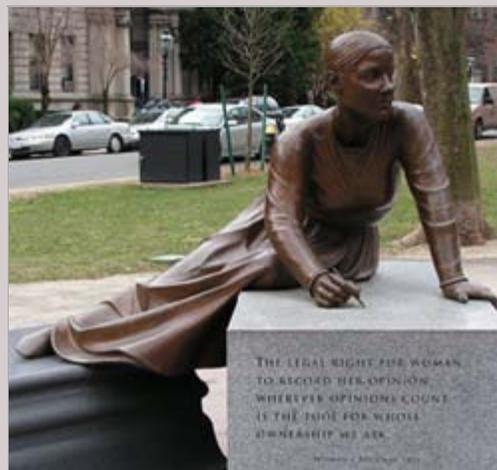
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Topic outline

Welcome to Legal Studies

482: Jurisprudence. In this course you will examine some of the central philosophical principles underlying the common law legal system. Each unit will guide you through an analysis of the current state of particular jurisprudential principles, discussing how they have been traditionally explained and justified and some of the ways that they relate to other principles. In this analysis you will be asked to reflect on traditional objections to these principles. Then, you will challenge these traditional conceptions by examining the critical theories of "others," such as women's groups, Aboriginal groups, and visible minorities: critics from outside the common law tradition.



"The legal right for woman to record her opinion wherever her opinions count is the tool for whose ownership we ask"
- woman's journal 1891

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1 Overview

Unit 1 will introduce you to the study of philosophy generally and to the study of jurisprudence in particular. Your review of key philosophical principles and readings should help you to develop an open, philosophical frame of mind. You will be asked to reflect on how individual, community and cultural beliefs may influence the study of jurisprudence, and how conclusions may be biased by decision-makers and the considerations they deem relevant.



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2 Objectives

1. Describe Plato's "Allegory of the Cave" and critically discuss how this allegory helps you to develop an open, questioning mindset (that is aware of potential bias) for studying jurisprudence.
2. Explain Mill's *fallibility principle* and reflect on how failure to comply with this may lead to personal bias in one's understanding of philosophical principles.
3. Describe how the way an inquiry is phrased can significantly influence knowledge (in general) and knowledge about the nature of justice (in particular). Discuss how the act of defining what you are looking for may predetermine what you will find and how this can result in discrimination in favour of some viewpoints and against others.
4. Explain how differentiating between legitimate and illegitimate methods of inquiry may influence the quest for knowledge. Discuss how a particular method of inquiry may prefer some viewpoints over others depending upon who is performing the inquiry and the approaches to inquiry that this person(s) deems to be legitimate.
5. Outline the essentials of the argument that the language used in an inquiry can (perhaps unavoidably) bias the results and produce barriers to those who function outside of that language group.



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3 Reading Assignment

- Plato. "Allegory of the Cave," (pp. 747–751): Reading 1 in the *Reading File*.
- Mill, J.S. Chapter II: "Of the Liberty of Thought and Discussion," (pp. 15–52): Reading 2 in the *Reading File*.
- Harding, S. "Rethinking Standpoint Epistemology: What Is 'Strong Objectivity'?" (pp. 49–82): Reading 3 in the *Reading File*.
- Little Bear, L. "Jagged Worldviews Colliding," (pp. 77–85): Reading 4 in the *Reading File*.
- Ross, R. Chapter 5: "Watch Your Language," (pp. 101–130): Reading 5 in the *Reading File*.
- Freeman, M.D.A. *Lloyd's Introduction to Jurisprudence*, pp.1–15.



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Legal Studies 482

Jurisprudence

Student Manual

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Athabasca University

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Introduction

Welcome to *Legal Studies 482: Jurisprudence*. In this course you will examine some of the central philosophical principles underlying the common law legal system. Each unit will guide you through an analysis of the current state of particular jurisprudential principles, discussing how they have been traditionally explained and justified and some of the ways that they relate to other principles. In this analysis you will be asked to reflect on traditional objections to these principles. Then, you will challenge these traditional conceptions by examining the critical theories of “others,” such as women’s groups, Aboriginal groups, and visible minorities: critics from outside the common law tradition.

Part of your job in this course is to assess the level of certainty required to say that a theory is sufficiently well supported or “proven.” What information is proper to consider in attempting to prove or disprove a theory? Unlike many scientific theories, it will often be impossible to claim that a theory has been proven or disproven absolutely. An open and skeptical frame of mind is important as you undertake your study. You will be trying to critically determine which positions you find more or less convincing and to articulate why. You will then apply what you have learned by critically examining the writing of others to your own writing, to make it as convincing and relevant as possible.

Approaching jurisprudence in this fashion is intended to provide an engaging critical study opportunity, one that leads you to challenge your previous conceptions, that leads you to embrace insights from a diverse range of scholars and that leaves you with a deeper, well-supported understanding of the philosophy of law. This in-depth foundational understanding will benefit you in other legal studies (or related) courses. Also, the interweaving of critiques presented by minority/subordinated communities will help to make you aware of the biases and weaknesses underlying the current system and provide you with keys to its critical reform.

This *Student Manual* supplies you with essential information about the course and instructions to complete it successfully. *Before you begin your course work, read this Student Manual carefully.* If you have any questions about the course or how to proceed with your studies, please contact your tutor or the course coordinator.

Course Materials

The course materials for *Legal Studies 482: Jurisprudence* include the items listed below. If you find any items are missing from your course package, please contact Course Materials Production at Athabasca University as soon as possible. You may call Athabasca University, toll free, from anywhere in Canada or the United States at 1-800-788-9041, and ask to speak to someone in Course Materials Production (ext. 6366). Students in the Edmonton and Calgary dialing areas are asked to call the Learning Centres to connect to an automated attendant, and then dial the four-digit extension. You may also send an email message to cmat@athabascau.ca, or write in care of Course Materials Production, Tim Byrne Centre, 4001 Hwy 2 South, Athabasca AB T9S 1A4.

Textbook

Freedman, M.D.A. 2001. *Lloyd's Introduction to Jurisprudence* (7th ed.). London: Sweet & Maxwell.

Athabasca University Materials

Student Manual: This *Student Manual* provides you with essential information about the course design, the course materials, and the procedures you should follow to complete the course successfully. Please read it through before beginning your studies, and pay particular attention to the Learning Objectives and the Study Schedule. The *Student Manual* also contains your assignments (for credit) and specific instructions for preparing and submitting these assignments to your tutor for grading and feedback.

Study Guide: The *Study Guide* consists of eight substantive units and one concluding unit. Each of the first 8 units covers specific topics related to jurisprudence. Each unit identifies Learning Objectives, lists reading assignments and provides discussion and study questions.

Reading File: The *Reading File* contains all assigned readings that are not included in the textbook. Readings in the *Reading File* come from a variety of sources; your *Study Guide* refers to them by author, title and number, in their order of appearance.

Forms: The forms you will need to submit an assignment to your tutor for marking or to notify the University of a change in your status as a student are included in your course package. These forms can also be found online at myAU.

Student Evaluation

To receive credit for *Legal Studies 482*, you must complete five written assignments that are collectively worth 100 per cent of your final grade. There is no final exam in *Legal Studies 482*. The weightings for each assignment, and their due dates, are as follows:

Activity	Credit Weight	Date Due
Assignment 1	15% of final grade	End of Unit 4
Assignment 2	20% of final grade	End of Unit 5
Assignment 3	15% of final grade	End of Unit 8
Assignment 4	10% of final grade	End of Unit 6, 7, or 8 (these units may be read in any order).
Assignment 5	40% of final grade	End of Unit 9
Total	100% of final grade	

Your final grade is determined by a weighted average of the grades you receive on these items. To receive credit for this course, you must complete ALL of your assignments, and you must obtain an overall grade of at least 50%.

Assignments

Adhering to the due dates suggested in the Study Schedule should help you to pace your work and to incorporate feedback and suggestions from your tutor into subsequent assignments.

- Assignment 1 consists of written answers to one Study Question from each of Units 1–4.
- Assignment 2 is an outline and short essay; the topic must be chosen from subjects in Units 1–5.
- Assignment 3 consists of written answers to one Study Question from each of Units 5–8.
- Assignment 4, the précis, is a plan for Assignment 5, a substantive essay.
- Assignment 5 is an 18- to 20-page essay; the essay topic can be chosen from subjects in Units 1–8.

When you have finished each assignment, mail it or email it to your tutor for grading and feedback. Include a Tutor-Marked Exercise form from the forms included with your course materials or an electronic TME from MyAU. When you receive your graded assignment, call your tutor to review his or her comments and to discuss the assignment. Your performance on the initial assignments will help you to successfully complete the final essay.

Essay-Writing Instructions

The following instructions apply to all written assignments for this course. Instructions specific to each assignment are provided below.

1. When preparing written assignments:

- clearly identify which issue(s) you are focusing on in your assignment;
 - identify the particular problem(s) or question(s) you intend to resolve;
 - provide a thesis statement indicating what your assignment will accomplish;
 - include a brief plan that sets out the steps you will take to complete the task set out in your thesis statement;
 - conclude your paper with a summary of how you have accomplished the task set out in your thesis statement.
2. Critical analysis is required for all assignments in this course. For a 400-level course, it is not sufficient to merely summarize the arguments of a particular author or issue in a step-by-step account (Plato says X, then he says Y ...). In your assignments, you need to set the context of your assignment and then critically evaluate the materials. What are the strengths of the materials? What are the weaknesses? How does the theory tie into practical application? What are the implications for the legal system and for those affected by it? You also need to add your own assessment into the debates. What do you think about the materials? What is your basis for this? What supports your position? What conclusions would you come to? Why?
 3. The following types of papers may be written for LGST 482:
 - a. Summary Paper: This kind of paper provides an intelligent and concise summary of the important points at issue, and makes the connections between these points clear.
 - b. Research Paper: This kind of paper discusses and critically analyzes what several authors have said about a particular issue.
 - c. Position Paper: This kind of paper states and defends your position on a particular issue or a particular author's work. It shows why other positions are not fully supportable, or why they are incorrect, and answers the main objections to your position. It should also acknowledge weaknesses or points for further discussion.
 - d. Compare/Contrast Paper: This kind of paper clearly outlines two opposing views on a particular subject or issue, shows why they differ (differences in assumptions, concerns, methods, etc.), shows where they share commonalities and overlap, and provides a possible solution to the disagreement or indicates a preference for one approach over the other and logically supports the solution/preference.
 - e. Exposition Paper: This kind of paper identifies a significant passage or piece of work where the full impact of author's meaning may not be readily apparent and then clarifies the meaning and significance in a larger context.
 4. Your ability to write clearly and correctly is critical; it will heavily affect your mark. Use simple language, short(er) sentences and precise words. A good strategy is to read your argument aloud. If it sounds confusing or unclear, it will come across that way to the reader. Proper grammar, organization, structure and punctuation are marked.
 5. The following are some additional factors to keep in mind as you prepare your critical analysis for each assignment:
 - a. Be methodical in your analysis. Carefully consider how people on different sides of the debate view the problem. Think carefully about what each side must show. Make an outline of the problem; only then are you ready to begin your assignment.

- b. Clearly state any assumptions that you are making in your analysis.
- c. Clearly support all conclusions by references to the facts/literature and the specific jurisprudential principles that apply to the debate.
- d. Provide sound philosophical conclusions, along with supporting reasons and arguments; resist the temptation to simply state what you think or what you think ought to happen.

Choosing an Essay Topic

1. This is a jurisprudence class. That is, your essays must focus on principles, questions, debates, etc., that relate to the philosophy of law. You may use examples to illustrate your arguments, but your essays should not become about the examples.
2. When selecting a topic for your essay, ask yourself which unit(s) you most enjoyed, or raised the most thoughts/reactions when you read the materials.
3. Look at the objectives for the unit(s) in the *Study Guide*, and use them as a starting place for narrowing down your topic.
4. Once your topic area is sufficiently narrow, come up with an interesting problem that needs to be solved/explained/etc. What position should be argued for/against? This will be the basis of your essay's introduction. You can also get ideas for essay topics (interesting problems) by reviewing the discussions and the Study Questions in the *Study Guide*. You are trying to do one or more of the following: why the author is right/wrong, how the view of one author is preferable another, describe how the issue requires more clarification, explanation or application, etc. In short, look for an angle where you can support your own position on something that needs to be solved/addressed.
5. Once you've identified a problem that needs to be solved (introduction), ask yourself what particular points you want to prove/explain/clarify/etc. and create an assertive thesis statement that says what you intend to do. Your thesis should advance your own position on something, that is, it should answer/prove/clarify something, not just talk about what others have said.
6. Develop a plan for your paper that outlines the steps you need to take to prove your thesis (and thereby solve the problem you identified in the introduction).
7. Write the body of the paper in the order set out in the plan.
8. Summarize and assertively conclude your paper. Show the reader that you have accomplished what you set out to do in your thesis statement. Your thesis statement and your conclusion should be directly connected. The thesis says what you will do, and the conclusion says how you have done it.

Narrowing an Essay Topic

Narrowing a topic doesn't necessarily mean focusing on one person's opinion or on one perspective. Unless your essay is about a specific critique of how one person's theory works (or doesn't work), focusing on a single perspective won't provide a solid foundation for your paper.

Narrowing a topic is about how you construct the introduction for your paper, the number of issues/problems you introduce, how you develop your thesis statement to address those issues/problems, and how you develop the plan of your paper to prove your thesis. Think about the length of the paper you need to write, and then consider how many issues you can meaningfully discuss in detail in that length of the paper.

For example, in a five-page paper with an introduction and conclusion, you may have only have three to three-and-a-half pages to discuss issues. You cannot meaningfully discuss four or five issues in this space. One or two are probably more appropriate. On the other hand, in a fifteen-page paper, one or two issues will rarely be sufficient, and you may run into problems with repetition and “padding” in your paper.

For example "jurisprudential problems faced by Aboriginal people" is too broad a topic. Narrow it down by looking at a particular principle about which one to three problems arise in the interpretation/application of the principle (for example). Note that if you cannot prove your position with a few good arguments, you are unlikely to be convincing with five to 10 arguments.

When developing your topic, look at the literature about that topic. Consider the primary literature (articles written by an author about a topic). Contrast this with secondary literature (in which one author writes about what another author has said on the topic). What are the authors discussing/debating in the primary literature? What points seem to be sticky? What elements seem to lack clarity or require further examination? What problems are the secondary authors attempting to resolve, and how does this tie back into the primary literature? In short, look for a problem that needs to be solved or a question that needs to be answered. Note: Most of the Study Questions are framed in ways that suggest possible essay topics.

Some questions that may help you to choose and narrow an essay topic:

What is going on here?

How is one side's argument weaker than the other side's?

Where does one (or both) arguments go wrong?

Are there too many assumptions (and what are they)?

Is an author's analysis of the theoretical elements missing, weak, or inconsistent?

Is there a lack of factual support for the position?

Has the author erred in defining terms or in their scope?

For example:

Example 1: "(Intro) ... (Thesis) I will argue that [position A] is preferable to [position B] with regard to (Plan) To prove that [position A] is the stronger position, I will compare and contrast the two positions on three elements: (a) how they deal with the facts relating to ...; (b) the clarity of their definition of ...; (c) their flexibility in dealing with differing cases."

Example 2: "(Intro) ... (Thesis) I will argue that both positions have problems. While both positions claim to discuss the same issues, they have defined these issues differently. Accordingly, both positions are weakened because they have not adequately defined the nature of (Plan) To prove that the two positions fail in their treatment of ... I will develop four elements that ought to be considered when defining ..."

In short, you must set out exactly what the problem is, what your solution will be and how you're going to prove your solution. Then you need to answer the question or problem, and reach a conclusion that is well supported in the body of your essay.

Structuring Your Essay

An essay consists of

- (1) an *introduction*;
- (2) a *thesis* statement;
- (3) a *plan* for the paper;
- (4) a *discussion* with supporting reasons and arguments; and
- (5) a *concluding* paragraph.

Introductory Paragraph & Thesis Statement

- The first paragraph of your essay.
- It introduces the main idea of your essay. A good opening paragraph captures the interest of your reader, indicates why your topic is important and clearly sets out the problems/issues that need to be resolved.

- The first paragraph concludes with the *thesis* statement. This is the main idea of the essay stated in a single sentence or two. It indicates what you will be proving in response to the issues introduced in the start of the introductory paragraph. The rest of your essay should be limited to advancing the position you have indicated you will prove in your thesis statement.

Plan and Discussion

- Following your introduction and thesis statement, you should indicate an outline of the steps you will take to advance your arguments and discussions.
- The discussion is made up of supporting paragraphs, which support your thesis and follow in the order indicated in your plan. You may wish to keep your thesis statement and plan clearly visible to you as you write and check your writing against it from time to time. If you find yourself writing something that doesn't advance your thesis, get rid of it. If you write something that is crucial to advancing your thesis but was not in your plan, then you may need to revise your plan.
- Supporting paragraphs make up the main body of your essay.
- They develop the main idea of your essay.
- To connect your supporting paragraphs may require transition words or phrases. Transition words link your paragraphs together and make your essay easier to read.

Conclusion or concluding paragraph

- The concluding paragraph comes at the end of your essay after you have developed your ideas. It summarizes or restates the main idea of the essay. You want to leave the reader with a sense that your essay is complete.
 - Restate the strongest supporting points of your essay.
 - Conclude your essay by restating the main idea in different words, indicating how you have proven your thesis statement.
 - You may suggest a plan for action or further research.