

FIRST AMENDMENT LAW
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING SYLLABUS – LAW 6511 – 26426 3 CREDITS

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Office Hours: Wednesday 10-12

MEETING TIME: Tuesday and Thursday 1:15 PM –2:40 PM

LOCATION: TBD

Texts:

KROTOSZYNSKI, WELLS, LIDSKY & CORBIN, **FIRST AMENDMENT: CASES & THEORY** (Aspen Publishing 4D ED. 2023) & handouts (to be found on Canvas at least one week in advance of class for which it is assigned)

COURSE GOALS AND OBJECTIVES:

This course explores the theory and doctrine associated with First Amendment of the U.S. Constitution. It is structured to accomplish the following goals, objectives, and outcomes:

- Increase your understanding of the basic building blocks of free speech theory and doctrine, primarily focusing on Supreme Court cases but also reviewing emerging issues.
- Provide you with the analytic tools to assess the complex free speech issues that arise in various social and political interactions.
- Improve your ability spot First Amendment issues and analyze them orally and in writing in a timely fashion.
- Improve your ability to read and analyze U.S. Supreme Court cases and better understand how legal analysis of constitutional law issues differs from analysis of common law and statutory issues.
- Please note: while racial, gender or sexuality oriented epithets may be contained in some of the readings, we will not use epithets in class discussions irrespective of identity.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Grading and Assignments:

1. Final Exam

Ninety percent (90%) of your grade in this class will be based on your score on the final exam. The final exam will be an open-book exam administered in the classroom on the scheduled exam date.

2. Quizzes

I will administer a quiz during the semester. The quiz will be given during a class period and will each consist of twenty multiple-choice questions. The questions will cover topics we discuss in class and will also be designed to guarantee that you are reading the assigned cases. The quiz will account for 10 percent (10 %) of your final exam score. I may add bonus points to the quizzes to help boost your score.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed **two** absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#). Please let me know if you will miss class, have missed class or must leave early. Please turn off your cell phone during class and focus on what is happening in the classroom. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

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 Law Honor Code located [here](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments unless expressly authorized by the professor to do so.

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 (Satisfactory)	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 [here](#).

OBSERVANCE OF RELIGIOUS HOLIDAYS:

UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

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. 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. Students may access information about various resources on the UF Law Student Resources Canvas page, available at <https://ufl.instructure.com/courses/427635>.

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

RECORDINGS OF CLASS

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or guest lecturer during a class session. Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor and Student Conduct Code.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each weekly class is approximately 2 hours in length, requiring at least **4 hours of preparation** outside of class including reading the assigned materials, writing critical analyses, and developing your final paper.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

Technology in the Classroom: NOTEBOOK COMPUTERS, PHONES, PAGERS, ETC.: You may use computers and smart phones in class only *for purposes directly related to the class* such as note taking, reading course materials. Social networking, reading or sending email messages, surfing the Internet, game playing, or any work unrelated to this class is not permitted and will affect your class participation grade. Similarly, students must silence any cell phones or pagers during class. If you have an extraordinary situation that might require you to answer your cell phone during class, please let me know before class.

Course Materials (I reserve the right to add a “hot topic” if a relevant one arises. ☺):

Date/Class	Topic/Hot Topic	Assignment/Readings
Tues. 1/14/25 #1	The History, Values and Content of the First Amendment	1) Read: pp. 3-29 2) Listen: <u>We The People: Free Speech (Podcast)</u>
Thur. 1/16/25 #2	<i>Hot Topic: Social Media Bans and State Action Doctrine</i>	1) Read 240-242 2) Read: Wilson V. Twitter
Tues. 1/21/25 #3	Implementing Freedom of Speech—The Categorical Approach-- The World War I Cases – Evolution of Clear & Present Danger The Red Scare – Deference & the “Association” Problem The Smith Act - Communists and Clear & Present Danger	1) Read: pp. 31-41 2) Read pp.41-51 3) Read: pp.51-54
Thur. 1/23/25 #4	<i>Brandenburg – The Modern Formulation and Some Modern Problems</i> <i>Hot Topic: Rethinking Incitement in the Current Age</i>	1) Read: pp. 54-64 2) Read: Emerson Sykes, In Defense of Brandenburg: The ACLU and Incitement Doctrine in 1919, 1969, and 2019, 85 Brook. L. Rev. (2019)
Tues.		

1/28/25 #5	<p>National Security Rationales Post-<i>Brandenburg</i></p> <p><i>Hot Topic: The Challenge of Deep Fakes</i></p>	<p>1) Read: https://www.brookings.edu/research/is-seeing-still-believing-the-deepfake-challenge-to-truth-in-politics/</p>
<p>Thur. 1/30/25 #6</p> <p>Tues. 2/4/25 #7</p> <p>Thur. 2/6/25 #8</p> <p>Tues. 2/11/25 #9</p>	<p>Government Actions That Discriminate Based on Content</p> <p><u>Fighting Words and Other Categorical Exclusions</u></p> <p><i>Hot Topic: Social Media and True Threats Doctrine</i></p> <p>Government Efforts to Promote Civility</p> <p>Content Neutrality and Levels of Scrutiny</p> <p>Content-Neutrality Principle—Origins to Modern Approach</p> <p><i>Hot Topic: Hate Speech—Where Does it Fit In</i></p> <p>Applying Strict Scrutiny to Content Based Laws</p> <p>Speaker Identity Distinctions</p> <p>Content-Neutral Speech Regulations and Intermediate Scrutiny</p>	<p>1) Read: pp. 65-75</p> <p>2) Read: Counterman V. Colorado (Canvas) https://www.abajournal.com/magazine/article/threatening_words_courts_protected_speech</p> <p>1) Read pp. 542-578 (from Chapter 10)</p> <p>1) Read: 89-104</p> <p>2) Read: https://www.cato.org/publications/policy-analysis/hate-speech-laws-ratifying-assassins-veto</p> <p>1) Read: pp. 105-117</p> <p>2) Read: pp. 117-128</p> <p>3) Read: pp. 128-134</p>

<p>Thur. 2/13/25 #10</p>	<p>“Secondary Effects” And Expressive Conduct</p> <p>Regulating Secondary Effects of Speech and Regulating Conduct with and Expressive Elements</p>	<p>1) Read: pp. 135-173</p>
<p>Tues. 2/18/25 #11</p>	<p>Regulations of Speech on Government Property</p> <p>Public Forum Concept: Foundational Cases Time Place and Manner Restrictions</p> <p><i>Hot Topic: Laws Restricting Protests McKesson v. Doe and Liability for Protest Violence</i></p>	<p>1) Read: pp. 175-183 2) Read: pp. 184-200</p> <p>3) Read: https://time.com/5882735/tennessee-law-protest-voting-rights-felony/</p>
<p>Thurs. 2/20/25 #12</p>	<p>Policing Conduct in the Public Forum: The Problem of the Hostile Audience</p> <p>Forum Analysis: Which Public Properties Do Speakers Have Access to?</p> <p><i>Hot Topic: Retaliation for First Amendment Conduct?</i></p> <p>Lozman v. City of Riviera Beach NRA v. Vullo</p>	<p>1) Read: pp. 202-217</p> <p>2) Read: pp. 218-240</p> <p>3) Read: Lozman 4) Read: Vullo</p>
<p>Tues. 2/25/25 #13</p>	<p>Compelled Speech and Expressive Association</p> <p>Government Orthodoxy—Right to Communicate Anonymously</p> <p>Right to Associate and Not Associate</p> <p><i>Hot Topic: Twitter Blocking</i></p>	<p>1) Read: pp. 244-288</p> <p>2) Read: pp. 288-311</p> <p>3) Read: pp. 668-691 (from Chapter 12)</p> <p>4) Read: https://casetext.com/case/knight-first-amendment-inst-at-</p>

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Thurs. 2/27/25 #14	<p>Commercial Speech</p> <p>Historical Approach-New Understanding</p> <p>Limits on Government Regulation—The Problem of Defining Commercial Speech</p>	<p>1) Read: pp. 313-340</p> <p>2) Read: pp. 341-365</p>
Tues. 3/16/25 #15	<p>Regulation of the Mass Media</p> <p>Regulation of the Press/ Newsgathering/AccessRights</p> <p><i>Hot Topic: Constitutionality of Texas Drone Photography Law</i></p>	<p>1) Read: pp. 367-403</p> <p>Ntl Press Photog v. McCraw: https://www.courthousenews.com/wp-content/uploads/2020/12/texas-drones.pdf</p>
Thurs. 3/6/25 #16	<p>Prior Restraints</p> <p><i>Hot Topic: New Information on the Pentagon Papers Case</i></p> <p>“Now It Can Be Told: How Neil Sheehan Got the Pentagon Papers:</p>	<p>1) Read: pp. 403-422</p> <p>2) Read: https://www.nytimes.com/2021/01/07/us/pentagon-papers-neil-sheehan.html</p>
Tues. 3/11/24 #17	<p>Regulation of Broadcasters</p>	<p>1) Read: pp. 429-440</p>
Thurs. 3/13/24 #18	<p>Regulation of Cable System Operators plus Internet & New Media</p> <p><i>Hot Topic TBD</i></p>	<p>2) Read: pp. 441-467</p>
Tues. 3/25/25 #20	<p>Tort Law and the First Amendment</p> <p>Defamation</p> <p><i>Hot Topic: Weaponized Defamation and Anti-Slapp in Federal Court</i></p>	<p>1) Read: pp. 469-499</p> <p>2) Read: https://thehill.com/policy/technology/532137-sex-workers-</p>

<p>Thurs. 3/27/25 #21</p> <p>Tues. 4/1/25 #22</p>	<p><i>Hot Topic: Defamation and Fake News</i></p> <p><i>Hot Topic: Should Section 230 Be Amended?</i></p> <p>Intentional Infliction of Emotional Distress</p> <p>Privacy and publishing True Information</p> <p>The Conflict Between Free Speech and Promoting Equality, Civility, Dignity, and Mutual Respect</p>	<p>warn-of-unintended-consequences-in-section-230-fight</p> <p>3) Read: https://www.desertsun.com/story/opinion/2021/01/12/fake-news-victims-deploy-lawsuits-shut-down-lies-and-disinformation/6630750002/</p> <p>1) Read: pp. 499-508</p> <p>2) Read: pp. 508-519</p> <p>1) Read: pp. 521-542</p>
<p>Thurs. 4/3/21 #23</p> <p>Tues. 4/10/25 #25</p> <p>Thurs. 4/15/25 #26</p> <p>Tues. 4/17/25 #27</p>	<p>The Government as Speaker, Employer, Educator</p> <p>Government Subsidized Speech and Speech by Government Employees</p> <p>Public Schools and Libraries</p> <p><i>Hot Topic: Mahoney Areas School Dist.v. B.L. and Norris v. Cape Elizabeth Sch. Dist., No. 19-2167 (1st Cir. Aug. 6, 2020).</i></p> <p>Introduction to Religion Clauses</p> <p>Religion Clauses, Saturday Sabbath and Sunday Closing Laws</p> <p>Free Exercise of Religion: Exemptions</p>	<p>1) Read: pp. 631-689</p> <p>1) Read: pp. 689-724</p> <p>1) Read: 727-738</p> <p>2) 739-802</p>
<p>Thurs. 4/29/21 #28</p>	<p>REVIEW DAY</p>	