Legal Issues in Higher Education
Political Science 313

Spring Term 2024
Instructor: Steven Poskanzer
Course Hours: Tuesday and Thursday 3:10-4:55
Location: Hasenstab Hall 109

Course Description

This seminar will explore a series of defining legal and public policy issues facing American colleges and universities. The overarching theme will be an examination of how core academic values (e.g., robust intellectual exchanges; the creation and maintenance of a community of learners with shared values) mesh and/or conflict with statutory, regulatory and judicially-created law. We will see how legal rules and principles that arise from outside the academy play out in this distinctive context. We will also explore the nature of intra-academy rules, practices, and cultural expectations that can both advance and impede the creation and transmission of knowledge and student learning/growth. Specific topics to be addressed include: college admissions and financial aid; the purpose, value and scope of academic freedom in faculty scholarship, teaching and intra-institutional speech; the nature of tenure; student rights and responsibilities; and universities as institutional actors in a broader world. Special emphasis will be placed on “emerging” higher education law issues likely to draw the attention of courts and policymakers (e.g., affirmative action; faculty use of social media; federal regulations pertaining to sexual misconduct; the legal status of student-athletes). Most broadly, we will examine the role of law as a stabilizing force, a catalyst for, and a reflector of societal change.

Learning Outcomes/Assessment Goals

My hope and expectation is that, by taking this course, students should:

- Acquire a basic knowledge of the U.S. legal system and how it works
- Develop a sophisticated appreciation of how colleges and universities operate, and of major current issues in higher education law
- Understand and be able to articulate the complexity of relationships between academic values and legal rules
- Understand the unsettled and sometimes contradictory nature of legal argumentation and adjudication (in common parlance, to grasp that “The Law’s favorite color is gray”)
- Craft and articulate arguments based on legal principles/reasoning
- Develop rudimentary legal research skills

This course is also meant to give students a good perspective on what law school/legal practice entails, thereby helping them gauge their level of interest in a legal career
Finally, through this course I want students to acquire a continuing interest in/commitment to their responsibilities as citizens and/or participants in our legal system.

Six (6) credits

This course can be applied to satisfy the Social Inquiry graduation requirement.

**Course Materials**

We will read an intentionally wide-ranging set of materials about the legal impact of actions by colleges and universities and their faculty, staff and students, including: key judicial opinions; Constitutional provisions; federal statutes and regulations; scholarly treatises by legal and higher education experts; law review articles; reports prepared by legal counsel; a consent decree that settled litigation; media accounts of legal controversies; and opinion pieces and advocacy statements from groups or individuals concerned with higher education topics. I have posted all of these readings (with the one following exception) on the Moodle site for this course.

Because we will be reading large portions of Matthew Finkin’s and Robert Post’s book *For the Common Good* (New Haven: Yale University Press, 2009), you should purchase this volume at the College bookstore or online.

Depending on legal developments, supplemental readings may also be assigned and posted on the course’s Moodle site.

**Course Requirements**

All students will be expected to write a 15-18 page, original research paper, on a higher education law topic of your choosing. This could be a deeper exploration of a topic explored in class or you can address a completely new subject. I will be glad to offer guidance on topic selection.

To provide feedback and help ensure that your research proceeds on a good track—and also to break up this writing assignment into less daunting chunks—I ask that you submit:

- A short one-two paragraph description of your proposed paper topic by **April 18**. You will need my approval of the topic—which I will not unreasonably withhold!

- An abstract or outline of your proposed paper, together with a preliminary annotated research bibliography by **May 2**. I will offer comments and suggestions on the abstract/outline.

- Final Papers will be due by 5:00 p.m., **May 29**.

You are also expected to participate in class discussions and, on occasion, to post discussion prompts and post-class reflections on the course’s Moodle site. (See the discussion on
Preparation for Class, Attendance and Class Participation below). You will receive a grade for class participation that will figure into your final grade.

**Course Outline and Reading Assignments**

While this syllabus presents an estimated, session-by-session, schedule of where we should be, this may vary a bit, depending on how fast we’re moving. I shall try to ensure that we spend sufficient time on each part of the course so that you understand the concepts and we can explore the issues adequately before we move to the next unit. We may also spend extra time on a particular topic if it coincidentally receives national or local media attention during the course because of current events (e.g., a lawsuit or legal controversy unfolding at a college or university). If you miss class, please contact a fellow student or me to learn at what point on the syllabus we ended and the topics we will be covering in the next class. It is always a good idea to read ahead if you can, since the reading for some units will be more voluminous than for others.

A note about the selection of topics: The law applicable to higher education is vast, incorporating some subjects that are taught as entire courses in law school. We will touch upon, for example, Constitutional law (freedom of speech, due process, equal protection), non-discrimination law, contract law, tort law (liability for negligence), administrative law, and employment law, to name just a few. In ten short weeks we cannot cover the entire field of higher education law, and therefore I have had to leave out some topics or touch upon them only briefly. If you have an interest in topics that are not covered (which can certainly be paper subjects), I am happy to provide suggestions for supplemental reading on your own.

**Week 1**

March 26 (Class 1)

**Overview—How Legal Rules Shape, Promote and Impede the Work of Colleges and Universities**

Goals of course
Introductions/Housekeeping matters
Relevant sources of law affecting higher education
Boards of Trustees and faculty governance

Readings:

U.S. Constitution excerpts

Poskanzer, *Higher Education Law: The Faculty*, pp. 5-16; 19-22

American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure*, in *Policy Documents and Reports*

Suggested Additional Readings:
Minda, “Origins of Modern Jurisprudence” and “Modern Conceptual Jurisprudence” in Postmodern Legal Movements

A Preview Topic: Antitrust Law and Financial Aid

Readings:

Excerpt from Sherman Antitrust Act

Overlap Group Consent decree

“Princeton to cover all college bills for families making up to $100,000,” Washington Post 9/8/22

“Harvard further expands financial aid to ease access,” Harvard Gazette 3/30/23

Sullivan, “Merit and Access,” Inside Higher Ed 4/19/07

Maguire and Butler, “‘Have Not’ Colleges Need New Ways to Compete With Rich Ones,” Chronicle of Higher Education 1/18/08

“3 Things to Know About the Latest High-Profile Admissions Lawsuit,” Chronicle of Higher Education 1/10/22


“Merit Aid Madness,” Washington Monthly September/October 2013

March 28 (Class 2)

A Preview Topic: Antitrust Law and Financial Aid (continued)

Readings:

Excerpt from Sherman Antitrust Act

Overlap Group Consent decree

“Princeton to cover all college bills for families making up to $100,000,” Washington Post 9/8/22

“Harvard further expands financial aid to ease access,” Harvard Gazette 3/30/23

Sullivan, “Merit and Access,” Inside Higher Ed 4/19/07

Maguire and Butler, “‘Have Not’ Colleges Need New Ways to Compete With Rich Ones,” Chronicle of Higher Education 1/18/08
“3 Things to Know About the Latest High-Profile Admissions Lawsuit,” Chronicle of Higher Education 1/10/22


“Merit Aid Madness,” Washington Monthly September/October 2013

Admissions and the End of Race-Based Affirmative Action

How College Admissions Really Works

Readings:

Harvard’s Admissions Process, excerpted from Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (1st Cir. 2020)

Week 2

April 2 (Class 3)

Admissions and the End of Race-Based Affirmative Action (continued)

14th Amendment Jurisprudence and Recent Supreme Court Holdings

Readings:

Grutter v. Bollinger

April 4 (Class 4)

Admissions and the End of Race-Based Affirmative Action (continued)

14th Amendment Jurisprudence and Recent Supreme Court Holdings (continued)

Readings:

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (2023)

US Department of Justice, Questions and Answers Regarding the Supreme Court’s Decision in Students for Fair Admissions, Inc. v. Harvard College and University of North Carolina, 8/14/23


Week 3

April 9 (Class 5)
Admissions and the End of Race-Based Affirmative Action (continued)

Likely Next Wave(s) of Dispute/Litigation

Race-based Preferences Beyond Admissions

Readings:

*Podberesky v. Kirwan*

“As Colleges Open Race-Exclusive Programs to All, Some Minority Students May Be Left Out in the Cold,” *Chronicle of Higher Education* 1/26/06

“Some Colleges Will No Longer Consider Race in Awarding Student Scholarships,” *Chronicle of Higher Education* 6/30/23

“Colleges Face Demands to Stop Considering Race in Student Scholarships,” *Chronicle of Higher Education* 9/19/23

“At least seven Ohio universities are reviewing race-based scholarships after Supreme Court ruling,” *Ohio Capital Journal* 3/8/24


Suggested Additional Reading:

Alger, “From Desegregation to Diversity and Beyond: Our Evolving Legal Conversation on Race and Higher Education,” 36 *Journal of College and University Law* 983

**Socioeconomic Preferences**

Readings:


**Legacy Admissions**

Readings:


“After Affirmative Action and Legacy Admissions, Will Early Decision Be the Next to Go?,” *The Chronicle of Higher Education* 9/20/23

**Athletic Preferences**

Readings:

“The one group with a huge advantage in college admissions,” *CNN* 7/10/23


April 11 (Class 6)

**Academic Freedom: Why it Matters and What are its Limits**

**Academic Freedom and Faculty Scholarship**

Readings:

Poskanzer, *Higher Education Law: The Faculty*, pp. 25-34; 63-69

Finkin and Post, *For the Common Good*, pp. 11-27; 53-77


**Ward Churchill Controversy:**

Readings:

“Inside a Free-Speech Firestorm,” *Chronicle of Higher Education* 2/18/05

“U. of Colorado Will Investigate Allegations of Misconduct Against Controversial Professor,” *Chronicle of Higher Education* 3/25/05


“U. of Colorado President Recommends Dismissal of Ward Churchill,” *Chronicle of Higher Education* 6/8/07

“Churchill Wins Lawsuit, but Only $1 in Damages,” Chronicle of Higher Education 4/3/09


“AAUP Unit Slams U. of Colorado Over Firings of 2 Controversial Faculty Members,” Chronicle of Higher Education 11/8/11

“Ward Churchill loses appeal to win back CU job,” Denver Post 9/10/12

Steven Salaita Controversy:

Readings:


Nelson, “Essay defends University of Illinois decision not to hire Steven Salaita,” Inside Higher Ed 8/8/14

Salaita v. Kennedy

“U. of Illinois Settles the Salaita Case, but Will That Help It Move On?” Chronicle of Higher Education 11/13/15

“How the Salaita Incident Imperiled the Program that Tried to Hire Him,” Chronicle of Higher Education 9/1/16

“‘Ousted’ From Academe, Steven Salaita, Says He’s Driving a School Bus to Make Ends Meet,” Chronicle of Higher Education 2/19/19

Week 4

April 16 (Class 7)

Academic Freedom: Why it Matters and What are its Limits (continued)

Academic Freedom and Faculty Scholarship (continued)

Faculty Scholarship (?) in Various Nontraditional Media

Readings:
“Professor’s Tweets Were ‘Insensitive’ and Embarrassed Fresno State, but She Won’t Be Punished,” Chronicle of Higher Education 4/25/18

“Georgetown Professor’s Profane Tweet Elicits Tepid Response From University,” Chronicle of Higher Education 10/2/18

“Professor Who Tweeted About ‘Castrating the Corpses’ of GOP Senators No Longer Teaching,” Inside Higher Ed 10/8/18


“Controversial Drexel professor resigns,” Inside Higher Ed 1/2/18

“Carnegie Mellon University professor’s critical tweet about Queen Elizabeth II goes viral,” Pittsburgh Post-Gazette 9/9/22

**Academic Freedom in the Classroom**

Readings:


Finkin and Post, *For the Common Good*, pp. 79-111

*Cooper v. Ross*

*Bishop v. Aronov*

*Axson-Flynn v. Johnson*

*Meriwether v. Hartop*

April 18 (Class 8)

**Academic Freedom: Why it Matters and What are its Limits (continued)**

**Academic Freedom in the Classroom (continued)**

Readings:


Finkin and Post, *For the Common Good*, pp. 79-111

*Cooper v. Ross*

*Bishop v. Aronov*
Axson-Flynn v. Johnson

Meriwether v. Hartop

“Appalachian State Chancellor Defends Discipline of Professor Who Showed Film About Porn,” Chronicle of Higher Education 11/26/12

“Patti Adler cancels controversial prostitution skit in CU-Boulder’s ‘Deviance’ course, Daily Camera 4/7/14

“After visual arts professor used n-word in seminar, Princeton finds no violation of policy, Daily Princetonian, 11/11/22


“The Professor’s Views Are Loathsome, Stupid, and Ignorant, the Provost Said. But He Won’t Be Fired,” Chronicle of Higher Education 11/22/19

“U. of Montana Will Let Conservative Professor Teach Constitutional Law,” Chronicle of Higher Education 9/10/04

“U. of Montana Law Faculty Denies Emeritus Status to Controversial Professor,” Chronicle of Higher Education 6/16/11

“Is Penn Going to Punish Amy Wax,” Inside Higher Ed 7/19/22

“Penn process continues in Wax case,” Philadelphia Daily News 2/21/24

“A Proposal to Tie Tenure to Intellectual Diversity Nears Approval in Indiana,” Chronicle of Higher Education 2/29/24

Trigger Warnings

Readings:

“Students’ Requests for Trigger Warnings Grow More Varied,” Chronicle of Higher Education 9/14/15


“University Rejects Student Assembly Proposal for Content Warnings in Classrooms,” Cornell Daily Sun 4/7/23

N.B. Paper topic descriptions are due by April 18
Week 5

April 23 (Class 9)

Academic Freedom: Why it Matters and What are its Limits (continued)

Academic Freedom and Institutional Speech

Readings:

Finkin and Post, *For the Common Good*, pp. 113-126

*Hong v. Grant*

*Demers v. Austin*

DelFattore, “To Protect Academic Freedom, Look Beyond the First Amendment,” *Chronicle of Higher Education* 10/31/10

**Melissa Click Controversy:**

Readings:

Report to the University of Missouri Board of Curators by Bryan Cave law firm

“U of Missouri board votes to fire Melissa Click as assistant professor,” *Inside Higher Ed* 2/26/16

“A Firing With Consequences,” *Inside Higher Ed* 5/19/16

“Melissa Click firing lands University of Missouri on association censure list for third time,” *Columbia Daily Tribune* 6/19/16

“U of Missouri Board Responds to AAUP on Click Case,” *Inside Higher Ed* 3/18/16

April 25 (Class 10)

**Tenure as a Distinctive Employment Construct**

Readings:

*Board of Regents v. Roth*

*Perry v. Sindermann*

*Brown v. Trustees of Boston University*
West Virginia University Faculty Code of Conduct

“What It Looks Like When a University Tries to Revoke a Professor’s Tenure,”
Chronicle of Higher Education 10/23/17


“U. of Saskatchewan Fires Tenured Professor Accused of Maligning Colleagues on RateMyProfessors.com,” Chronicle of Higher Education 2/24/06

“A Professor Called Out a Student by Name on His Blog. Should That Cost Him His Job?,” Chronicle of Higher Education 7/5/18

McAdams v. Marquette, including Bradley dissent

“‘My Fights Are With My Peers’: When a Professor Gets Banned for Bullying,” Chronicle of Higher Education 10/10/18

Suggested Additional Reading:


**Week 6**

April 30 (Class 11)

**Student Rights, Responsibilities, and Changing Expectations**

**Do Students Require Academic Freedom?**

Reading:

“Court Orders College to Readmit Education Student It Had Expelled for Advocating Corporal Punishment,” Chronicle of Higher Education 1/23/06

**Grading Disputes**

Readings:

“A Professor at Louisiana State Is Flunked Because of Her Grades,” Chronicle of Higher Education 5/16/10


“Grad loses in C+ lawsuit against Lehigh University,” Morning Call 2/14/13

“Academic” Discipline and the Consequences of Poor Academic Performance

Readings:

Board of Curators of the University of Missouri v. Horowitz

Regents of the University of Michigan v. Ewing

May 2 (Class 12)

Student Rights, Responsibilities, and Changing Expectations (continued)

“Behavioral” Discipline

Readings:

Schaer v. Brandeis University

Kors and Silverglate, The Shadow University, pp. 270-288

“Discipline Goes on Trial at Colleges,” Chronicle of Higher Education 3/27/09


N.B. Paper abstracts or outlines, together with preliminary annotated research bibliography, are due by May 2

Week 7

May 7 (Class 13)

Student Rights, Responsibilities, and Changing Expectations (continued)

Student Speech

Class-Related

Reading:

Tatro v. Univ. of Minnesota

Not Class-Related

Readings:
Speech First, Inc. v. Cartwright

“Oklahoma President’s Swift Action on Racist Video Carries Risks,” Chronicle of Higher Education 3/11/15

“Why expelled Oklahoma frat boys would have an ‘excellent chance’ in court,” Washington Post 3/11/15

Student Associational Rights

Reading:

Healy v. James

Student Unionization

Readings:

“‘Enormous Surge’ in Unions Reflects Disconnect Between Colleges and Graduate Employees,” Chronicle of Higher Education 5/18/23

“Colleges Contend With a Tidal Wave of New Undergrad Unions,” Chronicle of Higher Education 3/7/24

May 9 (Class 14)

Student Rights, Responsibilities, and Changing Expectations (continued)

Expectations About Safety and Student Well-Being

Readings:

Regents of the University of California v. Superior Court

Bradshaw v. Rawlings

Knoll v. Board of Regents of the Univ. of Nebraska

“A Jury Found Iowa State U. Partially Responsible for a Student’s Suicide. Here’s What That Could Mean for Other Colleges,” Chronicle of Higher Education 9/4/19


“Yale changes mental health policies for students in crisis,” Washington Post 1/18/23

“Yale University settles lawsuit alleging it pressured students with mental health issues to withdraw,” Associated Press 8/26/23

“25 Years Later, Has Clery Made Campuses Safer?,” *Chronicle of Higher Education* 3/9/15

**Week 8**

**May 14 (Class 15)**

**Student Rights, Responsibilities, and Changing Expectations (continued)**

**Sexual Violence on Campuses**

Readings:

“Reporting Rape, and Wishing She Hadn’t,” *New York Times* 7/12/14

Yoffe, “The College Rape Overcorrection,” *Slate* 12/7/14

“What Colleges Need to Know About the New Title IX Rules,” *Chronicle of Higher Education* 5/6/20


“It’s hard to ignore a woman toting a mattress everywhere she goes, which is why Emma Sulkowicz is still doing it,” *Washington Post* 10/29/14

“Columbia Settles With Student Cast as a Rapist in Mattress Art Project,” *New York Times* 7/14/17

Doe v. Brandeis


“How a Yale Student’s Rape Accusation Exposed Her to a Defamation Lawsuit,” *New York Times* 9/17/23

**May 16 (Class 16)**

**College Athletics**

**Title IX**

Readings:

Statute excerpts
Regulations excerpts

Office for Civil Rights Policy Interpretation

*Boulahanis v. Board of Regents*

*Biediger v. Quinnipiac Univ.*

“In a New Twist on ‘Equal Opportunity,’ a University Cuts Women’s Sports *Chronicle of Higher Education* 11/3/06

“Brown to pay more than $1M in battle over women's sports,” *Associated Press* 11/8/22

**Legal and Economic Future of Major College Sports**

Readings:


*NCAA v. Alston* majority opinion, including Kavanaugh concurrence

NCAA press release, “NCAA adopts interim name, image and likeness policy,” 6/30/21


Memorandum GC 21-08 from the Office of the NLRB General Counsel on Statutory Rights of Players at Academic Institutions under the National Labor Relations Act, September 29, 2021

“Southern California, NCAA, Pac-12 face complaint from National Labor Relations Board, *USA Today*, 9/18/23


“Football programs could face dearth of concussion insurance,” *Business Insurance*, 8/29/17


**Week 9**

May 21 (Class 17)
Beyond the Ivory Tower: College and University Relations with the Outside World

Federal and State “Intrusions”

Readings:


On the Federal Endowment Tax

Readings:


“Colleges reckon with new endowment tax and conservative antipathy,” *Washington Examiner* 2/6/18


On “Free” College

Readings:


“Should College Be Free?,” *New York Times* 12/3/19

“After Dropping Free Community College Plan, Democrats Explore Options,” *New York Times* 10/22/21

“New Mexico Offers Tuition-Free College to Residents,” *New York Times* 4/1/22

“New Mexico Is Trying to Make Tuition-Free College Stick. Here’s How,” *Chronicle of Higher Education* 3/12/24

On New Claims for Accommodations

Readings:


On Efforts to Limit Curricula and DEI Efforts

Readings:
“Amid National Backlash, Colleges Brace for Fresh Wave of Anti-DEI Legislation,” *Chronicle of Higher Education* 1/16/24

“DeSantis signs into law ‘Stop WOKE Act’ to restrict race discussions in Florida,” *Tallahassee Democrat* 4/22/22


Suggested Additional Reading:

Rufo, Shapiro, and Beienburg. *Abolish DEI Bureaucracies and Restore Colorblind Equality in Public Universities*, Manhattan Institute Issue Brief January 2023

May 23 (Class 18)

**Beyond the Ivory Tower: College and University Relations with the Outside World (continued)**

Should Colleges and Universities take Positions on Political, Economic, Moral, and Social Disputes?

Readings:

“Universities Worldwide Face Increasing Pressure to Drop Fossil-Fuel Investments,” *Chronicle of Higher Education* 4/1/15

350.org, “Frequently Asked Questions” about fossil fuel company divestment from 350.org website


“MIT Offers Harsh Words for Saudi Arabia, but Stops Short of Cutting Financial Ties,” *Chronicle of Higher Education* 5/6/19

“President Bowen discusses institution’s role on external issues,” *Princeton Alumni Weekly* 2/13/78

**Tax Exemptions and Town/Gown Relations**

Readings:

“Colleges and Cities Square Off Over Tax Demands,” *Chronicle of Higher Education* 1/31/10
Week 10

May 28 (Class 19)

Catch Up, Review and Conclusion

N.B. Final Papers are due by 5:00 p.m. on May 29.

Preparation for Class, Attendance, and Class Participation

We will be meeting face-to-face, although there will be a couple of occasions when (due to prior commitments I have) we will need to meet by Zoom or I will record a lecture in advance for you to watch.

The readings for the course are several hundred pages per week, and of course I expect you to have done the relevant reading before each session. However, as you will quickly discover, some of the selections (e.g., the news accounts of various controversies) are meant to draw out issues and provoke debate, and thus are not overly dense. Conversely, another set of readings is comprised of judicial opinions that illustrate how judges apply the law to specific disputes—and sometimes create new law. Reading such opinions is something of an acquired skill, because of the formal language and structure used by judges and the reliance upon precedent in crafting a decision, but you will get the hang of it quickly (really!) To that end, I will introduce you to (1) basic legal terminology and concepts; (2) the mechanics and impact of legal reasoning; and (3) the case method approach to studying law and divining legal principles.

This is a seminar class that depends in no small measure upon robust participation by all participants. I believe that lasting learning is best attained through joint discussion and deliberation, with teachers and students as active partners in intellectual dialogue. Our class sessions are designed to help build upon and confirm your understanding not just of the assigned material but of the underlying issues and themes. Therefore, your attendance and participation are important. I will assume from your presence that you are benefiting and learning from the course. Conversely, I will infer from your absence that you are not. Of course, I understand that sometimes emergencies or other unexpected circumstances (including medical circumstances such as COVID) arise that make attendance that day impossible. If this is the case, please talk with me as soon as possible so we can make arrangements to get you caught up. However, if you accumulate more than one unexcused absence, I will deduct from your course average.

While I will periodically offer a brief mini-lecture to explicate a particularly complicated or unfamiliar topic, for the most part our class will be a free-wheeling Socratic debate and discussion, led and facilitated by me. While I will expect people to participate voluntarily, I will also call upon students by name. Be ready to participate. Your comments, questions,
observations and critique of the readings (and of my and others’ arguments) will be central to the seminar and will make this a richer learning experience for us all.

To that end, during the first session of the class I will break us into three sub-groups, each of which will be charged will helping us prepare for—and then reflect upon—the discussions in subsequent sessions.

Starting with session 2 (March 28) and running through session 19 (May 28), each of the members of a designated sub-group will be asked, on six occasions:

- To post on the course’s Moodle site, at least 24 hours before the next session, one specific question that, based on the readings and your own knowledge or viewpoints, you feel are central to the subject(s) at hand and which you would urge the full class to take up for consideration; and

Starting with Week 1 of the term, and continuing through Week 9, at the end of each week each of the members of a designated sub-group will be asked, on three occasions:

- To post on the course’s Moodle site, within 48 hours after the last session of the week, a short reflection/analysis piece (e.g., 300-400 words) of the idea(s) discussed in our class sessions that week that you find most compelling, provocative, or worthy of further examination—and why you feel that way.

Because these discussion prompts and post-class reflections will be of value to all seminar participants, everyone should read them.

**Further Background and Ground Rules for Discourse**

As you’ll quickly discover from our discussions and the readings, while many people perceive “the law” as providing (or wish for it to provide) clarity and certainty in the rules that govern society and in the adjudication of the disputes that inevitably arise, there is often more “gray” than black/white in higher education law. This means that there is lots of room for debate and disagreement on what the current law is, and that, instead of me simply giving you “answers,” we shall be exploring together both what the law means and what it should be.

A most valuable skill required in legal analysis is seeing how the sides of an argument (and often there are more than two sides!) can be laid out in the cleanest and most powerful of terms. This is also something we’ll work on together.

Let me also lay out a few “ground rules” for our discourse in class:

- Our class must be marked by mutual respect for and civility towards each other. Everyone should feel included and able to express their views thoughtfully.
- We’ll be reading and discussing many disputes involving academic freedom and First Amendment freedom of expression (which are not the same thing!) I support both of those values in their proper context, and expect you to do the same.
• Substantive arguments about the law are to be expected, but they must never turn into personal attacks. If someone (and this includes me!) says something in class that offends you personally, I would ask that you take it up politely and honestly with that individual later.

• Because I want our classroom to be both an intellectually challenging and a supportive place, I will endeavor to alert students to topics or readings that I know may be wrenching to address. In turn, you should feel free to advise me privately if you cannot engage as you ordinarily would with regard to any particular topic.

• I will always endeavor to address everyone by their preferred name and pronouns (though it may take me a bit of time to memorize them all!) Because I do not want to subject anyone to public scrutiny on this matter, please let me know privately (email is fine) if you have a particular way you would like to be addressed.

• Some legal terminology (and how it is used by judges and commentators) shifts over time. The case law you’ll read may use terms in ways we would not do so today. For example, what we might regard as clear differences between discrimination on the basis of sex, of gender, or of sexual orientation have not always been recognized and described as distinct from each other. However, I will ordinarily refer to “gender-based” discrimination in the law as opposed to “sex-based” distinctions.

We will also have an opportunity during the first week of class to discuss collectively whether there are further ground rules for discourse that we’ll want to observe

**Grading**

I will compute your grade from a course average with the following weights:

- Description of paper topic: 5%
- Paper abstract/outline and preliminary bibliography: 20%
- Final Paper: 50%
- General Class Participation (including Moodle posts and especially in class-contributions): 25%

Written assignments are due on due date, as confirmed in class by instructor.

- Late assignments will be penalized.
- Missed assignments will receive a grade of zero (0).

However, I do understand that sometimes emergencies or other unexpected circumstances arise that make meeting a deadline impossible. If this is the case, please talk with me as soon as possible so we can make appropriate arrangements.

**Academic Integrity**

In an academic community, cheating and plagiarism are “capital offenses” that are the most serious violations of our shared standards and expectations. Academe relies upon the ethical conduct of scholars, who are expected always to give proper credit to the ideas of others that they rely upon/build upon. Students are held to the same standards in their own work. Any act
of academic dishonesty or misconduct will be referred to the Academic Standing Committee. For further information, see: https://apps.carleton.edu/handbook/academics/?policy_id=21359

**Accessibility**

I want everyone in the class to be able to learn effectively. To that end, Carleton is committed to providing reasonable accommodations to students with disabilities. Students seeking accommodations should contact the Coordinator of Disability Services at 222-4464 to begin the process. Carleton faculty are strongly encouraged to wait for official notification of accommodations before modifying course requirements for students.

Other resources that may be of value and aid to students include the College’s Academic Support center (https://www.carleton.edu/asc/) and Writing Center (https://www.carleton.edu/writing-center/).

**Artificial Intelligence**

The use of ChatGPT or other AI tools to prepare written assignments for this class is prohibited.

**Observance of Religious Holidays**

I will seek to accommodate or make alternative arrangements for students who need to come late to class, who need to be absent from class, or who need to submit an assignment late in order to observe a religious holiday. I would ask that you let me know in advance if you are experiencing such a conflict, so that I can work with you to find an appropriate and fair accommodation. You can find further information about the College’s policy on religious holidays at: https://www.carleton.edu/chaplain/religious-observances/.

**Contacting the Instructor:**

I can be reached at:

Office: 303 Hasenstab Hall
Office hours: Tuesdays and Thursdays 1-2:00 pm, and by appointment, as needed
Phone: (507) 222-4563
Fax: (507) 222-5615
Email: sposkanzer@carleton.edu (This is probably the fastest way to reach me)

I would ask each of you to come to office hours at least once, so I can get to learn more about you, your motivations for taking the course, and your longer-term aspirations.