PHIL5573B Topics in Applied Philosophy: Law and Society
2014-15 Term one
Saturday, 2:30-5:30pm

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Course Description:
Law and Society is an important area in jurisprudence. The nature of which is cross-disciplinary, i.e. a study goes beyond legal text analysis and, social and philosophical theories of institutions. Above all, the study of this course is to explore the interwoven relationship between societal values and law, for example, law and rights, law and morality, law and social institution and even law and politics. In each session, key issues of law and society would be examined, and Hong Kong legal cases would be given for both illustration and discussion of the interfaces between law and the different values in the society.

Purpose and Scope:
This course introduces students to the most important foundations, both theoretical and empirical, in the philosophical and sociological aspects of law. This course shows how the seminal thinkers – especially, Durkheim, Marx, as well as lawyers interested in sociology (such as Weber), and anthropology (such as Karl Llewellyn) – sought to bring together social theory and law in their analysis of key issues, and how their thinking remains critically relevant today. The course also seeks to explain the manner in which social theorists study law as well as to explain how they see some of the processual patterns and dynamics of law in the contemporary world.

Successive sections of this course will focus on: classical theoretical contributions to the philosophical and social theories of law; selected chapters in the development of the modern trend; and a useful selection of issues which may be best examined by a combined approach of law and social theory.

Aims:
- To introduce students to the theory and empirical research achievements of the philosophical and social theories of law.
- To provide students with an understanding of the theoretical and practical dimensions of law in society.
- To lay the groundwork for further inquiry into and application of sociological theory and methods to legal norms, institutions and processes.
- To provide students with some practical examples of current law and society issues.

Objectives:

By the end of the course, students should gain:
- Understanding of the jurisprudential and social science issues surrounding law and legal processes.
- Knowledge and understanding of the issues surrounding the relationship between law and society.
- Knowledge of the core literature relating to the areas studied on the course.

Assessment:
- The course will be assessed by both group presentation in class (50%) and an individual essay of not more than 5000 words (50%).
- The topics of both presentation and essay shall be determined by students with the approval of teacher.

Course Structure:

Part A: Introductory:
Meeting 01: Preliminaries -- the Course and its Aims;
   Law in Society and Culture: Law as Culture
   Case Study: ChinaChem Charitable Foundation Limited v Chan
   Chun Chuen and The Secretary for Justice [2010] HKCFI 88;
   HCAP 8/2007
   ChinaChem Charitable Foundation Limited v Chan
   Chun Chuen and The Secretary for Justice [2011] HKCA 15;
   CACV101/2010 (14 February 2011)

Meeting 02: Law in Society and Culture: Law as Customs
   Concubinage in HK
   Case Study: Suen Toi Lee v Yau Yee Ping [2001] HKCFA 21;
   Court of First Instance: [1998] 1 HKLRD 716 and [1999]
   3 HKLRD 502; Court of Appeal: [2000] 3 HKLRD 443
Part B: Seminal Writers:
Meeting 03: Marx and Marxist Approaches to Law, Society, & Social Change
   REIT Case
   Case Study: *Lo Siu Lan v Hong Kong Housing Authority* [2005]
   HKCFA 46; Court of Appeal [2005] HKCA 386; Court of First Instance [2004] HKCFI 1122.

Meeting 04: Durkheim: Law Morality and Social Integration
   CSSA Case
   Case Study: *Kong Yun Ming v The Director of Social Welfare* [2013] HKCFA 103

Meeting 05: Weber: Law, Domination and Rationalisation
   Congo Case
   Case Study: *Democratic Republic of Congo and others v FG Hemisphere Associates LLC* [2011] HKCFA 41

Part C: Empirical Studies and Theoretical Reflections:
Meeting 06: The Legal Profession
   Court of First Instance: [2001] HKCFI 63

Meeting 07: Judges, Courts and Dispute Resolution
   "Paparazzi" on Judges:
   Case Study: *Wong Yeung Ng v The Secretary of Justice* [1999]
   HKCA 382; [1999] 2 HKLRD 293

Meeting 08: Law Enforcement and Social Control
   Misconduct in Public Service:
   Case Study: *Sin Kam Wah and another v HKSAR* (FACC 14/2004); *Shum Kwok Sher v HKSAR* (FACC 1/2002) and
   HKSAR v *Wong Lin-kay* (FACC 3/2011)

Part D: Current Theorising:
Meeting 09: The Frankfurt School
   TVB judicial review:
   *Television Broadcasting Limited v Communications Authority and another* [2013] HKCFI 772' [2013] HKC 593
   ATV judicial review:

Meeting 10: Power/Knowledge: Michel Foucault
Prisoner and voting rights:
Chan Kin Sum v Secretary for Justice and another [2008] HKCFI 1081; [2009] 2 HKLRD 166

Meeting 11: Gender, Law and Society
Transgender and marriage rights:
W v Registrar of Marriages [2013] HKCFA 39; [2013] 3 HKLRD 90

Meeting 12: Post-colonial Law and Local Society: the case of Hong Kong
Identity and Difference:
Ng Ka Ling and another v The Director of Immigration [1999] HKCFA 72; [1999] 1 HKLRD 315

Part E: Conclusions
Meeting 13: Concluding Thoughts

Readings:


Bederman, David J. (2010), Custom as a Source of Law, Cambridge University Press.


Durkheim, Emile (1972), Selected Writings, Cambridge University Press.


Cases:


*Kong Yun Ming v The Director of Social Welfare* [2013] HKCFI 103.

*Lo Siu Lan v Hong Kong Housing Authority* [2005] HKCFI 46; Court of Appeal [2005] HKCA 386; Court of First Instance [2004] HKCFI 1122.
Ng Ka Ling and another v The Director of Immigration [1999] HKCFA 72; [1999] 1 HKLRD 315.

Shum Kwok Sher v HKSAR (FACC 1/2002).

Sin Kam Wah and another v HKSAR (FACC 14/2004).


Wong Yeung Ng v The Secretary of Justice [1999] HKCA 382; [1999] 2 HKLRD 293.

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