

LAW 312D Law and Literature

Spring 2021

Instructor:	Professor Mary Liston	Allard Hall, Room 447
Classes:	Mondays 2:00-5:00 via Zoom on Canvas	
Office Hours:	Please email liston@allard.ubc.ca to set up a meeting time	

A. Seminar objectives

What can literature teach us about law? What relationships does law have with literature or literary criticism? This seminar examines these key questions as well as several of the following:

- How are legal institutions, norms, and processes portrayed in literature?
- How has an author's legal education affected their writing?
- How is narrative used in legal writing, particularly in judicial opinions?
- How do legal actors "frame" legal arguments and issues?
- What are "legal fictions"?
- How are lawyers portrayed in literature?
- What can we learn about legal interpretation from literary interpretation?

The seminar will provide an opportunity to think about the law differently by critically examining and reflecting on works of fiction. We will also engage with problems in practical legal writing by considering the skills of legal persuasion, reasoning, rhetoric and writing. A background in literary studies is not required. Seminar participants will be expected to read the materials closely and be actively engaged in seminar discussions.

B. Course materials

Some course materials are available as hyperlinks embedded in the syllabus, as pdfs on the Canvas course website and/or will be distributed prior to class.

You will need to purchase the following books:

- Agatha Christie, *And Then There Were None* (William Morrow, 2011). Paperback.
- Louise Erdrich, *The Round House* (Harper, 2012). Paperback.
- Penelope Fitzgerald, *The Bookshop* (London: Fourth Estate 2014). Paperback.
- Kazuo Ishiguro, *The Remains of the Day* (Lester & Orpen Dennys, 2005). Paperback.
- Anna Sewell, *Black Beauty* (Penguin Classics 2011). Paperback.

It would be great if everyone had the same edition (for ease of reference) but you may also use your own copy in your preferred format.

C. Seminar assignments and procedures

All assignments must be satisfactorily completed.

1. Seminar participation = 15%

Weekly attendance, preparation by reading the materials, and active participation by talking, listening and participating in class exercises are vital—all of these activities are essential to the fruitfulness of the seminar and the intellectual vibrancy of our academic community. Students are expected to have read the assigned readings, to bring these readings to class, and to be prepared to analyze and respectfully discuss these materials in class with their colleagues. You should come to the seminar with prepared questions or substantive comments on the materials.

If there is a compelling reason for absence, please inform me in advance by email. If you are absent without a compelling reason more than two times in the term, 5% will be deducted from your final grade.

As part of your individual participation, you will post on the Discussion board your brief analysis of, reflections on, and/or thoughts about the materials from ONE class. The class you select to respond to cannot be the class you have chosen to be a discussion co-leader. Your response may consist of: reflections on law and literature that the class/materials raise; your response to any of the questions asked in that class; your own questions; and/or a short review of the text. Please upload your response **no later than 10 am the Monday after that your selected class**. You will also respond to ONE of your colleagues' posts.

2. Discussion co-leader for one seminar = 15%

In addition to regularly attending and participating in class, you will be asked to co-lead one class discussion. A week or several days before the seminar presentation, both students should schedule a meeting with me to discuss presentation format, questions and any extra materials. Co-lead seminars will begin in the week of Class 6 (Monday February 22).

Co-leaders should include a handout that assists the class with reflections, concerns or criticism, and questions for discussion. You are welcome to be creative with your format by, eg: staging a debate or a trial; creating a game; employing the Socratic method; devising in-class writing or reflection exercises; role-playing, etc.

You should work cooperatively, reliably, and respectfully with your partner. Shirking will result in penalties or, at worst, failure.

3. Two (2) short assignments = 2 x 10% = 20%

There will be two short assignment each worth 10%.

The first short assignment will be an applied exercise involving close reading and narrative analysis of a selected case which I will distribute. More information will be provided later in the term. It will be due **no later than 4 pm on Monday, March 1, 2021**.

The second short assignment is will involve a reconsideration of the relationship between law and literature and the value of having such a course in law school. More information will be provided later in the term. It will be due **no later than 4 pm on Wednesday, April 7, 2021**.

4. Essay Outline = 5%

You should submit a short, written proposal (1-2 pages), worth 5%, **no later than 4:00 pm on Monday, March 22, 2021** for general feedback. The proposal should include an explanation of the topic, the main research questions, a tentative outline of the paper, and a short bibliography. I will provide a short list of possible topics that you may wish to explore as an essay paper. I reserve the right to approve or reject a proposed topic of your own.

5. Final Essay = 45%

The final essay must present an original argument demonstrating critical thinking and analysis, engage in outside research, and draw upon the themes of the course. The essay should have double-spaced text, single-spaced footnotes, and a bibliography. It must be no shorter than **14 pages (or 5000 words) and no longer than 18 pages (or 6,300 words), including footnotes and excluding bibliography**.

The final essay is due **no later than 4:00 pm on Monday, April 26, 2021** and should be submitted to me as a Word document by email.

D. Grading Criteria

The Faculty of Law provides the following general grading guidelines:

80% to 100% (A- to A+): Exceptional/Excellent performance: strong evidence of original thinking; good organization; capacity to analyze and synthesize; superior grasp of subject matter with sound critical evaluations; evidence of extensive knowledge base.

68% to 79% (B- to B+): Competent/Good performance: evidence of grasp of subject matter; some evidence of critical capacity and analytic ability; reasonable understanding of relevant issues; evidence of familiarity with the readings.

55% to 67% (C- to C+): Adequate/Satisfactory performance: understanding of the subject matter; ability to develop solutions to simple problems in the material; acceptable but uninspired work, not seriously faulty but lacking style and vigour.

50% to 54% (D): Barely adequate understanding, serious flaws, inability to communicate course content.

00% to 49% (F): Inadequate performance: little or no evidence of understanding of the subject matter; weakness in critical and analytic skills; limited or irrelevant use of the material in answers.

E. Late Assignments

Please see the late assignment policy at:

http://www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/JD/penalties_for_late_assignments.pdf.

I have **no** discretion regarding late assignments. Unless you have permission from the Examinations Committee, I am required to deduct marks for every day, including weekends and holidays, that you are late. Please contact the Academic Procedures Committee in order to request a deferral or accommodation for any assignment.

F. Academic Integrity

All UBC law students are subject to the University's rules on Academic Misconduct (<https://artsone.arts.ubc.ca/about-arts-one/ubc-policies/ubc-plagiarism-policy/>) and are expected to act with academic integrity at all times. Students should be especially aware of the University's rules in relation to plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course in this degree or another degree, passing off the ideas of another person as your own. If you plagiarize, you will be subject to penalties set out in the UBC calendar (<http://www.calendar.ubc.ca/vancouver/index.cfm?tree=3,54,111,959>).

If you would like to learn more about academic misconduct, visit the UBC Library's website on academic integrity (<http://learningcommons.ubc.ca/guide-to-academic-integrity/>). Examples of academic misconduct can also be found in the UBC Annual Report on Student Discipline (<http://universitycounsel.ubc.ca/discipline/>).

Academic honesty is an essential requirement in an institution of higher learning. Academic misconduct not only has serious consequences for your education at law school, it may also have implications for your future plans in the legal profession.

The *Chicago Manual of Style*, chapters 14 and 15, provides advice on how to reference sources appropriately. For legal sources, see *The Canadian Guide to Uniform Legal Citation*, 8th ed. [commonly known as the *McGill Guide*].

G. Classroom Courtesy

The classroom is a community regulated by several basic guidelines, the most fundamental of which is the development of open environment where everyone can express their own opinions and ideas and, reciprocally, is respectful of other perspectives. All students are expected to maintain a professional demeanor in the classroom.

Please try to join the online class well in advance of its start time.

Late arrival: Unpredictable events and technological glitches can prevent students from arriving to online to class on time. If this is the case, please be respectful of others, and enter the class with your audio turned off.

Early departure: If you know that you need to leave the class early, please tell me in advance.

H. Communication

My **virtual** door is almost always open—save for when I am writing or have scheduled meetings. My email door is always open and I strive to respond to your emails promptly—between 24 and 48 hours, depending on my assessment of the urgency.

I am available to meet by appointment. Please use liston@allard.ubc.ca and NOT the Canvas email as I do not use Canvas for email communication.

Please contact me if you have any trouble accessing the Canvas course website or materials posted there. I will contact you using the UBC Faculty Service Centre so please make sure that you have given Student Services the current email address.

Students can email me anytime with comments, questions, or observations on the material or the class and I will, where warranted, bring this information back into our class for discussion either during the seminar or on the course website. If a response to an email inquiry cannot be answered in a few short sentences, I will likely request that you make an appointment to come and see me to discuss your questions.

COURSE SCHEDULE

Week	Assigned Reading
<p>Class 1</p> <p>Monday January 11</p>	<p>INTRODUCTION: THE JUDICIOUS READER?</p> <ul style="list-style-type: none"> • Reading closely, carefully and with consideration: WH Auden, “Law Like Love” • Law and/as/is literature? Literature and/as/is law? • Anthony G. Amsterdam and Jerome Bruner, “On Narrative” in <i>Minding the Law: How Courts Rely on Storytelling, and How Their Stories Change the Way We Understand the Law—and Ourselves</i> (Harvard UP, 2000), 110-142.
<p>Class 2</p> <p>Monday January 18</p>	<p>THREE BIG IDEAS: NARRATIVE, EMPATHY, IMAGINATION 1</p> <ul style="list-style-type: none"> • James Boyd White, “Tensions Defining the Art of Law,” in <i>Keep Law Alive</i> (Durham, NC: Carolina AP, 2019), 81-106. • Ronald Dworkin, “Law as Interpretation” (1982) 9 <i>Critical Inquiry</i>, 179-200. • Martha Nussbaum, “Rational Emotions” in <i>Poetic Justice: The Literary Imagination and Public Life</i> (Beacon Press, 1995), 53-78. • Robin West, “Economic Man and Literary Woman: One Contrast” (1988) <i>Mercer Law Review</i>, 867-878.
<p>Class 3</p> <p>Monday January 25</p>	<p>THREE BIG IDEAS: COUNTERARGUMENTS & CRITIQUES 2</p> <ul style="list-style-type: none"> • Richard Delgado and Jean Stefancic, “Legal Storytelling and Narrative Analysis” in <i>Critical Race Theory: An Introduction</i>, 3rd ed (New York: NYU Press, 2017), 44-57. • Stanley Fish, “Working on the Chain Gang: Interpretation in the Law and in Literary Criticism” (1982) 9 <i>Critical Inquiry</i>, 201-16. • Desmond Manderson, “Modernism and the Critique of Law and Literature” (2011) 35 <i>Australian Feminist Law Journal</i>, 105-23, 20ANU College of Law Research Paper No. 12-32. Available at SSRN: http://ssrn.com/abstract=2122179. • Richard A. Posner, “Law and Literature: A Relation Reargued” (1986) 72 <i>Virginia Law Review</i>, 1351-1392.
<p>Class 4</p> <p>Monday February 1</p>	<p>THE RULE OF LAW THROUGH THE LOOKING GLASS</p> <ul style="list-style-type: none"> • Lewis Carroll, excerpts from <i>The Annotated Alice: The Definitive Edition—Alice’s Adventures in Wonderland & Through the Looking Glass</i>, introduction and notes by Martin Gardner (New York: WW Norton, 2000). • Mary Liston, “The Rule of Law” in <i>The Encyclopedia of Political Science</i> (CQ Press, 2010), 1493-1497.

Week	Assigned Reading
Class 5 Monday February 8	AUTHORING THE LAW <ul style="list-style-type: none"> • Franz Kafka, “In the Penal Colony” in <i>The Penal Colony: Stories and Short Pieces</i>, Willa and Edwin Muir, trans. (Schocken, 1976), 191-227. • “Measures for Preventing Accidents from Wood-Planing Machines (1910)” in Stanley Corngold et al., <i>Franz Kafka: The Office Writings</i> (Princeton UP, 2009), 109-115. • “Risk Classification and Accident Prevention in Wartime (1915)” in Stanley Corngold et al., <i>Franz Kafka: The Office Writings</i> (Princeton UP, 2009), 322-33.
Monday February 15	*** No Class: Family Day / Reading Week. ***
Class 6 Monday February 22	EMPATHY, REFORM, AND STORYTELLING—CO-LED SEMINAR <ul style="list-style-type: none"> • Anna Sewell, <i>Black Beauty</i> (Penguin Classics Edition 2011). • Diana Donald, “The ‘two religions’: a gendered divide in Victorian society” in <i>Women against Cruelty: Protection of Animals in Nineteenth-Century Britain</i> (Manchester UP, 2020), 136-178. • <i>Prevention of Cruelty to Animals Act</i>, RSBC 1996 C 372.
Monday March 1	*** First Short Assignment due not later than 4 pm. ***
Class 7 Monday March 1	JUDGING THE JUDGES?—CO-LED SEMINAR <ul style="list-style-type: none"> • Agatha Christie, <i>And Then There Were None</i> (William Morrow, 2011). • Daniel Del Gobbo, “Unreliable Narration in Law and Fiction,” <i>Canadian Journal of Law & Jurisprudence</i> (2017) 30:3, 311-338. Warning: *Spoiler alert!*
Class 8 Monday March 8	A “GOOD” BOOK? DECENCY, DISAPPROBATION, & EMPATHY—CO-LED SEMINAR <ul style="list-style-type: none"> • Penelope Fitzgerald, <i>The Bookshop</i> (London: Fourth Estate 2014). • Suzanne Keen, “The Literary Career of Empathy,” in <i>Empathy and the Novel</i> (Oxford: Oxford UP, 2007), 37-64.
Class 9 Monday March 15	JURISDICTION, JUSTICE AND VIOLENCE—CO-LED SEMINAR <ul style="list-style-type: none"> • Louise Erdrich, <i>The Round House</i> (Harper, 2012). • John Borrows, “Heroes, Tricksters, Monsters and Caretakers: Indigenous Law and Legal Education,” (2016) 61:4 <i>McGill Law Journal</i>, 795-845.

Week	Assigned Reading
Monday March 22	*** Outline for essay due no later than 4:00 pm. ***
Class 10 Monday March 22	SERVING JUSTICE, SERVING THE PROFESSION?— CO-LED SEMINAR <ul style="list-style-type: none"> • Kazuo Ishiguro, <i>The Remains of the Day</i> (Lester & Orpen Dennys, 2005). • W. Bradley Wendel, “Lawyers and Butlers: The Remains of Amoral Ethics” (1995) 9 <i>Georgetown Journal of Legal Ethics</i>, 161-190. • <i>Legal Profession Act</i>, SBC 1998, c 9.
Class 11 Monday March 29	LAW & LITERATURE RECONSIDERED <ul style="list-style-type: none"> • Jack M. Balkin and Sanford Levinson, “Law and the Humanities: An Uneasy Relationship,” (2006) 18 <i>Yale J of Law and the Humanities</i>, 155-187. • Peter Brooks, “Narrative Transactions - Does the Law Need a Narratology,” (2006) 18 <i>Yale Journal of Law & the Humanities</i>, 1-28. • Mark Kingwell, “Let’s Ask Again: Is Law Like Literature,” (1994) 6 <i>Yale J of Law and the Humanities</i>, 1-36. • Ian Ward, “On Literary Jurisprudence,” (2011) 1 <i>Journal of Law & Interdisciplinary Studies</i>, 1-10.
Wednesday April 7	*** Second Short Assignment due no later than 4:00 pm. ***
Monday April 26	*** Essay due no later than 4:00 pm. ***