Syllabus

THE PRIVILEGE AGAINST SELF-INCRIMINATION - 62719

Last update 11-02-2014

HU Credits: 4

Degree/Cycle: 1st degree (Bachelor) and 2nd degree (Master)

Responsible Department: law

Academic year: 0

Semester: 1st Semester

Teaching Languages: Hebrew

Campus: Mt. Scopus

Course/Module Coordinator: Prof. Rinat Kitai-Sangero

Coordinator Email: shiba@mscc.huji.ac.il

Coordinator Office Hours: Monday, 17:00-18:00, room 210a

Teaching Staff:
  Prof Ronit Kitai
Course/Module description:
The right against self-incrimination has ancient roots. In its broadest sense it forbids forcing persons to furnish incriminating evidence against themselves. Adversarial and inquisitorial criminal justice systems alike recognize the accused person's privilege not to speak. Various rationales have been offered to justify this common right. However, there is no agreement on the rationale(s) underlying the right. The right has also drawn harsh criticism. The Seminar will discuss topics such as the historical roots of the right; the justifications of the right; the duty to hand over documents under some circumstances; body search; use immunity; the requirement of voluntariness; methods of interrogation; drawing adverse inferences from silence.

Course/Module aims:
The purpose of this course is to critically stand on the justifications underlying the privilege against self-incrimination and the voluntariness requirement and to stand on the rules derived from these justifications, especially with regard to the conduct of a criminal investigation.

Learning outcomes - On successful completion of this module, students should be able to:
To assess whether the right to silence is justified and what are its due justifications in light of the criticism against it.
To contrast between the right to silence and the existing rules for conducting criminal investigations.
To develop normative rules for conducting criminal investigations from the right to remain silent.
To explain the justifications for the requirement of voluntariness of confessions.
To develop normative rules of criminal procedure in light of the justifications for the voluntariness requirement.

Attendance requirements(%):
70%

Teaching arrangement and method of instruction: Seminar.

Course/Module Content:
Course topics in chronological order:
1. The general obligation to give evidence.
2. The right to silence and the privilege against self-incrimination as an exception to
the general duty: justifications (e.g. the cruel trilemma argument, protecting the innocent, placing the burden of proof on the state) and the reasons for its criticism (3 classes).
3. The treatment of confession, the voluntariness requirement, the forbidden and permitted during investigation, legitimacy of tricks (3 classes).
4. The holding of Miranda v. Arizona, the right to consult with defense counsel: scope and exceptions (two classes).
5. Detention for interrogation.
6. A demand for corroboration to confession.
7. Duty of handing over documents and submitting to physical examinations.
8. The rationale behind the voluntariness requirement and the rules that should be derived from the requirement's various rationales.

Required Reading:

Additional Reading Material:
רינת קיטי-סנגרו, Respecting the Privilege Against Self-Incrimination: A Call for Providing Miranda Warnings in Non-Custodial Interrogations, 42 NEW MEXICO LAW REVIEW 203 (2012).


שיטות חקירה; תחבולות בתחקיר


Course/Module evaluation:
End of year written/oral examination 0 %
Presentation 0 %
Participation in Tutorials 15 %
Project work 70 %
Assignments 0 %
Reports 0 %
Research project 0 %
Quizzes 0 %
Other 15 %

Additional information: