

# Jurisprudence 2013

## Course outline

### 1. Introduction

#### 1.1 Overview

Jurisprudence is a self-standing semester course in the penultimate year of the LLB degree. The purpose of the course is to give students a basic grounding in the central themes of legal philosophy. This will involve examining major schools of jurisprudence, and introducing the students to the core legal debates that have preoccupied legal philosophers from the early days of civilisation to modern times. The course will also focus on how these debates have impacted, and continue to impact, on the legal system in South Africa. The course is designed to serve certain generic purposes: to stimulate critical thought and debate about law as a social and political entity, and to provide a philosophical basis from which the students may better understand the rationales behind the existence, structure and content of the “black letter” laws that are studied in other legal courses. The course should also give students an opportunity to think carefully about the values that ought to underpin a country’s legal system, and in particular to see how certain philosophical approaches to law have shaped the way out South African society and its legal system has arranged itself, both in the present and the past.

#### 1.2 Credit value

10 credits.

#### 1.3 Assumptions of prior learning

In order to successfully complete this course, students need to be able to:

- write and communicate in coherent English;
- know how and where to access resources such as textbooks, law reports and statutes in the AJ Kerr Law Library;
- learn independently;
- read, analyse and extract principles from textbooks and other resource material; and
- reference according to general legal referencing conventions in written work.

### 2. Course outcomes

#### 2.1 Critical outcomes

Students will be able to:

- identify and solve problems;
- organise and manage themselves and their work load;
- collect, analyse and evaluate information from various sources, as well as information conveyed in the classroom environment; and

- communicate effectively in class debate and written assignments.

## 2.2 Intended specific outcomes

This course is designed so that students who successfully complete this course should be able to achieve the following outcomes. The student should be able to:

- understand, explain and evaluate the major schools of legal philosophy;
- understand, explain and evaluate some of the major jurisprudential debates that have preoccupied legal philosophers;
- understand, explain and evaluate how certain philosophical approaches to law have shaped the way our South African society and its legal system has arranged itself in the past;
- think critically about law as a social and political entity, particularly in the context of contemporary debates about law in modern South African society; and
- understand, explain clearly and evaluate the reasons behind the existence, structure and content of the “black letter” laws that are studied in other legal courses.

## 3. Teaching method

The course will be presented by means of *viva voce* lectures. There is no comprehensive handout for the course and students will be expected to take their own notes during class. In lectures, only a broad explanatory overview of leading jurisprudential theories will be given. Students will be expected to read extensively to consolidate and develop their understanding of the topics that are covered in the course. Students will also be expected to debate the merits of the various jurisprudential issues in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and in consolidating afterwards. Lectures are compulsory. A student may not miss more than six lectures throughout the semester without a valid excuse. There are no tutorials in this course.

## 4. Course content

- 4.1 Natural Law
- 4.2 Legal Positivism
- 4.3 Legal Realism
- 4.4 Historical Jurisprudence
- 4.5 Critical Legal Scholars

## 5. Resources

### 5.1 Prescribed reading

Johnson D, Pete S and Du Plessis M *Jurisprudence – A South African Perspective* (Butterworths, 2001)

### 5.2 Recommended reading

Students will be expected to expand upon the material discussed in lectures by reading relevant passages from some of the leading general texts on jurisprudence. These texts include:

- Dias RWM *Jurisprudence* 5<sup>th</sup> edition (Buttworths, 1985)
- Freeman MDA *Lloyd's Introduction to Jurisprudence* 7<sup>th</sup> edition (Sweet and Maxwell, 2001)
- Harris JW *Legal Philosophies* 2<sup>nd</sup> edition (Buttworths, 1997)
- McCoubrey H and White N *Textbook on Jurisprudence* 4<sup>th</sup> edition (Blackstone Press, 2003)
- Riddal JG *Jurisprudence* 2<sup>nd</sup> edition (Butterworths, 1999)
- Roederer C and Moellendorf D *Jurisprudence* (Juta & Co., 2004)
- Van Blerk A *Jurisprudence: An Introduction* (Butterworths, 1996)

Students are also encouraged to browse through the shelves in the AJ Kerr Law Library to familiarise themselves with the Faculty holdings of other jurisprudence holdings. This will stand them in good stead when research is undertaken for assignments.

## 6. Assessment

### 6.1 Grid

<b>Specific outcomes (On completion of this course, the student should be able to:)</b>	<b>Assessment criteria (What <i>evidence</i> must the student provide to show that they are competent? The student must be able to:)</b>	<b>Assessment tasks (The evidence will be <i>gathered</i> in the following way. The student may be expected to:)</b>
Understand, explain and evaluate the major schools of legal philosophy	<ul style="list-style-type: none"> <li>• Describe and explain the principles of classical natural law theory, as viewed through the eyes of certain legal philosophers</li> <li>• Describe and explain the principles of legal positivism, as viewed through the eyes of certain leading philosophers</li> <li>• Describe and explain the principles of legal realism, as viewed through the eyes of certain</li> </ul>	<ul style="list-style-type: none"> <li>• Write an essay in which the principles and features of the various schools of jurisprudence are discussed and critically evaluated</li> <li>• Write an essay in which one school of jurisprudence is compared and contrasted with one another</li> <li>• Write an essay in which one philosopher's approach to law is compared and</li> </ul>

	<p>leading philosophers</p> <ul style="list-style-type: none"> <li>• Describe and explain the principles of historical jurisprudence, as viewed through the eyes of certain leading philosophers</li> <li>• Describe and explain the principles of critical legal scholars, as viewed through the eyes of certain leading philosophers</li> <li>• Evaluate critically the advantages and disadvantages of any of these particular approaches to law</li> <li>• Compare and contrast the different schools of legal philosophy</li> </ul>	<p>contrasted with another</p>
<p>Understand, explain and evaluate some of the major jurisprudential debates that have preoccupied legal philosophers</p>	<ul style="list-style-type: none"> <li>• Discuss critically the Hart/Fuller debate as to whether law and morality are intrinsically interlinked</li> <li>• Discuss critically the Hart/Devlin debate about whether it is the task of the criminal law to enforce morality</li> <li>• Discuss critically the debate about how the process of legal adjudication occurs</li> </ul>	<p>Write an essay in which these debates are discussed and critically analysed</p>
<p>Understand how certain philosophical approaches to law have shaped the way our South African society and its legal system has arranged itself in the past</p>	<ul style="list-style-type: none"> <li>• Discuss critically the impact of the various philosophical approaches on the South African legal system, particularly in respect of the record and role of</li> </ul>	<ul style="list-style-type: none"> <li>• Write an essay in which the debate on and role of the South African judiciary is discussed, from various philosophical perspectives</li> </ul>

	the South African judiciary under apartheid	
Think critically about law as a social and political entity, particularly in the context of contemporary debates about law in modern South African society	<ul style="list-style-type: none"> <li>• Identify the relevant principles of legal philosophy that may underpin issues of legal and social debate in South Africa</li> <li>• Critically and logically discuss the relevant principles</li> <li>• Apply these principles to discussions about issues of contemporary legal interest in South African society</li> <li>• Propose potential solutions to these debates, which are grounded in firm jurisprudential foundations</li> </ul>	Write an essay in which contemporary issues of legal interest in South Africa are critically analysed from a philosophical perspective, and solutions are proposed to the problem that are logically grounded in relevant philosophical theory
Understand more clearly the reasons behind the existence, structure, value and content of the “black letter” laws that are studied in other legal courses	<ul style="list-style-type: none"> <li>• Identify and explain the philosophy behind the existence of various particular laws and legal structures</li> <li>• Discuss the way in which one’s philosophical starting point may determine how one understands the meaning and content of various laws and legal structures</li> </ul>	Write an essay in which a particular legal rule, principle, doctrine or institution is explained in its philosophical context

## 6.2 Composition

The final mark for the course is comprised of the following components:

Class mark:	40 marks
<u>Examination:</u>	<u>60 marks</u>
Total:	100 marks

## 6.3 Assignments

There are two major assignments in this course, which are submitted towards the end of the third and fourth terms respectively. In these assignments, students will be expected to discuss a particular jurisprudential issue, and relate the theory to a contemporary issue of interest to South African society. The assignments should be approximately 2500 words (including footnotes) in length, and will have to be thoroughly researched, and correctly referenced and presented. Each assignment counts 50% of the class mark component of the course. The assignments are compulsory.

## 6.4 Examination

One two-hour paper will be written in November. The examination will be out of 60 marks. There will be several 30-mark questions in the paper, of which the student will have to choose any two to answer. The questions will generally require students to be able to explain the nature and content of the theories about law that were examined in the course. The examination is compulsory. An external examiner assesses the quality of both the examination paper and the students' answers.

## 7. Evaluation

This course is evaluated as part of the global evaluation of LLB courses conducted at the end of each semester.