General Introduction: The Study of Higher Education Law

A. The Universe of Education Law
B. The Governance of Higher Education
C. Sources of Higher Education Law
D. The Legal Relationships Within Institutions of Higher Education
E. The Law/Policy Distinction
F. The U.S. Legal System as It Relates to Higher Education Law

PART ONE: PERSPECTIVES AND FOUNDATIONS

I Overview of Higher Education Law

1.1 How Far the Law Reaches and How Loudly It Speaks

1.2 Evolution of Higher Education Law

1.3 The Governance of Higher Education

1.3.1 Basic concepts and distinctions
1.3.2 Internal governance
1.3.3 External governance

1.4 Sources of Higher Education Law

1.4.1 Overview
1.4.2 External sources of law
1.4.2.1 Federal and state constitutions
1.4.2.2 Statutes
1.4.2.3 Administrative rules and regulations
1.4.2.4 State common law
1.4.2.5 Foreign and international law
1.4.3 Internal sources of law
1.4.3.1 Institutional rules and regulations
1.4.3.2 Institutional contracts
1.4.3.3 Academic custom and usage
1.4.4 The role of case law
1.4.5 Researching case law

1.5 The Public-Private Dichotomy

1.5.1 Overview
1.5.2 The state action doctrine
   1.5.2.1 When private postsecondary institutions may be engaged in state action
   1.5.2.2 When students, employees, and others may be engaged in state action
1.5.3 Other bases for legal rights in private institutions

1.6 Religion and the Public-Private Dichotomy

1.6.1 Overview
1.6.2 Religious autonomy rights of institutions and their personnel
1.6.3 Governmental support for religious institutions and their students and faculty members
1.6.4 Religious autonomy rights of individuals in public postsecondary institutions

1.7 The Relationship Between Law and Policy

II Legal Planning and Dispute Resolution

2.1 Legal Liability

2.1.1 Overview
2.1.2 Types of liability
2.1.3 Agency law
2.1.4 Enforcement mechanisms
2.1.5 Remedies for legal violations
2.1.6 Reducing legal liability
2.1.7 Treatment law and preventive law

2.2 Litigation in the Courts

2.2.1 Overview
2.2.2 Judicial (academic) deference
2.2.3 Managing litigation and the threat of litigation

2.3 Alternative Dispute Resolution

2.3.1 Overview
2.3.2 Types of ADR
2.3.3 Applications to colleges and universities

2.4 Institutional Management of Liability Risk

2.4.1 Overview and suggestions
2.4.2 Risk management strategies
2.4.3 Enterprise risk management

PART TWO: THE COLLEGE AND ITS GOVERNING BOARD AND STAFF

III The College’s Authority and Liability

3.1 The Question of Authority

3.1.1 Overview
3.1.2 Trustee Authority

3.2 Institutional Tort Liability

3.2.1 Overview
3.2.2 Negligence

3.2.2.1 Overview
3.2.2.2 Premises liability
3.2.2.3 Liability for injuries related to on-campus instruction
3.2.2.4 Liability for injuries in off-campus courses
3.2.2.5 Liability for co-curricular and social activities
3.2.2.6 Student suicide

3.2.3 Educational Malpractice
3.2.4 Defamation

3.3 Institutional Contract Liability

3.4 Institutional Liability for Violations of Federal Constitutional Rights (Section 1983 Liability)

3.4.1 Overview

IV The College and its Employees

4.1 Overview of Employment Relationships

4.2 Employment Contracts
4.2.1 Defining the contract
4.2.2 The at-will doctrine

4.3 Collective Bargaining
4.3.1 Overview
4.3.2 The public-private dichotomy in collective bargaining
4.3.3 Collective bargaining and antidiscrimination laws

4.4 Personal Liability of Employees
4.4.1 Overview
4.4.2 Tort liability
   4.4.2.1 Overview
   4.4.2.2 Negligence
   4.4.2.3 Defamation
4.4.3 Contract liability
4.4.4 Constitutional liability (personal liability under Section 1983)
   4.4.4.1 Qualified immunity
   4.4.4.2 Issues on the merits: State created dangers

4.5 Employment Discrimination
4.5.1 Overview: The interplay of statutes, regulations, and constitutional protections
4.5.2 Sources of law
   4.5.2.1 Title VII
   4.5.2.2 Equal Pay Act
   4.5.2.3 Title IX
   4.5.2.4 Section 1981
   4.5.2.5 Americans with Disabilities Act and Rehabilitation Act of 1973
   4.5.2.6 Age Discrimination in Employment Act
   4.5.2.7 Constitutional prohibitions against employment discrimination
   4.5.2.8 Executive Orders 11246 and 11375
   4.5.2.9 Laws prohibiting sexual orientation discrimination
   4.5.2.10 Laws prohibiting transgender discrimination

4.6 Affirmative Action in Employment
4.6.1 Overview
4.6.2 Affirmative action under Title VII
4.6.3 Affirmative action under the Equal Protection Clause
4.6.4 State regulation of affirmative action
4.6.5 Conclusions

4.7 Application of Nondiscrimination Laws to Religious Institutions
PART THREE: THE COLLEGE AND ITS FACULTY

V Special Issues in Faculty Employment

5.1 Overview

5.2 Faculty Contracts
   5.2.1 Overview
   5.2.2 Academic custom and usage
   5.2.3 Part-time faculty
   5.2.4 Contracts in religious institutions

5.3 Faculty Collective Bargaining

5.4 Application of Nondiscrimination Laws to Faculty Employment Decisions
   5.4.1 Overview
   5.4.2 Judicial deference and remedies for tenure denial

5.5 Affirmative Action in Faculty Employment Decisions

5.6 Standards and Criteria for Faculty Employment Decisions
   5.6.1 General principles
   5.6.2 Termination of tenure for cause
   5.6.3 Denial of tenure

5.7 Procedures for Faculty Employment Decisions
   5.7.1 General principles
   5.7.2 The public faculty member’s right to constitutional due process
      5.7.2.1 Overview
      5.7.2.2 Nonrenewal of contracts
      5.7.2.3 Denial of tenure
      5.7.2.4 Termination of tenure
   5.7.3 The private faculty member’s procedural rights

VI Faculty Academic Freedom and Freedom of Expression

6.1 General Concepts and Principles
   6.1.1 Faculty freedom of expression in general
   6.1.2 Other constitutional rights supporting faculty freedom of expression
   6.1.3 Academic freedom: basic concepts and distinctions
   6.1.4 Professional versus legal versions of academic freedom
   6.1.5 The foundational constitutional law cases
   6.1.6 External vs. internal restraints on academic freedom
6.1.7 “Institutional” academic freedom
6.1.8 “International” academic freedom

6.2 Academic Freedom in Teaching

6.2.1 In general
6.2.2 The classroom
6.2.3 Grading
6.2.4 Private institutions

6.3 Academic Freedom in Research and Publication

6.4 Academic Freedom in Religious Colleges and Universities

PART FOUR: THE COLLEGE AND ITS STUDENTS

VII The Student/Institution Relationship

7.1 The Legal Status of Students

7.1.1 Overview
7.1.2 The age of majority
7.1.3 The contractual rights of students
7.1.4 Student academic freedom
7.1.5 Students’ legal relationships with other students

7.2 Admissions

7.2.1 Basic legal requirements
7.2.2 Arbitrariness
7.2.3 The contract theory
7.2.4 The principle of nondiscrimination
  7.2.4.1 Race
  7.2.4.2 Sex
  7.2.4.3 Disability
  7.2.4.4 Age
  7.2.4.5 Immigration status
7.2.5 Affirmative action programs
7.2.6 Readmission

7.3 Financial Aid

7.3.1 General principles
7.3.2 Federal programs
7.3.3 Nondiscrimination
7.3.4 Affirmative action in financial aid programs
7.3.5 Discrimination against noncitizens
7.3.5.1 Documented (immigrant and nonimmigrant) noncitizens
7.3.5.2 Undocumented noncitizens

7.4 Student Housing
7.4.1 Overview
7.4.2 Discrimination claims
7.4.3 Searches and seizures

7.5 Campus Computer Networks
7.5.1 Freedom of Speech
7.5.2 Right to Privacy
7.5.3 Liability issues

7.6 Campus Security
7.6.1 Security officers
7.6.2 Protecting students against violent crime
7.6.3 Federal statutes and campus security

7.7 Other Support Services
7.7.1 Overview
7.7.2 Services for students with disabilities
7.7.3 Services for international students

7.8 Student Files and Records
7.8.1 Family Educational Rights and Privacy Act (FERPA)
7.8.2 State law

VIII Student Academic Issues
8.1 Overview

8.2 Grading and Academic Standards

8.3 Online Programs
8.3.1 Overview
8.3.2 Student legal claims about online programs

8.4 Academic Accommodations for Students with Disabilities
8.4.1 Overview
8.4.2 Requests for programmatic or other accommodations
8.4.2.1 Domestic programs
8.4.2.2 Study abroad programs
8.4.2.3 Online programs
8.5 Sexual Harassment of Students by Faculty Members

8.6 Academic Dismissals and Other Sanctions

8.6.1 Overview
8.6.2 Contract issues
8.6.3 Constitutional issues
8.6.4 Discrimination issues
8.6.5 Procedures for Academic Sanctions
  8.6.5.1 Public institutions
  8.6.5.2 Private institutions

IX Student Disciplinary Issues

9.1 Disciplinary and Grievance Systems

9.1.1 Overview
9.1.2 Establishment of systems
9.1.3 Codes of student conduct
9.1.4 Judicial systems

9.2 Disciplinary Rules and Regulations

9.2.1 Overview
9.2.2 Public institutions
9.2.3 Private institutions
9.2.4 Disciplining students with mental disorders

9.3 Procedures for Suspension, Dismissal, and Other Sanctions

9.3.1 Overview
9.3.2 Public institutions: Disciplinary sanctions
  9.3.2.1 Overview
  9.3.2.2 Notice
  9.3.2.3 Hearing
9.3.3 Private institutions

9.4 Student Protests and Freedom of Speech
9.4.1 Student free speech in general
9.4.2 The “public forum” concept
9.4.3 Regulation of student protest
9.4.4 Prior approval of protest activities
9.4.5 Posters and leaflets
9.4.6 Protests in the classroom

9.5 Speech Codes and the Problem of Hate Speech
9.5.1 Hate speech and the campus
9.5.2 The case law on hate speech and speech codes
9.5.3 Guidelines for dealing with hate speech on campus

X Rights and Responsibilities of Student Organizations and Their Members

10.1 Student Organizations
  10.1.1 The right to organize
  10.1.2 Right not to join, or associate, or subsidize
  10.1.3 Mandatory student activities fees
  10.1.4 Principle of nondiscrimination
  10.1.5 Religious activities

10.2 Fraternities and Sororities
  10.2.1 Overview
  10.2.2 Institutional recognition and regulation of fraternal organizations
  10.2.3 Institutional liability for the acts of fraternal organizations

10.3 The Student Press
  10.3.1 General principles
  10.3.2 Mandatory student fee allocations to student publications
  10.3.3 Permissible scope of institutional regulation
  10.3.4 Advertising in student publications
  10.3.5 Obscenity
  10.3.6 Libel
  10.3.7 Obscenity and libel in private institutions

10.4 Athletics Teams and Clubs
  10.4.1 General principles
  10.4.2 Athletes’ due process rights
  10.4.3 Athletes’ freedom of speech
  10.4.4 Pertinent statutory law
  10.4.5 Athletic scholarships
  10.4.6 Sex discrimination
  10.4.7 Discrimination on the basis of disability
  10.4.8 Drug testing
  10.4.9 Tort liability for athletic injuries

Part Five: The College and the Outside World

XI The College and Government
11.1 Local Government Regulation

11.1.1 Overview of local government regulation
11.1.2 Trespass statutes and ordinances, and related campus regulations
11.1.3 Relations with local police

11.2 State Government Regulation

11.2.1 Overview
11.2.2 State provision of public postsecondary education
11.2.3 State chartering and licensure of private postsecondary institutions
11.2.4 Other State Regulatory Laws Affecting Postsecondary Education Programs
   11.2.4.1 Laws on gun possession on campus

11.3 Federal Government Regulation

11.3.1 Overview of federal constitutional powers over education
11.3.2 Federal regulation of postsecondary education
   11.3.2.1 Overview
   11.3.2.2 Regulation of research
   11.3.2.3 Regulation of intellectual property

11.4 Federal Aid-to-Education Programs

11.4.1 Functions and history
11.4.2 Legal structure of federal aid programs

11.5 Civil Rights Compliance

11.5.1 General considerations
11.5.2 Title VI
11.5.3 Title IX
   11.5.3.1 Overview
   11.5.3.2 Title IX and peer sexual harassment
   11.5.3.3 Claims by accusing students
   11.5.3.4 Claims by accused students
11.5.4 Section 504
11.5.5 Coverage of unintentional discrimination

XII The College and External Private Entities

12.1 Education Associations

12.1.1 Overview of the education associations
12.1.2 Accrediting agencies
12.1.3 Athletic associations and conferences

12.2 Business Partners

12.2.1 Research collaboration
12.2.2 The research agreement

Appendices

A. Constitution of the United States of America: Provisions of Particular Interest to Postsecondary Education
B. The American Court System
C. Reading and Analyzing Court Opinions
D. Glossary of Legal Terms

Bibliography

Statute Index

Case Index

Subject Index