

LOYOLA UNIVERSITY CHICAGO
SCHOOL OF EDUCATION
 ELPS 453: Legal Aspects of Higher Education
 Spring 2011
 Tuesdays, 7:00 – 9:30 p.m.
 Water Tower Campus, CLC 525
 25 East Pearson Street

Instructor Information

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Course Description

Not surprisingly, every single college and university in the United States undeniably intersects with the American legal system in multiple ways. No person directly connected with higher education, whether student, staff, faculty, parent, vendor, or visitor, is outside the influence of the law. A review of any week's issue of *The Chronicle of Higher Education* or the on-line news site insidehighered.com reveals many diverse events (both within and outside higher education) that can and often does have serious legal implications for institutions and those who interact with these institutions. This course is designed to assist students in becoming more knowledgeable about the fundamentals of American law that directly and indirectly impinge on the teaching, learning, and administrative environments of higher education institutions in both the public as well as the private sectors. Diverse sources of law exist that impact higher education in many different ways and this course is designed to enhance student understanding and appreciation for this complexity.

Course Topical Outline

- A. Sources of law and their impact on institutions
- B. Legal character of higher education in America
 - 1. Incorporation of private and public institutions
 - 2. 501(c)3 requirements for non-profit organizations
 - 3. Public-private dichotomy
 - 4. State Action Doctrine implications for private higher education
 - 5. Religion and higher education

C. Students and Institutions: The 'Contract of Enrollment'

1. Legal theories traditionally defining student-institution relationship
2. Contract issues in admission
3. The ubiquitous Contract of Enrollment
4. Non discrimination in admission (race, sex, disability)
5. Undocumented students and admission
6. Affirmative action in admission

D. Expressional Rights on the Campus

1. Sources of law
2. Public v. private sector differences
3. Hate speech codes (public v. private sector differences)
4. Recognition of controversial groups
5. Student press issues: censorship and defamation

E. Student Due Process

1. Sources of law
2. Academic v. non-academic due process issues
3. Parental concerns
4. Public v. private sector procedural differences

F. Privacy Rights on the Campus

1. Search and seizure of student property
2. Campus computing networks
3. Student files and records
4. Defamation: Obscenity and Libel

G. Tort Liability

1. Types of liability issues: contract, tort, civil rights
2. Negligence claims
3. Institutional v. personal liability
4. Managing risk of liability

H. Sex Discrimination and Harassment

1. Sources of law
2. Definition of sexual harassment
3. Harassment procedures and policies on the campus

Course Learning Outcomes

Upon completion of this course, students are expected:

1. To effectively recognize a wide variety of legal issues on the campus both before and at the time they emerge at the institution;
2. To identify and utilize a variety of resources available that can assist in effectively addressing legal issues on the campus;
3. To identify a diverse body of knowledge related to the law and to understand how the law intersects with institutional policy;
4. To acquire new levels of efficacy leading to becoming active participants in addressing and resolving legal issues on the campus;
5. To critically evaluate and implement both preventative and reactive legal strategies in one's work on the campus;
6. To gain enhanced understanding of the ethical and social justice issues often linked to legal issues and educational policy in higher education;
7. To acquire greater sensitivity and awareness of the potential legal ramifications of decision making and policy development on the campus; and
8. To gain an appreciation and understanding for the value and importance of remaining current on emerging legal issues that face the campus.

School of Education Conceptual Framework

The conceptual framework for Loyola's School of Education that grounds our curriculum and learning outcomes emphasizes "*Professionalism in Service of Social Justice.*" This framework is consistent with the design and content of this course. The course in particular focuses on several key legal issues important not only to American higher education but to our greater society as well. For example, these issues involve incorporating fundamental fairness and justice in all educational policies so that all students, faculty and staff (and other stakeholders) are treated equitably and with dignity. Specific legal issues that address framework values include nondiscrimination (on basis of sex, race, color, national origin, disability, sexual orientation, religion, etc.) in the setting and implementation of educational policy at the local, state, and national levels. Affirmative action policies that focus on the educational needs of traditionally underserved populations of students, faculty, and staff are addressed in the course.

Diversity. In alignment with the SOE conceptual framework focusing on advancing social justice in our society, this course addresses important social justice issues especially around access to higher education. To illustrate, we address the intersection of law with educational policy around issues related to nondiscrimination in admission including the continuing debate around affirmative action programs in higher education both in admission and in employment. Additionally, because American higher education is diverse in so many different ways, we address how the law may impact educational policy differently at these diverse institutions (e.g., religiously-based institutions v. public sector institutions). Other examples of diversity that are impacted by the law include policies that address sex, sexual orientation, disability, race, ethnicity, color, religion, etc.

Technology. Students in this course will become familiar with a wide variety of legal resources, many of them Internet based. Students will use technology to access information from the course Blackboard site and Lexis-Nexis software in order to complete assignments. Most importantly, students will use Internet-based resources to conduct research and produce reports. This will enhance their ability to use technology as a learning and research tool.

Institutional Policies

Academic Honesty. Academic honesty is an expression of interpersonal justice, responsibility and care, applicable to Loyola University faculty, students, and staff which demands that the pursuit of knowledge in the university community be carried out with sincerity and integrity. The School of Education's Policy on Academic Integrity can be found at:

http://www.luc.edu/education/academics_policies.shtml

For additional academic policies and procedures refer to:

http://www.luc.edu/education/academics_policies_main.shtml

Accessibility. Students who have disabilities which they believe entitle them to accommodations under the Americans with Disabilities Act should register with the Services for Students with Disabilities (SSWD) office. To request accommodations, students must schedule an appointment with an SSWD coordinator. Students should contact SSWD at least four weeks before their first semester or term at Loyola. Returning students should schedule an appointment within the first two weeks of the semester or term. The University policy on accommodations and participation in courses is available at: <http://www.luc.edu/sswd>.

Harassment (Bias Reporting). It is unacceptable and a violation of university policy to harass, discriminate against or abuse any person because of his or her race, color, national origin, gender, sexual orientation, disability, religion, age or any other characteristic protected by applicable law. Such behavior threatens to destroy the environment of tolerance and mutual respect that must prevail for this university to fulfill its educational and health care mission. For this reason, every incident of harassment, discrimination or abuse undermines the aspirations and attacks the ideals of our community. The university qualifies these incidents as incidents of bias.

In order to uphold our mission of being Chicago's Jesuit Catholic University-- a diverse community seeking God in all things and working to expand knowledge in the service of humanity through learning, justice and faith, any incident(s) of bias must be reported and appropriately addressed. Therefore, the Bias Response (BR) Team was created to assist members of the Loyola University Chicago community in bringing incidents of bias to the attention of the university. If you believe you are subject to such bias, you should notify the Bias Response Team at this link: <http://webapps.luc.edu/biasreporting/>.

Reading Materials

The required text listed below is available at the Loyola Bookstore at WTC and may be available on-line through such vendors as Amazon.com. Copies may also be available at Beck's Bookstore (Chicago Ave.).

- **Kaplin, W. A., & Lee, B. A. (2009). *A Legal Guide for Student Affairs Professionals, second edition.* San Francisco: Jossey-Bass.**

Note: Additional required readings are assigned and are listed both on this syllabus and in Blackboard (Bd) (access through the 'Assignments' tab in Bd). Access to most of these additional readings is easily made as most are either Word documents or PDF documents.

A large number of 'recommended' readings are also identified in this syllabus and on Blackboard under the assignments tab. Students wishing to explore particular topics deeper and more comprehensively are encouraged to consult these readings.

Using Lexis-Nexis Through Loyola Libraries to Retrieve Court Cases

Searching Federal/State Court Cases. Students may wish to access specific full-text federal and state court cases as part of their research for assignments. If you know either the name of the case (the parties involved) or the official citation for the case, a case can easily be accessed electronically through Loyola's library. Students will be introduced to this process in class. Go to LUC Homepage (www.luc.edu) and click on the main link to Libraries found under Resources. Then click on Libraries Home Page:

- Next, click on Databases by Title and click on the letter "L"
- Then click on Lexis-Nexus (note: the third Lexis option)
- At top of page, click on the tab labeled "legal"
- Then on left side, click on Federal and State Cases
- Then you can either enter in the name of the case (Healy v. James) or the actual citation (408 U.S. 169) to get to the full text of the case. Note that full texts are typically quite lengthy as they contain footnotes and other detailed information pertinent to the case. Some cases required for reading in this course are provided to you in 'abridged' format (significantly shorter) and are available in the assignments tab of Bd.

Selected Web-based Professional Association Resources:

- National Association of College and University Attorneys (www.nacua.org)
- Association of Student Conduct Administration (www.theasca.org)
- American Association of Collegiate Registrars and Admission Officers (www.aacrao.org)
- Campus Legal Information Clearinghouse, Office of General Counsel, The Catholic University of America (<http://counsel.cua.edu>)
- National Center for Higher Education Risk Management (www.ncherp.org/legal.html)
- Family Policy Compliance Office, U.S. Department of Education (<http://www2.ed.gov/policy/gen/guid/fpco/index.html>)
- Law Search Engine (<http://www.findlaw.com>)
- U.S. Code (<http://uscode.house.gov>)
- Federal Judiciary Homepage (<http://www.uscourts.gov/courtlinks.html>)
- Illinois Board of Higher Education (<http://www.ibhe.state.il.us/>)
- Illinois Community College Board (<http://www.iccb.state.il.us/>)
- Equal Employment Opportunity Commission (EEOC) (<http://www.eeoc.gov>)
- UCLA Civil Rights Project (<http://www.civilrightsproject.ucla.edu/>)
- Center for Individual Rights (CIR) (<http://www.cir-usa.org/>)

Teaching Approach

In recognition that students learn in diverse ways, we attempt to utilize a variety of instructional approaches in this course including lecture, group discussion, in class case analysis, etc. We may

typically use 'lecture' as a way of stimulating discussion (with the use of power point slides as a support tool). We invite students to participate through active questioning of material assigned to be read and by asking students to apply this material to real life experiences they have had in higher education. Reflection questions that can guide your reading and note taking for in-class discussion will be provided. Students are also encouraged to stay abreast of current issues in higher education that have legal implications for discussion in class as they relate to the topics we will examine. Students may be asked to raise current events in class that have legal implications.

Requirements and Expectations

Attendance

This course meets only once a week, making attendance absolutely essential. You must be present to engage fully in the course content. We understand that sometimes life priorities can make this challenging. *The expectation, however, is that you will be present for the full class session each week.* Should you miss a class, arrive late, or leave early, you are responsible for identifying and obtaining missed material from your peers. Please notify the instructor via email *prior* to the start of class should you need to be absent. Any absence (as well as a pattern of arriving late or leaving early) may impact a student's final grade through adjustment of participation points. **Please avoid missing a class on a day when an assignment is due.** We would rather have you submit a written report one day late than miss class discussion that day.

Preparation

This course is designed using a combined traditional seminar format along with lecture in which much of the learning emerges from group discussion, student engagement with each topic, and instructor presentation/clarification of key concepts. As such, preparation through completion of each week's required readings and thoughtful reflection on the topics are critical not only for each individual's intellectual development, but the group's collective development as well. Readings have been purposefully selected for their relevance to the given topic and contribution to the overall literature. Rather than assigning a bulk of reading, the philosophy employed in this course design is to carefully select significant and important core readings and provide sources for additional reading should students wish to explore the topic further. Given that much thought has gone into selection of readings, students are expected to complete them in advance of each class. Additionally, as a graduate-level course, class time may not be directed towards dissecting each individual reading, but instead examining themes across readings and conducting a critical analysis of content and its application in the context of higher education. Students are encouraged to consider this as they read assigned material. Failure to read or otherwise be adequately prepared for class may impact a student's final grade through adjustment of participation points.

Engagement & Participation

Given the seminar/lecture format employed in this course design, student engagement in discussions and learning activities is critical. Our belief is that all students have valuable insights and experiences to contribute to the teaching and learning environment we construct in this class. However, it is important to note that *how* students engage is often a function of their particular learning style. Therefore, engagement is less about the frequency with which a student participates in class discussion and more about the quality of the contributions and being personally and consistently engaged with the discussion topics. For the purposes of this course, participation is valued in which

students build upon one another's comments, provide meaningful connections to practice, share critical observations and insights on a topic, and generally increase the complexity and richness of the discussion. Students are also encouraged to act as gatekeepers to the conversation by encouraging the participation of others as well as posing questions to one another. Students who never (or rarely) contribute to discussions, however, may be marked down for lack of 'participation.' While memorization of legal facts is not emphasized in this course for later 'regurgitation,' it is important that students take the time necessary to read carefully those statutes, law cases, and other fine points of legal analysis especially emphasized in class in order to obtain the most out of this course. There are several key statutes and court cases which each student should be conversant by end of this course.

Civil Discourse

Although deep and meaningful learning often comes as a result of cognitive and emotional dissonance, we share the belief that transformative learning is the result of compassionate learning communities in which individuals feel both challenged and supported. The underlying expectation of this course is that participants will approach one another with the same ethic of care and developmental concern that the larger education profession demands that we exercise with our students. This approach requires a willingness to engage in critical and controversial – but ultimately civil – discourse aimed at advancing our individual and collective knowledge. Students are expected to engage in social perspective-taking, a skill that requires both empathy and the ability to acknowledge multiple points of view. Each student's 'Participation Points' will result from: a) weekly class attendance, b) arrival on-time and remaining until class end, c) active and respectful listening, and d) appropriate contributions to discussions.

Cell Phones/On Call/Lap Tops

If you bring a cell phone or pager to class, please be sure it is either off or set to a silent mode. Should you need to respond to a call during class, please leave the room in an undistruptive manner. Texting and instant messaging are not allowed during class. Should you be on call as part of professional or graduate assistantship responsibilities, please advise me at the start of the semester. It is also a good idea to have a conversation with your supervisor and staff to help them understand that you are a student and class time should be interrupted for emergencies only. If a lap top is used during class, then please sit in such a place that your typing does not interfere with the learning of those nearby. Web surfing is of course inappropriate during class and a student may be asked to turn off the laptop if web surfing is observed.

Email/Blackboard

Email (through Bd) will be used as the primary mode of out-of-class contact for this course. As such, it is imperative that you activate your Loyola University Chicago account and check it daily. Please also check your Loyola spam mail and mail foundry to ensure course-related messages are not misdirected. Additionally, Blackboard may be used as a source to update the class about course material.

Written Work/Assignments

Graduate education places a strong emphasis on developing writing skills and the ability to communicate effectively. All papers should be submitted in APA 6th Edition format. Guidelines for this will be covered at the start of the semester and a handout posted on the Blackboard site. Key

provisions are that papers should be 12 point Times New Roman font, double-spaced, with one inch margins. NOTE: Students should not exceed the suggested length of assignments as dictated by the full assignment descriptions. Additionally, the suggested length *does not* include the title page or reference pages. Each report should have a full descriptive title on the first page of text and should contain an introduction to the report and a conclusion. Be sure to add your name and date to the report. Please also attach with any assignment a blank copy of the project rubric (available on Bd).

Should papers have significant errors in APA formatting, they may not be accepted as complete. For example, if approximately 5 or more different types of APA or grammatical errors are found, this may require the report to be returned and resubmitted by the student. The quality of writing is also of high importance. Students are encouraged to submit drafts of papers to peers or professional colleagues for initial feedback. If students have significant concerns regarding their writing ability, they are encouraged to consult the University Writing Center for assistance (http://www.luc.edu/tutoring/Writing_Center.shtml).

If you are a Higher Education major and don't personally own a copy of the APA 6th Edition writing manual, we highly recommend it to you. **Note: Appendix D of the APA Manual provides detailed references to legal materials. You should become very familiar with this section.** Assignment rubrics reveal that points are earned for appropriate use of APA formatting (especially for in-text citations and references at end), for appropriate use of grammar, for the absence of typos, and for overall organization and flow of the report.

When submitting each project assignment, **attach a blank copy of the rubric** (rubrics are found in Bd under documents tab).

Reports are to be submitted in class on the date assigned in **paper format**. As a matter of fairness to all students, **penalties for late submissions** may be assessed. A final project grade may be reduced by one-half letter grade for each 24 hour period an assignment is submitted late.

Class Schedule

Week 1 - January 18, 2011 – Course Introduction

- Student/Faculty Introduction
- Introduction to Higher Education Law
- Course Overview, Syllabus, Assignments

Reading:

- Article – “Would Law School Have Been a Better Choice?”

Week 2 - January 25, 2011 – Understanding Sources of Law (Overview of Higher Education Law)

Readings:

- Kaplin & Lee (Text): Introduction (pp. 1-23);
- Kaplin & Lee (Text): Section 2.1 – Legal Liability (pp. 57-66)
- Kaplin & Lee (Text): Appendix A (pp. 794-798)
- Janosik (2004): *Anticipating Legal Issues in Higher Education* (pp. 401-414)
- How to Read a Case (H/O)

- Sample Case Brief (H/O)

Questions to Guide Reading:

- In what ways does the federal constitution impact the day-to-day life of students and faculty/staff at institutions of higher education?
- Identify one or two current legal issues facing higher education and for these issues identify source(s) of law that may impact or be applied to the resolution of those issues.
- Under what general conditions would federal civil rights statutes apply to public versus private higher education institutions?

Week 3 - February 1, 2011 – Establishment of Legal Character of Institution (The University and its Contracts) – Form Groups and Pick Topics

Readings:

- Kaplin & Lee (Text): Section 3.1- The Question of Authority (pp. 105-108)
- Kaplin & Lee (Text): Section 3.3 – Institutional Contract Liability (pp. 128-132)
- Kaplin & Lee (Text): Section 4.1 – Employment Relationships (pp. 142-145)
- Kaplin & Lee (Text): Section 5.2 – Contractual Rights of Students (pp. 244-253)
- Kaplin & Lee (Text): Section 13.2 – State Government (pp. 648-657)
- *Lyons v. Salve Regina College*, 890 F.2d 484
- *Gilbert v. Seton Hall University*, 332 F.3d 105 (2d Cir. 2003)

Questions to Guide Reading:

- What does it mean for an institution to have “legal character?”
- In what different ways might higher education institutions be legally established in a state and how might each action affect the level of institutional autonomy the institution may enjoy from government encroachment?
- What do the terms “corporation,” “foreign corporation,” “eleemosynary,” and “proprietary” mean as each pertains to post-secondary education?

Week 4 - February 8, 2011 –The Public-Private Dichotomy – (Case Brief #1 due)

Readings:

- Kaplin & Lee (Text): Section 1.5 – The Public-Private Dichotomy (pp. 23-49)
- *Colorado Christian University v. Weaver*, (No. 07-1247, 10th Cir. 2008)
- *College Athletics Association v. Tarkanian*, 488 U.S. 179 (1988)
- *Smith v. NCAA*, 525 U.S. 459 (1998)
- *Smith v. Duquesne*, 787 F.2d 583 (3d Cir. 1986)

Questions to Guide Reading:

- How might the various categories of law impact public higher education institutions differently from private institutions?

- What are important distinctions that may exist in the legal character of public versus private higher education institutions? Do you feel today that there is more or less ‘blurring’ between the public and private sectors?
- What are the effects of the two religion clauses found in the Constitution’s First Amendment on both public and private higher education? How does the Colorado Christian University v. Weaver case illuminate a classic Church-State issue?

Week 5 - February 15, 2011 –The University and Its Students (Rights and Responsibilities)

Readings:

- Kaplin & Lee (Text): Chapter 8 – Academic Policies and Concerns (pp. 402-438)
- Melear (2003): *From In Loco Parentis to Consumerism* (pp. 124-148)
- *Regents of University of Michigan v Ewing*, 474 U.S. 214 (1985)
- *Gukenburg v. Boston University*, 974 F.Supp. 106 (D. Mass. 1997)
- *University of Missouri v. Horowitz*, 435 U.S. 78 (1978)

Questions to Guide Reading

- Reflect on the long history of American higher education and consider the ways that the legal relationship between students and their institution has evolved markedly over the years, even as recently as comparing 35 years ago to today. What has influenced these changes in the legal relationship?
- What does the phrase “*in loco parentis*” mean to you? How would you describe a student’s legal relationship with her/his institution under this doctrine? Many now believe this doctrine to be dead and buried in higher education. What arguments would either support or refute this belief? Consider this concept as both a legal doctrine and as an educational/policy doctrine.
- What “terms and conditions” typically encompass the contract between students and their institutions?
- Students often complain that the terms of their relationship with their institution are changed unilaterally by their institution without student consent. Do you feel this is a fair assessment? Are these changes without student assent violations of the law? Why or why not?
- Do you believe the judiciary tends to support the interests of institutions of higher education over those of students when students file legal complaints? Why or why not?

Week 6 - February 22, 2011 –The University and Its Students (Freedom of Expression and Hate Speech) – (Case Brief #2 Due)

Readings:

- Kaplin & Lee (Text): Chapter 10 – Students’ Freedom of Expression (pp. 478-508)
- *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969)
- *Papish v. University of Maryland*, 410 U.S. 667 (1973)
- *Davis v. Stratton*, 575 F.Supp. 2d 410 (N.D. NY, 2008)
- *Smith v. Tarrant County College District*, Civil Action Number 4:09-CV-658-Y (ND TX, 2009) (13 pp)

Questions to Guide Readings

- Is an absolute right to free expression guaranteed by the federal constitution? Why or why not? If not, what are examples of speech not protected?
- Can public and private institutions restrict or curtail expression by students if the content of that expression is hateful, malicious, and repugnant to the values of the institution?
- Should an institution curtail expression even if it can do so legally? Why or why not?
- In higher education, who is the “publisher” of the student press? What are the implications of this publisher responsibility?
- Should students have the right to “academic freedom” similar to what faculty may enjoy? What student freedoms might go hand in hand with this concept?
- What types of regulation and control can an institution legally place on student clubs, organizations, and activities on the campus? What about when they operate off the campus?
- Can a private institution legally deny recognition to student groups that represent viewpoints and/or values that are considered inconsistent with the mission of the institution?

Week 7 - March 1, 2011 –The Student and Privacy- Privacy Rights on Campus

Readings:

- Kaplin & Lee (Text): Section 7.1.2 – Searches and Seizures (pp. 365-371)
- Kaplin & Lee (Text): Section 7.2 – Campus Computer Networks (pp. 371-379)
- Kaplin & Lee (Text): Section 5.5.1 – FERPA (pp. 269-273)
- Lapp, D.J., O’Leary, K., & Wintner, T.H. (2009). Whose Room is it Anyway? *NACUA Notes*, 7(3)
- Davis, W.N., (2009, July). No More Pencils, No More Facebooks. *ABA Journal* (pp. 18-20)
- *State of Washington v. Chrisman*, 455 U.S. 1 (1982)
- *State of Washington v. Houvener*, 186 P.3d 370 (Division III Court of Appeals WA, 2008)
- *Snyder v. Millersville University*, No. 07-1660 (E.D. Pa. Dec. 3, 2008)

Questions to Guide Readings:

- What are major sources of law that form the legal bases for privacy rights on a campus and how might these vary from public to private sector?
- Under what circumstances might an institution conduct a search of a student’s private personal space (i.e., library carrel, auto parked on campus, backpack, residence hall room, etc.) without first obtaining a valid search warrant? Will this vary from the public to private sector?
- In what ways, if any, might an institution be constrained under FERPA when it seeks to invite the involvement of parents or significant others when students are exhibiting behaviors that may lead to their own endangerment or that of others?
- What steps do you believe institutions should take to educate/inform students of their legal rights to privacy on the campus?

Week 8 - March 8, 2011 – (No Class)**Week 9 - March 15, 2011 –Non Discrimination and Civil Rights Compliance****Readings:**

- Kaplin & Lee (Text): Section 7.4.3 - Services for students with disabilities (pp. 394-396)
- Kaplin & Lee (Text): Section 8.4 - Evaluating Students with Disabilities (pp. 426-438)
- Kaplin & Lee (Text): Section 14.9.3 thru 14.9.5 - Civil Right Compliance (pp. 735-744)
- Freeman (1991): How 'sex' got into Title VII

Questions to Guide Readings:

- Within education, what major civil rights act prohibits discrimination on the basis of sex and how does this act impact institutions? Is it possible for any higher education institution to decide not to enforce this particular civil rights act? Why or why not?
- Two major federal civil rights statues prohibit discrimination in higher education on the basis of disability. What is a basic definition of disability under these laws?

Week 10 - March 22, 2011 – Non Discrimination and Affirmative Action – (Case Brief #3 Due)**Readings:**

- Kaplin & Lee (Text): Section 4.6 - Affirmative Action (pp. 182-188)
- Kaplin & Lee (Text): Section 6.1 - Admissions (pp. 280-327)
- *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)
- *Gratz v. Bollinger*, 539 U.S. 244 (2003)
- *Grutter v. Bollinger*, 539 U.S. 306 (2003)

Questions to Guide Readings:

- What basic federal rights do the 13th, 14th, 15th, and 24th Amendments to the U.S. Constitutions provide? How do these impact Higher Education?
- What are broad differences between Section 1981 and Section 1983 and from what federal civil rights statutes do these sections arise?

Week 11 - March 29, 2011 - The University and Its Students (Student Conduct and the Disciplinary Process) – Due Process Rights in Higher Education - (Case Brief #4 Due)**Readings:**

- Kaplin & Lee (Text): Chapter 9 - The Disciplinary Process (pp. 441-474)
- Pavela, G. Ten Principles for Members of Hearing Boards. Posted to <http://www.academicintegrityseminar.com/Training/10Principles.html>
- "Monday Morning Blues" course vignette

Questions to Guide Readings:

- What sources of law provide students with basic procedural safeguards during conduct processes in public versus private higher education?

- What minimal due process are students afforded when they are charged with violating campus policies? Can this differ between public versus private institutions? Should it differ?
- What rights, if any, do students have to legal counsel in an on-campus conduct hearing? What is your view on whether or not students should have a right to legal representation on the campus? Why?
- What is meant by the Constitutional concept of "double jeopardy" and how does this apply to student disciplinary hearings?
- Under what circumstances do you feel an institution can and should contact a student's parent/guardian when he/she has violated campus policy? Can this occur under FERPA?

Week 12 - April 5, 2011 – Institutional Tort Liability in Higher Education

Readings:

- Kaplin & Lee (Text): Section 3.2 - Institutional Tort Liability (pp. 109-127)
- Kaplin & Lee (Text): Section 7.3 - Campus Security (pp. 380-390)
- Kaplin & Lee (Text): Section 11.2 - Fraternities and Sororities (pp. 538-549)
- *Freeman v. Busch*, 349 F.3d 582 (8th Cir. 2003)
- Gerstein & Gerstein (2008): Hazing; Response and liability

Questions to Guide Readings:

- In what ways might institutions have what the courts refer to as "special relationships" with students?
- Should colleges be liable for student/staff/faculty injuries occurring off campus?
- What factors should be considered in determining whether or not a campus is liable for injuries?
- Should individual faculty, staff, and/or students be held liable for causing harm or injury to others (in addition to or instead of the institution)?
- What recommendations would you offer for ways an institution might prevent injuries from occurring through more effective risk management practices?

Week 13 - April 12, 2011 – Sex Discrimination and Harassment Law and Campus Policy - (Case Brief #5 Due)

Readings:

- Kaplin & Lee (Text): Section 5.4 - Students' Legal Relationships with Other Students (pp. 262-269)
- Kaplin & Lee (Text): Section 8.3 - Sexual Harassment of Students by Faculty Members (pp. 410-423)
- Office of Civil Rights (2001)' *Revised sexual harassment guidance: Harassment of students by school employees, other students, or third parties.*
- *S.S. v. Alexander and University of Washington*, 177 P.3d 724 (WA, 2008) [Note: This case contains sexually explicit language that may be disturbing to some readers].

Questions to Guide Readings:

- How would you define sexual harassment within the context of the college or university environment?
- Please describe the essential differences between the legal concepts of quid pro quo and hostile environment harassment.
- Under current U.S. Supreme Court case law, what steps must an individual take within an educational setting to prove that actionable sexual harassment has occurred? How must an educational institution respond when allegations of sexual harassment are raised?

Week 14 - April 19, 2011 –Culminating Student Project Oral Reports

Tonight, students will begin their oral reports to the class on their term projects related to some aspect of the law as it related to higher education.

Week 15 - April 26, 2011 – Project Reports Conclude - (Case Brief #6 Due)

- Remaining oral reports conclude
- Course closure
- Student course/instructor evaluation

Week 16 - May 3, 2011 -- Final Exam and Written Reports Due by 7:00 pm

- Submit addressed, stamped envelope for final report return

Course Project Work

In recognition that students learn in many different ways, we provide students several options for project work that advance both the depth and breadth of student learning about topics and issues addressed in this course.

Briefs

Briefs are commonly used tools for summarizing and synthesizing the essential information regarding a specific case. Through the practice of writing briefs, students will learn to mine the text of a case for the essential points and issues.

The essential elements to include when writing your brief are as follows:

- The facts of the case;
- The issues that are to be decided by the court;
- The holding (or decision) of the court;
- The legal analysis that resulted in the ruling;
- The conclusion (what do we take away as the result of the case).

Students will be required to submit 6 written briefs. The first three are to be no more than 2 pages in length (single-spaced). The final 3 are to be no more than one page in length (single-spaced).

The following questions may offer guidance as you navigate the process of learning how to write briefs:

- Have I written clearly so as to be easily read and understood by the reader?
- Have I been concise while including enough descriptive material to get a sense of the case?
- Have I communicated a full understanding of each of the five elements of the brief?

Group Project

Over the course of a career in Student Affairs, professionals are often assigned to work with colleagues in facilitating a discussion or educating an audience on a particular topic.

In small assigned groups, students will prepare material for a class discussion on the topic of the assigned week. The group will engage the class in discussion of the topic. There is no written requirement for the class discussion however; groups may submit 1-2 page handouts for the class. Groups are welcome and strongly encouraged to use creative methods for engaging the class. Groups should plan to utilize the first 20-30 minutes of the class period for discussion.

Class members will have the opportunity to provide consultation to us regarding the performance of fellow group members to be used in the evaluation process.

Groups can select from any of the topics listed for weeks 5-13 of the course.

Analysis Paper

Over the course of a career in Student Affairs, professionals are often required to review policy and procedure and make revisions as necessary. Regardless of position, professionals should be knowledgeable regarding what makes good policy and should be able to read critically while offering suggestions for improvements, if appropriate. This paper is designed to provide you with the opportunity to develop and demonstrate an in-depth understanding of an issue important to higher education administrators.

Students will select a particular policy from a school in the state of Illinois (not LUC) to review and analyze. The specific policy must be approved by an instructor. Students will write a paper addressing the following questions:

- Why was the particular institution and policy selected?
- What is the student's overall assessment of the policy?
- What are the positive and/or negative elements found?
- How does the policy stand up against scrutiny when case law, federal and state statutes and best practices are taken into account? What possible problems, if any, could the institution encounter as a result of the policy?

- What implications does case law have on the policy? Is the policy consistent with decisions made by the courts? Describe how it is (or is not) consistent.
- What recommendations for revision would the student propose? If none, why?

As part of your paper writing process, you must conduct an interview with a professional at the institution that you select.

The analysis paper is 10-12 pages in length and is due on **May 3rd**.

Grading Protocol

All assignments must be completed by the end of the semester as grades of Incomplete are generally not assigned. The distribution of points for the semester, as well as overall grades to be assigned, are provided in the grids below:

94-100 Points A	Attendance and Class Participation	10 points
90- 93 Points A-	Case Briefs	30 points
87- 89 Points B+	Group Project #1	10 points
84- 86 Points B	Group Project #2	20 points
80- 83 Points B-	Analysis Paper	<u>30 points</u>
77- 79 Points C+		100 points
74- 76 Points C		
70- 73 Points C-		

ELPS 453 Legal Aspects of Higher Education Required and Recommended Readings

Spring 2011

American Association of University Women Educational Foundation. (2005). *Drawing the line: Sexual harassment on campus*. Washington, D.C.: Author. [Recommended]

Badger, E., & Yale-Loehr, S. (2002, Winter). Myths & realities for undocumented students attending U.S. colleges and universities. *Journal of College Admission*, no. 174, 10-15. [Recommended]

Beckham, J. C. (2000). Freedom of expression outside the classroom: The first amendment, student organizations and the public forum doctrine. Clearwater Beach, FL: 21st Annual Law & Higher Education Conference. [Recommended]

Bickle, R. D., & Lake, P. F. (1999). *The rights and responsibilities of the modern university: Who assumes the risks of college life?* Durham, NC: Carolina Academic Press. [Recommended]

Bird, L.E., Mackin, M.B., & Schuster, S.K. (Eds.). (2006). *The First Amendment on campus: A handbook for college and university administrators*. Washington, D.C.: National Association of Student Personnel Administrators, Inc. [Recommended]

Bricault, D. (2007). *Academic dishonesty: Developing and implementing institutional Policy*. Washington, D.C.: American Associate of Collegiate Registrars and Admissions Officers. [Recommended]

Franke, A. H. (2004, June 25). When student kill themselves, colleges may get the blame. *Chronicle of Higher Education*, 50 (42). [Recommended]

Freeman, J. (1991 March). How 'sex' got into Title VII: Persistent opportunism as a maker of public policy. *Law and inequality: A journal of theory and practice*, 9 (2), 163-184. Available online (revised) at: <http://www.jofreeman.com/lawandpolicy/titlevii.htm> [Recommended]

Gerstein, R.M., & Gerstein, L. (2008, Summer). Hazing: Response and liability. *Campus safety & student development*, 9(4), 79-82. Kingston, NJ: Civic Research Institute, Inc. [Required]

Gregory, R. F. (2004). *Unwelcome and unlawful: Sexual harassment in the American workplace*. Ithaca, NY: Cornell University Press. [Recommended]

Grodsky, E., & Kalogrides, D. (2008, November). The declining significance of race in college admission decisions. *American journal of education*, 115, 1-33. [Recommended]

Joint Statement of Constitutional Law Scholars. (2003). *Reaffirming diversity: A legal analysis of the University of Michigan affirmative action cases*. Los Angeles: The Civil Rights Project at UCLA. [Recommended]

Killenbeck, M. R. (2004). Affirmative action and diversity: The beginning of the end? Or the end of the beginning? Princeton, NJ: Educational Testing Service. [Recommended]

Kozlowski, K. (2008, Summer). Marijuana in dorm room equals indefinite suspension for student. *Campus safety & student development*, 9(4), 85-86. Kingston, NJ: Civic Research Institute, Inc. [Required]

Lake, P. (2009, February 6). Commentary: Student privacy rules show a renewed trust in colleges. *The Chronicle of Higher Education*, 55(22), A72. [Required]

Lapp, D.J., O'Leary, K., & Wintner, T.H. (2009, January 21). Whose room is it anyway? 7 NACUA Notes, 7(3). Available: <http://counsel.cua.edu/studlife/publications/dormsearch.cfm> [Required]

Lipka, S. (2009, March 17). Discipline goes on trial at colleges. *The Chronicle of Higher Education*, 55(29), A1. [Required]

Meers, E. B., & Thro, W. E. (2004). *Race-conscious admissions and financial aid programs*. Washington, D.C.: National Association of College and University Attorneys. [Recommended]

Melear, K. B. (2003). From *in loco parentis* to consumerism: A legal analysis of the contractual relationship between institution and student. *NASPA Journal*, 40(4), 124-148. [Required]

Office for Civil Rights. (2001, January 19). *Revised sexual harassment guidance: Harassment of students by school employees, other students, or third parties*. Washington, D.C.: U.S. Department of Education. Available on line at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> [Required]

Oliveroz, P. M. (2006, Spring). Too little, but not too late: A discussion of policies and practice shaping college access for undocumented immigrant students in the U.S. *ASHE Newsletter*, 19(1). [Recommended]

O'Neil, R. M. (1997). Free speech on the private campus. In O'Neil's *Free speech in the college community* (pp. 218-239). Bloomington, IN: Indiana University Press. [Recommended]

O'Neil, R. M. (1997). Who needs a speech code? In O'Neil's *Free speech in the college community* (pp. 1-26). Bloomington, IN: Indiana University Press. [Recommended]

Sokolow, B.A. (2005). *The typology of campus sexual misconduct complaints*. Malvern, PA: The National Center for Higher Education Risk Management, Ltd. [Required]

Stoner, E. N. (n.d.). *Reviewing your student discipline policy: A project worth the investment*. Washington, D.C.: National Association of Student Personnel Administrators. [Required]

University Sexual Harassment Prevention Office. (n.d.). Sexual harassment FAQ. Retrieved from <http://www.northwestern.edu/sexual-harassment/faq/index.html> . Evanston, IL: Northwestern University. [Required]

White, L. (2003, May/June). De-constructing the public-private dichotomy in higher education. *Change*, 35(3), 49-54. [Recommended]

Federal and State Court Cases for this Semester

- Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)
- College Athletics Association v. Tarkanian*, 488 U.S. 179 (1988)
- Colorado Christian University v. Weaver* (No. 07-1247, 10th Cir. 2008)
- Davis v. Stratton*, 575 F. Supp.2d 410 (ND, NY, 2008)
- Freeman v. Busch*, 349 F.3d 582 (8th Cir., 2003)
- Gilbert v. Seton Hall University*, 332 F.3d 105 (2^d Cir. 2003)
- Gratz v. Bollinger*, 539 U.S. 244 (2003)
- Grutter v. Bollinger*, 539 U.S. 306 (2003)
- Gukenburg v. Boston University*, 974 F.Supp. 106 (D. Mass. 1997)
- Heiken v. University of Central Florida*, 995 So.2d 1145 (5th Dist, FL, 2008)
- Lyons v. Salve Regina College*, 890 F.2d 484 (1st Cir. 1989)
- Papish v. University of Maryland*, 410 U.S. 667 (1973)
- Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985)
- Smith v. Duquesne*, 787 F.2d 583 (3^d Cir. 1986)
- Smith v. NCAA*, 525 U.S. 459 (1998)
- Smith v. Tarrant County College District*, Civil Action Number 4:09-CV-658-Y (ND TX, 2009)
- State of Washington v. Chrisman*, 455 U.S. 1 (1982)
- State of Washington v. Houvener*, 186 P. 3d 370 (Wa, 2008)
- S.S. v. Alexander and University of Washington*, 177 P.3d 724 (Wa, 2008)
- Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969)
- U.S. v. Heckenkamp*, 482 F.3d 1146 (9th Cir. 2007)
- University of Missouri v. Horowitz*, 435 U.S. 78 (1978)