

EDHE 6790 LEGAL ASPECTS OF HIGHER EDUCATION (Sections 70 and 71)
Higher Education Program – Counseling and Higher Education Department
College of Education – University of North Texas
Fall 2017

Instructor Information:

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Catalog Course Description:

Legal aspects and issues affecting institutions of higher learning and their administrations, faculties and students. Analyses of decisions rendered by the federal and state courts concerning procedural and substantive due process, civil rights, and the operation and function of higher education.

Texts:

Kaplin, William A. and Lee, Barbara A. *The Law of Higher Education, Fifth Edition, Student Version*. Also assigned are judicial opinions issued in 26 appellate court cases (citations are given below and the cases are now posted in the Judicial Opinions module).

Class Meetings:

Wednesdays from 5:30 to 8:20 pm

Section 70 – Chil 245

Section 71 – Collin Higher Education Center

Office Hours:

Wednesdays 1:00 to 3:00 and Thursdays 12:00 to 1:00

Goals and Objectives:

The goal of this course is to expose non-lawyers to the vast range of legal problems faced by higher education institutions. The overall objective of the course is to provide basic knowledge of the legal landscape of academic decision-making, with the goal of enabling current and prospective college and university faculty and administrators to recognize a legal problem and seek the necessary guidance.

Course Objectives:

1. Understand, describe, and explain the different sources of law in the American legal system.
2. Understand and critique the operation and underlying philosophical assumptions of the adversarial system of justice.
3. Distinguish important procedural aspects of civil and criminal litigation.

4. Understand and differentiate the basic components of the United States Constitution.
5. Demonstrate an understanding of the following basic legal concepts including: a) legal precedent, b) jurisdiction (original, appellate, in personam, in rem, and subject matter), c) the parties (e.g., plaintiff and defendant), d) pretrial, trial, and post trial proceedings, e) judicial remedies, and f) the organization of the state and federal courts.
6. Understand, describe and distinguish the legal rights and duties of college trustees, administrators, staff, and faculty.
7. Understand, describe, and analyze institutional and personal liability for torts and contracts.
8. Understand, describe, and analyze the scope and terms of the faculty contract.
9. Analyze and apply the constitutional and statutory prohibitions concerning employment discrimination (race, ethnicity, gender, age, and disability).
10. Analyze and apply the federal law concerning sexual harassment.
11. Analyze and apply the federal law concerning affirmative action in employment.
12. Understand and explain faculty due process rights in personnel decisions.
13. Understand and explain the legal protections for academic freedom.
14. Understand and explain the legal status of students in higher education.
15. Analyze and apply the federal law concerning affirmative action in student admissions.
16. Understand, describe, and explain the legal principles required in student disciplinary and academic grievance proceedings.
17. Understand, describe, and explain student rights concerning student organizations, student newspapers, and student records.
18. Understand, describe, and explain the significance of constitutional and statutory authority for the creation and operation of higher education institutions.

Course Format:

The course will be conducted in a mixed lecture and seminar format. I may also use multimedia, guest speakers, and in-class exercises to facilitate discussion. Students will be expected to have completed the readings for each class session in order to participate actively in class discussion and activities.

Grading and Evaluation:

Your grade for this course will be based on your performance on the assignments listed below. Also, although assignment grades will be given in terms of points (e.g. 45 out of 50), please remember we are using a 100 point scale for the course. So, at the end of the course, 90 to 100 points will be an A; 80 to 89 points will be a B, 70 to 79 points will be a C. Please consult the 2017-18 Toulouse Graduate School Catalog for the kind of work associated with each letter grade (e.g., A = excellent, B = good, C = fair, etc.) for assignments and for the final course grade. Here are the point allocations for the assignments:

30 points – Final Project

30 points – Presentation of Two Briefs (15 points each)

20 points – Higher Education Law Leadership Paper

20 points – Class participation

100 points – TOTAL

Learning Activities

1. Final Project (30 points). Each student must complete the Final Project. The final project and its instructions will be posted in the EDHE 6790 Blackboard course shell on September 20. The final project (your answers/essays responding to the questions) must be submitted to me by December 6 as a Word attachment e-mailed to Cliff.Harbour@unt.edu Your submission must be one document and it must be double-spaced. The purpose of this learning activity is to provide you with an opportunity to thoroughly examine major issues or legal decisions in higher education that you have studied in the course. Except as noted in the posted instructions, the paper must be well organized and well written and comply with all requirements of the APA Publication Manual (6th Edition).

2. Presentation of Two Briefs (15 points each – 30 points total): Each student must brief two cases during the semester. You are now invited to look through the cases (to become familiar with the topic) and the course calendar (to note when the case will be discussed) to determine what cases you would like to brief. Please note that the cases have different lengths and some are more complex than others. Part of my grading for your brief is determined by the length and complexity of the case you are briefing. So, if you select a long case or a complex case, I factor this into your grade. What this means is that a good (but not excellent) brief for a long or complex case typically earns a grade of A. On the other hand, a good (but not excellent) brief for a short and easy case only earns a grade of B. The purpose of this learning activity is to provide you with an opportunity to closely study, analyze, and then explain an appellate court's judicial decision.

Please send me an e-mail with your two or three preferences for the cases you would like to brief as soon as you can. I will then make briefing assignments and try to assign you a case you have requested. I expect to have briefing assignments made by September 6. Please note that to balance the course calendar, I need to make the assignments in a way that prioritizes the course and the needs of the class first.

Your brief must be presented as a single spaced Word doc, posted in the appropriate weekly Blackboard Module of the course for the week your brief is assigned. And, the brief must be posted the day before the class it is to be discussed. Because your brief will be the centerpiece for our discussion it **MUST** be posted in a timely manner. Briefs that are posted late will result in a deduction of 5 points for every day it is late. It is better to post a so-so brief on time as opposed to a very good brief a day late. The brief must be no more than 1,500 words.

The brief MUST be organized in the following manner:

Title: State the title of the case.

Parties: State the names of the plaintiff(s) and the defendant(s).

Court: Identify the court rendering the decision.

Procedural posture: Explain how the case came to the court rendering the decision.

Facts: State the facts of the case as provided in the court's opinion.

Issue: State the legal issue (or issues) addressed in the opinion. An issue must be presented in the form of a question. The question needs to focus on a legal issue (e.g., the plaintiff's legal right, the defendant's legal duty, etc.)

Holding: State the court's responses to the issues. The holdings should be presented in one or two sentences. The holding needs to start out by offering a Yes or No answer to the question posed in the issue.

Rationale: Explain the court's reasoning in support of its holdings. The court's reasoning is presented in the majority opinion and it provides the argument the judges/justices used to come to their conclusion.

Dissenting and Concurring Opinions: Briefly explain any dissenting or concurring opinions.

Discussion Questions: Please include two discussion questions for the class that are based on your reading of the case. Please focus on a legal, social or ethical issue that emerges from the case. Discussion questions must be relevant to higher education.

3. Higher Education Law Leadership Paper (20 points). Each student must complete a Higher Education Law Leadership Paper. The Paper must be presented as a double-spaced Word doc, e-mailed to me by October 15, 2017 at: Cliff.Harbour@unt.edu

This paper must be a focused writing, based on your interview of a higher education professional, that concisely addresses the professional's experiences or events where legal issues, rules, or guidelines were relevant to the behavior or decisions made by people involved in the experience or event. The purpose of this learning activity is to provide you with an opportunity to better understand the various legal issues, rules, or guidelines that were relevant to a higher education professional's work *although these may not have been obvious at the time of the experience or event*. Please organize your paper in the following manner.

A. Please briefly describe the organizational context, the individuals involved (please use pseudonyms), and the experience or event.

B. Please briefly describe the relevant legal issues, rules, or guidelines. You do NOT need to formally identify statutes, regulations, court decisions, etc. The point of the exercise is to enhance your awareness of how the law affected a higher education professional's experience or event.

C. If applicable, please also describe any relevant individual or institutional rights or duties, and to the extent you can, please describe the nature of the right or duty.

D. Please reflect on the interview, your participant, and any incomplete knowledge or biases *YOU* might have about the law, higher education, or the relationship between law and higher education.

E. In conclusion, please provide a summary discussion of the events or experiences and the higher education professional's overall assessment of the events or experiences.

Your paper (excluding title page and references), must be no less than 8 pages and no more than 10 pages in length. The paper must be well organized and well written and comply with all requirements of the APA Publication Manual (6th Edition).

4. Class Participation (20 points). Each student must participate in our weekly discussion. You must participate every week in this discussion - with this important exception - everyone gets one free unexcused absence. However, you cannot use this unexcused absence for the week you are presenting a brief. Two or more unexcused absences will result in assigning a grade of 0 points for participation. If a student is absent for more than one class, he or she must schedule a meeting (in person or telephone conference) with me. For further information on the UNT Attendance Policy and guidelines for excused absences, student should consult the policy at: <http://www.unt.edu/policy> (see 6.039).

Also, in order to earn your participation points, your participation must be substantive. You do not need to make extensive comments to earn the participation points. And, the goal for participation is not perfection - its participation. Think. Discuss. Be engaged. But, quality and not quantity will be touchstone used in assessing participation. I will not provide an assessment of your participation until the end of the course so you have the responsibility of ensuring that your participation is thoughtful every week. The purpose of this activity is to promote growth in your understanding of higher education and its relationship to the law through engagement with course materials and colleagues.

TURNITIN NOTICE: Students may be required to submit written assignments for this class to Turnitin, a web-based plagiarism detection service. Before submitting your paper to Turnitin, please remove your title page and other personal information. (Instructions regarding using Turnitin will be covered in class)

Academic Integrity & Academic Misconduct

Academic Integrity is defined in the UNT Policy on Student Standards for Academic Integrity. Academic Dishonesty includes cheating, plagiarism, forgery, fabrication, facilitating academic dishonesty, and sabotage. Any suspected case of Academic Dishonesty will be handled in accordance with University policy and procedures. Possible academic penalties range from a verbal or written admonition to a grade of "F" in the course. Further sanctions may apply to incidents involving major violations. The policy and procedures are available at: <http://vpaa.unt.edu/academic-integrity.htm>

Eagle Connect

All UNT students should activate and regularly check their EagleConnect (e-mail) account. EagleConnect is used for official communication from the University to students. Many important

announcements for the University and College are sent to students via EagleConnect. For information about EagleConnect, including how to activate an account and how to have EagleConnect forwarded to another e-mail address, visit <https://eagleconnect.unt.edu>. This is the main electronic contact for all course-related information and/or material.

Student Perceptions of Teaching (SPOT)

Completion of an online students' perceptions of teaching survey is a requirement for all organized classes at UNT. This short survey will be made available to you close to the end of the semester, providing you a chance to comment on how this class is taught. I am very interested in the feedback I get from students, as I work continually to improve my teaching. I consider your completion of this online survey to be an important part of your participation in this class.

Student Behavior in the Classroom

Student behavior that interferes with an instructor's ability to conduct a class or other students' opportunity to learn is unacceptable and disruptive and will not be tolerated in any instructional forum at UNT. Students engaging in unacceptable behavior will be directed to leave the classroom and the instructor may refer the student to the Center for Student Rights and Responsibilities to consider whether the student's conduct violated the Code of Student Conduct. The university's expectations for student conduct apply to all instructional forums, including university and electronic classroom, labs, discussion groups, field trips, etc. The Code of Student Conduct can be found at <http://www.unt.edu/csrr/>

Observation of Religious Holy Days

If you plan to observe a religious holy day that coincides with a class day, please notify me as soon as possible.

Students with Disabilities

The University of North Texas makes reasonable academic accommodation for students with disabilities. Students seeking accommodation must first register with the Office of Disability Accommodation (ODA) to verify their eligibility. If a disability is verified, the ODA will provide you with an accommodation letter to be delivered to faculty to begin a private discussion regarding your specific needs in a course. You may request accommodations at any time, however, ODA notices of accommodation should be provided as early as possible in the semester to avoid any delay in implementation. Note that students must obtain a new letter of accommodation for every semester and must meet with each faculty member prior to implementation in each class. Students are strongly encouraged to deliver letters of accommodation during faculty office hours or by appointment. Faculty members have the authority to ask students to discuss such letters during their designated office hours to protect the privacy of the student. For additional information see the Office of Disability Accommodation website at <http://www.unt.edu/oda>. You may also contact them by phone at 940-565-4323.

Disclaimer:

THIS COURSE PROVIDES GENERAL INFORMATION ABOUT THE LAW AS IT RELATES TO INSTITUTIONS OF HIGHER EDUCATION AND WILL INCLUDE SUBJECTIVE DISCUSSION OF VARIOUS MATTERS. NOTHING IN THIS SYLLABUS AND NOTHING DISCUSSED OR PRESENTED IN CLASS SHOULD BE CONSTRUED AS PERSONAL OR

PROFESSIONAL LEGAL ADVICE. PLEASE ALWAYS CONSULT LEGAL COUNSEL FOR LEGAL ADVICE ON SPECIFIC MATTERS.

Readings and Tentative Course Schedule

August 30

Welcome, Introductions, and Review of the Syllabus

Readings:

Kaplin & Lee: General Introduction & Chp. 1

September 6

Background

Readings:

Kaplin & Lee: Chps. 1 & 2

U.S. Constitution

Civil Litigation

Marbury v. Madison, 5 U.S. 137 (1803) (I'll submit a brief for Marbury.)

Weisberg, R. (2016). What remains real about the Law and Literature Movement?: A global appraisal. *Journal of Legal Education* 66(1), 37-43. (I'll discuss this article in class.)

September 13

The Authority and Liability of Institutions

Readings:

Kaplin & Lee: Chp. 3

Lyons v. Salve Regina College, 565 F.2d 200 (1st Cir., 1977)

Satell v. Temple University, Civil Action No. 17-2774; U.S. District Court for the Eastern District of Pennsylvania (July 25, 2017)

Niles v. Board of Regents of the University System of Georgia, 473 S.E. 2d 173 (Ga. App. 1996).

September 20

Law of Higher Education Research Issues and Methods

Readings:

Harbour, C. P. (2006). The incremental marketization and centralization of state control of public higher education: A hermeneutic interpretation of legislative and administrative texts. *International Journal of Qualitative Methods* 5(3), 1 – 14. doi.org/10.1177/160940690600500306

Other readings: Dissertations by John Sands and Leigh Wolfe Dawson.

September 27

The Authority and Liability of Institutions and the Institution and Its Employees

Readings:

Kaplin & Lee: Chps. 3 and 4

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

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

Ginsburg v. City of Ithaca and Cornell University, 5 F. Supp. 3d 243 (N.D.N.Y. 2014)

October 4 (We will meet online in Blackboard this week)

We will address questions that emerge from your Field Research for the Higher Education Law Leadership Paper

October 11

The Institution and Its Employees

Readings:

Kaplin & Lee, Chps. 4 & 7

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)

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

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

October 18

The Institution and Its Employees

Readings:

Kaplin & Lee, Chp. 5

United Steelworkers of America v. Weber, 443 U.S. 193 (1979)

Johnson v. Transportation Agency, Santa Clara County, 480 U.S. 616 (1987)

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

October 25

The Institution and Its Employees

Readings:

Kaplin & Lee: Chp. 5

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

Board of Regents v. Roth, 408 U.S. 593 (1972)

November 1

Law of Higher Education Leadership Issues and Problems

Readings:

Green Mountain Valley Community College Case Study

Lanker v. University of Wyoming (Complaint filed March __, 2010; Judge Downes' Oral Order, April 27, 2010)

November 8

Faculty Academic Freedom

Readings:

Kaplin & Lee: Chp. 6

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

Pickering v. Board of Education, 391 U.S. 563 (1968)

Van Alstyne (1990) Academic Freedom and the First Amendment...

November 15

Student Issues (Access, Admissions, and Affirmative Action)

Readings:

Kaplin & Lee: Chps. 7 & 8

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

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

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

*****Students for Fair Admissions Inc. v. Harvard College* (Complaint filed November 17, 2014 – this case is not eligible for briefing)**

Ellis, B. N. (September 9, 2016). Harvard to Release Six Years of Admissions Data for Lawsuit. The Harvard Crimson. Cambridge, MA.

<http://www.thecrimson.com/article/2016/9/9/admissions-data-release/>

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

November 22 (CHEC is closed. We will meet online in Blackboard this week.)

Student Issues (Privacy and Campus Security)

Readings:

Family Education Rights and Privacy Act (FERPA)

Campus Security

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act 20 USC 1092(f) (available at <http://clerycenter.org/jeanne-clery-act>)

November 29

Student Issues (Student Conduct and Speech)

Readings:

Kaplin & Lee, Chps. 9 & 10

Fellheimer v. Middlebury College, 869 F. Supp. 238 (Vt. 1994)

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

Morse v. Frederick, 551 U.S. 393 (2007)

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

December 6

Course Review and Synthesis

Final Project is due by 12:00 pm Noon.