

Western Michigan University
CECP 625
Legal Issues in Higher Education
Sangren 3213
Tuesdays and Thursdays 6:00 - 8:50 p.m.

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- I. Course Number: CECP 625
- II. Course Title: Legal Issues in Higher Education
- III. Course Credit: 3 graduate hours
- IV. Texts:

The Constitution of the United States of America.

Kaplin, W. A. & Lee, B. (1995) The law of higher education. (Third Edition) San Francisco: Jossey-Bass, Inc.

Paterson, B.G. & Kibler, W. L. (1998) The administration of campus discipline: student, organizational, and community issues. Asheville, N.C.: College Administration Publications, Inc.

Bickel, R. D., & Lake, P.F. (1999) The rights and responsibilities of the modern university. Durham, North Carolina: Carolina Academic Press.

Other readings will also be assigned.

- V. Course Description:

An exploration of the legal issues that affect the administration of postsecondary educational institutions. Issues pertaining to the various constituents of colleges and universities – students, faculty, and administrators - will constitute the major focus of this course.

- VI. Course Objectives:

The general objectives of this course are:

- To acquire knowledge of the method for legal citations.
- To develop the ability to utilize a law library and Lexus-Nexus as a resource tool.
- To understand the concept of “state action” and to be able to differentiate between public and private institutions.
- To become familiar with the jurisdiction of the courts and the implications of judicial opinions for postsecondary administrators.
- To develop the ability to identify legal issues related to students, faculty, and administrators.

- To become familiar with judicial decisions interpreting legislative acts impinging on the administration of colleges and universities.
- To understand several basic parameters of the legal liability of postsecondary administrators.
- To become acquainted with periodicals and resources available to assist the administrator in the area of legal issues.
- To develop a personal philosophy for working with institutional counsel.

VII. Caveat:

This is an education course and not a law school offering. While enrollment is open to graduate students at the University, it is primarily designed for those who either plan to become educational administrators or those who are currently practicing in the profession. The purpose of the course is to provide students with an awareness of the legal ISSUES that arise in higher education and the legal parameters defining those issues. The course is NOT designed to provide legal training or advice. If legal advice is desired, seek competent legal counsel.

VIII. Class Procedures:

Students are expected to complete the assignments and readings PRIOR to class. There will be some lectures by the instructors and guest lecturers but for the most part students will be expected to contribute to class discussion. Participation will be a critical component of course evaluation.

This course is reading intensive and requires an extraordinary amount of preparation. Some classes will begin with a quiz over material covered since the preceding quiz and all material covered up to that point. In addition to preparing for quizzes, students will be required to submit a number of briefs throughout the semester and be prepared to discuss the reading material for each particular class.

Students are expected to demonstrate professional demeanor; i.e., to be on time, to display professional courtesy to all classmates and instructor(s), to meet all deadlines, to turn off all cell phones, pagers, pda alarms, etc., and to notify the instructor in advance of their absence. All assignments are due at the beginning of class. Any exceptions to deadlines will be made through prior discussions with, and approval (in writing), of the instructor.

IX. Class Requirements:

- Each student is expected to be prepared to participate in class discussions.
- Each student is expected to complete reading assignments **prior** to each class.
- Each student will be expected to maintain a 3-ring notebook in which class notes, outlines and other materials will be maintained in an organized manner. These will be graded by the instructor.
- From time to time, students will be directed to obtain additional new cases. These should be included in classroom preparation and placed in the notebook.
- Each student will complete a 25-minute quiz as per the schedule.
- Each student will submit briefs for at least 7 law cases. The format for briefs is provided. Adherence to format is a critical part of the grading for each brief.
- Each student will participate in a group to formulate and present a solution to a case study.

X. Grading:

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|-----------|-----------|---------------------|-----------|
| Notebooks | 10 points | Case Study | 20 points |
| Quizzes | 30 points | Class Participation | 10 points |
| Briefs | 20 points | Reaction Paper | 10 points |

- a. Notebooks – evaluation based on organization, ease of use as reference, completeness, and neatness.
- b. Quizzes – evaluation based on thoroughness of response, citation of appropriate cases and concepts, clear and concise expression of ideas, grammar and spelling. Quizzes are over material covered up to that date.
- c. Briefs – evaluation based on student’s ability to summarize primary facts, a concise, well-defined statement of the issue, and the pertinent rationale of the court in support of its answer to the issue.
- d. Class participation – evaluation based on student’s attendance, involvement, engagement in discussions and debates, prior reading of material, obvious preparedness, contribution to the class, professional demeanor, and other factors deemed appropriate by the instructor.
- e. Case study – evaluation based upon teamwork application of pertinent case law and legal concepts, identification and resolution of issues contained in case, presentation of position and outcome.
- f. Reaction Paper – evaluation based on clarity of thought, originality, ability to compare and contrast legal concepts and administrative models, grammar, spelling, and general writing skills.

XI. Changes to Class Policies:

This syllabus is subject to change in the event of extenuating circumstances.

XII. Academic Integrity:

Please be advised that all policies pertaining to academic integrity will be strictly adhered to in this course. In particular, plagiarism is prohibited. Plagiarism consists of passing off as one’s own ideas, words, writings, etc., which belong to another. In accordance with this definition, you are committing plagiarism if you copy the work of another person and turn it in as your own, even if you have the permission of that person. If you have any questions regarding these policies, please consult the Student Code under the section “Conduct Rules & Regulations, B.3.a” and p. 26-28 of The Graduate Catalog.

XIII. Course Calendar:

Tuesday, May 6 **Introductions, Review of Syllabus, Structure of the Courts, National Reporter System, Legal Research and Citations, The Four Cs, 42 U.S.C. 1983, History of Students’ Relationships with Colleges and Universities, Institutional Relationships.**

Read:

Gott v. Berea College, 161 S.W. 204, 206 (Ky. 1913)

Anthony v. Syracuse, 231 N.Y.S. 435 (N.Y. App. Div. 1928)

Steinberg v. Chicago Medical College, 371 N.E. 2d 634 (Ill. 1977)

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961)

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)

Coghlan v. Beta Theta Pi Fraternity, 987 P.2 300 (1999)

Kaplin & Lee, p. 1-46, 371-377

Thursday, May 8

Discussion on the concepts of State Action and Substantive Due Process.

Read:

K & L, p. 45-54, 284-288

Constitution of the USA - especially 1st, 4th, 14th Amendments

Burton v. Wilmington Parking Authority, 6 L. Ed. 2d 45 (1961).

Powe v. Miles, 407 F. 2d 73 (2nd Cir. 1968).

Grossner v. Trustees of Columbia, 287 F. Supp. 535 (S.D.N.Y. 1968).

Soglin v. Kauffman, 418 F. 2d 163 (7th Cir. 1969).

Civil Rights Restoration Act of 1987 (provided).

Tuesday, May 13

Discussion on the Concept of Due Process (Procedural).

QUIZ #1 (State Action/Substantive Due Process)

Read:

K & L, p. 455-465, 483-500

Paterson & Kibler: Chapter XI

Review:

Constitution of the USA - especially 14th Amendment

Also Read:

Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961).

Gabrilowitz v. Newman, 582 F. 2d 100 (1st Cir. 1978).

Gardenhire v. Chalmers, 326 F. Supp. 1200 (D. Kan. 1971).

General Order, 45 FRD 133 (W.D. MO. 1968).

Thursday, May 15

Discussion on the Application of Due Process, Student Conduct, and Academic Integrity.

Read:

P & K, The administration of campus discipline (Chapters I, II, IV, V, X).

General Order, 45 FRD 133 (W.D. MO. 1968).

Constitution of USA - especially 1st, 4th, 14th Amendments

Tuesday, May 20

Discussion on Housing and Alcohol Issues.

QUIZ #2 (Due Process, Student Conduct, and Academic Integrity)

Read:

Pratz v. Louisiana Polytechnic Institute, 316 F. Supp. 872 (N.D. La.1970); affd. 401 U.S. 1004 (1971).

Widmar v. Vincent, 70 L. Ed. 2d 440 (1981).

Chapman v. Thomas, 743 F. 2d 1056 (4th Cir. 1984).

Moore v. Troy State, 284 F. Supp 725 (M.D. Ala. 1968)

Piazzola v. Watkins, 442 F 2d 285 (5th Cir. 1971)

Review:

Constitution of the USA - especially 4th Amendment

Also Read:

K & L, p. 549-556

Ballou v. Sigma Nu General Fraternity, 352 S.E. 2d 488 (S.C. App. 1986).

Estate of Hernandez v. Arizona Board of Regents, 866 P. 2d 1330 (Az. 1994).

Bradshaw v. Rawlings, 464 F. Supp. 175 (E.D. Pa. 1979) and 612 F. 2d 135 (3rd Cir. 1979).

Wilson by Wilson v. Bellamy, 414 S.E. 2d 347 (N.C. App. 1992).

Beta Beta Chapter of Beta Theta Pi Fraternity v. May, 611 So. 2d 889 (Miss. 1993).

Thursday, May 22

Discussion on the First Amendment Concept of Free Speech, Student Protests, and the Student Press.

Review:

Constitution of USA - especially 1st Amendment

Read:

UWM Post v. Board of Regents of University of Wisconsin, 774 F. Supp. 1163 (E.D. Wis. 1991).

Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F. 2d 386 (4th Cir. 1993).

R.A.V. v City of St. Paul, 60 L. W. 4667 (1992).

Wisconsin v. Mitchell, 61 L. W. 4575 (1993).

K & L, p. 500-516

P & K, p. 113-124

Review:

Constitution of USA - especially 1st, 4th, 14th Amendments

Also Read:

Tinker v. Des Moines Independent Community School District, 393 U. S. 503 (1969).

Dickey v. Alabama State Board of Education, 273 F. Supp. 613 (M.D. Ala. N.D. 1967).

Joyner v. Whiting, 477 F. 2d 456 (4th Cir. 1978).

Papish v. Board of Curators of University of Missouri, 35 L. Ed 2d 618 (1973).

Rosenberger v. Rector and Visitors of the University of Virginia, 63 L. W. 4702 (June 27, 1995).

Sword v. Fox, 446 F. 2d 1091 (4th Cir. 1971).

Tuesday, May 27

Discussion of Recognition and Regulation of Student Organizations.

Bikel & Lake reaction paper due (no more than five pages – double spaced, APA style).

QUIZ #3 (Housing, Alcohol, Free Speech, Student Protests, and Student Press)

Read:

P & K, p. 129-157

K & L, p. 91-98

Review:

Constitution of USA - especially 1st Amendment

Also Read:

Healy v. James, 33 L. Ed. 226 (1972).

Gay Student Services v. Texas A & M University, 737 F. 2d 1317 (5th Cir. 1984).

Good v. Associated Students of University of Washington, 542 P. 2d 762 (Wash. 1975).

Board of Regents of the University of Wisconsin System v. Southworth, (Supreme Court Case, Spring 2000)

**Thursday, May 29/
Tuesday, June 3**

Discussion on Liability

Read:

K & L, p. 98-117

Stineman v. Fontbonne College, 664 F. 2d 1082 (8th Cir. 1981).

Smith v. Day, 538 A. 2d 157 (Vt. 1987).

Meese v. Brigham Young University, 639 P. 2d 720 (UT. 1981).

Potter v. N.C. School of the Arts, 245 S. E. 2d 188 (N.C. App.

1978).

Mintz v. State, 362 N.Y.S. 2d 619 (S. Ct. App. Div 3rd Dept. 1975).

Furek v. University of Delaware, 594 A. 2d 506 (Del. 1991).

Tarasoff v. Regents of University of California, 551 P. 2d 334 (Cal. 1976).

Peterson v. San Francisco Community College District, 205 Cal. Rptr. 842 (1984).

Hartman v. Bethany College, 778 F. Supp 286 (N.D. W. Va. 1991).

Graham v. Montana State University, 767 P. 2d 301 (Mont. 1988).

Burch v. University of Kansas, 756 P. 2d 431 (KS. 1988).

Mullins v. Pine Manor College, 449 N.E. 2d 331 (Mass. 1983).

Miller v. State, 487 N.Y.S. 2d 115 (A.D. 2 Dept. 1985).

Tuesday, June 3

Continue with Discussion on Liability

QUIZ #4 (Recognition & Regulation of Student Organizations)

Thursday, June 5

Discussion of Title VI, VII, IX and Sexual Harassment

QUIZ #5 (Liability)

Read:

K & L, p. 576-580, 815-826

Franklin v. Gwinnett County Public School, 112 S. Ct. 1028 (1992); 60 L.W. 4167 (1992).

Patricia H. v. Berkeley Unified School District, 830 F. Supp. 1288 (N.D. Cal. 1993).

Davis v. Monroe County Board of Education, 74 F. 3d 1186 (11th Cir. 1996).

Rowinsky v. Bryan Independent School District, 80 F. 3d 1006 (5th Cir. 1996).

Winston v. Maine Technical College System, 631 A. 2d 70 (Me. 1993)

- Tuesday, June 10** **Work in groups.**
- Thursday, June 12** **Discussion of FERPA, DFSCCA Amend '89 and Student Right-to-Know and Campus Security Acts.**
- Read:**
- K & L, p. 822-826, 576-580, 793-794
- Columbia Pictures v. Professional Real Estate Investors, Inc.
866 F. 2d 278 (9th Cir. 1989).
- Francois v. University of D.C., 788 F. Supp. 31 (D. D.C. 1992).
- State ex rel The Miami Student v. Miami University, 680 N. E. 2d 956 (OH, 1997).
- Section 504 issues and Americans with Disabilities Act.
- Also Read:**
- Doe v. Washington University, 780 F. Supp. 628 (E.D. Mo. E.D.1991).
- Doe v. University of Maryland Medical Sys. Corp., 50 F. 3d 1261 (4th Cir. 1995).
- Doe v. New York University, 442 F. Supp. 522 (S.D. N.Y. 1978); 511 F. Supp. 606 (S.D. N.Y. 1981); 666 F. 2d 761 (2nd Cir. 1981).
- U.S. v. Board of Trustees of University of Alabama, 908 F. 2d 740 (11th Cir. 1990).
- Tuesday, June 17** **Wrap-up discussion
Allow time to work in groups
Grading of Notebooks
QUIZ #6 (Statutes)**
- Thursday, June 19** **Group Presentations**
- Tuesday, June 24** **Group Presentations**