

INSTRUCTOR'S MANUAL
for
THE LAW OF HIGHER EDUCATION
SIXTH EDITION:
STUDENT VERSION

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PREFACE

This is the *Instructor’s Manual* for the *Student Version** of our treatise, *The Law of Higher Education*, 6th ed.** Information about both books, and about auxiliary resources that accompany the books, is available on *The Law of Higher Education* webpage (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education-6th-edition>) hosted for us by the National Association of College and University Attorneys.

In this *Manual*, we have collected and set out our observations and suggestions on “teaching from” the *Student Version* – that is, using it as the text (or one of the texts) for a higher education law course in a graduate school of education or a law school. Although we do not address other instructional uses in this *Manual*, we think that the *Student Version* also could be a useful text or resource for graduate courses in higher education administration, higher education policy, or higher education governance, for some upper-level undergraduate courses, and for in-service training programs for professionals on the staffs of colleges and universities.

We would be delighted to hear from instructors who have used or are considering using the *Student Version* as a course text. Feedback is important to us. We also would be pleased to receive copies of course syllabi from instructors who have adopted the *Student Version*. Please send comments and syllabi to: blee@oldqueens.rutgers.edu

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* Kaplin, Lee, Hutchens and Rooksby, *The Law of Higher Education Sixth Edition: Student Version* (Jossey-Bass, 2020) (hereinafter “Student Version”).

** Kaplin, Lee, Hutchens and Rooksby, *The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making* (Jossey-Bass, 6th ed., 2019) (2 vols.).

PART I

PURPOSE, ORGANIZATION, AND CONTENT OF THE *STUDENT VERSION*

1. Purpose of the text.

The *Student Version* of our two-volume work, *The Law of Higher Education* (6th edition, 2019) (“*LHE 6th*” or “full 6th Edition”), has the specific goal of supporting the effective teaching and learning of higher education law. To accomplish this goal, the *Student Version* presents foundational principles and concepts, in-depth analysis, and practical suggestions on a wide array of legal issues faced by public and private colleges and universities. The discussions draw upon pertinent court opinions, constitutional provisions, statutes, administrative agency regulations, and related research and scholarship.

2. How We Developed the *Student Version*

We designed the *Student Version* primarily for use in higher education law courses in graduate schools of education and law schools. We selected the topics from the full 6th Edition that we believe are of greatest importance and interest to students and their instructors. The issues we emphasize for each topic are usually ones that administrators, faculty members, or students could encounter at virtually any institution of higher education in the country (or, sometimes, in the world). In developing these issues, we focus not only on the applicable law, but also on pertinent policy considerations and on implications for practice.

Instructors interested in further cases, discussion, or bibliographical cites on particular topics or issues are invited to consult the crosswalk to *LHE 6th* that appears in the front matter of the *Student Version*. For instructors interested in topics that we have omitted from the *Student Version*, we suggest that you consult the Table of Contents of *LHE 6th*, available on our *Law of Higher Education* Web Page (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education-6th-edition>).

3. Study Aids in the *Student Version*

The *Student Version* includes numerous study aids designed specifically for instructors to use with their students. These study aids include:

- A “General Introduction to the Study of Higher Education Law,” that lays the conceptual foundation for study of, the subject matter and also provide guidance for students who do not have background or training in the law.
- An appendix (Appendix B) that provides an overview of the American system of courts and highlights key distinctions between federal and state courts, and between trial and appellate courts.
- An appendix (Appendix C) that provides practical guidelines for reading and analyzing judicial opinions.
- An appendix (Appendix D) that contains a glossary of legal terms used in the *Student Edition*.
- Overviews at the beginning of chapters (in italics) that introduce the topics and concepts to be addressed in each chapter.
- Six graphics (or figures), spread throughout the book that illustrate particular legal concepts and distinctions.
- A crosswalk (in the front matter) that connects each section in the *Student Version* to the corresponding section in the full *6th Edition*, and is designed for instructors and students who may seek additional discussion, cases, or bibliographical resources available in *LHE 6th*.

In addition to these study aids that are incorporated into the *Student Version*, we also have prepared a separate volume of edited cases and practice problems, keyed to the *Student Version*, which is available to instructors for distribution to students. (See Part IV (1) below.)

4. Organization and Content of the *Student Version*

The *Student Version* is organized into five parts:

- Perspectives and Foundations
- The College and Its Governing Board and Staff
- The College and Its Faculty
- The College and Its Students
- The College and the Outside World.

In turn, these five parts are divided into twelve chapters, preceded by a General Introduction. Each chapter is divided into numerous sections and subsections with their own titles. The content of the chapters is as follows:

- **Chapter One** provides a framework for understanding and integrating what is presented in subsequent chapters and a perspective for assimilating future legal developments.
- **Chapter Two** addresses foundational concepts concerning legal liability, preventive law, and the processes of litigation and alternative dispute resolution.
- **Chapters Three through Ten** develop the legal concepts and issues that define the *internal* relationships among the various members of the campus community, and address the law’s impact on particular roles, functions, and responsibilities of students, faculty members, and trustees and administrators.
- **Chapter Eleven** focuses on the postsecondary institution’s *external* relationships with government at the federal, state, and local levels. This chapter examines broad questions of governmental power and process that cut across all the *internal* relationships and administrative functions considered in Chapters Three through Ten.
- **Chapter Twelve** also addresses the institution’s *external* relationships, but the relationships are those with the private sector rather than with government. This chapter reviews the various national and regional education associations with which postsecondary institutions interact, as well as the various research ventures in which institutions engage with private entities from the commercial world.

Further description of each chapter’s content is included in the overviews (in italics) that are of the beginning of each chapter.

5. Terminology Used in the *Student Version*

We have endeavored throughout the text to use terminology that is accessible to both education and law students. For students or instructors who may need help with terminology, we have provided it in two ways. First, the Preface to the *Student Version* includes a section on “Nomenclature and Definition of Terms” that explains key terms such as “postsecondary education,” “University,” “public institution,” and “private institution.” Second, Appendix D to the *Student Version* contains a Glossary that defines the various legal terms that we use in the text, and each such term appears in bold face the first time it appears in the text.

6. Recommendations for Using the *Student Version* and Keeping Up-to-Date

Numerous recommendations on using the *Student Version* are included in Parts II through V of this *Instructor's Manual*. In addition, we have two precautions about using the *Student Version* that instructors may wish to review with their students:

First, the legal analyses and practical suggestions in the book are not adapted to the law of any particular state or to the circumstances of any particular postsecondary institution. Furthermore, the book is not a substitute for the advice of legal counsel, or a substitute for further research into the legal authorities and factual circumstances that pertain to particular legal problems that face an institution, administrator, student, or faculty member in real life.

Second, the *Student Version* is not necessarily the latest word on the law. The law moves especially fast in its applications to postsecondary education. Thus, we suggest that instructors and students keep abreast of ongoing developments concerning the topics and issues in this book. Various aids available for this purpose are described in the Preface to the *Student Version*. In particular, we recommend that instructors use our *Law of Higher Education* webpage, hosted by the National Association of College and University Attorneys (NACUA) (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education-6th-edition>), on which we post pertinent new developments keyed to the *Student Version* (see Part IV(3) of this Manual). An even more timely source of updated information is the weekly NACUA posting “New Cases and Developments” that is released every Monday. The NACUA website homepage also includes information on recently-published court opinions, regulations, and other important documents.

There also are two specialty journals, both of which we recommend, and both of which provide extended legal analysis on recent developments, as well as classical concerns: *The Journal of College and University Law*, published by NACUA, and the *Journal of Law and Education*, published by the Jefferson Lawbook Company (which covers elementary and secondary as well as postsecondary education).

PART II

THE AUDIENCE FOR THE *STUDENT VERSION*: EDUCATORS VS. LAWYERS

We have designed the *Student Version* for use not only by law students but also by education students (and students in related fields) who may not have prior training or background in law. The General Introduction to the *Student Version* speaks directly to both groups. The text of the twelve chapters is written in a style accessible to both groups. Moreover, we have auxiliary teaching materials (see Parts IV (1) & V below), with cases that are edited, and notes and questions that are crafted, to accommodate the needs and perspectives of both groups; and with problems and problem-solving exercises that are designed to be addressed from the perspective of either group – or from the perspectives of both, thereby allowing for comparison and accommodation of viewpoints, as well as collaborative problem-solving experiences.

Instructors will want to advise students without legal background to pay particular attention to the suggestions and cited resources in section F of the *Student Version's* General Introduction, as well as to the four appendices at the back of the text: the U.S. Constitution, the American Court System, Reading and Analyzing Court Opinions, and Glossary of Legal Terms.

It follows, from this description of the student audience for the *Student Version*, that the text also may be used by both instructors who are lawyers and those whose professional training or background is in administration, policy making, or some other education-related field. Instructors without legal training should find the resources cited in Section F of the General Introduction and the material in the appendices to be particularly helpful the first few times they offer the course.

In courses for education students and courses that mix education students together with law students, instructors should use the *Student Version* with an important caution in mind: Educators need not learn to know the law like lawyers know the law, to analyze problems like lawyers do, or to perform the functions that lawyers perform. In real-world settings, there are (or should be) lawyers available to do these things. It is important for instructors to impress upon education students that educators, administrators, and public policy-makers have different roles - - in which it is more critical to know about law than to know the law; more critical to know how to analyze problems from their own discipline's perspective, against the backdrop of law, than to analyze problems from the lawyer's perspective; and more critical to know how to work with lawyers in performing their own functions, than to perform the lawyers' functions for them.

PART III

ORGANIZING THE COURSE

The *Student Version* has a General Introduction followed by 12 chapters, each with numerous sections and subsections (see Part I (4) of this Manual). The organization and content allow instructors flexibility to delete particular sections or subsections from their assignments for the course; to add additional material to their assignments, including readings from the full *6th Edition (LHE 6th)* on topics not covered in the *Student Version* (see Part IV (2) of this Manual); and to change the order of topics assigned from the *Student Version*. In addition, instructors have flexibility to add cases and/or problems from our teaching materials (*CPM: Student Version*) to course assignments, as discussed in Parts IV (1) & V below. All these case materials and problems are keyed to the *Student Version*.

Here are some further suggestions about course organization:

1. We suggest that courses begin either with the General Introduction or with Chapter I, Sections 1.1 and 1.2. These readings, taken together, would make a good first assignment for a class meeting.

Caution: Part A of the General Introduction (The Universe of Education Law) introduces the distinction between higher education and K-12 education. While it is important for instructors to emphasize this distinction, which is deeply imbedded in the law, we suggest that instructors also provide an alternative perspective for their students. According to this emerging perspective, there are important interrelationships between higher education and K-12 education, such that problems and challenges at one level often may have serious effects on the other. For this reason, there is now a gradual trend toward viewing formal education as a continuum rather than a series of distinct stages (pre-K, K-12, undergraduate, graduate). This viewpoint has important implications for the governance of education, and at a minimum suggests that the almost total separation between higher education and K-12 education in state and federal governance structures must be breached to encourage more cooperation between the two levels.

2. We suggest that all (or almost all) of chapter 1 be assigned at the beginning of the course. Preceded by the General Introduction, it would make a good first assignment for a class meeting. Students should be able to absorb most of these materials on their own without substantial lecturing by the instructor. There is, however, much in these sections (especially

sections 1.5 and 1.6) that would provide the basis for challenging and interesting discussions, if the instructor so chooses.

3. In making coverage choices, instructors should be helped not only by our detailed table of contents for the *Student Version* but also by the brief overviews that appear in the text at the beginning of each chapter.

4. Probably the major choice about the order of assignments arises with respect to Part Three (“The College and Its Faculty”) and Part Four (“The College and Its Students”) of the *Student Version*. For courses focusing on student affairs, some instructors may wish to reverse the order of these two Parts. Moreover, in student affairs courses, instructors may want to give more emphasis to Part Four than to Part Three; and in courses focusing on academic affairs, instructors may want to give more emphasis to Part Three than to Part Four.

Caution: In courses emphasizing student affairs (Part Four), instructors likely will want to cover, at a minimum, section 6.2 of the Part Three materials; and in courses emphasizing academic affairs (Part Three), instructors likely will want to cover, at a minimum, sections 7.1.4, 7.7.2, 7.8, and 8.2 of the Part Four materials.

5. Another choice regarding the order of assignments may arise with Chapters II and III. Most of this material could be addressed either near the beginning or near the end of a course. If the instructor decides to move this material to the end of the course, we recommend that Section 3.1 nevertheless remain at the beginning, since it introduces students to the college or university as a legal entity apart from its administrators and faculty.

6. For instructors seeking to skip or move very quickly over certain blocks of material in the *Student Version*, the best places to look for possibilities often will be Chapter IV (“The College and Its Employees”) and Chapter XI (“The College and External Private Entities”). The instructor’s specific course goals will dictate whether any, or how much, of these materials need to be covered.

Caution: In courses for students who are, or are about to be, staff members at higher education institutions, the instructor may identify the development of professionalism as a course goal. In this circumstance, we recommend that the course cover at least the first four sections of Chapter IV. Also, in courses that cover the application to faculty of federal nondiscrimination

laws (Chapter V, Section 5.4), we recommend that instructors cover at least Sections 4.5 and 4.6 of Chapter IV.

PART IV

AUXILIARY RESOURCES AVAILABLE FOR USE WITH THE *STUDENT VERSION*

The *Student Version*, along with periodic updates that we post on our *Law of Higher Education* webpage (see 3 below), stands on its own as a course text. Instructors need not combine it with any other texts or readings. On the other hand, if instructors do wish to supplement the *Student Version* with other resources – for example, to add additional topics or to facilitate a particular teaching method – we have made it easy to do so. In particular, we have teaching materials, available to instructors free of charge that are keyed to the *Student Version* and will support an instructor’s use of the case method, the problem-based method, or both. And our full *6th Edition*, which addresses various topics beyond those in the *Student Version*, will support an instructor’s efforts to broaden, or add a special emphasis to, the course. These auxiliary resources – our teaching materials and full *6th Edition* – are described below, along with suggestions for using them. A third auxiliary resource, our periodic updates on our webpage, is then discussed to round out the picture. And, of course, instructors may wish to have students read court opinions, journal articles, or other materials in addition to the materials discussed in this Instructor’s Manual. The sample syllabi found in the Appendix provide examples of these additional materials, many of which are added throughout the semester as new developments occur.

1. *The Teaching Materials*

Cases, Problems, and Materials for use with The Law of Higher Education Sixth Edition: Student Version (hereinafter *CPM: Student Version*, or *CPM*) is a volume of teaching materials for classroom use that we make available in electronic format free of charge for instructors who adopt the *Student Version* as a required text. *CPM: Student Version* is made available by the National Association of College and University Attorneys. Any instructor who has adopted the *Student Version* as a required course text may download and reproduce *CPM* (or portions of it) for distribution to the students in the course. No other reproduction, distribution, or transmission is permitted. Instructions for downloading and purchasing are on our webpage (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education-6th-edition>).

CPM: Student Version is divided into two parts. Part I contains three types of materials: court opinions that we have carefully edited and keyed to the *Student Version* and that illustrate selected facets of the law’s development; notes and questions on the cases to stimulate discussion and enhance understanding of each case’s broader law and policy implications; and short,

narrowly focused practice problems that explore the law's concrete applications, and which are designed to elicit discussion of particular issues. Answer guidelines for each problem are included in an appendix. Part II of *CPM* is a series of "large-scale" problem-solving exercises whose issues are not confined to a single section or chapter of *CPM* or the *Student Version*. In a formal course, these problem exercises may be used periodically to integrate knowledge or to practice professional roles in problem solving; or they may be used for end-of-course review and synthesis, independent study, or as the basis for research and writing assignments or examinations. Preceding the first of the large-scale problem exercises is a proposed set of directions and a proposed set of basic questions for problem review. Guidelines for working through each problem, with references to pertinent sections of the *Student Version*, are also contained in an appendix. (Instructors may wish to defer student access to these answer guidelines, and to those for the Part I problems, until students have completed the problem.)

There are two basic ways in which instructors may wish to use *CPM* in conjunction with the *Student Version*:

(1) The instructor may use the *Student Version* as the primary resource and *CPM* as a secondary resource. The *Student Version* would then be the main source of assigned readings and the main support for class presentations and discussions, while selected materials from *CPM* would be used for illustrating particular points of presentations and discussions, and/or for problem solving practice, writing assignments, or independent study. *CPM*'s availability in electronic format will facilitate this type of selective use and allow instructors to integrate other teaching materials with those in *CPM*.

(2) The instructor may use *CPM* as the primary resource and the *Student Version* as a parallel or secondary resource. *CPM* would then be a regular source of assigned readings and the main support for class discussions, case analysis, simulations, or other problem-solving exercises. The *Student Version* would be a source for assigned background readings, independent study of particular topics, assistance with problems and questions in *CPM*, and general review and synthesis. In addition, the *Student Version* could be a basic resource for students doing research papers, memos, or other projects.

Instructors, of course, also may devise variants of these two basic approaches to suit their particular pedagogical styles and goals, or – having adopted the *Student Version* as a course text – may simply use *CPM* as a personal resource for planning purposes or a resource for exam questions.

2. *The Full Sixth Edition (“LHE 6th”)*

The Law of Higher Education, 6th ed., is a comprehensive treatise designed for college and university attorneys, officers and administrators, trustees, faculties, and staffs. It organizes and conceptualizes the entire range of legal considerations pertinent to the operation of colleges and universities. Being more comprehensive than the *Student Version*, *LHE 6th* is in two volumes comprising sixteen chapters. The table of contents of *LHE 6th* is available on our webpage hosted by NACUA (see above).

For certain advanced doctoral courses, some instructors may prefer to use the full sixth edition, rather than the *Student Version*, as the course text – particularly if the doctoral students are likely to want to keep the treatise as a professional resource. But our focus here is on ways that instructors could use *LHE 6th* to support teaching and learning in courses where the *Student Version* is the assigned text. For these purposes, we are assuming that the instructor would arrange to have a copy of the full *6th edition* placed on library reserve.

Instructors may find the full *6th edition (LHE 6th)* helpful in one or more of these ways:

- *LHE 6th* can provide analysis and suggested resources for additional topics, beyond those in the *Student Version*, that instructors may wish to cover in their courses. Similarly, *LHE 6th* can provide more extended discussion, and additional case examples and practical suggestions, for certain topics that are in the *Student Version* but to which the instructor wishes to give extra emphasis. The preface to the *Student Version* reviews the topics from *LHE 6th* that we have omitted from, or compressed in, the *Student Version*.
- *LHE 6th* can be a helpful resource for students choosing research topics or doing research papers. *LHE 6th* can serve this need because it covers more topics than the *Student Version*, includes more case examples, contains more text cites and footnotes identifying useful resources, and includes a Selected Annotated Bibliography at the end of each of its sixteen chapters.
- *LHE 6th* can be a useful resource for instructors as they prepare particular classes. Instructors wishing additional background or grounding on particular topics that they plan to cover, for instance, can read the section in *LHE 6th* that parallels the *Student Version* section they assign to the students, or can consult one of the resources cited in the chapter Bibliographies in *LHE 6th*. Instructors seeking additional case examples for

class discussion, or additional suggestions on implications for practice, may also find them in the more expansive discussions in *LHE 6th*. In addition, instructors seeking to extend discussion of a particular *Student Version* topic by addressing an additional, related topic may find such related topics in *LHE 6th*. (For example, an instructor covering student support services in class may extend the discussion beyond the topics in Section 7.7 of the *Student Version* by addressing one of the other support services discussed in *LHE 6th* Sections 8.7.2, 8.7.5, or 8.7.6.)

To help instructors and students use *LHE 6th* in these ways, the *Student Version* contains, in its front matter, a Crosswalk that connects each section of the *Student Version* to the corresponding section of *LHE 6th*. For instructors who do not yet have access to a copy of *LHE 6th*, the full table of contents is available on our website hosted by NACUA (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education-6th-edition>). (The Crosswalk is also posted on the website.)

3. *The Periodic Updates (New Developments)*

Because, the law moves especially quickly in its applications to higher education (see Part I (6) above), instructors will want to have efficient ways to keep abreast of new and ongoing developments concerning the topics and issues they address in their courses. To meet this need, we have established a “new developments” section on *The Law of Higher Education* Website (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education-6th-edition>). Accessible to both instructors and students, this section includes new developments, clarifications, and errata that we post on a continuing basis to update and supplement the *Student Version*.

In addition, the preface of the *Student Version* contains numerous recommendations on other resources that instructors or students may wish to consult to stay up to date on the topics in the *Student Version* or other topics being explored via independent study or research.

PART V

**USING PROBLEMS AND PROBLEM SOLVING
AS AN INTEGRAL PART OF THE COURSE**

We think that problem-based learning (PBL) and its cousin, collaborative learning, can be particularly effective in higher education law courses. We therefore recommend that instructors assign practice problems as part of the course work and dedicate part of class time to problem-solving practice. Problems could be used periodically throughout the course or could be reserved for the end stage of the course. Instructors who choose not to use problems in this way may nevertheless find it beneficial to provide problems to students for their own independent study.

These uses of problems are facilitated by our teaching materials, *CPM: Student Version* (see Part IV (1) above). Instructors can match the small-scale, targeted problems in Part I of *CPM* to particular topics from the *Student Version* and thus use problems throughout the course. Instructors can use the large-scale problem-solving exercises in Part II of *CPM* at transitional points in the course after covering the various topics highlighted in the exercise, or at the end of the course for purposes of review and integration of materials covered earlier. For both the small-scale and large-scale problems, instructors can assign the answer guidelines (in Appendices A and B of *CPM*) for student review of problems that they have completed; and instructors can use the guidelines themselves in preparing for class discussion of problems or in preparing to grade students' written responses to problems. The answer guidelines include numerous references to pertinent sections of the *Student Version*, some or all of which instructors may use as assigned reading prior to doing the problem or recommend to students as a resource to consult while doing the problem. In addition, for the large-scale problems, Part II of *CPM* contains suggestions on role-playing and general questions to use for reviewing the large-scale problems in class. (Instructors may also adapt these suggestions and questions to problems that they devise themselves.)

The large-scale problems in *CPM* Part II also lend themselves to use in simulation exercises that place students in professional roles. In courses for education students, the students could assume the roles of administrators; in courses for law students, they could assume the roles of attorneys; and in mixed courses, both types of roles could be represented in the same problem. Instructors in courses for education students may wish to recruit lawyers from their institution's office of general counsel or professors from the law school to play lawyer roles in simulations;

similarly, instructors in courses for law students may wish to recruit professionals from their institution's administration and staff to play administrator roles in simulations. Appendix B to this *Instructor's Manual* contains a handout introducing students to simulation exercises. Although this handout was drafted for law students, instructors can readily adapt it for education students, as well. Regardless of how much or little time they spend on problems in the course, many instructors may want to introduce students to the legal problem-solving process, *i.e.*, the process that lawyers go through in advising clients with higher education law problems.

For discussion of the pedagogical values of problem-solving exercises, along with suggestions for using such exercises, see, *e.g.*, Kurtz, Wylie, and Gold, "Problem-Based Learning: An Alternative Approach To Legal Education," 13 *Dalhousie L.J.* 797 (1990); Cockrell, Caplow, & Donaldson, "A Context for Learning: Collaborative Groups in the Problem-Based Learning Environment," 23 *The Review of Higher Education* 347 (2000); Nathanson, "The Role of Problem Solving in Legal Education," 39 *J. of Legal Educ.* 167 (1989); Moskowitz, "Beyond the Case Method: It's Time to Teach with Problems," 42 *J. of Legal Educ.* 241 (1992); and see generally Kenneth Bruffee, *Collaborative Learning* (Johns Hopkins U. Press, 2d ed. 1999). These materials draw upon the psychology of learning and would be useful guides whether the setting is a law school, a graduate school of education, or a professional workshop.

APPENDIX A

Sample Course Syllabi*

This Appendix contains seven course syllabi developed by seven different instructors for seven different courses. We present them here as examples of how higher education law courses might be focused and organized. Syllabus Nos. 1, 2 and 3 are for face-to-face courses offered in a graduate school of education; Syllabus No. 4 is for a course offered by a law school; Syllabus No. 5 is for an online course offered in a law school. Syllabus No. 6 is for an online course for an Executive PhD program. Syllabus No. 7 is for a face to face law school course that includes a simulation. We have made minor edits in each syllabus.

These courses were offered prior to the publication of the 6th edition of the *Student Version*. Instructors can locate the parallel sections in the *Student Version* by using the Crosswalk in the front of the book.

The seven syllabi remain the property of the instructors and are included in this Instructor's Manual with their permission. Other instructors who would like to use portions of one of these syllabi for their own courses should contact the instructor listed on that syllabus.

***Notice to users of the Instructor's Manual:**

The syllabi included in this version of the Manual refer to the Fifth Edition of the *Student Version*, so the page numbers for reading assignments do not correspond to the 2020 edition of the *Student Version*.

Syllabus No. 1
(for students in higher education graduate program)

SYLLABUS

ESHESA 8560

HIGHER EDUCATION LAW

AUTUMN SEMESTER 2019

Instructor: Dr. Jan Alan Neiger, Ph.D., J.D.
Assistant Vice Provost, Office of Academic Affairs
Neiger.4@osu.edu
614-292-1860

Course Time: Tuesdays, 5:30 – 8:15 p.m.
Campbell Hall 271

Office Hours:

I will be available after class and by appointment (and, of course, by email).

Course Objectives

This course is designed to expose future college and university leaders and faculty to the array of administrative and decisional problems that they may face, which have legal implications for the individual and the institution. Providing definitive legal answers to specific problems and scenarios is not the objective in our discussions. That duty remains with institutional attorneys and state attorneys general. Rather, the purpose of the course is to provide examples of the legal issues involved in academic decision-making so that, as future leaders, you can be given the tools to better appreciate, understand, and identify legal risks and problems, make prudent and informed decisions, and seek the necessary assistance and guidance.

Every effort will be made to follow the syllabus and weekly assignments as closely as possible. But the law changes as often as the views of our politicians. When possible and appropriate, guest lecturers will be brought in to discuss certain legal topics. And weekly assignments/readings may change depending on the interest of the subject matter and/or legal events that arise during the semester. Such changes are always at the discretion of the instructor. Changes to grading percentage subject to change until first class.

Instructional techniques

The course generally will be conducted in a mixed lecture and seminar/case study format. When appropriate, classes will have case studies or short problems for both group and full classroom discussions and problems solving. Such discussion will then lead into an overview lecture of the key areas within the case study and assigned readings. Students are to come prepared, have completed the assigned readings, and engage with and challenge other students (and the instructor) over the issues and ideas emanating from the readings and presented problems.

Goals and Objectives

- To become familiar with the jurisdiction of the courts and the implications of court decisions (aka: A little bit of “Night Court,” “LA Law,” “The Good Wife,” and a whole lot of SCOTUSblog).
- To understand the legal status of and the basic parameters of the legal liability of colleges and universities and decision-makers (aka: Am I going to get sued and if so, who is paying?)
- To improve problem solving skills and develop the ability to identify legal issues and risks related to students, faculty, and administrators (aka: Think of it as deducing that is was Colonel Mustard in the kitchen with the candlestick).
- To become familiar with state and federal legislation impacting the jobs of administrators and faculty (aka: Also known as weather, wait 15 minutes and it will change—unless you live in San Diego).
- To develop an understanding of why there is a need for lawyers on campus and that they are on campus to make your job easier (aka: We are from the legal office and here to help).
- To appreciate that many issues do not rise to legal issues. But when processes and procedures are not followed, legal issues and risks can arise. Put simply, keep it simple, follow the rules, and do the right thing.

Text: Kaplin & Lee, The Law of Higher Education (5th Ed). Student Version.

Other handouts, materials, or on-line assignments as determined by the instructor.

COURSE REQUIREMENTS:

1. Reading the text, online assignments, and any other specific assignments.
2. Come prepared and participate!

EVALUATION: Evaluation will be based on the following:

In Class Participation

(10%--10 points)

Effective participation enriches the course. The classes will have a heavy component of interactive conversations through which we explore the legal and policy issues affecting higher education. The evaluation of class participation will focus on the quality of a student’s contributions and comprehension of the policy and legal problems under

consideration, not just frequency of the communication. Class participation will focus on case studies (some within groups) but students are encouraged to raise issues, especially current events. Students are expected to be on time for and attend class.

One (sometimes two) Page Case briefs
(12% total—3 points each for total of 12 points)

During the semester, you will be assigned cases that you will be responsible for briefing and discussing during class. Briefs should not be more than one page. Work will be evaluated based on assessing relevant facts, identifying the legal issue, determining the court's holding and rationale for the holding, and relevance to high education.

Citation (name of the case, which court decided it)

Facts (what happened factually and procedurally—focusing on significant and relevant facts—how did we get here?)

Issues (what is in dispute and what is the court addressing)

Holding and Reasoning/Rationale (What did the Court find and the reasons for its finding)

See Case Briefing Exercise, Dean Monte Smith, Moritz College of Law

<https://moritzlaw.osu.edu/registrar/wp-content/uploads/sites/15/2013/08/casebrief17.pdf>

Due Process Assignment

(12.5%—12.5 points)

Read assigned due process cases with focus on recent decisions from within the Sixth Circuit Court of Appeals. Based on review of the cases, provide guidance to conduct coordinator (with legal support) on how to address due process issues to Ohio State's Student Code of Conduct. Address whether changes are same for academic and non-academic misconduct. The specific issues to be addressed will be explained in class.

Reflection Case Study Analysis

(12.5%—total 12.5 points)

You have been appointed Department Chair at the University and several issues come your way in your first week. Work will be evaluated based on assessing relevant issues, identifying policy and legal issues, comprehending class material as it applies to the case study (including relevant cases), and how you, would address the problem—with respect to both policy and legal considerations. Be concise and provide your recommendations. Keep to two pages (single space).

Group Project Regarding a Case Scenario and Presentation

(20%--12 points for work product, 6 points for presentation, and 2 points for answering questions—
total 20 points)

You will work in groups on a larger scale case study researching the problem, making decisions about the issue as a practitioner, and presenting your analysis and conclusions to the class. Possible assignments, depending upon the scenario, are student affairs, academics, business & finance, information technology, governmental affairs, or communications. Your goal will be to address pertinent legal and policy issues and to reach a recommendation on those issues. The in-class presentation should be approximately 30 minutes (with additional time for questions) but may vary depending upon number of groups. Work will be assessed based on spotting the issues in the case study; legal analysis, how you would deal with the issue(s), the quality, effectiveness; and professionalism of the presentation; and addressing questions from the instructor and classmates. Indeed, student contributions through questions and comments will be evaluated when determining grades for in-class participation.

An Individual Position Paper/Project (33%--33 points)

You will pick a legal issue related to higher education, such as a topic pertaining to speech codes, Title IX/sexual harassment, First Amendment and/or academic freedom, search and seizure/right to privacy, honor and judicial codes, faculty/staff bullying, social media, student diversity in admissions and/or financial aid, or duty to protect students from harm; and from that topic, produce a final product. Examples of a final product include creating a model policy, writing a scholarly paper, taking an existing OSU policy and modifying it, interviewing relevant administrators on campus and producing a report describing best practices and recommending a policy for the university. Further guidance will be provided in class.

Consider the following when completing your project: (1) discuss why this issue is important; (2) if a case study, interview the key constituents and discuss the positions of key individuals who have been interviewed regarding the issue; (3) identify and discuss the key cases and/or statutes and guidance from the relevant federal or state laws; (4) analyze what other institutions have implemented or scholars have voiced regarding the issue; (5) provide recommendations and best practices that would resolve the issue and support your position; and (6) provide any other information that will support the project. You will be given wide latitude in choosing a project.

Evaluation of the project will be based on its organization, the quality and effectiveness of the communication, a demonstrated understanding of the topic through identifying the legal issues, creativity, depth of analysis, and practicality of the recommendations made.

The approximate length is 8-12 pages. You can move beyond the page limit should the paper require it due to substance and/or references. Word count might be a better

guideline/parameter. With one inch margins, double spaced, which is preferred, but 1.5 or single inch (with line space between paragraph) spacing is acceptable, and 12 point font (Times New Roman font is preferred but will defer to your particular preference), I would be looking for 2200-3000 words—excluding list of references at end of paper (no more than 3700-3800 words—there are no bonus points for length). I find headings to be helpful in guiding the reader.

You are free to select a style for which you have been trained and/or required within the College (which I know is the APA style). However, I am open to other styles as I used APA in the doctoral program and the bluebook (which uses footnotes) in law school.

Please forward the paper to me by email by 9:45 pm on Wednesday, December 11. For those who forward it to me earlier, I will review and have a final grade for the course as soon as possible.

GRADING SCALE: The OSU Standard Grading Scheme is used (*i.e.*, 93-100 = A; 90-92.9 = A-; 86.7-89.9 = B+; 83.3-86.6 = B; 80-83.2 = B-; 76.7-79.9 = C+; 73.3-76.6 = C; 70-73.2 = C-; 66.7-69.9 = D+; 63.3 - 66.6 = D; 63.2 and below = F. Note: If you attend and participate in class regularly and attend office hours regularly, your grade may be rounded up to the next letter grade. For example, if you have a 92.9% (A-) and attend and participate in class regularly, you may receive an A in the class. This is up to the discretion of the instructor. *There is no extra credit.*

ACADEMIC MISCONDUCT: Academic misconduct of any kind will not be tolerated and will be reported using official University procedures. Examples of academic misconduct include (but are not limited to) plagiarism, unauthorized collaboration, and copying the work of another student. Policies and procedures can be found the Code of Student Conduct available online in several places including http://studentaffairs.osu.edu/resource_csc.asp.

INTELLECTUAL PROPERTY/AUDIO AND VIDEO RECORDING: Video and audio recording of classes without the explicit written permission of the instructor is a violation of the Code of Student Conduct.

STATEMENT OF STUDENT RIGHTS: Any student with a documented disability requiring special accommodations under The Americans with Disabilities Act, 42 U.S.C. 12101 et. seq (2004) or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, et. seq (2004) must register immediately with the Office of Disability Services, 150 Pomerene Hall, 1760 Neil Avenue on campus in order to receive effective and timely accommodations. For Students with Disabilities: Please note that course materials and exercises can be made available in alternative formats. Please contact the instructor or the Office for Disability Services (292-3307) for further information.

PROFESSIONAL CONDUCT: Students are expected to conduct themselves in a professional manner and to abide by the provisions in the Code of Student Conduct. Students should appreciate diversity, and they should conduct themselves professionally with members of the opposite gender and/or from different cultures. Any forms of sexual harassment or intimidation will not be tolerated. The University's [Code of Student Conduct](#) and [Sexual Misconduct Policy](#) are available on the OSU web page.

Week 1 **“Louis, I think this is the beginning of a beautiful friendship.”ⁱ**

Read *Kaplin & Lee: Appendix A, B, and C*

The Federal Court System in the United States

<http://www.uscourts.gov/uscourts/FederalCourts/Publications/English.pdf>

Ohio Courts <http://www.supremecourt.ohio.gov/>

Take Aways

- Overview of the Federal and State Court system
- Applicable federal and state law, and sources of regulation in higher education (including the U.S. Department of Education and state boards)
- How to read and brief a court case
- Law office at the University
- Different Types of Higher Education Institutions & Counsel
 - Public Colleges and Universities & State Action
 - Private Religiously Affiliated and Secular Institutions
 - Community Colleges

Additional Resources:

Barbara A. Lee, *Fifty Years of Higher Education Law: Turning the Kaleidoscope*, *The Journal of College and University Law*, Vol. 36, No. 3 (2010)

Week 2 **“If you build it, he will come.”ⁱⁱ**

Read *Kaplin & Lee: 1-65*

Take Aways

- Overview of the Legal Authority of College and Universities

Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819)
- Sources of HIED Law (Internal and External)

Howard University v. Best, 484 A.2d 958 (1984)

Krotkoff v. Goucher College, 585 F.2d 675 (4th Cir. 1978)
- The State Action Doctrine.

Krynicky v. University of Pittsburgh, 742 F.2d 94 (3d Cir. 1984)

- Substantive Due Process

Burton v. Wilmington Parking Authority, 6 L. Ed. 2d 45 (1961)

Powe v. Miles, 407 F. 2d 73 (2nd Cir. 1968)

Grossner v. Trustees of Columbia, 287 F. Supp. 535 (S.D.N.Y. 1968)

Soglin v. Kauffman, 418 F. 2d 163 (7th Cir. 1969)

1st, 4th, 14th Amendments of the US Constitution

Civil Rights Restoration Act of 1987

- Procedural Due Process (a constant thread throughout the course)

Goss v. Lopez, 419 U.S. 565 (1975)

Mathews v. Eldridge, 424 U.S. 319 (1976)

Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961)

Gabrilowitz v. Newman, 582 F. 2d 100 (1st Cir. 1978)

Gardenhire v. Chalmers, 326 F. Supp. 1200 (D. Kan. 1971)

**General Order*, 45 FRD 133 (W.D. MO. 1968)

14th Amendment of the US Constitution

- Religion and the Public/Private Dichotomy

Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986)

Chaudhuri v. Tennessee State University et al, 130 F.3d 232 (6th Cir. 1997)

- Relationship Between Courts and Colleges

Regents of Michigan v. Ewing, 474 U.S. 214 (1985)

General Order, 45 FRD 133 (W.D. MO. 1968)

Week 3 **“Fasten your seatbelts. It’s going to be a bumpy ride [night].”ⁱⁱⁱ**

Read *Kaplin & Lee: pp. 66-135*

Take Aways

- Legal Liability, Preventive Law, and the Processes of Litigation and Alternative Dispute Resolution

Kunda v. Muhlenberg, 621 F.2d 532 (3rd Cir. 1980)

California Faculty Association v. The Superior Court of Santa Clara County, 75 Cal. Rptr. 2d 1 (Cal. Ct. App. 1998)

- Authority and Liability of the University
 - In Loco Parentis/Special Relationship

Lewis v. St. Cloud University, 693 N.W.2d 466 (Minn. App. 2005)

Gott v. Berea College, 161 S.W. 204, 206 (Ky. 1913)

Hartman v. Bethany College, 778 F. Supp 286 (N.D. W. Va. 1991)

Connor v. Wright State University, 2013 Ohio App. Lexis 5988 (Ct. App. Ohio Dec. 24, 2013)

- Negligence

- Supervision

Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979)

Smith v. Day, 538 A.2d 157 (Vt. 1987)

Graham v. Montana State University, 767 P.2d 301 (Mont. 1988)

Beach v. University of Utah, 726 P.2d 413 (Utah 1986)

- Standard of Care

Mintz v. State, 362 N.Y.S. 2d 619 (S. Ct. App. Div 3rd Dept. 1975)

Furek v. University of Delaware, 594 A. 2d 506 (Del. 1991)

Stineman v. Fontbonne College, 664 F. 2d 1082 (8th Cir. 1981)

Shin v. Massachusetts Institute of Technology, et al., No. 02-0403, 2005 WL 1869101 (Mass. Super. June 27, 2005) <http://tech.mit.edu/V125/N30/shin-decision.pdf>

- Premises Liability

Nero v. Kansas State University, 861 P.2d 768 (Kan. 1993)

Hayden v. University of Notre Dame, 716 N.E.2d 603 (Ind. Ct. App. 1999)

Gragg v. Wichita State University, 934 P.2d 121 (Kan. 1997)

Ginsburg v. City of Ithaca, Cornell University et al., 839 F. Supp. 2d 537 (N.D.N.Y. 2012)

Robertson v. State of Louisiana, 747 So.2d 1276 (La. Ct. App. 1999)

Burch v. University of Kansas, 756 P.2d 431 (KS. 1988)

- Instruction

Meese v. Brigham Young University, 639 P.2d 720 (UT. 1981)

Ross v. Creighton University, 957 F.2d 410 (7th Circ. 1992)

McDonald v. University of West Virginia Board of Trustees, 444 S.E.2d 57 (W. Va. 1994)

Loder v. State of New York, 607 N.Y.S.2d 151 (N.Y. App. Div. 1994)

- Educational Malpractice

**Hendricks v. Clemson University*, 578 S.E.2d 711 (S.C. 2003)

Nova Southeastern University, Inc. v. Gross, 758 So.2d 86 (Fla. 2000)

- Duty to Warn

Tarasoff v. Regents of University of California, 551 P.2d 334 (Cal. 1976)

Peterson v. San Francisco Community College District, 205 Cal. Rptr. 842 (1984)

Regents of the University of California v. Rosen, 413 P.3d 656 (Cal. 2018)

- Duty to Provide Safe Environment

Mullins v. Pine Manor College, 449 N.E.2d 331 (Mass. 1983)

Miller v. State, 487 N.Y.S. 2d 115 (A.D. 2 Dept. 1985)

Nova Southeastern University v. Gross, 758 So.2d 86 (Fla. 2000)

- Student Suicide

Jain v. State of Iowa, 617 N.W.2d 293 (Iowa 2000)

- Contractual

Steinberg v. Chicago Medical College, 371 N.E.2d 634 (Ill. 1977)

Corso v. Creighton University, 731 F.2d 529 (8th Cir. 1984)

Anthony v. Syracuse, 231 N.Y.S. 435 (N.Y. App. Div. 1928)

Yakin v. University of Illinois, 508 F.Supp. 848 (N.D. Ill. 1981); *aff'd*
760 F.2d 270 (7th Cir. 1985)

Behrend v. State, 55 Ohio App.2d 135 (1977)

Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976)

University of Texas Health Science Center v. Babb, 646 S.W.2d 502 (Tex. App. 1982)

Supplee v. Miller-Motte Business College, Inc., 768 S.E.2d 582 (Ct. App. N.C. 2015)

- Defamation/Slander

Beckman v. Dunn, 419 A.2d 583 (Pa. 1980)

Mazart v. State, 441 N.Y.S.2d 600 (N.Y. Ct. Cl. 1981)

164 Mulberry Street Corp. v. Columbia University, 771 N.Y.S.2d 16 (App. Div. 1st Dep't 2004)

Mehta v. Ohio University, 194 Ohio App.3d 844 (10th Dist. Oh. 2011); 2012-Ohio-6201 (OH Ct. App., Dist. 10, Dec. 28, 2012)

Goldman v. Wayne State, 390 N.W.2d 672 (Mich. Ct. App. 1986)

Seitz-Partridge v. Loyola University of Chicago, 987 N.E.2d 582 (Ct. App. N.C. 2015)

Olsson v. Indiana University Board of Trustees, 571 N.E.2d 585 (Ind. Ct. App. 1991)

McGarry v. University of San Diego, 64 Cal. Rptr. 3d 467 (Cal. Ct. App. 2007)

- **Constitutional**

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961)

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)

Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986)

- **Statutory**

Bob Jones University v. United States, 461 U.S. 574 (1983)

Additional Resources

Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky (July 12, 2012)

http://www.insidehighered.com/sites/default/server_files/files/REPORT_FINAL_071212.pdf

Week 4 **“I coulda been a Contender. I coulda been somebody”^{iv}**

Read *Kaplin & Lee*: pp. 136-209

Take Aways

- Types of University Employees
 - Contractual
 - At-Will
- Collective Bargaining
- When are Students Employees

Schumann v. Collier Anesthesia & Wolford College, 803 F.3d 1199 (11th Cir. 2015)

- Drug Testing

Pierce v. Smith, 117 F.3d 866 (5th Cir. 1997)

- Personal Liability

Burnham v. Ianni, 119 F.3d 668 (8th Cir. 1997) (*en banc*)

Scanlan v. Texas A&M University, 343 F.3d 533 (5th Cir. 2003)

- Employment Discrimination (Race, Sex, Age, Disability)

- Title VI, VII, IX and Sexual Harassment

Gawley v. Indiana University, 276 F. 3d 301 (7th Cir. 2001).

Vance v. Ball State University, 133 S.Ct. 2434 (2013)

Hatchett v. Philander Smith College, 251 F.3d 670 (8th Cir. 2001)

Green v. Administrators of the Tulane Educational Fund, 284 F.3d 642 (5th Cir. 2002)

Patane v. Clark, 508 F.3d 106 (2^d Cir. 2007)

Holcomb v. Iona College, 521 F.3d 130 (2^d Cir. 2008)

Taxman v. Board of Education of the Township of Piscataway, 91 F.3d 1547 (3d Cir. 1996) (en banc), cert. granted, 117 S. Ct. 2506, cert. dismissed, 118 S. Ct. 595

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S. Ct. 694 (2012)

Farragher v. City of Boca Raton, 524 U.S. 775 (1998)

Burlington Industries v. Ellerth, 524 U.S. 742 (1998)

Winkes v. Brown University, 747 F.2d 792 (1st Cir. 1984)

- National Origin

Chacko v. Texas A&M University, 960 F. Supp. 1180 (S.D. Tex. 1997), affirmed without opinion, 149 F.3d 1175 (5th Cir. 1998)

- ADA

Roman v. Cornell University, 53 F. Supp. 2d 223 (N.D.N.Y. 1999)

Sorensen v. University of Utah Hospital, 194 F.3d 1084 (10th Cir. 1999)

Mammone v. President and Fellows of Harvard College, 847 N.E.2d 276 (Mass. 2006)

Nedder v. Rivier College, 908 F. Supp. 66 (D.N.H. 1995), 944 F. Supp. 111 (D.N.H. 1996)

Hatchett v. Philander Smith College, 251 F.3d 670 (8th Cir. 2001)

- Religion

Gay v. SUNY Health Science Center of Brooklyn, 1998 U.S. Dist. LEXIS 20885 (E.D.N.Y. 1998) (unpublished)

Adams v. Trustees of the University of North Carolina at Wilmington, 640 F.3d 550 (4th Cir. 2011)

- Equal Pay Act

Gustin v. West Virginia University, 63 F. App'x 695 (4th Cir. 2003)

Rizo v. Yovino, 887 F.3d 453 (9th Cir. 2018)

Dixon v. University of Toledo, 638 F. Supp. 2d 847 (N.D. Ohio 2009)

- Sexual Orientation

Hively v. Ivy Tech Community College, 853 F.3d 339 (7th Cir. 2017)

Nichols v. Azteca Restaurant Enterprises, 256 F.3d 864 (9th Cir. 2001)

Holman v. Indiana, 211 F.3d 399 (7th Cir. 2000)

Lewis v. Heartland Inns of America, 591 F.3d 1033 (8th Cir. 2010)

- Transgender

Smith v. City of Salem, Ohio, 378 F.3d 566 (6th Cir. 2004)

Barnes v. Cincinnati, 401 F.3d 729 (6th Cir. 2005)

- Title VII claims--Disparate Impact/Treatment

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)

Penk v. Oregon State Board of Higher Education, 816 F.2d 458 (9th Cir. 1987)

Scott v. University of Delaware, 455 F. Supp. 1102, 1123–32 (D. Del. 1978),
affirmed on other grounds, 601 F.2d 76 (3d Cir. 1979)

- Direct Evidence of Discrimination

Clark v. Claremont University, 6 Cal. App. 4th 639 (Cal. Ct. App. 1992)

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

- Circumstantial Evidence

Namenwirth v. Regents of the University of Wisconsin, 769 F.2d 1235 (7th Cir. 1985)

Week 5 “They call me [Professor] Tibbs”^v

Read *Kaplin & Lee*: pp. 213-274

Take Aways

- Faculty Employment
 - Types of Faculty

- Contractual Considerations.

Krotkoff v. Goucher College, 585 F.2d 675 (4th Cir. 1978)

- Collective Bargaining

Lehnert v. Ferris Faculty Association, 500 U.S. 507; 111 S. Ct. 1950 (1991)

NLRB v. Yeshiva University, 444 U.S. 672, 100 S.Ct. 856 (1980)

- Judicial Deference

Kunda v. Muhlenberg College, 621 F.2d 532 (3d Cir. 1980)

Ohio University v. Ohio Civil Rights Commission, 887 N.E.2d 403 (Ohio Ct. App. 2008)

- Standards and Criteria for Faculty Personnel Decisions/Removal of Tenure/Non-renewal

McConnell v. Howard University, 818 F.2d 58 (D.C. Cir. 1987)

San Fillippo v. Bongiovanni, 961 F.2d 1125 (3rd Cir. 1992)

Greene v. Howard University, 412 F.2d 1128 (D.C. Cir. 1969)

Klingner v. University of Southern Mississippi, No. 14-60007 (5th Cir. 2015)

Lopez v. Bd of Trustees of Illinois, 344 F.Supp. 611 (N.D. Ill. 2004)

Levitt v. Univ. of Texas, 759 F.2d 1224 (5th Cir. 1985)

Garrett v. Matthews, 625 F.2d 658 (5th Cir. 1980)

Korf v. Ball State University, 726 F.2d 1222 (7th Cir. 1984)

Lawrence v. Curators of the University of Missouri, 204 F.3d 807 (8th Cir. 2000)

Kumbhojkar v. University of Miami, 727 So.2d 275 (Fla. Dist. Ct. App. 1999)

- The Public Faculty Member's Right to Constitutional Due Process.

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)

Perry v. Sindermann, 408 U.S. 593 (1972)

Cleveland Bd. of educ. v. Loudermill, 470 U.S. 532 (1985)

Judweid v. Iowa Bd. of Regents, 860 N.W.2d 241 (Iowa Ct. App. 2014)

McKenna V. Bowling Green State University, Case No. No. 13-4054. (6th Cir. 2014)

Levitt v. University of Texas, 759 F.2d 1224 (5th Cir. 1985)

Potemra v. Ping, 462 F. Supp. 328 (E.D. Ohio 1978)

Trejo v. Shoben, 319 F.3d 878 (7th Cir. 2003)

McLendon v. Morton, 249 S.E.2d 919 (W. Va. 1978)

Beitzel v. Jeffrey, 643 F.2d 870 (1st Cir. 1981)

Goodisman v. Lytle, 724 F.2d 818 (9th Cir. 1984)

Simonson v. Iowa State University, 603 N.W.2d 557 (Iowa 1999)

Banik v. Tamez, 2017 U.S. Dist. LEXIS 88796 (S.D. Tex. June 9, 2017)

Trimble v. West Virginia Board of Directors, Southern West Virginia Community & Technical College, 549 S.E.2d 294 (W. Va. 2001)

Week 6 “What we’ve got here is failure to communicate.”^{vi}

Read *Kaplin & Lee: pp. 275-340* Take

Always

- First Amendment & Academic Freedom
 - Academic Freedom in the Classroom.
 - Sweezy v. New Hampshire*, 354 U.S. 234 (1957)
 - Martin v. Parish*, 805 F.2d 583 (5th Cir. 1986)
 - Keyishian v. Board of Regents*, 385 U.S. 589 (1967)
 - Pickering v. Bd. Of Education*, 391 U.S. 563 (1968)
 - Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992)
 - Parate v. Isibor*, 868 F.2d 821 (1989)
 - Jeffries v. Harleston*, 52 F.3d 9 (2d Cir. 1995)
 - Urofsky v. Gilmore*, 216 F.3d 401 (4th Cir. 2000) (*en banc*)
 - Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991)
 - Adler v. Board of Education of City of New York*, 342 U.S. 485 (1952)
 - Garcetti v. Ceballos*, 547 U.S. 410 (2006)
 - Hildebrand v. Michigan State University*, 662 F.2d 439 (6th Cir. 1981)
 - Demers v. Austin*, 1746 F.3d 402 (9th Cir. 2014)
 - Piarowski v. Illinois Community College*, 759 F.2d 625 (7th Cir. 1985)
 - Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001)
 - Hardy v. Jefferson Community College*, 260 F.3d 671 (6th Cir. 2001)

Adams v. Trustees of the University of North Carolina at Wilmington, 640 F.3d 550 (4th Cir. 2011)

Evans-Marshall v. Board of Education, 624 F.3d 332 (6th Cir. 2010)

- Protection of Confidential Academic Information: “Academic Freedom Privilege.”

University of Pennsylvania v. EEOC, 493 U.S. 182; 110 S. Ct. 577 (1990)

- Academic freedom in research, publications, grading, and clinical education
- Safe Spaces and Trigger Warnings

Additional Resources

1940 Statement on Principles of Academic Freedom and Tenure with 1970 Interpretive Comments <https://www.aaup.org/file/1940%20Statement.pdf>

AAUP Policy Documents & Reports 3-7 (9th ed. 2001)
<http://files.eric.ed.gov/fulltext/ED456693.pdf>

Lawrence White, “Fifty Years of Academic Freedom Jurisprudence,” 36 *Journal of College and University Law* 791 (2010)

“Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*,” American Association of University Professors (2009)

Week 7 “Carpe, carpe, carpe diem. Seize the day, boys. Make your lives extraordinary.”^{vii}

Read *Kaplin & Lee*: pp. 343-368; 507-519; 553-568

Joint Statement on Rights and Freedoms of Students,
<http://onlinelibrary.wiley.com/doi/10.1002/ss.37119925903/pdf>

Academic Freedom of Students and Professors, and Political Discrimination
<https://www.aaup.org/academic-freedom-students-and-professors-and-political-discrimination>

Take Aways

- Institutional Relationship with Students
 - Student's Legal Status

Johnson vs. Schmitz, 119 F.Supp. 2d 90 (D.Conn. 2000)

Ward v. Polite, 667 F.3d 727 (6th Cir. 2012)

Behrend v. State, 55 Ohio App.2d 135 (1977)

- Contractual Rights

Beukas v. Farleigh Dickinson University, 605 A.2d 776 (N.J. Super. Ct. Law Div. 1991), *aff'd*, 605 A.2d 708 (N.J. Super. Ct. App. Div. 1992)

Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976)

Seitz-Partridge v. Loyola University of Chicago, 948 N.E.2d 219 (Ill. App. Ct. 2011)

Millen v. Colby College, 874 A.2d 397 (Me. 2005)

Eiland v. Wolf, 764 S.W.2d 827 (Tex. App. 1989)

- Academic Freedom/ First Amendment Rights

Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957)

Brown v. Li, 308 F.3d 939 (9th Cir. 2002)

Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004)

Pompeo v. Bd. Of Regents of University of New Mexico, 58 F. Supp. 3d 1187 (D.N.M. 2014)

Yoder v. University of Louisville, 2013 U.S. App. LEXIS 9863 (6th Cir. May 15, 2013)

- Students' Academic Issues

- Awarding of Grades and Degrees

Connelly v. University of Vermont, 244 F. Supp. 156 (D. Vt. 1965)

Susan M. v. New York Law School, 76 N.Y.2d 241; 556 N.E.2d 1104 (1990)

Smith v. Davis, 2013 U.S. App. LEXIS 687 LEXIS (5th Cir. Jan. 10, 2013)

Olsson v. Bd. Of Higher Education of the City of New York, 402 N.E.2d 1150 (N.Y. 1980)

Guidry v. Our Lady of the Lake Nurse Anesthesia Program through Our Lady of the Lake College, 170 So.3d 209 (La. Ct. App. 2015)

Al-Dabagh v. Case Western Reserve University, 777 F.3d 355 (6th Cir. 2015)

- Changing Degree Requirements

Burnett v. College of the Mainland, 994 F.Supp.2d 823 (2014)

- Degree Challenges/Sanctions/Revocation

Crook v. Baker, 813 F.2d 88 (6th Cir. 1987)

Napolitano v. Trustees of Princeton University, 86 N.J. Super. 548; 453 A.2d 263 (App. Div. 1982)

Regents of the University of Michigan v. Ewing, 474 U.S. 214 (1985)

Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978)

Stoller v. College of Medicine, 562 F.Supp. 413 (1983)

Waliga v. Bd of Trustees of Kent State, 22 Ohio St. 3d 55 (1986)

Gaspar v. Bruton, 513 F.2d 843 (10th Cir. 1975)

Wheeler v. Miller, 168 F.3d 241 (5th Cir. 1999)

Ashokkumar v. Elbaum, 932 F. Supp. 2d 996, 1009 (D. Neb. 2013)

Additional Resources:

Barbara A. Lee and Nancy Tribbensee, “Paradigm Shifts: The Legalization of the Institution-Student Relationship” (National Association of College and University Attorneys, June 2010)

Mary Ann Connell, “The Right of Educational Institutions to Withhold or Revoke Academic Degrees”

<http://www.stetson.edu/law/conferences/highered/archive/2005/RevokeDegrees.pdf>

Assign Due Process Project for Week 8

Week 8 “You can’t handle the truth.”^{viii}

Due Process Project to be turned in before Class

Read *Kaplin & Lee: pp. 569-602*

Take Aways

- The Student Institution Relationship (con’t)
 - Disciplinary and Grievance systems
 - General Order*, 45 FRD 133 (W.D. MO. 1968)
 - Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961)
 - Esteban v. Central Missouri State College*, 277 F. Supp. 649 (W.D. Mo. 1967)
 - Dinu v. President and Fellows of Harvard College*, 56 F. Supp.2d 129 (1999)
 - Schaer v. Brandeis University*, 432 Mass. 474 (2000)
 - Driscoll v. Board of Trustees of Milton Academy*, 70 Mass. App. Ct. 285 (2007)
 - Zimmerman v. Board of Trustees of Ball State University*, 2013 U.S. Dist. LEXIS 54368 (S.D. Ind. Apr. 15, 2013)

Yeasin v. University of Kansas, 360 P.3d 423 (Kan. Ct. App. 2015)

Flaim v. Medical College of Ohio, 418 F.3d 629 (6th Cir. 2005)

Ray v. Wilmington College, 106 Ohio App.3d 707 (1995)

Berman v. Regents of University of California, 178 Cal. Rptr. 3d 62 (Cal. Ct. App. 2014)

Doe v. University of Cincinnati, 872 F.3d 393 (6th Cir. 2017)

Doe v. Miami University, ____ F.3d ____ (6th Cir. 2018)

Doe v. The Ohio State University, ____ F.Supp. __ (S.D. Oh. 2018)

Week 9 **“Magic may be used before Muggles in exceptional circumstances . . . includ[ing] situations that threaten the life of the wizard or witch himself, or witches, wizards, or Muggles present at the time.”^{xi}**

Read *Kaplin & Lee: pp. 602-636*

Take Aways

- Student Protest and Demonstrations

Shamloo v. Mississippi State Board of Trustees, 620 F.2d 516 (5th Cir. 1980)

Stacy v. Williams, 306 F. Supp. 963 (N.D. Miss. 1969)

State of Vermont v. Colby, 972 A.2d 197 (Vt. 2009)

- Postings, Leaflets & Newspapers

Giebel v. Sylvester, 244 F.3d 1182 (9th Cir. 2001)

Thomas v. Chicago Park Dist., 534 U.S. 316 (2002)

OSU Student Alliance v. Ray, 699 F.3d 1053 (9th Cir. 2012)

- Public Forum

Gerlich v. Leath, 861 F.3d 697 (8th Cir. 2017)

Burnham v. Ianni, 119 F.3d 668 (8th Cir. 1997) (*en banc*)

State of Ohio v. Spingola, 736 N.E.2d 48 (Ohio 1999)

Bowman v. White, 444 F.3d 967 (8th Cir. 2006)

Justice for All v. Faulkner, 410 F.3d 760 (5th Cir. 2005)

- Free Speech Zones

Burbridge v. Sampson, 74 F. Supp. 2d 940 (C.D. Cal. 1999)

Khademi v. South Orange County Community College District, 194 F. Supp. 2d 1011 (C.D. Cal. 2002)

Smith v. Tarrant County College District, 670 F. Supp. 2d 534 (N.D. Tex. 2009)

University of Cincinnati Chapter of Young Americans for Liberty v. Williams, 2012 WL 2160969 (S.D. Ohio June 12, 2012)

- Speech Codes and Hate Speech.

Healy v. James, 408 U.S. 169 (1972)

Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993)

Cohen v. San Bernardino Valley College, 92 F.3d 968 (9th Cir. 1996), *cert. denied*, 520 U.S. 1140 (1997)

Univ. of Illinois at Urbana-Champaign, OCR Case No. 05-94-2104 (Nov. 30, 1995)

Doe v. Univ. of Michigan, 721 F. Supp. 852 (E.D. Mich. 1989)

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

Papish v. Bd of Curators of the University of Missouri, 410 US 667 (1973)

Widmar v. Vincent, 454 U.S. 263 (1981)

- Social Media and Speech

Tatro v. University of Minnesota, 800 N.W.2d 811 (Minn. App. Ct. 2011),
affirmed on other grounds, 816 N.W.2d 509 (Minn.

2012) *Koeppel v. Romano et al.*, 252 F. Supp. 3d

1310 (M.D. Fla. 2017) *Keefe v. Adams*, 840 F.3d 523

(8th Cir. 2016)

Loving v. Boren, 956 F. Supp. 953 (W.D. Okla. 1997), *affirmed*, 133 F.3d 771 (10th Cir. 1998)

Rollins v. Cardinal Stritch University, 626 N.W.2d 464 (Minn. 2001)

Week 10 “It’s not your fault.”^{ix}

Read *Kaplin and Lee*: pp. 368-376; 533-553; 805-808

U.S. Department of Education, Office for Civil Rights “Dear Colleague” letter on Sexual Violence (April, 4, 2011).

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

Dear Colleague Letter, “Questions and Answers on Title IX and Sexual Violence.” (April 29, 2014).

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

U.S. Department of Education, Office for Civil Rights “Dear Colleague” letter on Harassment and Bullying (Oct. 26, 2010).

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.pdf>

Take Aways

- Title IX and Sexual Harassment

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)

Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998)

Williams v. Board of Regents of the University System of Georgia,
477 F.3d 1282 (11th Cir. 2007)

Silva v. University of New Hampshire, 888 F.Supp. 293 (D.N.H. 1994)

Cohen v. Brown University, 101 F.3d 155 (1st Cir. 1996)

Franklin v. Gwinnett County Public School, 112 S. Ct. 1028 (1992); 60
L.W.
4167 (1992).

Patricia H. v. Berkeley Unified School District, 830 F. Supp.
1288 (N.D. Cal. 1993).

Rowinsky v. Bryan Independent School District, 80 F. 3d 1006 (5th Cir.
1996).

Winston v. Maine Technical College System, 631 A. 2d 70 (Me. 1993)

Hayut v. State University of New York, 352 F.3d 733 (2nd Cir. 2003)

Delgadillo v. Stegall, 367 F.3d 668 (7th Cir. 2004)

Vance v. Ball State University, 133 S.Ct. 2434 (2013)

- **Sexual Orientation**

Johnson v. University of Pittsburgh, 97 F. Supp. 3d 657
(W.D. Pa. 2015)

Vdeckis v. Peperdine University, 150 F. Supp. 3d 1151,
1159 (C.D. Cal. 2015)

Carcano v. McCrory, 203 F. Supp. 3d 615 (M.D.N.C.
2016)

Additional Resources

Violence against Women's Act (VAWA)

<https://www.fas.org/sgp/crs/misc/R42499.pdf>

Hand out Case Study to be Completed for Week 11

Week 11 “Do. Or do not. There is

no try.”^x Read Kaplin and Lee: pp. 519-

533; 808-812 *Case Study to be turned in*

before Class

Take Aways

- Students with Disabilities
 - The definition of a disability
 - Accommodating students with disabilities

Sjostrand v. Ohio State University, 2014 U.S. App. LEXIS 7868 (6th Cir. Apr. 28, 2014)

Peters v. University of Cincinnati College of Medicine, 2012 U.S. Dist. LEXIS 126426 (S.D. Ohio Sept. 6, 2012)

McCully v. University of Kansas School of Medicine, 2013 U.S. Dist. LEXIS 156233 (D. Kan. Oct. 31, 2013)

Ohio Civil Rights Commission v. Case Western Reserve University, 666 N.E.2d 1376 (Ohio 1996)

Doherty v. Southern College of Optometry, 862 F.2d 570 (6th Cir. 1988)

- Support Services
- Section 504 issues and Americans with Disabilities Act.

Doe v. Washington University, 780 F. Supp. 628 (E.D. Mo. E.D.1991)

Doe v. University of Maryland Medical Sys. Corp., 50 F. 3d 1261 (4th Cir. 1995)

Doe v. New York University, 442 F. Supp. 522 (S.D. N.Y. 1978);
511 F. Supp. 606 (S.D. N.Y. 1981); 666 F. 2d 761 (2nd Cir. 1981)

Southeastern Community College v. Davis, 442 U.S. 397 (1979)

Guckenberger v. Boston University, 8 F.Supp.2d 82 (D. Mass. 1998)

United States v. Board of Trustees for the University of Alabama,
908 F.2d 740 (11th Cir. 1990)

Zukle v. Regents of the University of California, 166 F.3d 1041 (9th Cir.
1999)

○ *ESAs*

U.S.A. v. University of Nebraska at Kearney, 940 F.Supp.2d 974 (D.

Neb. 2013) Additional Resources

Laura Rothstein, "Higher Education and Disability Discrimination: A Fifty Year Retrospective,"

36 *Journal of College and University Law* 843 (2010)

Kent State University, *Policy on Reasonable Accommodations and Assistance Animals in University Housing* (Jan. 4, 2019).

Week 12 "Privacy's been dead for years because we can't risk it. The only privacy that's left is the inside of your head."^{xii}

Read *Kaplin & Lee: pp. 446-506*

Take Aways

- Housing

Obergefell v. Hughes, 576 U.S.____(2015)

- Solicitation

Chapman v. Thomas, 743 F. 2d 1056 (4th Cir. 1984)

- Searches and Seizures/Right to Privacy

Commonwealth v. Copney, 11 NE.3d 77 (Mass. 2014)

Medlock v. Trustees of Indiana University, 738 F.3d 867 (7th Cir. 2013)

Pratz v. Louisiana Polytechnic Institute, 316 F. Supp. 872 (N.D. La.1970); *affd.*

401 U.S. 1004 (1971)

Moore v. Troy State, 284 F. Supp. 725 (M.D. Ala. 1968)

Piazzola v. Watkins, 442 F 2d 285 (5th Cir. 1971)

Board of Trustees of the State University of New York v. Fox, 492 U.S. 469 (1989)

Commonwealth v. Neilson, 666 N.E.2d 984 (Mass. 1996)

Devers v. Southern University, 712 So.2d 199 (La. Ct. App. 1998)

Limpuangthip v. United States, 932 A.2d 1137 (D.C. 2007)

Commonwealth v. Carr, 918 N.E.2d 847 (Mass. App. Ct. 2009),
reversed, 2010

Mass. LEXIS 871 (Mass.

November 17, 2010)

Drug testing

Barrett v. Claycomb, 936 F.Supp. 2d 1099 (W.D. Mo. 2013)

- Campus Security

Nero v. Kansas State University, 861 P.2d 768 (Kan. 1993)

- Student Records (FERPA)

Owasso Independent School District v. Falvo, 564 U.S. 426 (2002)

State ex rel The Miami Student v. Miami University, 680 N. E. 2d 956 (OH, 1997)

United States of America v. The Miami University and the Ohio State University, 91 F. Supp. 2nd 1132 (2002)

ESPN v. The Ohio State University, 132 Ohio St.3d 212 (2012)

Francois v. University of D.C., 788 F. Supp. 31 (D. D.C. 1992)

- Student Right-to-Know and Campus Security Acts
 - Security officers
 - Protecting students against violent crime

Additional Resources:

The Department of Education 2016 Clery Handbook reflecting most recent changes to the statutes and new implementing regulations.

https://www2.ed.gov/admins/lead/safety/handbook.pdf?utm_content=27b8b24fb4bba127bdc7f47238b4676c&utm_campaign=Just%20Released%21%20Updated%20Clery%20Handbook&utm_source=Robly.com&utm_medium=email

Week 13 Group Project as noted in Evaluation

Be ready for questions from you colleagues

Week 14 Group Project as noted in Evaluation

Be ready for questions from you colleagues

Week 15 “And if the whole fraternity system is guilty, then isn’t this an indictment of our educational institutions in general?”^{xiii}

Read Kaplin & Lee: pp. 637-746

Take Aways

- The Right to Join, Organize, and Impose Fee

Widmar v. Vincent, 454 U.S. 263 (1981)

Rosenberger v. Rector and Visitors of the Univ. of Virginia, 515 U.S. 819 (1995)

Board of Regents of the Univ. of Wisconsin System v. Southworth, 529 U.S. 217 (2000)

Christian Legal Society v. Martinez, 130 S.Ct. 2971 (2010)

Alpha Delta Chi-Delta Chi Chapter v. Reed, 648 F.3d 790 (9th Cir. 2011)

Gay Student Services v. Texas A & M University, 737 F. 2d 1317 (5th Cir. 1984)

Good v. Associated Students of University of Washington, 542 P. 2d 762 (Wash. 1975)

- Student Press

Papish v. Board of Curators of the University of Missouri, 410 U.S. 667 (1973)

Hosty v. Carter, 412 F.3d 731 (7th Cir. 2005)

Educational Media Co. at Virginia Tech v. Insley, 713 F.3d 291 (4th Cir. 2013)

Mazart v. State, 441 N.Y.S.2d 600 (N.Y. Ct. Cl. 1981)

- Fraternities and Sororities

Ballou v. Sigma Nu General Fraternity, 352 S.E. 2d 488 (S.C. App. 1986)

Estate of Hernandez v. Arizona Board of Regents, 866 P. 2d 1330 (Az. 1994)

Bradshaw v. Rawlings, 464 F. Supp. 175 (E.D. Pa. 1979) and 612 F. 2d 135 (3rd

Cir. 1979)

Wilson by Wilson v. Bellamy, 414 S.E. 2d 347 (N.C. App. 1992)

Beta Chapter of Beta Theta Pi Fraternity v. May, 611 So. 2d 889

(Miss. 1993) *Coghlan v. Beta Theta Pi Fraternity*, 987 P.2 300

(1999)

Iota XI Chapter of Sigma Chi Fraternity v. Patterson et al., 566 F.3d 138 (4th Cir. 2009)

Furek v. University of Delaware, 594 A.2d 506 (Del. 1991) vs

Yost v. Wabash College, 3 N.E.3d 509 (Ind. 2014)

- Athletics

Cohen v. Brown University, 991 F.2d 888 (1st Cir. 1993)

Week 16 “And the only thing I ask from you is ‘ganas.’ Desire.”^{xiv}

Read Kaplin & Lee: pp. 376-446

Take Aways

- Admissions and Diversity
 - Diversity and Affirmative Action

University of California Regents v. Bakke, 438 U.S. 265 (1978)

Grutter v. Bollinger, 539 U.S. 306 (2003)

Gratz v. Bollinger, 539 U.S. 244 (2003)

Fisher v. University of Texas-Austin, 133 S. Ct. 2411 (2013)

Fisher v. University of Texas, 579 U.S. (June 23, 2016)

Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) (*en banc*)

Hopwood v. Board of Regents of the Texas University System, 999 F. Supp. 872 (5th Cir. 2000)

Johnson v. Board of Regents of Georgia, 106 F. Supp. 2d 1362 (11th Cir. 2001)

Smith v. University of Washington, 2000 WL 1770045 (9th Cir. 2000)

- *Financial Aid and Scholarships*

Podberesky v. Kirwan, 38 F.3d 147 (4th Cir. 1994)

Flanagan v. President and Directors of Georgetown College, 417 F. Supp. 377 (D.D.C. 1976)

ⁱ Casablanca

ⁱⁱ Field of Dreams

ⁱⁱⁱ All About Eve (bumpy ride makes more sense)

^{iv} On the Waterfront

^v In the Heat of the Night (with apologies as it is Mr. Tibbs)

^{vi} Cool Hand Luke

^{vii} Dead Poets Society

^{viii} A few Good Men

^{ix} Harry Potter and the Order of the Phoenix

^x Good Will Hunting

^{xi} The Empire Strikes Back

^{xii} Enemy of the State

^{xiii} Animal House

^{xiv} Stand and Deliver

Syllabus No. 2

(for students in PhD Seminar)

The Law and Higher Education, Fall 2019

16:507:520

Professor Barbara Lee
Michael Klein, J.D., Ph.D.
Mondays, 4:50 - 7:30 p.m.

barbalee@oq.rutgers.edu

Winants Hall Room 202
Rutgers University

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(848) 932-2600

Catalog Description

A survey of significant laws, court opinions, and regulations affecting public and private colleges and universities. Includes reviews of student and faculty contract and constitutional rights, federal regulation of research, federal student financial aid and civil rights laws, privacy laws, and tort law.

Course Objectives

This is a doctoral-level course that requires substantial reading and analysis of the course text, journal articles, and the decisions of state and federal courts. The course has the following general learning goals:

1. Enable the student to understand the foundational legal principles affecting the operations and leadership of colleges and universities
2. Provide the tools to equip the student to analyze a situation and identify potential legal issues
3. Enable the student to understand how to incorporate legal principles into the policy development process

Specific Learning Outcomes—Based upon ACPA/NASPA Professional Competencies

At the end of the course, the successful student should be able to:

1. Explain the basic tenets of personal or organizational risk and liability as they relate to one's work
2. Explain the differences between public and private higher education with respect to the legal system and what they may mean for students, faculty, and staff at both types of institutions.
3. Describe the evolving legal theories that define the student–institution relationship and how they affect professional practice

4. Describe how national constitutions and laws influence the rights that students, faculty, and staff have on public and private college campuses.
5. Explain the concepts of risk management and liability reduction strategies.
6. Explain when to consult with one's immediate supervisor and campus legal counsel about those matters that may have legal ramifications.
7. Act in accordance with federal and state/province laws and institutional policies regarding nondiscrimination.
8. Identify the internal and external special interest groups that influence policy makers at the department, institutional, local, state/province, and federal levels
9. Describe the public debates surrounding the major policy issues in higher education, including access, affordability, accountability, and quality.
10. Describe the governance systems at one's institution, including the governance structures for faculty, staff, and students.
11. Describe the system used to govern or coordinate one's state/province system of higher education, including community college, for-profit, and private higher education.
12. Describe the federal and state/province role in higher education

Course Requirements and Grading

The course will rely heavily on analysis of course readings, student discussion and consideration of the implications of the law for policy. Students are responsible for all assigned reading and for participation in class discussion. Evaluation of students will include:

Two short papers responding to a practical problem encountered by higher education administrators (eight pages maximum)	30
percent	
Research paper on topic of student's choice (must be approved by instructor)	60
percent	
Presentation of research paper to class	10
percent	

Required Course Materials

Course Text: William A. Kaplin and Barbara A. Lee. *The Law of Higher Education, Fifth Edition (Student Version)*. Jossey-Bass, Inc., 2015. ISBN 978-1-118-03662-4. Cases and other reading assignments are posted on course website.

Academic Integrity Policy

The Office of Student Conduct supervises issues related to violations of academic integrity (see <http://academicintegrity.rutgers.edu>). Please familiarize yourself with the

university policy on academic integrity at <http://academicintegrity.rutgers.edu/academic-integrity-policy/>.

Students with Disabilities

Rutgers University welcomes students with disabilities into all of the University's educational programs. In order to receive consideration for reasonable accommodations, a student with a disability must contact the appropriate disability services office at the campus where you are officially enrolled, participate in an intake interview, and provide documentation: <https://ods.rutgers.edu/students/documentation-guidelines>. If the documentation supports your request for reasonable accommodations, your campus's disability services office will provide you with a Letter of Accommodations. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. To begin this process, please complete the Registration form on the ODS web site at: <https://ods.rutgers.edu/students/registration-form>.

Assignments

9/9/19 Introduction to the course, to the legal system and higher education law

Assignment for 9/9/19:

Text, pp. 1-65

The Judicial System of the United States

Accessing Westlaw on the RU Libraries Website

9/16/19 Legal liability (direct, vicarious)

Assignment for 9/16/19:

Text, pp. 66-80, 93-135

Nguyen v. MIT (2018)

Regents v. Superior Court (2018) (UCLA case)

9/23/19 Employee legal rights and obligations; Collective Bargaining (employees, students, athletes), Nondiscrimination, Affirmative Action in Employment, Discrimination at Religious Colleges

Assignment for 9/23/19: **Paper #1 due today**

Text, pp. 136-209

Transgender Discrimination Update (from LHE 6th)

Hively v. Ivy Tech (2017)

9/30/19 Special issues in faculty employment

Assignment for 9/30/19:

Text, pp. 213-274

Donna R. Euben and Barbara A. Lee. "Faculty Discipline: Legal and Policy Issues in Dealing with Faculty Misconduct." 32

Journal of College & University Law 241 (2006).

NLRB v. Yeshiva University (1980)

10/7/19

Faculty academic freedom

Assignment for 10/7/19:

Text, pp. 275-340

AAUP 1940 Statement on Academic Freedom and Tenure

AAUP Statement on Professional Ethics

Michael LeRoy, "How Courts View Academic Freedom." 42

Journal of College & University Law 2 (2016).

Garcetti v. Ceballos (2006)

10/14/19

Admissions and Financial Aid, Housing, FERPA

Assignment for 10/14/19:

Text, pp. 376-506

Jonathan Alger, "From Desegregation to Diversity and Beyond: Our Evolving Legal Conversation on Race and Higher Education." 36 *Journal of College & University Law* 983 (2010).

Jay Caspian Kang, "Where Does Affirmative Action Leave Asian-Americans?"

<https://www.nytimes.com/2019/08/28/magazine/affirmative-action-asian-american-harvard.html>

Updates for Chapter Seven

Fisher v. University of Texas, 136 S. Ct. 2198 (2016) (in Westlaw)

Students for Fair Admissions v. Harvard College (on website)

10/21/19

Federal Regulation of Higher Education

Assignment for 10/21/19:

Text, pp. 779-815

Congressional Research Service (2018, Oct. 24) "The Higher Education Act (HEA): A Primer." <https://www.acenet.edu/news-room/Documents/CRS-HEA-Primer-October-2018.pdf>

Judith Eaton, "Accreditation and the Federal Future of Higher Education." *Academe* (2010, Sept.-Oct.)

<https://www.aaup.org/article/accrreditation-and-federal-future-higher-education?PF=1#.XVm8k-NKipo>

Stephen S. Dunham, "Government Regulation of Higher Education: The Elephant in the Middle of the Room." 36 *Journal*

of College & University Law 749 (2010).
Recalibrating Regulation of Colleges and Universities,
<https://www.aau.edu/sites/default/files/AAU%20Files/Key%20Issues/Higher%20Education%20Regulation/Regulations-Task-Force-Report-2015-FINAL.pdf>
The Admissions Scandal—Federal Action and Response
 US Attorney’s Office, District of Massachusetts (2019, March 12).
 “Arrests Made in Nationwide College Admissions Scam: Alleged Exam Cheating & Athletic Recruitment Scheme.”
<https://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic>
 College Admissions Fairness Act, S. 1732, 116th Cong. (2019).
<https://www.congress.gov/116/bills/s1732/BILLS-116s1732is.pdf>
 Access, Success, and Persistence in Reshaping Education [ASPIRE] Act of 2019, S. 1855, 116th Cong. (2019).
<https://www.congress.gov/116/bills/s1855/BILLS-116s1855is.pdf>
 The ongoing investigation by the Department of Justice into early-admissions programs:
<https://www.insidehighered.com/admissions/article/2018/04/09/justice-department-starts-investigation-early-decision-admissions>

10/28/19

State Regulation of Higher Education

Paper #2 due today

Assignment for 10/28/19

Text, pp. 749-779

Overview of state governance systems: https://www.ecs.org/wp-content/uploads/PS-Gov-Structures-50_State-Analysis_Compacts_Other-States_May2019.pdf

Statutes establishing New Jersey’s statewide higher education governance

Reorganization Plan No. 005-2011

Gibbons, PC (2015, Sept. 15). Independent Review of Stockton University’s Purchase and Proposed Sale of the Showboat Casino in Atlantic City. [background to NJSA 18A:3B-6.2]

http://intraweb.stockton.edu/eyos/presidents_office/content/docs/independent_review_of_stockton_showboat_purchase.pdf

New Jersey Presidents’ Council (2016, Jan 25). Minutes of Meeting [see discussion and vote on proposals from Passaic County Community College and Union County College to change Registered Nurse (R.N.) programs to Bachelor of Science in Nursing (B.S.N.), pp. 3-6; 13-14]

College Affordability Commission (2016). Final report.

<https://www.njleg.state.nj.us/legislativepub/reports/CASC.pdf>

The Admissions Scandal—State Responses

California State Assembly Democratic Caucus (2019, March 28). "Assemblymembers Propose College Admissions Reform and Oversight." <https://a19.asmdc.org/press-releases/20190328-assemblymembers-propose-college-admissions-reform-oversight>

11/4/19

Student Academic Freedom, Sexual harassment and assault

Assignment for 11/4/19:

Text, pp. 343-370; 533-553

Substitute Questions and Answers OCR document:

<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

Title IX Update (from 6th edition SV) (on website)

Williams v. University of Georgia (2007)

Doe v. Baum (2018)

11/11/19

Student Academic Issues

Assignment for 11/11/19:

Text, pp. 345-368; 507-532; 553-568

Susan P. Stuart, "'Hope and Despondence: Emerging Adulthood and Higher Education's Relationship with its Nonviolent Mentally Ill Students.'" 38 *Journal of College & University Law* 320 (2012).

Swenson v. Bender (2009)

Emeldi v. University of Oregon (2012)

11/18/19

Student discipline

Assignment for 11/18/19:

Text, pp. 569-636

Andrew R. Kloster, "Speech Codes Slipping Past the Schoolhouse Gate: Current Issues in Students' Rights." 81 *UMKC Law Review* 617 (2013).

Tatro v. University of Minnesota (2012)

11/25/19

Student organizations; DACA

Research paper due today

Assignment for 11/25/19:

Text, pp. 637-745

Taylor, Z. W., & Barrera, M. C. (2019). Documenting a Crisis: How Postsecondary Institutions Addressed DACA Students After Trump's Rescission. *Teachers College Record*, 121(5). Available at

<https://www.tcrecord.org/Content.asp?ContentId=22657>

Manuel, K. M. (2014). Unlawfully present aliens, higher education, in-state tuition, and financial aid: Legal analysis. Washington, DC: Congressional Research Service.

Available at

https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=2263&context=key_workplace

Pi Lambda Phi v. University of Pittsburgh (2000)

12/2/19 Student presentations

12/9/19 Student presentations

Syllabus No. 3
(Graduate Students in Higher Education Program)

HIGHER EDUCATION AND THE LAW
Fall Semester, 2019
Course No. HPSE-GE2115.1

DAY: Wednesday
TIME: 4:55 - 6:35 p.m.
PLACE: 25 West 4th St. -C-09

INSTRUCTOR: Terrance J. Nolan
Bobst Library, Room 1150 70 Washington Square South
New York University
(212) 998-2257
EMAIL: terrance.nolan@nyu.edu
OFFICE HOURS: By appointment

Course Content and Objectives:

This course is based principally upon discussion and evaluation of primary materials to examine the effect of law and the legal system on institutions of higher education and their faculty, students and staff. Specific issues considered include the differences and similarities between public and private institutions, student activities and liability, faculty status and rights, employment and equal opportunity issues, labor relations, student discipline, and religion and the First Amendment. Other questions touched upon involve study abroad, student records, student loans, student residence and voting, copyright, taxation and institutional accreditation. Guest lecturers are a feature of the course. The goal of the course is to provide a substantial framework and reference for higher education administrators and related professionals in evaluating the potential legal dimensions of their responsibilities and activities.

Resources:

The textbook for the course is *The Law of Higher Education*, 5th ed. - Student Version, by William A. Kaplin and Barbara A. Lee (Jossey-Bass, 2014). Additional weekly readings are posted on NYU Classes.
The two-volume, *The Law of Higher Education*, 6th ed. by William A. Kaplin, Barbara A. Lee et. al. (Jossey-Bass, 2019), upon which the student version is based, has been placed on reserve in Bobst Library.

Class Organization:

For each class, several students will each be assigned to provide a summary and analysis of an individual case. This usually will be followed by a discussion and evaluation of the student's presentation by other students and the instructor. The instructor may set the stage for this discussion by a short, introductory lecture. It is always appropriate, and

often necessary, to discuss the policy reasons supporting, or the policy implications of, a rule of law. This in many instances will involve considerations, for example, of history, philosophy, economics and sociology.

Requirements:

- I. Attendance and participation.
2. Readings as assigned and oral case presentations.
3. Mid-Term Exam- open book
4. Final Assignment - TBD

Grading: Class participation and case presentations, 50%; Mid-Term Exam, 25%; Final Assignment, 25%

COURSE OUTLINE AND ASSIGNMENTS (subject to change)

September 4 I. The Legal System and the College/Student Relationship

- A. The Judicial System: federal and state
- B. Review of assignments
- C. College/Student Legal Relationship

Text: Pages 1-18; 839-853

Cases:

Gott v. Berea College. 156 Ky. 376, 161 S.W.204 (1913)
Goldstein v. New York University. 76 AD 80, 78 N.Y.S. 739 (1st Dept. 1902)
Anthony v. Syracuse University. 224 AD 487, 231 NYS 435 (4th Dept. 1928)
Carr v. St. John's University. 17 AD 2d 632, 231 NYS 2d 410 (2nd Dept. 1962)

September 11 II. Public and Private Institutions

- A. Public v. Private: State Action?
- B. "Mixed" Public and Private

Text: Pages 33-50

Cases:

Powe v. Miles, 407 F.2d 73 (2d Cir. 1968)

Albert v. Carovano, 851 F.2d 561 (2d Cir. 1988)
In re Monmouth University, (N.J. Superior Court, Appellate Division,
2006) Tanford v. Brand, 104 F.3d 982 (7th Cir.), cert. denied, 522 U.S.
814, 118 S.Ct.
60, 139 L.Ed.2d 23 (1997)

September 18

III. Students and Liability for Injury - Part I

- A. Alcohol Use
- B. Student Violence
- C. Security
- D. Field Trips
- E. Study Abroad

Text: Pages 97-119

Cases:

Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979), cert. denied, 446 U.S. 909,
100 S.Ct. 1836, 64 L.Ed.2d 261 (1980)
Eiseman v. State of New York, 70 N.Y.2d 175, 518 N.Y.S.2d 608, 511 N.E.2d
1128 (1987)
Mullins v. Pine Manor College, 449 N.E.2d 331 (Mass. 1983) Nero v. Kansas
State University. 861 P.2d 768 (Kan. 1993) Commonwealth of Virginia v.
Peterson, 286 Va. 349 (2013)
Nguyen v. Massachusetts Institute of Technology. 479 Mass. 436 (2018)

September 25

IV. Students and Liability for Injury- Part II

Text: Pages 672-685

Cases:

Beach v. University of Utah, 726 P.2d 413 (Utah, 1988) Furek v. University of
Delaware, 594 A.2d 506 (Del., 1991)
McClure v. Fairfield University, 35 Conn. L. Rptr. 169 (Conn. Super. 2003) Fay
v. Thiel College, 55 Pa. D+C.4th 353 (Ct. Com. Pl. 2001)
Regents of the University of California v. Superior Court, 4 Cal 5th 607 (2018)

October 2 **V. Faculty - Part I**

- A. Tenure and Re-Employment Rights
- B. Constitutional Due Process

- C. Academic Freedom
- D. Non-Discrimination
- E. Labor Relations / Collective Bargaining

Reading: American Association of University Professors (AAUP), 1940 Statement on Principles of Academic Freedom and 1970 Interpretive Comments.

Text: Pages 253-283

Cases:

Board of Regents v. Roth, 408 U.S. 564 (1972)
Perry v. Sinderrmann, 408 U.S. 593 (1972) Gorum v. Sessoms, 561 F3d 1 79 (3d Cir. 2009) Demers v. Austin, 729 F.3d 1011 (9th Cir. 2013)

October 9 VI. Faculty - Part II

Text: Pages 231-239

Cases:

Otero-Burgos v. Inter-American University, 558 F.3d 1 (1st Cir. 2009) Haviland v. Simmons, 45 A.3d 1246 (RI 2012)
Zahorik v. Cornell University. 729 F2d. 85 (2d Cir. 1984) University of Pennsylvania v. EEOC, 493 U.S. 182 (1990)

October 16 VII. Faculty - Part III

Text: Pages 140-144; 226-230

Cases:

Trustees of Columbia University, 97 NLRB No. 72 (1951)
Cornell University. 183 NLRB No. 41 (1970)
NLRB v. Yeshiva University. 444 U.S. 672 (I 980)
Trustees of Columbia University, 364 NLRB No. 90 (2016)
Community College of Philadelphia v. Commonwealth of Pennsylvania, Pennsylvania Labor Relations Board, 432 A.2d 637 (Pa. Cmwlth. 1981)

October 23 Mid-Term Examination - Open Book

October 30 VIII. Student Admissions and Activities - Part I

- A. Nondiscrimination in student admissions

- B. Affirmative action
- C. Student Newspapers

Text: Pages 398-421

Cases:

Regents of the University of California v. Bakke, 438 U.S. 265 (1978) [opinion of Powell, J.]
Fisher v. University of Texas, 579 U.S. (2016) (majority opinion)
Doe v. New York University. 786 N.Y.S. 2d 892 (Sup. Ct. NYC. 2004)
Powers v. St. John's University. 25 NY 3d 210 (2015)
Matter of Susan M. v. New York Law School, 76 NY2d 241, 556 N.E.2d 1104, 557 N.Y.S.2d 297 (1990)

November 6 IX. Student Admissions and Activities - Part II

- A. Student discipline/Academic sanctions
- B. Student protests

Text: Pages 589-602

Cases:

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961)
Matter of Haug v. State University of New York at Potsdam, 149 AD 3d 1200 (3d Dept. 2017)
Matter of Doe v. Skidmore College, 152 AD 3d 932 (3d Dept. 2017)
Doe v. Columbia University, 831 F.3d 46 Q,! Cir. 2016)
Doe v, Miami University. 882 F.3d 579 {Q"" Cir. 2018)

November 13 X. Student Admissions and Activities - Part III

- A. Use of facilities

Reading: Madison, James, Memorial and Remonstrance Against Religious Assessments (1785)

Text: Pages 664-672

Cases:

Widmar v. Vincent. 454 U.S.263. 102 S.Ct.269, 70 L.Ed.2d 440 (1981)

Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995)
Christian Legal Society v. Martinez, 561 U.S. 661 (2010) (Opinion of Ginsburg, J. and Dissent of Alito, J)

November 20 XI. Federal and State Regulation I

- A. Taxation
- B. Student voting
- C. Student residence
- D. Student Loans

Cases:

Case Western Reserve University v. Wilkins, 105 Ohio St. 3d 276, 825 N.E.2d 146 (2005)
Williams v. Salerno, 792 F.2d 323 (2nd Cir. 1986)
Lockett v. University of Kansas 111 P.3d 170 (Kansas Court of Appeals, 2005)
In re Shadwick, 341 B.R. 6 (Bankr, W.D. Mo. 2006)

December 4 XII. Federal and State Regulation II

- A. Student Records
- B. Copyright
- C. Accreditation

Text: Pages 495-500; 783-794; 819-823

Cases:

Russo v. Nassau Community College, 81 N.Y.2d 690, 603 N.Y.S.2d 294, 623 N.E.2d 15 (1993)
United States v. Miami University. 294 F.3d 797 (6th Cir. 2002)
Princeton University Press v. Michigan Document Services, 99 F.3d 1381 (6th Cir. 1996), cert. denied, 520 U.S. 1156, 117 S.Ct. 1336, 137 L.Ed.2d 495 (1997)
Marjorie Webster Junior College v. Middle States Association, 432 F.2d 650 (D.C. Cir.), cert. denied, 400 U.S. 96.5, 91 S.Ct. 367, 27 L.Ed.2d 384 (1970)

December 11 XIII. Employment Regulation

- A. ADA, OSHA, FLSA, NLRB, Title VII., etc
- B. Colleges and Universities as Employer

Text: Pages 159-185

Syllabus No. 4

(Law school course)

SYLLABUS LAW 6389 20 HIGHER EDUCATION LAW Spring 2019

Instructor: Charles Barber, Esquire
cbarber@gwu.edu

Office Address: 2100 Pennsylvania Avenue, NW
Suite 250
George Washington University
Washington, D.C. 20052
Tel: (202) 994-6503

The best means of contacting the instructor is by e-mail. Office hours by appointment.

Class Schedule: The course will meet on Tuesday evenings, 6:00 – 8:00. The last day of the class is April 9, 2019. The exam will be administered on Thursday, April 23rd at a time and place TBD.

Required Course Materials: There is one required textbook for this course: The Law of Higher Education, Fifth Edition (Student Version), Kaplin and Lee (2014)

Evaluation and Grading Methods

- **Final Examination**
This course will have a closed book, two hour examination on April , 2017.
- **Class Participation**
As indicated in the GW Law School Bulletin, I reserve the right to raise or lower the student's grade on the basis of class participation. If I exercise this right, a student's grade may be raised or lowered for class participation by only one grade step, e.g., from B to B+, or B to B. (GW Law School Bulletin, p. 16, 37).
- **Optional Paper**
Students may elect to do a short paper to get a deeper understanding about a particular topic. Feedback will be provided on the paper, and extra credit may be awarded. This paper is not required, however.

Classroom Policies

- **CLASS ATTENDANCE**

As reflected in the GW Law School Bulletin, “[r]egular class attendance is required and is necessary for successful work. A student who is deficient in class attendance or participation will, after the instructor or Dean of Students attempts to communicate with the student, have a grade of No Credit (*NC*) entered on the record absent an excuse. (Here, as elsewhere in the Bulletin, email correspondence to a student’s official Law School email address is one fully acceptable means for student notification.) No excuse for deficient attendance or participation will be granted except by the Dean of Students and then only upon proof of unexpected serious illness, injury, or other emergency. A student whose excuse is accepted by the dean of students will be withdrawn administratively from the course.” (GW Law School Bulletin, p. 19 & 40).

- **Disability Support Services:**

Any student who may need an accommodation based on the potential impact of a disability should contact the Office of Disability Support Services (DSS) at 202-994-8250 located in Rome Hall, Suite 102, to establish eligibility. Once a student is registered and deemed eligible for accommodation, he or she should then contact the Dean of Students Office at 202-994-8320 to coordinate reasonable accommodations (e.g., note-taking assistance, adaptive technologies, etc.).

For additional information please refer to: <http://disabilitysupport.gwu.edu/>

Law School examination protocol calls for anonymous grading. The disclosure of exam accommodations to a professor has the potential to breach exam anonymity. Students enrolled in interdisciplinary programs should be aware that protocols implementing accommodations for a given course will differ based upon which GW Division is offering the course.

- **ACADEMIC INTEGRITY POLICY**

Students must strictly adhere to the GW Law School’s Academic Integrity Code (see GW Law School Bulletin, p. 65) and publication Citing Responsibly, and the University’s Code of Student Conduct. At the time the exam is completed, each student must provide a signed Pledge of Honesty to the proctor (or Records Office if it is a take-home exam).

- **RECORDING OF CLASSES**

This course will follow the Law School’s “Class Recording Policy,” available at the Dean of Students Office website. Essentially, students may request class recordings when they will be absent for religious reasons, family emergencies, and other authorized absences.

Requests for recording and questions about the policy should be directed to the Dean of Students Office.

Content of the Course: This course provides an overview of legal issues arising in the governance of institution of higher education. The course highlights three overarching themes: the dichotomy involving public and private institutions, the deference sometimes afforded to academic institutions, and the wide variety of issues faced by today's institutions. After exploring the significance of "state action" and the public/private dichotomy, the course focuses on a variety of issues directly affecting students, faculty and senior leadership. Source materials include federal constitutional amendments, key federal statutes, major cases, and a variety of supplementary material. While the focus of the course is higher education law from a national perspective, the last class will highlight a variety of legal issues arising from city and county government actions.

Course Learning Outcomes: A student who completes this course should have a knowledge and understanding of major substantive issues of higher education law, including laws affecting both public and private institutions. This knowledge and understanding should include the ability to identify legal issues from higher education fact patterns related to students, faculty, staff, board of directors and institutional responsibility, and to resolve those issues through applicable law.

Reading Assignments

1st Class: Overview of Higher Education Law: Themes and Sources of Law
Jan. 8th Text: Chapter 1: pp. 1-31

Supplements:

- United States Constitution Amendments 1, 4, 5 and 14
- "Hot Topics for 2019"

2nd Class: Introduction to the Public – Private Dichotomy
Jan. 15th Text: Chapter 1: pp. 33-62

Supplements: Charter of the George Washington University and University of Maryland materials

Cases:

- *Greenya v. George Washington University*, 512 F.2d 556 (D.C. Cir. 1976)
- *Remy v. Howard University*, 55 F.Supp.2d 27 (D.D.C. 1999)

3rd Class: Public – Private Dichotomy Applied: First Amendment Cases on Freedom of Speech and Freedom of the Press
Jan. 22nd Text: Chapter 8: pp. 602 - 636

Cases:

- *Shaw v. Burke*, 2018 WL459661, (C.D. Calif. 2018); (Introduction, Factual Background, and Discussion IV. B)
- *Young America's Foundation v. Napolitano*, Case 3:17-cv-02255-MMC (N.D. Calif. 2018)
- *Hosty v. Carter*, 412 F.3rd 731 (7th Cir. 2005)

4th Class: **College and Students: Legal Status**
Jan. 29th Text: Chapter 7: pp. 119 – 121; 343 – 368

Cases:

- *Andre v. Pace University*, 618 N.Y.S.2d 975, *rev'd*, *Andre v. Pace University*, 655 N.Y.S.2d 777
- National Labor Relations Board Decisions re: Columbia University and Student Workers (2016)

5th Class: **Admissions: Nondiscrimination and Affirmative Action**
Feb. 5th Text: Chapter 7: pp. 376 – 384, 395 -421

Cases:

- *Gratz v. Bollinger*, 123 S.Ct. 2411 (2003).
- *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003).
- *Fisher v. University of Texas-Austin*, 133 S. Ct. 2411 (2013)

6th Class **Sex in Higher Education: Title IX and Sexual Harassment**
Feb. 12th Text: Chapter 7: Text: pp. 368 – 376, 384 -389, 533 – 553, 805- 808

Supplement:

- GW Policy on Sexual Harassment
- Summary of DOE Proposed Title IX Regulations
<https://www2.ed.gov/about/offices/list/ocr/docs/ba-ckground-summary-proposed-title-ix-regulation.pdf>
- Summary of the Jeanne Clery Act
<http://clerycenter.org/summary-jeanne-clery-act>
- *Doe v. University of Cincinnati*, 2018 WL 1521631 (S.D. Ohio 2018)

7th Class **Academic & Disciplinary Actions Affecting Students**
Feb. 19th Text: pp. 508 – 516; 569 - 602

Cases:

- *Zwick v. Regents of the Univ. of Michigan*, 2008 U.S. Dist. LEXIS 34472
- *Phat Van Le v. University of Medicine & Dentistry of N.J.*, 2010 WL 1896413 (3rd Cir. 2010)

Supplement:

- GW Guide to Student Rights and Responsibilities

8th Class **Student Files and Records:**
Feb. 26th Text: 495 -500

Case:

- *United States v. Miami University*, 294 F.3rd 797 (6th Cir. 2002)

Supplement:

- *Family Education and Privacy Act (aka the "Buckley Amendment")*, 20 U.S.C. §1232 (g);

March 5th Spring Break

9th Class **Faculty: Contract of Employment**
Mar. 12th Text: Chapter 5: pp. 213 – 222; 243 -274

Case:

- *Brown v. The George Washington University*, 802 A.2d 382 (D.C. Ct. App. 2002)

Supplement:

- AAUP Statement of Principles on Tenure

10th Class: **Faculty: Academic Freedom**
Mar. 19th Text: Chapter 6: pp. 275 – 298; 309 - 327

Cases:

- *Sweezy v. New Hampshire*, 354 U.S. 234 (1957)
- *Urofsky v. Gilmore*, 216 F.3d 401 (4th Cir. 2000).

11th Class **College and Trustees, Administrators and Staff**

Mar. 26th Text: Chapter 3: pp. 93 – 97, 125 - 135

Case:

Stern v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries, 381 F. Supp 1003 (D.D.C. 1974).

Supplements:

- Summary of “Sarbanes-Oxley Act of 2002” requirements
- IRS Form 990

12th Class: **Premises Liability**

April 2nd Text: Chapter 3: pp. 97 - 125

Cases:

- *Schieszler v. Ferrum College*, 236 F. Supp2d 602 (2002)
- *McClure v. Fairfield University*, 35 Conn. L. Rptr. 169; 2003 WL 21524786 (Conn. Super)
- *Kavanaugh v. Boston Univ.*, 795 N.E.2nd 1170, 440 Mass. 195 (Mass. 2003)

13th Class: **College and the Community: Zoning and Land Use**

April 9th Text: Part of Chapter 11: pp. 749 -765

Supplements:

- DC Zoning Regulations, 11 DCMR § 210
- The George Washington University Foggy Bottom Campus Plan

April 23rd Exam Date

Syllabus No. 5
(Online course for law students)

Samford University
Cumberland School of Law
MHLC 510 – Introduction to Higher Education Law & Governance
3 Credit Hours – Fall Semester 2019

Course Instructor:

W. Clark Watson, Esq.
wcwatson@samford.edu
(205) 726-4503

Office Hours Policy: Students may schedule a time to meet with the instructor via WebEx or phone. Instructor will attempt to respond to student emails within one business day. Instructor biography can be found on the Canvas Syllabus page.

Course Description:

A survey of the legal and corresponding compliance issues facing institutions of higher education. Compliance responsibilities of faculty, administration, and governing boards will be addressed.

Course Delivery Description:

This is a web-based course delivered online (asynchronous) via Canvas.

Course Prerequisites:

There are no prerequisites for this course.

Course Materials:

Required:

1. Kaplin, William A., and Lee, Barbara A. (2014). [*The Law of Higher Education \(5th ed.\) Student Version*](#). San Francisco: Jossey-Bass (Wiley). (“LHE”)
2. Links to additional materials will be provided within the course in Canvas. All materials linked within the course will be either (a) freely available or (b) available through the University Library. Students must create a Social Science Research Network account at <http://SSRN.com> in order to access some of the readings.

Academic Progression:

Students are reminded to refer to the M.S.L./ LL.M. Student Handbook for information

on minimum grades, required grade point average, and academic progression.

Permission of Use Statement:

See Permission of Use Page in Canvas Course Syllabus.

Technology Requirements:

Samford utilizes the Canvas Learning Management System (LMS). Canvas is best accessed using the most recent versions of Chrome or Firefox web browsers. Successful participation in this course requires the following:

Samford Bulldog Email and Canvas accounts (required)
Access to a computer and stable internet connection
High-speed internet connection (DSL or cable modem, preferred)
Headset with microphone or computer with built-in speakers and microphone
Microsoft Office products (e.g. MS Word, PowerPoint, Excel)

Important Technology Information

Samford email is the official means of communication for the university. The only way by which your instructor will contact you is either through your university email account or Canvas. No less than daily, you should (i) check your email and (ii) log into Canvas to check for course updates.

Microsoft Office 365 is available for free download to all current faculty, staff, and students. This can be easily downloaded from the [Technology Services website](#). Sign in with your Samford Username and Password and then download this software.

It is anticipated that Microsoft Word will be used to complete all written assignments since Microsoft Office 365 is provided to the Samford University community. If a student uses another word processing application, the document should be converted into a PDF before it is uploaded to Canvas.

Technology can be problematic. Internet connections can be slow or down; computers may malfunction; and power outages can cause delays or the inability to connect. Technological issues are not acceptable excuses for late assignments. Be prepared; have a backup plan; and submit assignments a reasonable period before the deadline.

[Technology Services](#) offers telephone, email, and in-person support to all Samford student and employees. Technology Services is in the ground floor of the University Library, Room 012. Hours of operation are listed below.

Technology Services Hours of Operation

In person: [University Library, Room 012](#), Monday-Friday, 7:00 a.m. to 5:00 p.m.

Email: support@samford.edu, Monday-Friday, 7:00 a.m. to 5:00 p.m.

Phone: (205) 726-2662, 7 days a week, 24 hours per day

Web address: <https://www.samford.edu/departments/technology-services/>

Privacy Policies

turnitin - http://turnitin.com/en_us/about-us/privacy

WebEx - https://www.webex.com/cisco-privacy_full-text.html

Samford.edu website - <https://www.samford.edu/privacy-policy>

Family Education Rights and Privacy Act (FERPA)

<https://www.samford.edu/departments/registrar/ferpa>

Microsoft - <https://privacy.microsoft.com/en-US/privacystatement>

Computer & Digital Literacy Skills Expectations:

To participate and complete an online course, you are expected to have the following computer and digital literacy skills:

Computer Skills

Students are required to know how to use the software in the course. Microsoft Office 365 is available for free download to all current faculty, staff, and students. It is expected that students will be able to create and edit documents, presentations, and spreadsheets using these programs.

Written assignments should be completed using Microsoft Word since Microsoft Office 365 has been provided to all members of Samford University. If Microsoft Word is not used, please convert documents into a PDF prior to uploading into the university's LMS.

Microsoft Office 365 can be downloaded from the [Technology Services website](#). You will need to sign in with your Samford Username and Password to download and use this software.

LMS Skills

Students are expected to be able to access and use the university's LMS including upload assignment submissions, download course documents, post to discussion board and reply to other students' posts, view recorded presentations, send and receive email via school account, and use video conferencing applications.

Digital Literacy Skills

Digital literacy is the student's ability to locate, assess, utilize, create, and communicate information using technology.

- Locate instructional and research content via advanced search engine commands
- Assess digital content for its authority, purpose, and currency
- Utilize, create, and communicate information using technology
- Understand copyright and licensure practices in a digital environment

Technology can be problematic: Internet connections can be slow or down; computers may malfunction; power outages can cause delays or the inability to connect. Technological issues are not acceptable excuses for late assignments. Be prepared and have a backup plan.

Student Learning Outcomes (SLOs):

Upon completion of this course, the student will be able to do each the following:

- SLO 1 — Identify and describe the significant legal and compliance issues impacting higher education.
- SLO 2 — Explain the governance structure of public and private higher education institutions.
- SLO 3 — Recognize and describe the significant intellectual property considerations for higher education institutions
- SLO 4 – Articulate the various ways that higher education institutions may incur legal liabilities
- SLO 5 - Perform research and apply findings related to compliance issues

Compliance Certification Board Topics covered in this course:

- Institutional Policies
- Risk Management
- Student Administration
- Research Regulation
- Title IX Compliance
- Technology and Data Protection

Instructional Method and Learning Strategies:

This course is organized into modules. Each module includes one or more lectures, outside readings, readings from LHE and other sources. You are also required to participate in discussion forums. You will be assessed based upon the quality of your forum posts, one or more papers, one mid-term exam, one paper, and a final exam that will serve as your summative assessment. Class weeks begin on Wednesday and end on Tuesday. There may be multiple due dates during the same class week.

To help you achieve the course outcomes, the following learning strategies will be used in the course: written reflections, focused discussion, independent research, problem-solving activities, analytical writings and peer review.

Course Schedule and Topical Outline:

See the Canvas course page for a comprehensive list of readings and activities. Class weeks begin on Wednesday and end on Tuesday. See Canvas course for Module outcomes. Schedule, course content, and reading assignments are subject to change at instructor's discretion.

Always check Canvas and email for the most up-to-date reading assignments.

Date/Week	Topics & Readings	Learning Activities
<p>Week 1 8/26 – 9/3</p>	<p>Module #1: Introduction, Evolution and Public-Private Distinctions Lecture 1.1 – Course Introduction Lecture 1.2 – Evolution of American Higher Education Law Lecture 1.3 – The Public / Private Dichotomy Lecture 1.4 - Religious Institutions and Religious Activities of Public Institutions</p>	<p>Log on to Canvas and review syllabus Student Introductions – Post to Forum LHE Sections 1.1; 1.2; 1.4 through 1.6</p>
<p>Week 2 9/4 – 9/10</p>	<p>Module #2: Authority and Governance Lecture 2.1 – Legal Authority and Governance Lecture 2.2 – Policies and Procedures Lecture 2.3 – Shared Governance</p>	<p>LHE Sections 1.3; 1.7; 3.1; Discussion Forum #1</p>
<p>Week 3 9/11 – 9/17</p>	<p>Module #3: Institutional Liability and Risk Management Lecture 3.1 – Theories of Legal Liability Lecture 3.2 – Constitutional Immunity Lecture 3.3 - Litigation and Alternative Dispute Resolution Lecture 3.4 – Institutional Risk Management Watch: https://youtu.be/IGyx5UEwgtA (Court System Structure) Watch: https://youtu.be/7sualy8OiKk (US Supreme Court Procedures)</p>	<p>LHE Chapter 2; Sections 3.2; 3.3; 3.4 Discussion Forum #2 Topic Assigned for Research Memorandum</p>
<p>Week 4 9/18 – 9/24</p>	<p>Module #4: Higher Education Employment Lecture 4.1 - IHE Employment Generally Lecture 4.2 – Overview of Faculty Employment Lecture 4.3 – Procedural Rights of Faculty Employees</p>	<p>LHE Sections 4.1 through 4.3; 5.1 through 5.3; 5.7 Discussion Forum #3</p>
<p>Week 5 9/25 – 10/1</p>	<p>Module #5 Tenure and Academic Freedom Lecture 5.1 – Tenure and Terminations of Tenure for Cause Lecture 5.2 – Academic Freedom</p>	<p>LHE Sections 5.6; 5.7; Chapter 6; Section 7.1.4 Discussion Forum #4</p>
<p>Week 6 10/2 - 10/8</p>	<p>Module #6: Federal Nondiscrimination Laws Lecture 6.1 – Title IX of Education Amendment of 1972 Lecture 6.2 – Civil Rights Act of 1964 (Titles VI and VII) Lecture 6.3 – Americans with Disabilities Act; Section 504 of the Rehabilitation Act</p>	<p>LHE Sections 4.5 through 4.7; 5.4; 11.3.1 through 11.3.2.2; Discussion Forum #5</p>

Week 7 10/9 – 10/15	Module #7: Records; Access Lecture 7.1 – Family Educational Rights and Privacy Act Lecture 7.2 – Public Records Acts/FOIA/Open Meeting Laws	LHE Sections 4.5.2.5; 7.2.4.3; 7.6.3; 7.8; 7.7.2; 8.4; 10.4.7; 11.5.5; Mid-Term Exam
Week 8 10/16 - 10/22	Module #8: Financial Aid Lecture 8.1 – The Higher Education Act of 1965 Lecture 8.2 – Federal Student Aids Programs	LHE Sections 7.3 Discussion Forum #6
Week 9 10/23 – 10/29	Module #9: Admissions; Conferring, Withholding and Revoking Degrees Lecture 9.1 - Admissions Lecture 9.2 – Conferring, Withholding and Revoking Degrees	LHE Section 7.2 Discussion Forum #7
Week 10 10/30 – 11/5	Module #10: Intellectual Property Rights and Protections Lecture 10.1 – Copyright Lecture 10.2 – Trademarks Lecture 10.3 – Patents	LHE Section 11.3.2.3 Discussion Forum #8
Week 11 11/6 - 11/12	Module #11 – Student Life Lecture 11.1 – Student Organizations Lecture 11.2 – Student Housing Lecture 11.3 – Student Conduct	LHE Sections 7.2; 7.3; 7.4; Chapter 9; Sections 10.1 through 10.3; Discussion Forum #9
Week 12 11/13 – 11/19	Module #12 – External Regulation Lecture 12.1 – Accreditation Lecture 12.2 – Research	LHE Sections 11.1; 11.2; Chapter 12 Discussion Forum #10
Week 13 11/20 – 11/26	Module #13: Institutional Property, Management and Security Lecture 13.1 - Campus Security Lecture 13.2 – Technology Systems and Management Lecture 13.3 - Contract Management Lecture 13.4 - Clery Act and VAWA	LHE Sections 7.1.3; 7.5; 7.6; Submit Research Memorandum
Thanksgiving 11/27 – 12/1		

<p>Week 14 12/2 – 12/5</p>	<p>Module #14: Intercollegiate Athletics Lecture 14.1: The NCAA and Athletic Scholarships Lecture 14.2: Statutory Regulation of Athletics Lecture 14.3 Contract Issues in Intercollegiate Athletics</p>	<p>LHE Sections 10.4; 12.1.3; Discussion Forum #11</p>
<p>Week 15 12/6 – 12/7</p>	<p>Prepare for Final Exam</p>	
<p>Final Exam 12/8 - 12/9</p>	<p>Final Exam</p>	<p>Final Exam</p>

Course Activities, Assessments, & Interactions:

Assessments

- Mid-Term Exam (SLO 1, SLO 2, SLO 3, SLO 4)

You will have readings from the assigned textbook each week. You will have a mid-term in Canvas to demonstrate your mastery of the readings, the online lectures and fundamental course concepts through the materials that are assigned for the exam. The mid-term exam may include short discussion, multiple choice and fill in the black question formats.

- Forum Posts (SLO 1, SLO 2, SLO 3, SLO 4)

Active participation is required in this course. There will be forum discussion questions. You are required to respond to the main discussion (at least 3 paragraphs) and comment on the responses of others in the course (respond to a minimum of 2 other students). The quality of your posts is more important than quantity. You must integrate readings from the text, lectures and outside sources to support your discussion. Please see grading rubric.

- Legal Memorandum (SLO 1, SLO 2, SLO 3, SLO 4, SLO 5)

Students will research an assigned higher education topic and prepare a written analysis of the subject. The format of the document will be that of a legal research memorandum. The instructor will provide a sample format that the memorandum should conform to. Grades will be based upon the quality of research, legal analysis, organization and writing skill.

- Final Exam (SLO 1, SLO 2, SLO 3, SLO 4)

The final exam will be comprehensive over the entire course. Course materials that are not assigned for the mid-term exam may receive more attention on the final exam. The final exam may include short discussion, multiple choice and fill in the blank question formats.

Interactions

Students will interact in the Discussion Forum. Students will engage with the lectures, with outside resources, and with the text. The instructor will provide feedback on written assignments and within the discussion forums.

Grading:

There are 500 points available in this course as described below. While every effort will be made to maintain accuracy in the Canvas Gradebook, the final grade – that which will appear on your transcript and be calculated for your GPA – is the grade posted to Banner which is accessible to you through the Samford Portal and/or Degree Works (found within the portal).

ACTIVITY	POINTS
Discussion Forums (10 x 10 points) drop lowest score	100
Legal Memorandum	100
Mid-Term Exam	150
Final Exam	150
TOTAL	500

Grading Scale

A= 93-100% A-= 90-92% B+= 87-89% B= 83-86% B-=80-82% C+=77-79 C=73-76%
 C-= 70-72%
 C- = 70-72% D+ = 67-69 D = 65-66 F = <65

Getting Started with this Course:

Samford University uses the Canvas Learning Management System (LMS). To get started with the course, do the following:

1. Log onto the Samford access point by going to: portal.samford.edu.
2. Next select the Canvas icon on the upper left side of the screen. The Canvas dashboard will open, and your courses will be displayed in the middle of the screen.
3. Select your course to begin.
4. The course welcome page will open. Read the welcome section and follow the instructions for getting started.

You will need your Samford Username and Password to log in to the course. If you do not have or don't know your Samford User Name, contact Technology Services at (205) [726-2662](tel:726-2662) or support@samford.edu.

Course & University Policies:

Attendance

Students are expected to log into their courses on Canvas and check Samford email every day.

Assignments

- All assignments will be graded according to the rubrics found in your course in Canvas.
- No credit will be given for late assignments.
- Technology failures are not a valid excuse for late or missed work. If the university is experiencing technical issues, you will be notified.
- All assignments must be submitted using the method indicated on the assignment, such as posting to a discussion forum. Assignments emailed directly to the instructor, except in extraordinary circumstances, will not be accepted.

Academic Integrity

A degree from Samford University is evidence of achievement in scholarship and citizenship. Activities and attitudes should be consistent with high academic standards and Christian commitment and should be in keeping with the philosophy and mission of the University.

The Faculty Statement on Academic Dishonesty provides that students, upon enrollment, enter a voluntary association with Samford University. They must be willing to observe high standards of intellectual integrity; they must respect knowledge and practice academic honesty. Those who cheat on an examination or class assignment are not only academically dishonest, but also completely deficient in the scholarly maturity necessary to college study. Those detected in dishonesty are subject to severe punishment. The more dependence on cheating, the more inevitable becomes ultimate failure, often accompanied by public disgrace. Any act to obtain an unfair academic advantage is considered dishonest.

The website of the Office of the Registrar identifies the types of misconduct that constitute a conduct violation. If a student is accused of a violation, a hearing panel composed of faculty and students will review the violation and may impose sanctions that include probation, suspension, or dismissal. The full text of the policy, including examples of violations, procedures and appeals, can be accessed at <https://www.samford.edu/departments/registrar/policies-and-definitions>.

Netiquette

Please refer to the **Netiquette Policy** located in your Canvas Course.

Student Grievance Policy

Students should follow the grievance process set forth in the current M.S.L/LL.M Student Handbook which can be found on the [Gradlaw Student Resources Page](#) in Canvas.

Americans with Disabilities Act

Samford University complies with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Students with disabilities who seek accommodations must make their request by contacting Disability Support Services located in Dwight Beeson Hall (DBH) 103, www.samford.edu/dr or disability@samford.edu, or call (205) 726-4078. A faculty member will grant reasonable accommodations only upon written notification from Disability Support Services. Classroom accommodations are not retroactive; therefore, prompt attention to the process is advisable. Students who wish to receive examination accommodations must provide a letter from Disability Resources to the Director of Student Services and ADA Compliance no later than thirty days prior to the last day of classes.

Because the process of evaluating and documenting a student's need for accommodations can be time consuming, students are encouraged to contact Disability Resources early in the semester to ensure the completion of all necessary paperwork by the deadline. Accommodations received after the deadline will be processed for the following semester.

Title IX

Samford University is committed to the creation and maintenance of a safe learning environment for students and the University community. In accordance with applicable federal law, all university employees must report sexual misconduct, hate crimes, violations of law or school policy regarding alcohol, weapons or drugs, or actions prohibited by the federal *Violence Against Women Act*. For this reason, if you tell your instructor or another faculty member about sexual misconduct, including sexual harassment or sexual violence, he or she must report that information to the Title IX Coordinator. The Samford University Sexual Discrimination and Misconduct Policy (<https://www.samford.edu/files/Sexual-Discrimination-and-Misconduct-Policy.pdf>) designates the pastoral counselors in the Office of Spiritual Life, the licensed counselors in the University Counseling Office, and the healthcare personnel in the University Healthcare Office who are confidential resources that students may communicate with on a confidential basis.

Emergency Readiness

RAVE is the primary method of communication used by Samford University during a campus emergency. If you have not registered for *RAVE* alerts, please use the link provided below and go to the My Contact Information box on your Portal homepage to update your *RAVE* Emergency Alert Information. [Link to RAVE Emergency Alert](#)

Samford University utilizes *Samford Alert* for desktop, laptop, tablet, and mobile devices to provide students with information, procedures, and links about what to do in the event of a variety of emergency situations that could occur on our campus. If you do not

already have the *Samford Alert* app on your mobile device, laptop, desktop, or tablet, please click on this [Link to Samford Alert app](#) and go to the *In Case of Emergency* box on your Portal homepage for instructions on downloading the App. Once you have downloaded the App, please take time to review the information provided, it is important that you know what to do in the case of a campus emergency.
<http://www3.samford.edu/ops/publicsafety>

Inclement Weather

Inclement weather or other events beyond the control of the University that might cause risk or danger to students, faculty, and staff may occasionally result in changes to normal University operations, including cancellation of classes or events; the calendar schedule may be adjusted.

Syllabus No. 6

(Executive PhD course in higher education law)

Jackson State University Executive PhD in Urban Higher Education

Semester and Year: Fall 2019

Course Number and Title: EDHE 829 Seminar in Legal Aspects of Higher Education

Credit Hours: 3

Instructor: Stephanie R. Jones

Email: stephanie.jones@jsums.edu

Location: JSU e-Center Office Hours: by appointment

Course Description: The course focuses on the role of law in the governance and management of American higher education institutions. It will use universities and colleges as a lens to better understand non-profit organizations more generally, what constitutes the law, how litigation works, the roles of counsel, employment relationship between organizations and individuals, particularly the relationship between faculty and higher education institutions with a concentration on higher education, the students in academic and social settings.

Goals/Objectives: The overall objective of this course is to provide students with a basic understanding of the law and legal issues related to higher education. This understanding should assist students in their administrative roles to recognize legal problems and know when to seek the necessary guidance and assistance.

Text: *The Law of Higher Education*, 5th Edition: Student Version, Jossey-Bass, 2014; by William A. Kaplin and Barbara A. Lee. ISBN: 978-1-118-03662-4

Additional Resources: You will utilize *The Journal of College and University Law* or the *Journal of Law and Education*. You will also need a smart phone and/or computer to utilize during class. Communication outside of class will occur primarily through your JSU email account.

Content and Schedule:

Class #1 – Thursday, September 12, 2019

Assigned Reading: General Introduction; Appendices B, C, & D; and Part One

(Perspectives & Foundations) (Chapters 1-2)

In-class exercises: Case reviews

Class #2 – Thursday, October 3, 2019

Assigned Reading: Part Two (The College and Its Governing Board and Staff) & Part Three (The College and Its Faculty)
(Chapters 3-6)

In-class exercise: Board Governance

Class #3 – Thursday, November 14, 2019

Assigned Reading: Part Four (The College and Its Students)
Chapters 7-

10

In-class exercises: Clery Report & Diversity

Class #4 – Thursday, December 5, 2019

Assigned Reading: Part Five (The College and the Outside World)
(Chapters 11-12)

In-class exercise: Accreditation/Affiliation

Requirements:

No final exam will be given. Students will be required to have read the assigned materials prior to class, participate in class discussions, group work, problem analysis, and presentations. Students will be required to take weekly quizzes, complete one article review, one case review, and make a presentation to the class of their article review and case review. Students will also be required to complete an issue analysis paper. All assignments should be submitted via Canvas.

Article Review: The article review should include the appropriate citation, a brief summary of the article, and a critique. The reviews should be a maximum of five typed pages, double-spaced and be in Microsoft Word format. Article should be related to a subject covered in the reading assignment for the upcoming class meeting based upon your assigned presentation date (i.e. Article Review for Class #2 Presentations should be based upon an issue addressed in Parts Two and Three of the text; Article Review for Class #3 Presentations should be based upon an issue addressed in Part Four of the text; Article Review for Class #4 Presentations should be based upon an issue addressed in Part Five of the text). Please clearly indicate, by number, which section of the text relates to your chosen article. Articles reviewed should be no older than five years (i.e. nothing prior to 2014). Articles must be from the following higher education publications: *Journal of College and University Law* or *Journal of Law and Education*. Each student will be required to make a verbal presentation of their article review to the class based upon the schedule included below. The presentation should last no more than five minutes.

Case Review: The case review should include the appropriate case style/citation, a description of the parties and factual background, a statement of the issue, a list of the relevant law(s), a summary of the holding/conclusion, and practical implications. Case reviews should be a maximum of 15 Microsoft Powerpoint slides. Cases should be selected from the citations included in the reading assignment for the upcoming class meeting (i.e. Case Review for Class #2 Presentations should be based upon a case cited in Parts Two or Three of the text; Case Review for Class #3 Presentation should be based upon a case cited in Part Four of the text; Case Review for Class #4 Presentation should be based upon a case cited in Part Five of the text). Please clearly indicate, by number, which section of the text relates to your chosen case. A case index can be found in the text beginning on page 871. Each student will be required to make a Powerpoint presentation of their case to the class based upon the schedule included below. The presentation should last no more than ten minutes.

Issue Analysis Paper: Issue analysis paper topic must be a current legal issue of your choosing. Students must select their issue and have it approved by the Instructor no later than October 3rd. Issue must be one that falls within one of the twelve categories that make up the chapters of the Kaplin & Lee text. The paper should include an introduction of the problem/issue, a summary of relevant law, a literature review, and an assessment and recommendation(s) based on your understanding of the issue. The paper should be written as if being prepared for the lawyer for your university based upon your need for their help in solving a problem your boss asked you to review. The paper should be a maximum of twenty typed pages, double-spaced and include a cover and reference page (not counted as part of the 20 pages). The paper should be completed in APA format.

Assignment Due Dates (by 11:59 pm):

Article Review: See schedule below

**(9/22, 11/3, or 11/24) Case Review: See
schedule below (9/22, 11/3, or 11/24)**

**Issue Analysis Paper: Sunday,
December 1st**

All assignments are due by 11:59 pm of the due date; late assignments will be subject to a one-point per day deduction. Issue Analysis papers will not be accepted late.

Papers not turned in by the deadline will not be graded and students will receive a zero (0) for the Issue Analysis assignment.

Presentation Schedule:

Class #2 - October 3 rd	Class #3 - November 14 th	Class #4 - December 5 th
<i>Article Review (due 9/22)</i>	<i>Article Review (due 11/3)</i>	<i>Article Review (due 11/24)</i>
<i>Case Review (due 9/22)</i>	<i>Case Review (due 11/3)</i>	<i>Case Review (due 11/24)</i>

Method of Student Evaluation:

In-class quizzes – 15% (5 points per meeting (meetings 2-4))

In-class discussions & exercises – 20% (5 points per meeting meetings 1-4))

participation/professionalism
quality/relevance of participation

Article Review – 20% (15 points for review & 5 points for presentation)

timeliness and format
quality/relevance of review
ability to direct discussion and answer questions

Case Review – 20% (15 points per review & 5 points for presentation) format/required elements

quality/relevance of review
ability to direct discussion and answer questions

Issue Analysis – 25% (25 points)

Format (2 pts)

Quality (5 pts)

Explanation

of Issue (3

pts)

Depth of

Research (5

pts)

Scope of
Analysis (5
pts)
Practicality of Recommendation(s) (5 pts)

Special Needs Learners: If you have a disability for which you are or may be requesting an accommodation, you are encouraged to contact both your instructor and JSU's Office of Support Services for Individuals with Disabilities and speak with the ADA Coordinator. JSU is committed to coordinating reasonable services and accommodations to JSU students and staff as well as other external constituents with disabilities. Special emphasis is given to accessibility and inclusion when meeting the needs of all of our students, employees and visitors. Any student, employee, or campus visitor who has been diagnosed with a disability is eligible for accommodations at JSU. The student, employee, or visitor must make the University aware of his/her disability by presenting documentation applicably showing the disability and need for academic adjustment, auxiliary aids, accommodations, and services.

For additional information, please contact the Office of Support Services for Individuals with Disabilities at (601) 979- 3704. The Office is located on the first floor of Jacob L. Reddix Hall.

Diversity Statement: Jackson State University is committed to creating a community that affirms and welcomes persons from diverse backgrounds and experiences and supports the realization of their human potential. We recognize that there are differences among groups of people and individuals based on ethnicity, race, socioeconomic status, gender, exceptionalities, language, religion, sexual orientation, and geographical area. All persons are encouraged to respect the individual differences of others.

Class Attendance Policy: 100% class attendance is expected of all students. If you will be absent for any class meeting, inform the instructor in advance via email in order to have the opportunity to take the relevant quiz and/or reschedule your presentation. In-class discussion points are not available to those who are not in attendance.

Academic Honesty: Students are expected to comply with JSU's honor code:

I will be honest in all of my academic coursework and will not indulge in or tolerate the academic dishonesty of my counterparts or peers. I will not partake in any type of misconduct, misrepresentation, or immoral behavior that will harm, damage, or endanger any person, property or myself or reflect negatively against me or hinder my academic continuance. I will strive to achieve excellence and to complete degree requirements without hesitation. I am a valuable part of the Jackson State University family, and proud of it.

Additional policies and resources can be found in the Graduate Catalog which may be accessed online at <http://www.jsums.edu/graduateschool/graduate-catalog/>.

The above schedule and procedures in this course are subject to change at the discretion of the instructor. The course was designed as a four (4) class meeting course. Should the number of class meetings vary, the instructor will amend the materials accordingly so as to include the critical material within the time available.

The Catholic University of America

School of Law

EDUCATION LAW PRACTICE: A SIMULATED LAWYERING EXPERIENCE

Course Syllabus

Professor Kaplin

I. Course Description

This course uses a variety of instructional formats to examine legal and policy issues in the nation's systems of public and private education. Higher education is emphasized more than elementary and secondary education. Students are organized into two "law offices," each of which has an adviser who is an attorney from CUA's Office of General Counsel. The law offices represent various individual and institutional "clients." The clients' problems involve matters such as denial of faculty tenure, control of students with psychiatric problems, misuse of university computer networks, peer sexual harassment, hate speech codes, the review of university affirmative action plans, and home schooling for elementary and secondary students. These problems and the assigned background readings emphasize the particular ways in which civil rights law, constitutional law, contract law, tort law, and administrative law apply to education settings. Simulations and writing assignments that accompany some of the problems help students to develop research, writing, and problem-solving skills and also introduce students to other lawyering competencies such as negotiation, interviewing, counseling, and mediation. Students enroll for 3, 4, or 5 credits; the required writing assignments and simulation assignments increase as the credit load increases. Successful completion of the course fulfills one-half of the upperclass writing requirement.

Either concurrently with this course or in a subsequent semester, some students may earn additional academic credit in an Education Law Externship at the Catholic University Office of General Counsel.

II. Course Web Page

This course is administered through The West Education Network (TWEN). The course has three TWEN web pages:

- (1) "Education Law Practice: A Simulated Lawyering Experience;"
- (2) "Education Law Practice: Law Office A;" and
- (3) "Education Law Practice: Law Office B." The first page is the general course web page for the use of all class members. The second two pages are for the use of the respective law offices and may be accessed only by members of the designated office. Most of the handouts for this course and most of the documents for the problems will be posted on these TWEN Web pages.

In addition, the course Web pages will provide useful research links for you as well as a convenient method for reviewing current developments in education law.

Course Goals

This course is designed to help you, in the context of education law and policy, to achieve these goals:

- A. to develop the higher-level analytical capacities that are needed when various bodies of substantive law may each apply to a particular problem or field of concern;
- B. to improve problem-solving skills and other lawyering skills (research, writing, interviewing, counseling, negotiation, mediation) by practicing, and reflecting on, the art of lawyering;
- C. to understand the legal status and legal problems of educational institutions, systems, and associations, especially colleges and universities;
- D. to develop relevant comparisons, regarding law and practice, between (1) elementary-secondary education and higher education, and (2) public education and private education; and
- E. to become familiar with the roles and professional responsibilities of lawyers that represent governmental or nonprofit organizations or bring claims against them, the various forums in which such lawyers may work, and the collaborative (teamwork) aspects of the practice.

IV. Course Materials

The required texts are Kaplin and Lee, Cases, Problems, and Materials for Use with The Law of Higher Education (“CPM”); and Kaplin and Lee, The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making (5th ed. 2006) (“LHE”). The CPM text is keyed to LHE.

For your own independent study and research, the major journal in the higher education field is the Journal of College and University Law, which the library has. The Journal of Law and Education, which the library also has, is another leading journal that covers both elementary/secondary education and higher education. Another important resource is West’s Education Law Reporter, which publishes court opinions, case digests, and short articles. Other resources for higher education are listed in the bibliographies at the end of each chapter in LHE and., as well as in the footnotes and text citations.

V. Course Content

We will begin with introductions to the American education system, education law, and the legal problem-solving process. We will do two short problems for practice, one on higher education and one on elementary/secondary education. Then we will undertake a series of large-scale problems that comprise the bulk of the course. The first of these problems (“The Professor Ito Problem”) is the primary problem for the course.

All students will work on this problem, and we will work on it through most of the course. Generally you will work in teams of two, with assistance from other members of your law office and from your law office’s adviser. We will also explore this problem in class sessions by using various simulations preceded by subject matter briefings, skills briefings, and law office meetings. At the conclusion of this problem we will have an extensive “feedback session” that will help you reflect on what you have learned.

The primary large-scale problem, The Professor Ito Problem, concerns a private university’s denial of a professor’s application for tenure and the legal claims and legal recourse available to the professor. One law office will be attorneys for the professor, and the other law office will be attorneys for the university. We will do all or most of the following simulations in class: (A) Professor Ito’s attorneys will interview their client; (B) the university’s attorneys will interview the university President; (C) Professor Ito’s attorneys will interview a potential witness (a colleague in a different department); (D) the university’s attorneys will interview a potential witness (Prof. Ito’s department chair); (E) attorneys for each side will meet for at least one negotiation session. A team of two attorneys from each law office will be designated to perform each simulation.

In addition, there will be several writing assignments for the Professor Ito Problem. Each attorney for the professor will prepare a demand letter outlining legal claims and proposed relief; and each attorney for the university will prepare a response to this demand letter. Each attorney for the professor will prepare a legal memorandum for their senior partner that develops their client’s legal claims and suggests next steps to take; and each attorney for the university will prepare a legal memorandum for their senior partner that develops the university’s defenses and suggests next steps to take. All attorneys will, after an individual conference with their senior partner (me), re-write and re-submit their legal memorandum.

VI. Course Requirements

Three-credit students must complete their simulation assignments and writing assignments for the Professor Ito Problem. Four-credit students must complete the simulation assignments and writing assignments for the Professor Ito Problem, and must also complete a writing assignment and simulation assignment for one other problem. Five-credit students must complete the simulation assignments and writing assignments for the Professor Ito problem, and must also complete the writing assignment and simulation assignment for two other problems. Before completing the re-write of the

legal memorandum for the Professor Ito Problem, each student must have an individual office conference with me (the senior partner) on the memo he/she is re-writing.

The re-writes of the legal memorandum for the Professor Ito Problem will all be due on the same date near the end of the exam period.

You must participate actively with your law office on every problem, both in and out of class, whether or not you have a writing or simulation assignment. Five-credit students should expect to have relatively more responsibilities in their law offices than 4-credit students; and 4-credit students should expect relatively more responsibilities than 3-credit students.

The simulations may include various non-legal roles (administrators, clients, witnesses), and I may need help from class members in locating outside persons to play some of these roles. Specifically, you may be individually responsible for recruiting one such person, or your law office may be responsible for recruiting one or two such persons. If so, you may ask persons either inside the university (including other law students) or outside the university who would be suitable to play the role for which you are recruiting.

In addition to the simulations, there will be reading assignments and other assignments for most classes. You must complete these assignments before class and participate actively in class discussions. For each feedback session at the end of a problem, you must review the problem materials and your simulation notes, and participate actively in the class discussion.

VII. Course Grades

Your final course grade will be based on the writing assignments for the Dr. Ito Problem, the writing assignments for other problems (for 4- and 5-credit students), the brief written critiques of other problems, and class participation. Class participation will include all your in class work, including your work in the problem simulations, and will also include your participation in discussions conducted in the discussion forums on the course and law office TWEN pages.

APPENDIX B

Simulation Exercises

You are about to participate in a live simulation. As you will see, simulations are valuable teaching and learning tools. To get the most benefit from this exercise, you will want to be familiar with the character and purposes of simulations.

Here is a brief description:

A simulation resembles something but is not the thing itself. In law school, a simulation resembles the activity of lawyers; the essential attribute of a simulation is that students do something like what lawyers do. More specifically, in a simulation, students are presented with a situation that might confront a practicing lawyer. In dealing with the situation, they perform in role and attend to the goals and interests of their clients; they are result-oriented.

(J. Feinman, "Simulations: An Introduction," 45 *J. of Legal Education* 469, 469-470 (1995)).

Here also are three important rules for you to follow as you participate in simulation exercises.

1. In your mind, consciously place yourself into the role that you have been assigned, and stay strictly in your role throughout the exercise.
2. If there are observers in the room, ignore them. Act as though they do not exist. (The corollary for observers is to act as though you are not there; do not react to, distract, or otherwise interact with the simulation participants.)
3. Willingly suspend your disbelief. (This is an accepted technique of literary analysis, *i.e.*, "willing suspension of disbelief.") For instance, you will know that you are not in a "real" conference room or law office when you do a simulation; you will know that the institution you are representing or challenging may not be a "real" institution; you will know that the students you work with or oppose are not "real" attorneys and "real" officers of the institution; and you will know that the client, or witness, or university official that you are facing in the simulation may not have the actual name and title that they represent to you. But for the sake of the simulation, you can and do put aside, or "suspend," all such "disbeliefs."