

## 2022 Syllabus

### First Amendment Law (Law 6511)

#### Part I. Academic Information

##### *Contact Information*

Professor Charles W. Collier

You may contact me via the “Inbox” section of our Canvas page.

For administrative issues:

Sherrice Smith (problems with Canvas, with assignments)

[ssmith@law.ufl.edu](mailto:ssmith@law.ufl.edu)

(352) 273-0891

Victoria Redd (questions about attendance, excused absences)

[redva@law.ufl.edu](mailto:redva@law.ufl.edu)

(352) 273-0906

##### *Attendance*

An attendance code (written on the board) should be entered for each class. Victoria Redd (above) will keep track of attendance and may be consulted about attendance and excused absences. ABA guidelines dictate that you should incur no more than six unexcused absences during the semester.

##### *Meeting Times and Classroom; Office Hours and Appointments*

Class meets on Mon. and Wed. at 4:30--5:55, HH 355B

Office Hours: Monday and Wednesdays from 6:00pm-7:00pm or by appointment in my office, HH 373.

##### *Casebook and Other Materials*

Stone, Seidman, Sunstein, Tushnet & Karlan, *The First Amendment* (Aspen Casebook Series / Wolters Kluwer: Fifth Edition, 2016).

The casebook has been ordered for you to purchase at the law school bookstore; used copies should also be available.

Other items will regularly be posted to the “Files” section of your Canvas page.

## *Course Description; Learning Methods; Learning Objectives*

This course provides an introduction to the main topics in First Amendment freedom of speech, expression, and association. Related aspects of First Amendment theory are pursued throughout.

Regardless of the learning methods used, volunteered questions and comments are always welcome. “*Learning methods*” emphasizes the importance of *active learning* (which numerous studies have shown to be superior to passive learning).

“Passive” learning could be exemplified by silently listening to a lecture; “active” learning could be exemplified by class discussion on the topic of the lecture. My goal in this course is to create an environment in which all students feel comfortable contributing to class discussions.

Two conditions underlie successful class discussion. (1) A “presumption of respect” for everyone’s thoughts and substantively-based opinions on our subject matter; (2) Consistent preparation supporting this presumption. Thoughts and opinions unsupported by class preparation would not be expected to gain currency in the “marketplace of ideas” that is our class.

If you have prepared for class, and if a seemingly important question occurs to you during class, it is highly probable that (1) other students have this question too, or (2) they would have it if the issue were addressed in class. Thus, for our mutual benefit, you should raise that question *in class*.

Substantive questions raised *after class* are thus best confined to those of only individual interest; for example, you might wonder how something you studied in another class fits in with something in this class.

*Learning objectives* are a natural by-product of the above. Students should be able to formulate thoughtful and informed questions that advance our class discussion of First Amendment cases, doctrines, and theories.

## *Course Requirements*

There are three main graded components of the course, as well as an optional “First Amendment Activity” for extra credit:

### I. Six Memos

Six one-page (double-spaced) memorandum assignments will be handed out on Canvas, to be returned a few days later. These will cover most if not all of the substantive and procedural aspects of First Amendment Law dealt with in this course. (For example, the first memo will deal with incitement.) The memos are designed to simulate the types of assignments you might actually receive as a junior associate in a law firm, a beginning legal aid attorney, an assistant state attorney, or a law clerk to a judge.

The memos will be graded on the following Pass / Fail scale:

Pass+

Pass

Pass-

Fail

The memos will count for 20% of the course grade. Receiving a “Pass” on each memo will fully satisfy the 20% allocation; it is perfectly fine to aim for a “Pass” on each memo. *Interpretation:* “Pass” means that everything important has been adequately covered; “Pass+” means that something extra or out-of-the-ordinary has also been contributed; “Pass-” means that not everything important has been adequately covered; “Fail” means that most of the important things have not been adequately covered. (I will be happy to go over your memo with you if it received a Pass- or Fail.) Five of the six memos must be completed; if you complete all six, the lowest grade will be thrown out.

Memo 1 (graded assignment)

Memo 2 (graded assignment)

Memo 3 (graded assignment)

Memo 4 (graded assignment)

Memo 5 (graded assignment)

Memo 6 (graded assignment)

[Six Memos = 20% of grade / graded Pass+, Pass, Pass-, Fail]

## II. Final Exam

Seventy-five percent of your course grade will be allocated to a take-home, open book final exam covering approximately 10 double-spaced pages. You will have the entire examination period to work on your exam.

About 50% of the exam (about 5 double-spaced pages) will be devoted to issue-spotting and analysis of issues in fact patterns.

About 50% of the exam (about 5 double-spaced pages) will be devoted to an essay-style analysis of a theory, doctrine, or case(s).

The exam will be discussed more in class; and a special “Practice Exam” will be handed out toward the end of the semester.

[Final Exam = 75% of grade]

## III. Class Participation and (Useful) Contributions

Class participation reflects your preparedness when called on as well as volunteered contributions, which are always welcome.

This relatively small allocation to your grade may serve as a tie-breaker or borderline factor in grading.

[5% of grade]

## IV. Optional First Amendment Activity

This is a student-directed activity that could involve something like a petition, (lawful) protest, or other type of expressive activity. Interested students may serve on a Steering Committee to come up with possibilities for the class to consider. Those who do participate in this activity will need to write up a one-page report on their participation, for which they will receive approximately the amount of extra credit corresponding to one of the six memos. (More information about this activity will be given out in class.)

### *Course Plan and Schedule*

A separate *Reading List* will be posted to the “Files” section of your Canvas page. Reading assignments will be “annotated” with question to think about as you do the

reading. The readings will be covered in the order listed (note that this is not always the same order as in the casebook); other readings and cases may be added from time to time and announced in class and/or on the Canvas “Announcements” page, which can be linked to your email. I will generally endeavor on Wednesdays to give an estimate of the material to be covered the following week; but in any event you are always responsible for reading at least ten pages beyond the point where the previous class ended.

*Professionalism*

You are already members of the legal profession by virtue of attending an ABA-approved law school. A corresponding seriousness of purpose should inform your approach to this course, your punctuality and attendance, your completion of assignments, and your in-class focus on our discussions.

Part II. Administrative Information

**ABA Out-of-Class Hours Requirement:** ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction.

**Information on UF Law Grading Policies:**

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A (Excellent)	4.0	C	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D (Poor)	1.0
B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.0

The law school grading policy is available at:

<http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

## **Compliance with UF Honor Code:**

### **Academic honesty and integrity are fundamental values of the University community.**

Students should be sure that they understand the UF Student Honor Code at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

## **Professional Courtesy**

As a matter of professionalism, you are expected to be on time for class—meaning seated and ready to begin when class starts. Arriving late is disruptive not only to me, but to your fellow students. Please do not arrive late to class, or leave early, absent extenuating circumstances. If you need to do so, please sit near one of the exits to minimize your disruption to others. Please make sure your cell phone is turned off during class.

## **Recordings of Class**

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

## **Statement Related to Accommodations for Students with Disabilities**

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester, as accommodations are not retroactive. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Answers to questions about exam delays and accommodations can be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

## **Student Course Evaluations**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click here (<https://gatorevals.aa.ufl.edu/students/>) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students here: <https://gatorevals.aa.ufl.edu/public-results/>.

## **Preferred Name and Pronouns**

Many of you may have a preferred name that is not the name given to me on the official roll. It is important to the learning environment that you feel welcome and safe in this class. I want you to be comfortable participating in class discussions and communicating with me on any issues related to the class. I would like to refer to you by your preferred pronoun and name. As such, if your preferred name is not the name listed on the official UF roll, please let me know as soon as possible. Feel free to ask for instructions on changing your display name in Canvas.

## **Discourse, Inclusion, and the Classroom**

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

1. commit to self-examination of our values and assumptions;
2. speak honestly, thoughtfully, and respectfully;
3. listen carefully and respectfully;
4. reserve the right to change our mind and allow for others to do the same;
5. allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

## **Health and Wellness Resources**

Law school can be a daunting experience, especially when life outside the law becomes challenging and when you are expected to function at high levels during a pandemic. UF Law provides numerous resources for your support, and I encourage you to seek help if you have concerns. Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.



# READING LIST

## Casebook Readings

(Only those readings specifically listed below are assigned; all other readings in the book are optional, even if they are in the same section or subsection as an assigned reading. “All” means to read everything in the chapter or section in question. Selections in [brackets] *may* be assigned if time permits.)

### I. The History and Philosophy of Free Expression (All)

#### II. A. Expression That Induces Unlawful Conduct

*Abrams v. United States*

*Gitlow v. New York*

*Whitney v. California*

*Brandenburg v. Ohio*

#### II. C. Expression That Provokes a Hostile Audience Reaction

*Terminiello*

*Feiner*

Note: Revising the *Feiner* Approach

*Cantwell*

*Chaplinsky*

Note: The Skokie Controversy

### III. Overbreadth, Vagueness, and Prior Restraint

(All, except *Near v. Minnesota*)

#### IV. A. False Statements of Fact

*NYT v. Sullivan*

*Curtis Publishing Co. v. Butts; Associated Press v. Walker*

*Gertz*

Note: Public and Private Figures, Public and Private Speech

*Hustler v. Falwell*

#### IV. D. Obscenity

*Roth*

Note: Developments in the Law of "Obscenity"--1957-1973 (5. *Stanley v. Georgia*; 6. *United States v. Reidel*)

*Miller v. California*

*Paris Adult Theatre*

Note: The 1973 Reformulation and Its Aftermath

IV. E. The Lewd, the Profane, and the Indecent

*Cohen v. California*

*Erznoznik*

*Pacifica*

IV. F. Hate Speech and Pornography

*R.A.V.*

*Virginia v. Black*

Note: Pornography and the Victimization of Women (1. A model statute; 2. g. *American Booksellers Association v. Hudnut*)

V. A. General Principles

*Kovacs v. Cooper*

*City of Ladue v. Gilleo*

V. C. Symbolic Conduct

*United States v. O'Brien*

Note: Draft Card Burning and the First Amendment (3. *Tinker v. Des Moines Independent Community School District*)

V. B. Speech on Public Property: The Public Forum

1. *Hague v. CIO*

V. A. *Schneider v. State*

V. B. 1. *Schneider v. State*

Note: Regulating the Public Forum (1. *United States v. Grace*; 5. *Ward v. Rock against Racism*)

Note: Devices for Regulating the Public Forum (1. *Cox v. New Hampshire*; *Thomas v. Chicago Park District*; *Watchtower Bible & Tract Society*)

[3. *Lehman v. City of Shaker Heights*]

[V. C. Symbolic Conduct]

[(All)]