

Course title Philosophy of Law – Hard Cases		ECTS code	
Name of unit administrating study Faculty of Law and Administration			
Studies			
Field of study	Type	Form	
Polish and International Legal Studies Programme	Diploma programme (1st and 2nd tier studies)		
Teaching staff mgr Magdalena Glanc-Żabiełowicz			
Forms of classes, the realization and number of hours		ECTS credits	
A. Forms of classes, in accordance with the UG Rector's regulations Lecture with discussion			
B. The realization of activities Lecture in the class, multimedia presentation			
C. Number of hours 20h			
The academic cycle Winter semester			
Type of course mandatory		Language of instruction English	
Teaching methods The course format will typically be a combination of a lecture, a multimedia presentation and a discussion, with discussion – analysis of critical incidents (hard cases) – dominating.		Form and method of assessment and basic criteria for evaluation or examination requirements	
		A. Final evaluation, in accordance with the UG study regulations Exam, Essay	
		B. Assessment methods Final grades will be based on a critical essay on issues explored in class (approx. 5.000 words) and a test.	
		C. The basic criteria for evaluation or exam requirements Students will be required to read each week's assignments in advance to have initial takes on the issues of the course and participate regularly in discussions in class.	
		D. Method of verification of the established effects of education	

	<p>The results are evaluated in accordance with the following scale:</p> <p>A (5,0) – 91% or more B (4,5) – 81%-90% C (4,0) – 71-80% D (3,5) – 61-70% E (3,0) – 51-60% Failed (2,0) – 50% or less</p>
<p>Required courses and introductory requirements</p> <p>All foreign incoming Erasmus law students are admitted to the PILSP at the Faculty of Law and Administration. Other students wishing to follow PILSP courses need to apply (see: PILSP Regulations).</p> <p>Command of English on the level of B2 or higher is recommended.</p>	
<p>Aims of education</p> <p>This course will consider a range of issues in contemporary theory and philosophy of law with particular emphasis on the concept of so called hard cases. As the main goal of the course is to raise awareness of theoretical problems involved in understanding law as well as practical problems that arise when creation and application of law is concerned. Students' attention will be dragged to problems that occur where there is a clash of law with other normative systems and the conflict of law with itself. We will look carefully at philosophical questions that have arisen in various different areas of the law and at a number of highly contested contemporary legal issues.</p>	
<p>Course contents</p> <ol style="list-style-type: none"> 1. Introduction. General theory of hard cases. 2. Law vs. law. Cannibalism. The case of Speluncean explorers. 3. Law vs. morality. Legal moralism and Paternalism. The case of Lawrence v. Texas. 4. Law vs. culture. Cultural defense. Recognising marriage. 5. Law vs. medicine. Surrogate motherhood. The case of Baby M. 6. Law vs. history. Transitional justice. The prosecution of the Nazi regime. 7. Law vs. politics. Legitimacy of humanitarian intervention. The case of Kosovo 8. Law vs. human rights. Legalizing torture. The ticking bomb scenario. 9. Law vs. politics. Polish Constitutional Drama. 10. Summary of the course. 	
<p>Bibliography of literature</p> <ol style="list-style-type: none"> 1. Literature required to pass the course <ul style="list-style-type: none"> • Riddall J.D., <i>Jurisprudence</i>, Oxford University Press, Oxford 2010. • Sykuna S., Zajadło J., <i>Towards a New Theory of Hard Cases</i> (in:) Wojciechowski B., Juchacz P.W. Cern K.M (eds.), <i>Legal Rules, Moral Norms and Democratic Principles</i>, DIA-LOGOS Vol. 15, Peter Lang Edition, Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien, 2013, pp. 133-162 • Zajadło J., Zeidler K., <i>Philosophy of Law</i>, WoltersKluwer, Gdańsk-Warszawa 2016. 2. Extracurricular readings <ul style="list-style-type: none"> • Brooke D. <i>Jurisprudence</i>, Q&A, Routledge question & answers series, , 5th edition, Taylor & Francis e-Library, 2011. • Devlin P., <i>Morals and the Criminal Law</i>, Morality and the Law, pp. 24-41 • Dershowitz A. , <i>Want to torture? Get a warrant</i>, (in:) San Francisco Chronicle 22.1.2002, p. A19 (http://www.alandershowitz.com/publications/docs/torturewarrants2.html) • Duff R.A., Farmer L., Marshall S.E., Renzo M., Tadros V., <i>The Structures of the Criminal Law</i>, Oxford University Press, Oxford 2011. 	

- Fuller, L.L., *The Case of the Speluncean Explorers* (in:) The Harvard Law Review, 1949 Vol. 4 Nr 62, pp. 616-645.
- Hart H.L.A., *Immorality and Treason*, London 1958, pp. 83-88;
- *In the Matter of Baby "M"*, 1988 (<http://www.justiceharvard.org/resources/in-the-matter-of-baby-%e2%80%9cm%e2%80%9d-1988/>), full judgement: (<http://www.lfip.org/laws822/docs/1.htm>)
- Jackson R.H., *Opening statement before the International Military Tribunal*, 21.11.1945; (<http://www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-by-robert-h-jackson/opening-statement-before-the-international-military-tribunal/>);
- Jackson R.H., *Closing arguments for conviction of Nazi war criminals*, 26.7.1946; (<http://www.roberthjackson.org/files/theman/speeches-articles/files/closing-arguments-for-conviction-of-nazi-war-criminals.pdf>)
- *Judgement in Dudley and Stephens v. Regina* (1884). 14 QDB 273 DC
- Karayanni M.M., *Adjudicating Culture*, (in:) Osgoode Hall Law Journal, 2009 Vol. 47 nr 2, Art. 5
- Luban, D., *Liberalism, Torture, and the Ticking Bomb*, (in:) *Georgetown Law Faculty Publications and Other Works*, 2009, Paper 148 (<http://scholarship.law.georgetown.edu/facpub/148>)
- Meller S.E., *The Kosovo Case: An argument for a Remedial Declaration of Independence*, (in:) *Georgia Journal of International and Comparative Law*, 2012, Vol. 40, pp. 836-838
- Oprea A., *Child Marriage a Cultural Problem, Educational Access a Race Issue? Deconstructing Uni-Dimensional Understanding of Romani Oppression*, ERRC 15.7.2005 (<http://www.errc.org/article/child-marriage-a-cultural-problem-educational-access-a-race-issue-deconstructing-uni-dimensional-understanding-of-romani-oppression/2295>)
- Peters A., *Humanity as the A and Ω of Sovereignty*, (in:) *European Journal of International Law*, 2009 Vol. 20, No. 3, pp. 513-544.
- Pollitt K., *The Strange Case of Baby M*, (in:) *The Nation* 23.05.1987, (<http://www.thenation.com/article/strange-case-baby-m>);
- Singer P., *A Convenient Truth*, (in:) *New York Times* 26.01.2007, (http://www.nytimes.com/2007/01/26/opinion/26singer.html?_r=1&th&emc=th&oref=slogin)
- Teitel R., *The Law and Politics of Contemporary Transitional Justice*, (in:) *Cornell International Law Journal*, 2005, Vol. 38, p. 837; NYLS Legal Studies Research Paper No. 06/07-10.

**The learning outcomes
(for the field of study and
specialization)**

Knowledge

Through an exploration of fundamental questions concerning the nature of law and the relation between law and other normative systems, students become aware of the major concepts, issues and debates in contemporary legal philosophy and the key concepts inherent to the idea of hard cases. They understand and respond to the issues discussed in class by taking a position and offering compelling reasons to support of it.

Skills

The aim of the course is to strengthen critical thinking and argumentative writing skills. Students can critically analyze the views presented in the literature as well as the arguments presented in the discussion. They also scrutinize standards of review in landmark legal decisions. Students learn to express themselves in class on controversial issues of justice and law. They articulate ideas, analysis and facts in a public discussion.

Social competence

Being fostered to think in an informed and reasoned way about practical and theoretical questions concerning law, students become more sensitive to the complexity of the phenomenon of law. They explore legal questions of importance to contemporary society and become open to very different interpretations of law

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