

SEXUALITY & THE LAW
Law 6930-23549
University of Florida Levin College of Law
Fall 2019
Professor Merritt McAlister
Pronouns: she/her/hers
mcalister@law.ufl.edu / Office: HH 343

Syllabus

1. Overview. This is an advanced constitutional law course that examines the intersection of law, sexuality, and gender identity. We will explore the historical evolution of constitutional doctrines of privacy, liberty, and equality, especially as these concepts have evolved to protect LGBTQIA+ individuals. We will then bring these issues into the present day, by considering contemporary legal battles over religious freedom and non-discrimination laws; Title VII's prohibitions on sex discrimination; and military service by transgender individuals. We will examine these issues critically, including by addressing concerns over federalism, free exercise, the democratic process, and the proper role of the courts.

2. Required Materials. Our casebook is WILLIAM N. ESKRIDGE, JR., NAN D. HUNTER, & COURTNEY G. JOSLIN, *SEXUALITY, GENDER, AND THE LAW* (4th ed. 2018).

3. Class Meetings. Our class will meet on Tuesdays from 3:00 pm to 5:00 pm in HH 345. We will take a ten-minute break in the middle of class.

4. Office Hours. My office hours are 1:00 pm to 3:00 pm on Mondays. If I need to reschedule my office hours for any reason, I will make an announcement in class and/or leave a note on my door. Outside of office hours, I am happy to meet by appointment at other times; please email me to arrange. I also maintain an open-door drop-in policy: if my door is open, I am available. I encourage you to talk with me about anything class- or law-school related. I also know a thing or two about clerkships, law-firm jobs, cooking, and chocolate Labs.

5. Contact Information. My office is in Room 343, and my office telephone number is 352.273.0981. My e-mail address is mcalister@law.ufl.edu. E-mail is usually the best way to reach me. Please do not hesitate to contact me regularly throughout the semester.

6. Canvas. I will use Canvas to distribute additional readings as noted on the course syllabus. I will also use Canvas to make available any material I distribute in class, including PowerPoint presentations.

7. Course Objectives and Student Learning Outcomes. By the end of this course, you should be able to: (1) articulate the constitutional frameworks for substantive due process and equal protection, especially as they relate to LGBTQIA+ rights; and (2) describe the pathways leading to the *Obergefell* decision; (3) explicate competing arguments for the role of courts and the political process in protecting individual rights; and (4) describe current issues impacting the LGBTQIA+ community's legal rights, especially as to employment, the military, prisons, and public accommodations discrimination.

8. Class Assignments. At the end of this syllabus, you will find a Course Reading Map, which is a list of assignments by subject matter. I reserve the right to remove assignments or portions of assignments from our planned reading map depending on how quickly we move through the material.

9. Class Preparation, Participation, and Experience. Consistent with the American Bar Association Standard 310, you should expect to spend at least four hours per week preparing for this two-hour course.

I have high expectations for the learning environment we create together. I use a “lectussion” teaching style, which means that I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. I will supplement our discussion with a short introductory lecture each class to recap the major take-away points from the previous class and launch that day's discussion.

I expect each of you to attend class prepared. Preparation includes completing the assigned reading, reviewing notes and/or reading material from the prior class, and thinking through assigned problems. In completing the assigned reading, please focus your attention on the main cases and the hypothetical problems; you may skim the notes. I expect you to come to class prepared to discuss how you might approach the discussion problems in the assigned reading (if the reading contains a discussion problem or two for that week).

I have an on-call policy that may be more rigorous than other upper-level courses. To ensure meaningful participation from all class members and to help you build lawyering skills, I will cold-call students using a modified Socratic method. I use an on-line list randomizer to generate the cold-call list for each day's class. Although I re-run the list before every class, I will not cold-call the same student on two consecutive weeks nor will I call on a student who has not indicated that she is prepared (see Section 10). I may call on one student to dialogue with me on one case or I may jump around from student to student. I will often take volunteers, especially as our discussion opens up to consider the implications of doctrine. Sometimes you will work together in groups to brainstorm responses to the problems included in our casebook.

10. Class Attendance and Recording Preparation. I record both class attendance and preparation solely by the sign-in sheet. **By signing in, you confirm that you are prepared for class in accordance with Section 9.** It is your responsibility to sign-in and/or initial the sheet before class begins. **You may not sign the attendance sheet if you arrive after I have begun teaching.** Be aware that it is a serious violation of the Academic Honesty policy to sign in for another person or to have others sign you in. I will make the sign-in sheet available at least 5 minutes before class is scheduled to begin.

If you fail to sign the sign-in sheet more than four times during the semester, I will lower your final grade by at least one-third of a point (e.g., from a B to a B-).

You do not need to tell me why you are absent or unprepared. If, however, you expect to be absent from class more than three times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence. Accordingly, please notify me of such absences in advance.

11. Electronic Devices. I use interactive electronic polling to increase engagement and receive student feedback: <http://mmcalister.participoll.com>. You may use either a cellphone or a computer to participate in polling. You may not use your cellphone for any other purpose in this class. You may use a computer or tablet in class to take notes or for other classroom purposes if you wish.

I expect you to be professional and respectful of the classroom environment and not use electronic devices for any other purpose. I reserve the right to reconsider my electronic device policy to preserve the classroom environment.

12. Evaluation. Your final grade in this course has two components: the final exam and class participation. Ninety percent of your grade is the final exam. The final exam will be an open-book, open-note eight-hour take-home exam due by the end of the exam period. I will discuss the format of the exam in class.

Ten percent of your grade will be based on a peer- and self-evaluation of your course engagement. Because I believe there are many ways to contribute positively to a learning environment, and because I recognize that I, as the instructor, may not always be aware of how those contributions are made and experienced by the class, I believe that you are in the best position to assess how you and your peers have contributed to your own learning experience in this course.

At the mid-point and end of the semester, I will ask you to assign anonymously to each of your classmates between 1 and 5 points based on their contributions to your educational experience in this course. You will also assign points to yourself based

on a self-assessment of your own contributions. Contributions to our learning environment include, but are not limited to, the quality/helpfulness of cold-call dialogues; the quality/helpfulness of in-class questions and volunteered answers; the quality/helpfulness of discussions in groups; and the quality/helpfulness of out-of-class discussions and/or study-group participation. These scores may also take into account actions that are disruptive to our learning environment, including but not limited to, impermissible/distracting use of computers.

I will average the scores received for a total of ten possible points, which will be added to your raw score on the final exam. I will throw out any participation sheets that assign all students the same score. If you cannot assign a score to any classmate, you are to leave that score blank; a blank score will not be used in calculating the average. I reserve the right to add participation point(s) to the participation score of any class member if I believe that the class has underappreciated significantly the contributions of a class member. I will not reduce class participation points, recognizing that there are contributions that may occur outside of the classroom of which I am unaware. I may reduce your final grade pursuant to the class attendance and preparation policy in Section 10.

13. Grading. Your grade in this class will be based on the final exam and class participation, as described in Sections 9, 10, and 12, above. 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
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Average)	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

14. Accommodations. Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

15. 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. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can 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 at <https://gatorevals.aa.ufl.edu/public-results/>.

16. Academic honesty. Academic honesty and integrity are fundamental values of the UF Law School community. You should be sure that you understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School's application of it, available at <https://www.law.ufl.edu/life-at-uf-law/officeof-student-affairs/additional-information/honor-code-and-committee/honor-code>.

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I. Constitutional Frameworks: Liberty, Equality, and Expression

1. Substantive Due Process, pp. 9–15 (through Note 1); 17–28 (through Note 6); 34–42 (through Note 4) [focus on *Griswold*, *Eisenstadt*, *Roe & Bowers*]
2. Equal Protection, pp. 49–56 (to end of case); 61–70 (to end of case); 86–100 (end of *Romer* Notes; omit “Immutability” note); 117–122 (to end of case) [focus on VMI Case, *Romer*, and *Glenn*]
3. The First Amendment, pp. 125–132 (through the *Postscript*); 134–137 (through Note 1); 158–162 (through Note 2); 166–180 (through Note 3); 182–87 (to end of case) [focus on *Hurley*, *Boy Scouts v. Dale*, and *Rumsfeld v. FAIR*]

II. Watershed Decisions and Equal “Liberty”

4. Access to Abortion, pp. 191–223 [focus on *Casey* and *Whole Woman’s Health*]
5. Overruling *Bowers*: *Lawrence v. Texas*, pp. 226–246 (through Note 2) & 251–252 (Problem 2-2) [read *Lawrence* carefully]
6. The Marriage Cases, pp. 277–280 (through Note 2); 297–334 (through Note 3); & 336 (Problem 2-6) [focus on *Windsor* and *Obergefell*]

III. A Collision Between Rights: Religious Freedom and LGBTQ Rights

7. Religious Freedom Restoration Acts, pp. 507–537 [focus on Problem 4-1 and *Hobby Lobby*]
7. Religious Freedom and Antidiscrimination Laws; Religious Students, pp. 543–551; 556–557 (Problem 4-3); 577–584 (to end of case); 591–596 (through Note 1); handout on *Masterpiece Cake* (available on Canvas) [focus on *Elane Photography*, *Masterpiece Cake*, and *Christian Legal Society*]

IV. Special Topics in LGBTQ Rights

9. Workplace Issues, pp. 613–619; 675–683 (to end of case); 685–690 (through Note 2); 712–718 [you do not need to re-read *Glenn*; focus on *Oncale* and *Price Waterhouse*]
10. Workplace Issues Continued: Title VII, pp. 723–740 n.3 [skim as background on cases]; read briefs from *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*, No. 18-107 (S. Ct.) (available on Canvas)
11. Family Law Survey, pp. 865–68; 882–83 (Problem 7-2); 883–885; 887–892; 902–908 (through note 3); 910 (Problem 7-4); 912–915; 921–924; 939–945 [read cases with an eye towards how *Obergefell* and access to marriage impacts decisions]
12. Military Issues, pp. 1128–1132; handouts on bans on military service by transgender people (available on Canvas)
13. Prison Issues, pp. 1147–1154 (to end of case); 1157–1162; 1172–1183; & 1186–1193 [focus on *Turner*, *DiMarco*, *Shaw*, and *Fields*]