

**Law and Religion**  
**LAW 379**  
**Spring 2011**

**Professor Benjamin Berger**

Location: Room 142  
Times: Monday and Wednesday, 10:30am–12:00pm  
Unit Value: 1.5 units

**CONTACT INFORMATION:**

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**REQUIRED MATERIALS:**

1. Course Readings
  - Course readings will be made available on the course website.
  - Permissions for posting all materials have been obtained and any charges imposed by the copyright holders are the cost of the course readings.
    - Students must go to the Course Distribution Centre and pay the fee for access to the course readings.
    - It is possible that modest additional charges for readings could arise as the course carries on. If so, students will be alerted to the additional fee and payments will be made to the Course Distribution Centre.
  - I have made the materials available such that they can be downloaded one by one or as a single package at the beginning of the year.
  
2. Course Website
  - We will be using a course website, found by logging in (using your netlink id and password) at [moodle.uvic.ca](http://moodle.uvic.ca)
  - If you are registered, this course will appear as one of your courses for which a moodle site has been created.
  - The site is organized around our weekly topics, with readings listed under each topic. Exercises, chat rooms, news, and links will be added as the course proceeds.
  - Please consult the calendar on this site, which lists key dates, including deadlines, cancelled classes, and make-up classes.

**DESCRIPTION:**

Students enrolled in this seminar will engage in a close and critical examination of the complex historical and contemporary interactions between law and religion, two social forces whose relationship has shaped – and continues to shape – our modern world. Students will begin by considering the nature of religious belief, identity, and belonging, examining certain influential theories of religion developed in philosophy, anthropology, psychology and sociology, as well as

modern approaches to and theories about the study of religion. After briefly exploring aspects of the deep historical relationship between law and religion, the seminar will focus upon contemporary issues involving the relationship between law and religion in the modern liberal state, canvassing such issues as: the meaning of “secularism”; religion and religious reasoning in the public sphere; the constitutional status of religion, including religious freedom and equality and their relationship to other constitutional rights and public interests; religion and education; law, religion, and morality; and comparative issues in law and religion.

The seminar will be overtly interdisciplinary, putting questions of history, philosophy, and religious studies alongside legal theory and analysis. Students will be encouraged to mirror this approach in their research project.

The seminar will be dominantly discussion-based, although lectures will be used to introduce students to unfamiliar areas, and multiple forms of media (film, audio, literature) will be employed in the course of the seminar.

### **OBJECTIVES:**

My purpose in this course is to establish a community of inquiry into the complex relationship between law and religion. In addition to providing an opportunity to explore contemporary issues arising from this relationship, my objective is also to provide you with an opportunity to explore a variety of perspectives on and approaches to issues of law and society. I will ask you to push yourself to engage with challenging material; in exchange, I am committed to feeding your curiosity, expanding and deepening your knowledge in this area, and helping you to develop your analytic skills. Finally, among my objectives is to have you undertake sophisticated, creative research and to refine your oral and written communication skills. To this end, my hope is that students will:

- Gain an appreciation for the key ideas and debates that – both historically and in contemporary society – inform the relationship of law and religion;
- Become familiar with the doctrinal issues at play in law and religion in Canada today;
- Develop a rich understanding of the nature of both religion and the constitutional rule of law in the modern liberal state, including the relationship of both to identity, power, truth and equality;
- Wrestle with both the promise and limits of legal multiculturalism as it applies to religion;
- Engage in passionate, reasoned, and informed discussion with colleagues on issues of central importance to contemporary Canadian society;
- Develop skills in research and writing, as well as critical oral and written communication skills;
- Enjoy engaging with one of the most fascinating, complex, theoretically rich, and practically important areas of contemporary Canadian law.

### **METHODOLOGY:**

This course will take the form of an advanced seminar. For the most part, topics will be arranged in a weekly block, allowing an initial class to familiarize ourselves with the relevant theories, problems, readings, and case law, followed then by a second class that will involve attention to particular issues and further discussion arising from points of interest from the first class. Although I will sometimes

provide you with context-setting lectures (usually in the first of our two weekly classes) the bulk of our class time will be spent in seminar discussions, academic exercises, and, when possible, engaging with guest speakers.

As a seminar, the success of the course depends substantially on students' willingness to critically reflect on the material and to engage in discussion with one another and with me. Students are **expected to attend every class having read and reflected upon the materials** and prepared to discuss issues and problems raised by the cases and by the secondary literature.

Although participation in class discussion is strongly encouraged (indeed required!), please be mindful of the number of students in the seminar and the need to allow all space to present their views, reactions, and questions.

### **CLASSROOM CLIMATE:**

The issues that we are addressing in this course touch upon some of the most durable and difficult tensions in the development and current state of the modern world. The nature and role of the public sphere, law, religion, and culture are of immense intellectual import and interest, but also touch upon some of our most deeply held personal commitments. The academic community of which we are a part demands that we be able to engage in free and creative inquiry. In pursuit of this community of searching and spirited inquiry, an inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, while vigorously exploring and explaining our views, both I as instructor and you as students must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment.

For your reference, you may wish to consult the University's Discrimination and Harassment Policy ([http://www.uvic.ca/shared/shared\\_usecdocs/policies/GV0205\\_1150.pdf](http://www.uvic.ca/shared/shared_usecdocs/policies/GV0205_1150.pdf)). The University of Victoria and the Faculty of Law are committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. I expect all aspects of this class to be conducted with this commitment firmly in mind.

If you have any concerns about the climate of the class, please feel free to contact me or the Associate Dean.

### **EVALUATION:**

There will be no examination. Instead, your grade will be based on the following four requirements, explained more fully below:

- (1) a **research paper**, worth 75% of your final grade;
- (2) a **commentator presentation**, worth 15% of your final grade;
- (3) **web commentaries**, worth 5% of your final grade;
- (4) **course participation**, including participation in class exercises and discussions,

completion of the essay description and preliminary outline/summary requirements, and class attendance, worth 5% of your final grade.

**(1) The Research Paper: 75 Marks**

**Nature of assignment:** This is an opportunity for you to deeply explore the law, scholarship, and theory surrounding a law and religion-related issue of special interest and importance to you. You are free to pick any topic of interest to you that fits within the general scope of the course, subject to the approval of the professor. You will be required to submit a brief note/précis describing your intended topic and a 3-5 page preliminary outline/summary/annotated bibliography. At the same time that the outline is submitted to the professor, you will be encouraged to post it on the “research projects” section of our web board, thereby creating a common resource of approaches, sources, and ideas for structuring your research projects.

I will provide feedback and comments on paper topics and outlines. Students are encouraged to talk to me about the progress of their research or writing, issues that you are having in conceiving of your topic, or any other matter related to your paper at any time during the term. In the interests of fairness, I will not, however, review or comment upon drafts of the paper.

**Guidelines:** This research paper must be between 4500 and 6000 words, not including footnotes. A word count must be provided on the cover page. I will stop reading at 6000 words (and I put a high premium on a good conclusion to a research paper!). ***I encourage the submission of double-sided assignments in order to reduce the consumption of paper.***

**Deadlines:** Paper topics must be chosen by **February 7, 2011**, and a brief note describing the topic should be ***deposited in the online drop box*** on or before that day. A 3-5 page preliminary outline/summary (including preliminary bibliography) of the paper is due on or before **Monday, February 28, 2011**. Please deposit these in the appropriate online drop box. I encourage you to schedule your time so as to submit your final paper on the last day of classes, **Tuesday, April 5**. I am aware, however, that depending upon your schedules, you may wish to use some or all of your exam period to finish the paper. Final papers are due to be uploaded ***into the online drop box*** by or before **4:30pm on Thursday, April 21**. Please note that, given that this is the last day of the term, extensions past this date must be handled by the Associate Dean’s office.

Students experiencing difficulty in meeting due dates should discuss the problem with me or with the Associate Dean as soon as reasonably possible and, in any event, before the date on which the paper is due. **Late papers are subject to a reduction of 1 letter grade for every partial day late.** For example, a paper that is ½ day (or even 30 minutes) late and is graded as a B+ may receive a letter grade of B. If the same paper were 1.25 days late, it would receive a letter grade of B-.

**Major Paper Option:** Your paper may be used to fulfill the Faculty’s major paper requirement. However, if you choose that option, the paper must meet the length requirements established by the Faculty for such papers. In other words, it must be at least 7500 words (**not including** footnotes and appendices) and **no more than 10000 words**. A word count must be provided on the cover page. It must also receive a grade of C+ or better. **Students who wish to use their paper as a major paper must consult with and receive prior permission from the instructor and must register the**

**paper with the Associate Dean's office.** *A limited number of students will be granted permission.*

**Assessment:** The research paper is an opportunity to engage critically and creatively with a topic related to this course, but of your choosing. It is a critical research paper, meaning that it must go beyond a summary of law and secondary materials and offer your original, thoughtful, and critical commentary on the thesis that you pursue in your paper. I will be looking not only for clarity of argument, but the insightfulness and perceptiveness of your analysis, your sense of the social and/or theoretical context in which the legal issues work themselves out, and the thoroughness and quality of your research. As a significant research paper, I also expect appropriate and polished style and will look carefully at grammatical correctness, your organization, and the clarity of your thought and writing. I will look for thorough research that takes account of both primary and secondary sources. Secondary sources should be used in service of your own argument, meaning that you must go beyond describing existing scholarship and, rather, critically evaluate the existing literature and caselaw. The paper must be entirely your own independent work. It should also represent new work in the sense that it must not be a paper you have prepared for some other class or in some other capacity. Within the first weeks of the course, I will separately circulate a more detailed account of the criteria that I will use to evaluate the papers.

**(2) Commentator Assignment: 15 Marks**

**Nature of Assignment:** The purpose of this assignment is to give you and one of your colleagues an opportunity to serve as a kind of discussion leader and “provocateur” on one of the topics. At the outset of the seminar, you will select or be assigned the role of “commentator” for a week’s topic, with two students serving as commentators for each week. The commentators will lead the first ½ of the second of the two classes in any given week. The principal purpose of the comment is to enrich, through student selection, the range of materials and readings considered in the course and to provoke discussion and reflection on themes and issues of interest to the students.

I encourage you to select a week in which the topic is one that may relate to your research paper. This assignment will give you an opportunity to begin to explore or test some of your reactions and ideas.
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**Responsibilities of the Commentator:** Having reviewed and digested the readings for the week that they have selected, the commentators are to identify an aspect of the week’s theme that is of particular interest to them and then to select one article, case, or other reading of any genre *not included* in the week’s readings or covered elsewhere in the course. Although you may choose any reading that is of interest to you and that you would like to present to the class, you may meet with me to discuss possible sources or themes to explore. The commentator should then come to class prepared to briefly present the reading and, most importantly, her/his insights or thoughts arising from this reading as it relates to the week’s themes. Other students **will not be expected to read** this article, chapter, or case, so the magic comes in briefly describing the piece and then offering reflections, questions, or criticisms *that will encourage and provoke class discussion*. Each commentator has a maximum of 15 minutes for his or her presentation. The two commentators for the week may, if they wish, select 2 pieces rather than 1 and work together in presenting them. Both should make some oral comments and if two are collaborating together, at least one of the two pieces selected should be a secondary reading rather than a case or other source. If students work together,

they may take a total of 25-30 minutes to present.

Each commentator will then be required to submit by e-mail a 4-5 page (double spaced) written critical commentary on the selected piece to the professor. These critical commentaries are due no later than two weeks after making your presentation. This is an opportunity to offer a written discussion and critical analysis of the piece that you selected, as well as its relationship to the week's themes and your evolving thoughts on the issues that you raised. ***There is no need to describe the piece again in your written commentary***, though reference to specific passages and arguments in the piece will make the commentary more effective and interesting. Although this 4-5 page written piece should broadly reflect the content of the commentary given in class (supplemented by any further reflections and reactions you may have had over the course of thinking about and discussing the topic during class time), the written commentary may emphasize one aspect of the oral commentary over others. If you worked together with the other commentator for the purposes of the oral presentation, you may wish to divide responsibility for addressing different aspects of your oral commentary. To be clear, **each commentator must submit her/his individual written submission, which is to reflect the individual student's thought and reactions.**

**Assessment:** Commentators' work (both oral and written) will be assessed on the basis of the thoughtfulness, clarity, creativity, and engagement with the course themes, having regard to factors such as:

- The demonstrated **relationship** between the selected reading and the week's theme;
- The extent to which the student drew out **new and interesting aspects** of the week's theme;
- The **quality and succinctness** of the student's oral description of the selected piece;
- The extent to which the student **successfully engaged colleagues** in conversation;
- **Insight** shown in the oral and written analysis of the selected piece and the week's readings;
- **Creativity** in both substance and form of work;
- The style, grammar, analytic cogency and rhetorical **effectiveness** of the written work.

Marks for the commentator work will be assigned at the end of the course.

### **(3) *Web Commentaries: 5 Marks***

Each week's section on the moodle site has a web forum. This is a place for the exchange of thoughts, concerns, questions, and ideas arising from the week's theme or, more specifically, the readings. All students are expected to participate in the forums, offering thoughtful comments and questions when so moved.

**In addition** to this general expectation, at the outset of the course, students will be required to sign up for one week during which they will be initiators and one week in which they will be responders.

If you have signed up as an initiator, by the end of the Saturday preceding your week you should have started a thread in a "cite and comment" form. To do this you select one or two sentences from one of the assigned readings and offer a brief (approx. 250-500 words) reflection on why that passage caught your attention, grabbed your imagination, or raised questions or concerns for you. Responders for the week are expected to select one of the initiator comments and post a response. It is expected that other students will engage in the conversation and all students may, of course, begin new threads.

Your initiator and responder comments will be marked on the basis of clarity, insightfulness, and engagement with the week’s themes and readings. Students who make a good faith effort on each of their posts can expect to receive an excellent grade for this portion of the course.

**(4) Course Participation: 5 Marks**

This class will be successful only if all students accept responsibility to participate actively. To promote this, 5% of the final grade will be based on course participation.

This portion of your final grade will be based on the following requirements:

- (a) paper topic description handed in on time;
- (b) preliminary outline/summary handed in on time;
- (c) attendance (see below); and
- (d) participation in classroom discussions and exercises.

As long as each requirement is fulfilled on the assigned dates and attendance and participation in class discussions and exercises is acceptable, a student can expect to receive an excellent grade on this aspect of the course.

***Attendance***

Students are expected to attend all classes and to have read the required readings for each class. If for any reason you cannot attend a class session, please inform me in advance. A student who misses more than two class sessions may forfeit the entirety of the 5 marks assigned the course participation.

**THE CALCULATION OF GRADES**

The Law Faculty uses the following marking scheme to determine your final letter grade. The “narrative description” column reflects a rough general consensus among faculty members in regard to assessing student performance. I adopt this description in my grading for all components of this course:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+	9	90-100%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	
A-	7	80-84%	
B+	6	75-79%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	
B-	4	65-69%	

C+	3	60-64%	Satisfactory or minimally satisfactory performance.
C	2	55-59%	These grades indicate a satisfactory performance and knowledge of subject matter.
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 and below	Unsatisfactory performance.

**OTHER IMPORTANT NOTES:**

***Regulations:***

Students will wish to visit the Associate Dean’s page at <http://law.uvic.ca/current/associatedean.php> to familiarize themselves with policies and guidelines specific to the Faculty of Law.

Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2010-2011 (“U Vic Calendar”, available online at <http://web.uvic.ca/calendar2010/>), both generally and specifically for the Faculty of Law.

The Undergraduate Academic Regulations (2010-2011) of the UVic Calendar (<http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/index.html>) set out the University’s expectations about attendance and assignments. The Faculty of Law’s Academic Regulations can also be found at [http://law.uvic.ca/current/academic\\_regs.php#academic](http://law.uvic.ca/current/academic_regs.php#academic)

***Academic Integrity:***

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the University Calendar for policies respecting paraphrasing, plagiarism, and cheating. **It is your responsibility to familiarize yourself with the university policy on academic integrity. If, after reviewing this policy, you have any concerns or questions, or require clarification, do not hesitate to drop by my office or to send me an e-mail.**

The policy on academic integrity can be found on the web at the following address: <http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/PoAcl.html>

***Accommodation, Health Concerns, and Counseling Services***

If any issues arise during the course of the term that may affect your ability to complete course requirements or meet deadlines, it is your responsibility to contact me and/or the Associate Dean as soon as reasonably possible to discuss available supports and possible accommodation.

I would like you to be aware of the services offered by UVic Counselling Services (<http://www.coun.uvic.ca/>) as well as UVic Health services (<http://health.uvic.ca/>).

***Accommodation for Students with a Disability:***

There are support systems, resources, and forms of accommodation available to students with a disability. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/>) and I would be more than happy to work with you to ensure your success in this course.

***Accommodation of Religious Observances:***

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday or observance (<http://web.uvic.ca/calendar2010/GI/GUPo.html>). If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday or observance, please speak with me (or the Associate Dean) and we will be pleased to work out some satisfactory form of accommodation.