South Asian University  
Faculty of Legal Studies  
Detailed Course Structure  
Semester _1_ in 2019

Part I

Course Title:  
**Jurisprudence & Legal Theory**

Course Code:  
LW001

Course instructor : Dr Sai Ramani Garimella
Course Duration : One Semester
Credit Units : 4 (MSE/TPW/ESE)
Medium of Instruction: English
Prerequisites : Nil
Precursors : Nil
Equivalent Courses : N/A
Contact E-Mail : ramani@sau.ac.in
Part II

Course Aims

The curricula presence of Jurisprudence & Legal theory is founded on the avowed purpose of engaging with the student on the general aspects of the law as an instrument of social policy. In the words of Julius Stone, “it is the lawyer’s examination of precepts, ideals and techniques of the law in the light derived from the present knowledge in disciplines other than law.” Jurisprudence and legal theory are the summation of the knowledge on the nature of legal rules, the underlying meaning of legal concepts and on the essential features of legal systems, and therefore referred to as the philosophy of law. Law as the system of social ordering, gains its reasons and content from the theoretical constructs, and the theoretical constructs themselves are strengthened by the societal development. This symbiotic relationship thus necessitates the study of jurisprudence as an introduction to the first principles of law and beyond. The accumulated wisdom of thinkers and the concepts that have gained a formal structure through their wisdom forms the curricular content for this course.

The course structure has been prepared to ensure that the topics and the readings that form the mainstay of the intellectual exchange in the classroom leave a curiosity for exploring the theoretical constructs of the variety of legal institutions. It aims at encouraging the student to explore the symbiotic relationship of theoretical constructs and practical issues. Apart from gaining strength with module-specific readings, there are readings drawn from the practice of law, especially the case judgment readings, and this helps the student to found their reasoning on logical premises. It is expected that this course shall give a significant impetus to the student’s research interests, apart from being a significant fillip in comprehension and articulation of the knowledge of law. Understanding the increasing presence of South Asia in the international legal discourse, the course draws upon specific legal and judicial statements from South Asian countries, to understand the inspirations and intersections with the Western legal thought in certain specific concepts.

This course has a collection of readings to go along with the topics that explain the various approaches to social ordering that have been attempted in human history. Also included are topics related to the concepts of rights and duties, the sources of law and the techniques of the judicial process.
OBJECTIVE OF THE COURSE

The course on the “Jurisprudence & Legal Theory” is one of the compulsory courses for LL.M. It has been designed and developed with a view to meet the following objectives –

1. Understand the foundations of theoretical knowledge in international law.
2. Appreciate the importance of theoretical constructs in social policy ordering, the role of law as an instrument of such policy activity.
3. Articulate a critique on the rule of law and its nuances in influencing public policy activity.
4. Appreciate the linkages that evolve in this course between theoretical knowledge and policy activity through the readings and case judgments interspersed in this course structure.

INDIVIDUAL MODULES DESCRIPTION

Week 1- Introduction to the coursework
- Importance of Jurisprudence
- Understanding law
- Relationship between jurisprudence and philosophy
- Concept of Justice and Order

Basic Readings:
Annette Forster, Peace, Justice and International Order, (Palgrave Macmillan 2014) (1-7, 62-95)
Suri Ratnapala, Jurisprudence (CUP 2013) Justice (318-357)
Gunther Hellmann, Power and law as Ordering Devices in the system of International Relations, in Stefan Kadelbach & others, System, Order, and International Law (OUP 2017) (443-463)
Anders Wedberg (Trans), Hans Kelsen, General Theory of Law and State (Harvard University Press 1949) Law and Justice (1-14)

http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/2/

**Advanced Readings:**

Jeffrey Brand, *Philosophy of Law Introducing Jurisprudence* (Bloomsbury Academic 2013) Chapter 1 (1-29)


Allan Beever, *Forgotten Justice The forms of Justice in the History of Legal and Political Theory* (OUP 2013)


**Week 2- Law and Modernity**

- International Rule of Law
- Sources of law (Int’l law)
- Structural and substantive objectives

**Basic Readings:**


James Crawford, *Brownlie’s Principle of Public International Law* (OUP 2012) Sources of International law (20-47)
Samantha Besson and Jean D’ Aspermont, *The Oxford Handbook of the Sources of International Law* (OUP 2017)

Sundhya Pahuja, *Decolonising International Law* (CUP 2011) (172-253)

**Advanced Readings:**

Jean D’ Aspermont, *Formalism and the Sources of International Law* (OUP 2011)

Martti Koskenniemi (ed.), *Sources of International Law* (Ashgate Publishing 2016) Sources (3-122)


**Week 3 - Natural Law**

Laws of Nature and Natural law

- 20th Century Neo-Scholastic/Christian Period

**Basic Readings:**


**Advanced Readings:**

Mark C. Murphy, *Natural Law in Jurisprudence and Politics* (CUP 2006) (1-25)

Andrea Padovani and Peter G. Stein, *The Jurists’ Philosophy of Law from Rome to the Seventeenth Century* (Springer 2007)

Dennis Patterson, A *Companion to Philosophy of Law and Legal Theory* (Wiley – Blackwell 2010) Natural Law Theory (211-227)


Bardo Fassbender and Anne Peters, *The Oxford Handbook of The History of International Law* (OUP 2012)
Week 4- Concept of Rights and Duties
- Right and Duties
- Legal Personality

Basic Readings:
Suri Ratnapala, Jurisprudence (CUP 2013) Rights (295-317)
Fleur Johns (ed.) International Legal Personality (Ashgate 2010)
Roland Portmann, Legal Personality in International Law (CUP 2010) Introduction (1-28)

Advanced Readings:
W. Hastie (Trans), Immanuel Kant, The Philosophy of Law, The Science of Right (Edinburgh 1887)

Week 5- Formalism and Normativism
- Positivism and its contemporary challenges (specific to Int’l law)
- Pure theory of Law (Kelsen’s proposition on norms)
- Norm collision and fragmentation

Basic Readings:


Martti Koskenniemi; "Fragmentation of International Law - The Function and Scope of the lex specialis Rule and the Question of 'self-Contained Regimes': An Outline” [2009] 1 TDM 1, Available at: www.transnational-dispute-management.com/article.asp?key=1308


Dennis Patterson, *A Companion to Philosophy of Law and Legal Theory* (Wiley – Blackwell 2010) Legal Positivism (228-248)


http://scholarship.law.berkeley.edu/californialawreview/vol40/iss1/2/

**Advanced Readings:**


Week 6
Revision and Feedback.

Week 7 - Need for theoretical understanding of International law
- Why theory is important?
- How it helps to better understand the subject.
- A brief overview of the list of theories to be focused in the following weeks

**Basic Readings:**
Andrea Bianchi, *International Law Theories* (OUP 2016) Chapter 1 (1-20)

Week 8 - Post-Modern theories
- New Heaven School
- Legal Realism

**Basic Readings:**
Dennis Patterson, *A Companion to Philosophy of Law and Legal Theory* (Wiley – Blackwell 2010) American Legal Realism (249-266)
Oliver Jutersonke, Realist Approaches to International Law, in Anne Orford and Florian Hoffman, *The Oxford Handbook of The Theory of International Law* (OUP 2016) (327-343)
[http://digitalcommons.law.yale.edu/fss_papers/959](http://digitalcommons.law.yale.edu/fss_papers/959)
Advanced Readings:

Week 9- Critical approaches to international law
- Why new approaches?
- Critical Legal Studies (CLS)
- New Approaches to International law (NAIL)

Basic Readings:


Andrea Bianchi, *International Law Theories* (OUP 2016) CLS (135-162)


Advanced Readings:

Week 10- TWAIL & FtAIL
Third World Approaches to International Law (TWAIL) and its relevance in practice
Feminist Approaches to International Law (FtAIL)

Basic Readings:


Christine Chinkin, Feminism, Approach to International Law, Max Planck Encyclopedia of Public International Law, 2010.


Advanced Readings:

Week 11- Economic Approaches to International Law
- Marxist Approaches to International law
- Kouzes and Posner

Basic Readings:


Advanced Readings:


Week 12
Revision and Feedback.