

International Human Rights Law Syllabus

Course Listing: CAS IR 306

Lecturer Information

Lecturer

Marcus Gatto, B.A., M.A., J.D.

Email

mgatto@bu.edu

Office Location & Hours

Boston University—DCU
Office
By Request

Credits: 4 BU Credits + 3 Hub Units

Class Times and Locations: refer to main schedule

General Information

Course Overview

The purpose of this module is to examine the history, development, structure and efficacy of international human rights law. In this module, students will investigate the legal framework of the United Nations and regional systems relating to the protection and promotion of, inter alia (among other things), the rights of minorities and indigenous peoples, women's rights, the rights of migrants and refugees, cultural rights, and the emerging field of environmental rights. Students will also engage in vigorous classroom discussion about the ethics and normative grounding of human rights. Students will assess the remedies that exist for violations of human rights law in the various systems and examine practical case studies where relevant. This module provides a platform through which students can explore international human rights norms thematically. Reference will be made throughout the course to the Irish context. Assessment for the course consists of class attendance and participation (10%), a "short-fuse" memorandum assignment (10%), a closed-source memorandum assignment (15%), an appellate brief (25%), an appellate oral argument (15%), and an essay-style final examination (25%).

Hub Learning Outcomes

Ethical Reasoning (One Unit):

1. Students will be able to identify, grapple with, and make a judgment about the ethical questions at stake in at least one major contemporary public debate, and engage in a civil discussion about it with those who hold views different from their own.
2. Learners will demonstrate the skills and vocabulary needed to reflect on the ethical responsibilities that face nations and governments as they grapple with issues affecting both the communities to which they belong and those identified as "other." They should consider their responsibilities to future generations of humankind, and to stewardship of the Earth.

Writing Intensive (One Unit):

1. Students will be able to craft responsible, considered, and well-structured written arguments, using media and modes of expression appropriate to the situation.
2. Students will be able to read with understanding, engagement, appreciation, and critical judgment.

Critical Thinking (Intellectual Toolkit/ One Unit):

1. Students will be able to identify key elements of critical thinking, such as habits of distinguishing deductive from inductive modes of inference, recognizing common logical fallacies and cognitive biases, translating ordinary language into formal argument, distinguishing empirical claims about matters of fact from normative or evaluative judgments, and recognizing the ways in which emotional responses can affect reasoning processes.
2. Drawing on skills developed in class, students will be able to evaluate the validity of arguments, including their own.

Generally, on completion of this course, students will be able to:

1. Identify and evaluate the normative grounding of moral and ethical arguments in contemporary modern debates surrounding minority rights, refugees and asylum-seekers, the rights of women globally, the current status and future of human rights, etc. and evaluate the arguments that are generated surrounding these thematic areas, as they are illustrated in contemporary society and current events appropriately. (Learning Outcome Number One, Ethical Reasoning; Learning Outcome Two, Critical Thinking.)
2. Formulate ethical arguments and respond to claims for our moral attention as members of defined geographical, ideological, and ethnic communities, as well as our more specific membership in the international and various regional, national, and subnational groups. Students will learn to articulate these arguments and responses with measured, responsible and legal vocabulary, incorporating arguments based in empirical analysis, formal logic, emotional or moral appeals, and their own character as advocates. Students will also be encouraged to adopt points of view different to their own to supplement or challenge their own assessments of an issue. (Ethical Reasoning, Learning Outcomes One & Two)
3. Compare the international (United Nations) human rights law system and regional (European, Inter-American, African) human rights law systems. (Ethical Reasoning, Learning Outcome Two)
4. Evaluate the various mechanisms and procedures for human rights law enforcement incorporating the legal skill, vocabulary and terminology acquired in the course. (Ethical Reasoning, Learning Outcome Two)
5. Critically assess specific areas of international human rights law with reference to relevant legal instruments and contemporary cases; learn to read these with a high level of comprehension and whilst exercising critical judgment skills and formulating intricate, measured, and considered responses. (Writing Intensive, Learning Outcome One; Ethical Reasoning, Learning Outcome Two; Critical Thinking, Learning Outcome Two)
6. Draft a legal document in the form of a submission, reasoned opinion, legal brief, or neutral memorandum concerning a specific area of human rights. The drafting process will involve the use of appropriate sources, focusing on appropriate subject matter, and drafting in the correct format. (Writing Intensive, Learning Outcome One)
7. Acquire competency in legal writing and research, and familiarity with legal terminology and vocabulary for framing effective arguments for participation in public and complex debates in current human rights law debates. The competencies acquired will include the ability to draft and format legal documents, properly attribute relevant law and legal scholarship used in a document, distinguish between persuasive and binding authority, and craft a persuasive argument through effective, logical, and responsible reasoning. (Ethical Reasoning, Learning Outcome Two; Writing Intensive, Learning Outcome Two; Critical Thinking, Learning Outcome Two).
8. Provide neutral evaluations of the law in particular areas or with reference to particular cases. (Critical Thinking, Learning Outcome Two; Ethical Reasoning, Learning Outcome One)
9. Discern the relevant details from the factual matrix of a given scenario and to marshal these along with relevant law to reach a justified conclusion. (Critical Thinking, Learning Outcome Two; Ethical Reasoning, Learning Outcome One)
10. Engage in responsible and considered oral and written advocacy to guide audience toward a pre-determined and sound legal conclusion. This is accomplished through the composition of legal memoranda, a legal submission, and delivery of an appellate oral argument with questioning. (Writing Intensive, Learning Outcome One; Ethical Reasoning, Learning Outcome One; Critical Thinking, Learning Outcome One)
11. Composition and delivery of a series of legal documents and oral and written submissions. (Learning Outcomes Detailed In "Assessments and Grading" section)

Instructional Format

Class time will be used for a combination of lectures, discussions, and group exercises (including peer review and writing workshop activities). Participation is very important in this module, as students will be asked to explain readings and concepts, to offer analysis of cases and to express their opinion.

Assignments and Grading

The learning outcomes assessed by the writing and oral advocacy in the course involve fostering the ability of students to advance arguments grounded in three categorical appeals, namely, those identified in the Aristotelian method: logos, pathos, and ethos. Under logos fall those arguments which involve an appeal to formal logic, critical/rational argumentation, and empirical evidence as means of advancing an argument. Arguments falling within pathos are those which make an appeal to the moral or emotional sensibilities of the audience or highlight the same within the speaker her/himself. In contrast to logos, pathos can invoke anecdotal evidence, as well as experiential, figurative, or emotional language. Finally, ethos is cultivated through reference to the good character, knowledge or credibility of the speaker her/himself, or of those whom they are representing; is also reflective of the care which the speaker has applied to the writing or oration, in terms of formatting and choice of subject matter. All three of these appeals, when properly prepared and deployed, ensure the effectiveness of an argument, legal or otherwise. Through this course, a student will develop their ability both to give neutral advice on a legal question, as

well as to advocate from a certain perspective. In this sense, the writing-intensive, as well as ethical reasoning and critical thinking elements and nature of the course promotes mental agility on the part of the student and cultivates her/his ability to transfer between a variety of writing and other delivery, such as spoken and written legal argumentation. This course is writing intensive, meaning that students will be asked to read, synthesize, and apply legal concepts and materials to factual scenarios, taking into account practical considerations such as jurisdiction, the operative statutory or constitutional frameworks for the given jurisdiction, and any other legal instruments by which the jurisdiction is governed. The variety of writing assignments posed for the student reflect the actual work of legal professionals and policy-framers in the area of international human rights law.

Due	%	Assignment Title	Description
Continuous	10	Attendance and Participation	Students should be present in class to engage with their peers in prepared and extemporaneous debates on the issue presented in class each week. Each absence will result in an automatic 10% deduction in the mark for this area. Absences may only be excused with the approval of the programme director for a valid and compelling reason, in accordance with Boston University policies on the matter. A student can achieve a high mark by contributing to class discussions on a regular basis in a way that progresses the discussion, seeks clarification, or responds to the viewpoints voiced by their peers. A mid-range participation mark will be given where a student makes intermittent contributions to class, and where these contributions do not progress the discussion or respond to the substantive contributions made by other students in a structured or sustained manner. A low mark will be awarded where a student makes few contributions or no contributions to classroom discussions and fails to engage with her/his peers in a respectful or engaged manner. (Ethical Reasoning and Critical Thinking, All Elements)
Week 2	10	“Short-Fuse” Memoranda Activity (Formative and summative assessment)	During this class session, students will be presented with examples of short memoranda dealing with legal questions posed for analysis. Having examined these examples, the class will, as a group, discuss and research a new question posed for analysis and draft together a concise answer for that question as a group which will then be evaluated and discussed by as a group with the instructor for the course as a means collective formative assessment during this class session. Students can then use the classproduced memorandum as a guide for their own work. (One Hour) In turn, students are required to write a concise and accurate answer to a specific legal question posed to them in the space of 500 words. Texts are provided and no independent research is required for this assignment. (Writing Intensive)
Week 4	15	Closed Source Memorandum Assignment	Students are given a series of decided cases surrounding a specific legal issue and asked to give a neutral, written assessment of a legal question posed. Students will compare the factual matrices of the past cases and the legal rules applied in those past cases to the facts of the fictional to which they are assigned. Students are not required to research independently for this assignment. (Length: 750 words) (Writing Intensive, Critical Thinking)
Week 6	25	Appellate Brief	One week before submission of the assignment, students will engage in a structured peer review of the work produced to date and have the opportunity for feedback form their colleagues in class and from the instructor. They will have time to incorporate this feedback into their final submitted work and be able to model or adapt features of their peers’ work which they find to be particularly effective. (One Hour) The student now transitions from a neutral position in his/her writing to engage in advocacy on behalf of a fictional client. The student will be given a fictitious case record and must marshal the relevant facts from that record to compile a written brief on behalf of his/her client that advocates that the court/judge reach a certain justified legal conclusion in the case of his/her particular client. (2,000 Words) (Writing Intensive, Ethical Reasoning)

Week 11	15	Appellate Oral Argument	<p>Based on the brief which the student has composed, he or she now must engage in oral advocacy on behalf of their client in a setting that blends pre-prepared remarks and extemporaneous answers to questions posed by individuals drawn from the Dublin legal community (practising solicitors and barristers, legal academics) who act as judges. (10-15 Minutes length) (Writing Intensive, Critical Thinking, Ethical Reasoning)</p> <p>One week prior, students will submit an outline of their oral argument to be peer-reviewed in class under the supervision of the instructor. We will also discuss oral argument structure, ineffective and effective components of a persuasive argument and logical forms of argumentation. We will also listen to examples of oral argument from the Supreme Court of the United States from the Oyez Project, and discuss what makes these arguments particularly (in) effective. (One Hour)</p>
Week 12	25	Final Examination	<p>Students will sit for a two-hour, essay-style examination spanning the entire course. (All Hub Outcomes) The questions are divided into two subgroups; students must answer one question from each sub-group.</p> <ul style="list-style-type: none"> • The first sub-group engages with the ethical reasoning outcomes of the course, requiring students to take positions in relation to ethical questions, and engage in a detailed exposition of the theoretical considerations with regard to a contemporary debate within human rights. They must also countenance in their responses the ethical responsibilities that nations face and the duty towards those perceived as the “other” in certain cases. • In the second of the sub-groups, students must engage with the critical thinking learning outcomes for the course. Specifically, they must analyse factual scenarios with reference to relevant law and therefrom derive normative and evaluative judgments regarding the legal theories they would pursue and the anticipated arguments of the other side of the issue; they must raise and dispose of the latter to bolster the soundness and thoroughness of their own judgment. Moreover, using the skills and tools for critical analysis that they have acquired through the course, they must critically analyse multiple perspectives on a contemporary debate. Upon completion of such analysis, the student should offer their own sound and considered judgment on a matter and explain its virtues vis-à-vis competing viewpoints.

Course Materials

Required Text (Available for Lending at BU/DCU Library):

Rhona K.M. Smith, *Textbook on International Human Rights*, (8 th edn, OUP 2018).

Complementary Readings:

Legal Resources (Ethical Reasoning, Critical Thinking):

Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, and David Harris (eds), *International Human Rights Law*, (3rd edn, OUP, 2018)

Ilias Bantekas and Lotz Oette, *International Human Rights Law and Practice*, (CUP 2013).

Philip Alston and Ryan Goodman, *International Human Rights*, (OUP 2013).

Philip Alston (Author), Ryan Goodman (Author), Harry J. Steiner (ed), *International Human Rights in Context: Law, Politics, Morals*, (3 rd edn, OUP 2007).

Mashood Baderin and Robert McCorquodale (eds), *Economic, Social and Cultural Rights in Action*, (OUP 2007).

James Nickel, *Making Sense of Human Rights*, (Wiley-Blackwell 2015).

Ian Brownlie and Guy Goodwin-Gill, *Brownlie's Documents on Human Rights*, (6 th edn, OUP 2010).

Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (OUP 2006).

Jack Donnelly, *Universal Human Rights in Theory and Practice*, (3 rd Edn, Cornell University Press 2013).

Micheline R, Ishay, *The History of Human Rights: From Ancient Times to the Modernization Era*, (University of California Press 2004).

Christian Tomuschat, *Human Rights: Between Idealism and Realism*, (3rd edn, OUP 2014).

Written and Oral Advocacy Resources (Critical Thinking, Writing Intensive):

Aristotle. (2012) *The Art of Rhetoric*. Harper Collins Publishers

Bronsteen, J. (2006). *Writing a legal memo*. Foundation Press; Thomson/West

Brown, H. (2015). *The mindful legal writer: Mastering predictive writing (Aspen coursebook series)*. Wolters Kluwer Law and Business

Calleros, C (2002) *Legal Research and Writing*. Aspen Business and Law

Clary, B., & Lysaght, P. (2010). *Successful legal analysis and writing: The fundamentals (3rd ed.)*. West/Thomson Reuters.

Fruehwald, E. (2015) *Legal Writing Exercises: A Practical Guide to Clear and Persuasive Writing for Lawyers*. American Bar Association

Kee, C. (2006) *The Art of Argument: A Guide to Mooting*. Cambridge University Press

Richardson, E (2019) *A Guide to Mooting in Ireland*, Clarus Press

Smith, R. (2012). *The legal writing survival guide*. Carolina Academic Press.

Snape, J. & Watt, G. (2010) *How to Moot: A Learner Guide to Mooting*. Oxford University Press

Online Resources:

The Oyez Project (Chicago Kent School of Law): <https://www.oyez.org/>

Plagiarism Notice:

It is the responsibility of every student to read the Boston University statement on plagiarism, which is available in the Academic Conduct Code. Students are advised that the penalty against students on a Boston University program for cheating on examinations or for plagiarism may be “[...] expulsion from the program of the University or such other penalty as may be recommended by the Committee on Student Academic Conduct, subject to approval by the Dean.” N.B: Students MUST retain an electronic copy of all essays submitted for assessment.

Course Schedule

For each topic, please read the specified chapter in the required text. Additional reading, from the complementary materials list, such as articles together with links to relevant websites will be made available on Moodle one week in advance of each class. PowerPoint presentations will also be available two days prior to the class and it is recommended that students print out/access these presentations and have them electronically or physically available in class.

Detailed Schedule:

Class	Topic/Preliminary Reading	To Complete:
1	Human Rights, Historical Context, Development, and Institutions <i>Smith</i> : Chapter 2 (Pages: 5-25)	Students will focus on the inception and promulgation of human rights. They will also examine the development of international human rights regimes prior to, and after, World War II. It will also trace the ideologies of national sovereignty and the burgeoning notion of an international community, commencing with the League of Nations, through the experiences of World War II, and onwards to the creation of the United Nations. Finally, it will examine rival philosophical bases for the derivation of rights: universality versus cultural relativity.
	Writing Workshop One: Neutral Research and Evaluation	Here, students will receive explicit instruction on legal research and writing and will receive instruction on the provision of neutral, predictive evaluations of the law in a given area or in relation to a specific factual matrix forming the basis of a legal research question. As well, students will

Class Topic/Preliminary Reading	To Complete:
	receive feedback in advance of their “short-fuse” assignment in Week 2.
<p>2 The United Nations Treaties and Institutions; Overview of Select Regional Systems Smith: Chapter 3 (Pages 26-36) Chapter 4 (Pages 37-51)</p>	<p>Students will examine the United Nations Charter and its role in governing international relations. They will also examine key international legal instruments which have issued from the UN and its various branches. Particular attention will be given to “dualist” nations such as Ireland and the difficulty of enforcing human rights in this circumstance. We will also review the UN institutions and their impact on the protection of human rights. Of note among these institutions are the Security Council, the International Court of Justice, and the International Criminal Court. To conclude, we will examine regional legal regimes for the protection and promotion of human rights.</p>
<p>3 The Right to Life <i>Smith</i>: Chapter 13 (Pages: 217-234)</p>	<p>Here, students will examine the central and paramount human right: the right to life. We will consider what obligations—be they positive or negative—the right to life may impose upon the state. We will examine with particular care the death penalty and the “right to die”.</p>
<p>4 The Right to be Free from Torture, Inhuman, and Degrading Treatment <i>Smith</i>: Chapter 14 (Pages: 217-235)</p>	<p>Students will examine the seemingly universally agreed prohibition of torture. We will also discuss whether or in what circumstances torture can ever be morally permissible in certain emergency circumstances (e.g., to protect innocent life from imminent threat).</p>
<p>5 Social and Economic Rights <i>Readings will be posted on Moodle</i></p>	<p>During this topic, we will distinguish social and economic rights from civil and political rights, with reference to different regional and domestic systems, and the levels of protection afforded to these categories of rights.</p>
<p>6 Writing Workshop Two: Oral and Written Advocacy</p> <p>Freedom of Expression/Minority Rights <i>Smith</i> Chapters 18 & 21</p>	<p>Here, students will learn how to deploy logical argumentation in the context of oral and written advocacy. Students will be provided with readings and media centered on engaging in responsible advocacy. Students will also be provided in with materials concerning the type of logical reasoning that can be incorporated into argumentation, and means of identifying recognizing the logical argumentation of opponents. This explicitly corresponds to learning outcome one of Critical Thinking as well as the Aristotelian Method as outlined in the assessment strategy for the module. Students will also receive feedback at this time on their Closed Memorandum assignment.</p> <p>Field Trip: Kilmainham Gaol</p> <p>For this section, we will examine, in the first instance, international, regional and domestic regimes protecting the liberty of expression. We will further examine how the definition of protected/unprotected speech and expression can vary according to jurisdiction. In the second instance, we will critically examine specific protections in law for cultural, linguistic and other minorities.</p>
<p>7 Writing Workshop Two: Oral and Written Advocacy</p>	<p>During this topic, we will examine the human right to health in international law and the positive obligations upon states, in view of respecting, protecting and fulfilling this right. The</p>

Class	Topic/Preliminary Reading	To Complete:
	<p>The Human Right to Health and Guest Lecture on the Human Right to Health and the operation of Criminal Law as an adjunct or impediment to its realization</p> <p><i>Readings will be posted on Moodle</i></p>	<p>guest lecture will speak about the desirability, vel non, of criminalizing the transmission of HIV with deference to the dignity and rights of those living with HIV; in addition, the guest will speak to the treatment of narcotics addiction in conjunction with the right to health of the persons living with addiction.</p>
8	<p>Rights of Refugees and Asylum Seekers Smith: Chapter 22 (Pages: 382-387)</p>	<p>For this topic, we will outline the legal criteria for refugee status and the <i>lacunae</i> within existing legal frameworks. It also examines the direct provision system in Ireland.</p>
9	<p>Women's Rights in International Human Rights Systems</p> <p><i>Smith: Chapter 22 (Pages: 371-376)</i></p>	<p>In this section, we will focus on distinct elements of women's rights in domestic and international legal regimes, including access to education and property rights, domestic, patrimonial, and sexual violence, contraception and abortion, with a view to the right of self-determination.</p>
10	<p>International Environmental Law and Human Rights Regimes.</p> <p><i>Smith: Chapter 23 (Pages: 395-396)</i></p>	<p>In this section, we will examine emergent issues at the nexus of international human rights law and environmental protection, including the proposed right to a healthy environment.</p>
11	<p>In Class Presentations</p>	<p>Students will present appellate oral arguments.</p>
12	<p>Monitoring, Remedies & Enforcement Mechanisms/Final Class Revision Smith: Chapter 10 (Pages 153-179)</p>	<p>In this session, we will examine monitoring systems, as well as remedies and enforcement mechanisms which are available to governments, civil society organizations, and private individuals. This class will conclude with a thematic revision of the course.</p>
13	<p>Final Examination</p>	<p>Students will sit for a two-hour, essay-style examination spanning the entire course.</p>