

LAW, RELIGION, AND SEXUAL IDENTITY

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Office Hours (conducted remotely via Zoom): Thursdays 2-4 pm

Spring Semester 2021
Thursdays 10:00 am-12:00 pm
Holland Hall 283/284

I. INTRODUCTION

Religion and sexuality are inseparable in American law and life. Sometimes, they are deeply at odds with each other, and, simply put, the law must attempt to draw fair and reasonable boundaries between them. This has and continues to be a complex and daunting task. Our main goal in this seminar is to better understand how and why the American judiciary has interpreted the Constitution to address this ongoing challenge.

To gain this understanding, we will focus on: (1) cases, laws, and other historical texts that have shaped American law regarding religion since the founding of the country, emphasizing the First Amendment's Free Exercise and Establishment Clauses; (2) cases, laws, and historical narratives that illustrate how the American legal system has addressed emerging realities of "sexual identity" writ broad – sexual orientation, gender identity, and other aspects of the LGBTQI dimension of human life; and (3) current civil rights controversies that demonstrate the fundamental yet problematic relationship between religion and sexuality under the law, such as whether an employer's religious beliefs exempt the employer from having to provide contraceptive options to employees under its medical insurance plan, or whether schools must make accommodations regarding bathroom use for transgender students, or whether a business owner's religious beliefs protect the business from having to serve LGBTQI customers, or whether a U.S. Supreme Court Justice's personal religious convictions should play a role when the Justice interprets the Constitution and laws to resolve conflicts between religious belief and sexual identity.

II. COURSE MATERIALS

- a. ***Law and Religion, Cases and Materials, Fourth Edition*** (Foundation Press, 2017), Leslie C. Griffin
- b. ***Gay Rights and the Constitution*** (Foundation Press, 2016), James E. Fleming, Sotirios A. Barber, Stephen Macedo, and Linda C. McClain
- c. **Outside Readings** – I will regularly provide brief compilations of outside materials that I consider relevant to our class discussion – news articles, political commentary, judicial opinions, etc. These readings complement the assigned material from the two required casebooks.

III. STUDENT LEARNING OUTCOMES

After completing this seminar, you should be able to:

- a. Describe the fundamental doctrines of Constitutional law regarding religion, especially the Free Expression and Establishment Clauses of the First Amendment;

- b. Demonstrate an understanding of the key historical arguments that have shaped the Supreme Court’s evolving interpretations of the Free Exercise and Establishment Clauses of the First Amendment;
- c. Explain and apply the Court’s precedents on law and religion to ongoing social and cultural questions such as what constitutes protected religious belief for purposes of conscientious objection to war, whether prayer and religious instruction should be permitted in public schools, what otherwise illegal practices (e.g., polygamy, animal sacrifice, hallucinogenic drug use) should be permitted as expressions of religious belief, and what protections should apply to religious activity in the workplace;
- d. Demonstrate a basic understanding of the history of gender and sexuality in American life;
- e. Describe the fundamental moral principles and religious doctrines that have shaped the history of the legal regulation of sexual identity, including gender and sexual orientation, from the common law to the present;
- f. Demonstrate an understanding of key Supreme Court decisions regarding the treatment of gender and sexual orientation in employment, the military, education, and marriage;
- g. Discuss how the Supreme Court has balanced the rights of individuals, employers, and institutions when resolving conflicts between claims of religion freedom and civil rights regarding sexual identity;
- h. Demonstrate, after researching, drafting, and revising your seminar paper, greater skill in conducting independent research and in producing clear, well-organized, persuasive written legal analysis.

IV. READING, ATTENDANCE, CLASS PARTICIPATION, AND OTHER CLASSROOM POLICIES

- a. Discussion and Class Participation: This course is built on class lecture and discussion. I expect you to be here for every class. If you cannot attend, you are responsible for catching up. Similarly, I expect you to be prepared to participate in class by doing the assigned reading, by thinking carefully about how that reading fits within the structure of your growing understanding of the law, by listening to what others have to say, and by offering your own opinions when you feel they will enrich the discussion. (Quality is more important than quantity when it comes to what you say in class.) More than knowing any single topic, what really matters here is the *process* of reading, thinking hard about, and discussing vigorously these materials. I will consider these factors when determining your class participation score (**10%** of your final grade).
- b. Attendance: I will take attendance every class. If you cannot attend, you must contact me before class to inform me. As mentioned above, when determining your final grade, I will consider your attendance as part of your “Class Participation.” As advanced students, you are aware that any student who misses more than 20% of our class sessions will be prohibited from completing the course. Thus in this class you may have a *maximum* of two (2) unexcused

absences. On the third unexcused absence, you will become ineligible to complete the course. The law school's policy on attendance can be found [here](#).

- c. Workload Expectations: Per ABA Standard 310, you are expected to spend, on average, two hours preparing outside of class for every hour that you spend in class. Thus for this seminar you should expect to spend approximately 4 hours of outside time per week in addition to the 2 hours you spend in class. The 4 hours will consist of doing the assigned reading, writing intellectual journal entries, and researching and drafting your final research paper.
- d. Recordings of Classes: You may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students who fail to follow this rule will be referred to the College of Law Honor Code Council and the University's Office of Student Conduct and Conflict Resolution. I will make recordings of all class sessions available to everyone by posting them on Canvas.
- e. Laptop Use: Normally, I do not allow the use of laptop computers or any other electronic devices in class. However, because of the COVID-19 situation, you may use laptop computers *for class purposes only*.
- a. Cell Phones and Classroom Conduct: Please do not arrive late to class, leave early, or leave to take a break during class unless you have my permission. (We will take a 5-minute bathroom break midway through each class session.) Please turn off and put away your cell phone before class begins. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.
- f. Canvas and Email: I will use Canvas to post all class materials. I will communicate with you, and will expect you to communicate with me, by email. Thus I ask that you check the course Canvas site and your campus email regularly in order to stay abreast of class postings and any information I may send you.

V. ASSIGNMENTS AND GRADES

Because this is a seminar, your tasks here will emphasize reading, thinking, discussing, and writing more than the conventional "Black Letter" skills of memorizing and outlining. Indeed, my greatest hope is that you emerge from this course with a more developed, examined, sophisticated understanding of your own beliefs about law, religion, and sexual identity.

Specific Course Requirements:

1. Class Participation (10%): Please see "Discussion and Class Participation" above.
2. Intellectual Journal (20%): This chronicle of your thinking throughout the course will consist of 5 informal entries of 2-3 pages each. Each journal entry is worth **4** points. I will provide you with a question to respond to for each journal entry. Each journal entry is due in my email inbox prior to class on the date and time listed below. If you exceed this deadline, I will deduct 1 point from the journal. If you are more than one week late, I will not accept the journal.

- a. Rather than outline and memorize rules and cases, your intellectual work in this course is to read and respond to challenging materials (court opinions, law review articles, essays, films, etc.) that raise fundamental questions about the complex nature of American law on religion and sexual identity. To help you engage as fully as possible with the reading, as well as to help you prepare for class discussion and to formulate questions and ideas for your final paper, I require that you maintain this informal academic journal. (While I require just five journal entries, you should consider making an entry for every class period. Past students have remarked that writing regularly in this journal was the most helpful aspect of the course.)
- b. The point of these journals is to get you to express your thinking about the reading and other materials in coherent, original ways. So when responding to the question asked for a particular journal, instead of merely summarizing what you've read, or quoting extensively, try to engage with the material on your own terms – ask questions, suggest answers, dispute arguments, make connections to other ideas and concepts, ponder hypotheticals, and so on. Don't be afraid to take risks – this journal is the place to do it. I want this component of the course to help you generate ideas and arguments in your own "jurisprudential" voice, both to help you prepare for class discussion and to give you momentum and material as you formulate and research your final paper. When responding to the question asked for a specific journal, you may make reference to any materials discussed in class, to relevant things happening in the world, to your own life experience, or some combination thereof.

Sometimes I will use excerpts from your journals to shape class discussion. My reading of portions of your journal entries in class should give you a good idea of what constitutes an exemplary journal entry. When I read portions of your journal entries in class, I will *never* identify the author. If you want me to refrain from reading a particular journal at all, please indicate that on the journal entry.

- c. I will not provide written feedback on your journal entries, but you are welcome to ask my opinion of what you have submitted. If you do not hear from me that a journal entry is sub-par, you should assume that it is sufficient to receive 4 points. Because I will not formally grade your journal entries, I will not focus on grammar, spelling, or other technical matters. I will, however, keep notes on the *quality* of your effort to explore, in writing, the thinking you are doing for class. With this in mind, I will take an "all-or-nothing" approach to grading your journal entries: I will give each journal entry either a **4** (reflecting thoughtfulness and effort) or a **0** (reflecting weak or token effort, little engagement with the subject matter, etc.).
- d. The journal deadlines are:
 - **Journal #1 – due electronically by 10:00 pm on Friday, January 29th**
 - **Journal #2 – due electronically by 10:00 pm on Friday, February 12th**
 - **Journal #3 – due electronically by 10:00 pm on Friday, February 26th**
 - **Journal #4 – due electronically by 10:00 pm on Friday, March 12th**
 - **Journal #5 – due electronically by 10:00 pm on Friday, March 26th**

When submitting a journal to me, please remember to put your name, the date, and the journal number (i.e., Journal #4) at the top of the journal entry.

3. Final Seminar Paper (70%):

- a. Deadline: **Your final seminar paper is due by 10:00 pm on Monday, May 3rd.** You must submit an electronic version (in Word format) to me by email. Unless you have an extraordinary, pre-approved reason for exceeding the deadline, I will mark your paper down one full letter grade (e.g., from A- to B-) for every 24 hours that it is late.
- b. Seminar Paper Parameters: Each of you is required to write a final research paper. The topic you choose should require some independent research. While the quality of your analysis is the most important criterion that I will consider in determining your final grade, I will discuss in greater detail the specific criteria that will help you meet that standard.

If you are using this seminar paper to fulfill the Advanced Writing Requirement, your paper should be approximately 25 pages, double-spaced, with 12-point Times New Roman font. If you are not using this seminar paper to fulfill the AWR, your paper should be approximately 20 pages, double-spaced, with 12-point Times New Roman font. Either way, your paper should be of professional quality, with citations conforming to Bluebook format for law review articles. Please put footnotes at the bottom of the paper rather than at the end of the paper.

c. Specific Paper Deadlines:

I will provide you with specific deadlines for the following components of your research paper:

- i. **Topic Paragraph:** One paragraph in which you (1) describe your paper topic, (2) briefly discuss how you plan to develop that topic, and (3) state what intend your basic argument to be.
- ii. **Sentence Outline:** A 2-4-page sentence outline and working bibliography.
- iii. **Rough Draft:** A full first draft of your seminar paper. We will discuss the parameters of this in greater detail, but the bottom line is that the more you have at this point, the better I can help you move toward completion.
- iv. **Complete Final Paper:** Your final seminar paper is due to me via email before **10:00 pm on Monday, May 3rd.**

VI. SUMMARY OF FINAL GRADE COMPOSITION

- a. **10%** = Attendance and class participation
- b. **20%** = 5 Journal entries (**4%** each)
- c. **70%** = Final seminar paper

100%

VII. UF GRADING INFORMATION AND GRADING SCALE

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

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>

VIII. ONLINE COURSE EVALUATION PROCESS

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](#) 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 ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students [here](#).”

IX. FOR STUDENTS ATTENDING CLASS IN PERSON

If you have registered to attend class in person, you must attend in person unless you get my approval in advance to attend class virtually. Students who do not comply with this policy will be counted as absent.

In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. Because noncompliance with these protocols disrupts the classroom environment, I may take noncompliance into account when determining your final grade or whether you may remain in the course.

- You are required to wear approved face coverings at all times during class and within buildings. We are all responsible for following and enforcing these policies and requirements. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
- This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please use designated seats and maintain appropriate spacing between yourself and other students. Please do not move desks or stations.

- Sanitizing supplies are available in the classroom if you want to wipe down your desk prior to sitting down and at the end of the class.
- Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
- If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus; if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions regarding when you are able to return to campus. (See <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.) Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>).

X. ACADEMIC HONESTY

As UF students, you are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code.” On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.” The Honor Code specifies a number of behaviors that are in violation of this code and the sanctions that may result. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the me. Click [here](#) to read the Honor Code.

XI. DISABILITY ACCOMMODATIONS

Students requesting accommodations 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 (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

XII. HEALTH AND WELLNESS RESOURCES

- *U Matter, We Care*: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit [U Matter, We Care website](#) to report a concern and a team member will reach out to the student in distress.
- *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as non-crisis services.
- *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](#).
- *University Police Department*: [Visit UF Police Department website](#) or call 352-392-1111 (or 9-1-1 for emergencies).

- *UF Health Shands Emergency Room / Trauma Center*: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](#).

XIII. THE CLASSROOM ETHOS

This seminar will be intellectually challenging. This is perhaps the best reason to take the course. Our subject matter may at times be troubling or controversial to you. I think that's a good thing, because it will compel you to examine your own assumptions and values and consider other perspectives as you develop your understanding of how religion and sexual identity are treated in the American legal system. I encourage you to ask questions and challenge arguments, whether mine or those of your classmates, *as long as you do so thoughtfully and respectfully*.

Class time is precious, and one of the greatest legal skills is the capacity to interact *efficiently* with others, so please think before you speak. Because this course is broad and necessarily touches many dimensions of the legal universe, I may not have the answers to all of your questions, and I will err on occasion. I promise you an honest response about what I think and about what I do or do not know. I believe such honesty is crucial to education, and so that we can learn from each other, I expect the same honesty from you. The law school classroom is one of the great learning spaces in the world, and I implore you to take advantage of the give-and-take that transpires here to develop yourself as a lawyer and a person.