

Law & Sexuality

Spring 2018

Professor Drew Gulley

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COURSE INFORMATION

Class Hours and Location:

Tuesdays, 7:10 – 9:00 p.m. (2 credits), Room 243.

Office Hours:

As an adjunct professor, I do not keep office hours. On most class days, I will be available for a short time before and after the class period. If you would like to meet separately, please send me an email and I will try to accommodate an appointment. I will also provide an opportunity to connect to discuss or review your final paper.

Course Materials:

CARLOS A. BALL, JANE S. SCHACTER, DOUGLAS NEJAIME & WILLIAM B. RUBENSTEIN, *CASES AND MATERIALS ON SEXUALITY, GENDER IDENTITY AND THE LAW* (6th ed.) (the “Casebook”).

Supplemental materials will be assigned to acknowledge and incorporate current developments.

Online Content:

This course may have a digital presence on a, to be provided, Blackbaud site. I will post various handouts and other class-related materials on the site.

Attendance:

The rules of the American Bar Association require students to be in good and regular attendance in the courses for which they are registered. Outside of approved (by me) absences, you may miss no more than 2 hours of class, or 1 class session.

I will take attendance and, if you exceed the permitted absences, you will be withdrawn from the course. You will receive notification from the Law School to this effect. Administrative withdrawal from a course may have serious consequences on other aspects of your financial aid, enrollment, and future aspirations.

Please notify me, as soon as possible, if you believe you must miss from than one class or the permitted number of hours. Accommodations may be made for students who must be absent for religious reasons and in cases of compelling hardship.

Class Participation:

As lawyers, our positions benefit from critical dialogue. I expect active class participation. Outstanding, conscientious participation in class may result in your grade rising a

tic (e.g., B → B+); conversely, failure to participate or engage constructively may result in downgrading (e.g., B → B-). Frankly, open conversation will make this course a whole lot more interesting, so please bring your authentic, inquisitive selves to the classroom. Constructive disagreement is encouraged. Our time together will revolve around topics over which there are intense feelings; we will actively listen to one another's views with respect. I will deal swiftly with any issues if I deem that respectful decorum has been breached.

Coming Late, Leaving Early:

Avoid, please. Consistent, objectionable skirting of attendance may result in deductions from your grade.

Grading:

Grades are based on (i) a reaction paper of approximately 3-5 pages in length and (ii) a final paper of approximately 15-20 pages in length. As previously noted, in-class participation may also impact the final grade.

Classroom Address:

I will address you by the first names provided to me by Hofstra University. There may (still) be a preference in law schools for addressing students by surname, preceded by "Mr." or "Ms." (or "Miss"). As a student, I got a thrill from hearing "Mr. Gulley" intoned from the lectern. However, these forms of address are gendered and I feel strongly that each individual should be able to choose their preferred title, rather than feel the need to conform to or correct an assigned one from me. I will call on individuals without prior notice. If you would like for me to address you by a name (or title) other than the first name by which you are identified, please let me know as soon as possible and I will address you by your preferred name (or title). "Professor" is gender-neutral, so please refer to me as "Professor Gulley" or "Drew," according to your own conventions.

SYLLABUS

This course explores how law (and, by extension, we) regulate the expression of sex and gender, conduct of sexual intimacies, access to state-granted benefits, and protection in one's livelihood. By extension, this course will also examine how certain expectations and assumptions about sex, gender, and romantic love permeate American and international law. That is quite a lot to cover.

The subjects we will touch upon are fiercely debated at home, in courtrooms, and on the floors of legislative chambers. The outcome of these debates is, quite literally, life or death for some citizens. Topics such as hate crime, abortion, rape, domestic violence, prostitution, gender assignment surgery on adults and intersexed children, and discrimination based on gender and sexual orientation continue to both divide and unite our country. In our chosen profession, we are increasingly likely to counsel clients on laws related to matters of sexual orientation and gender identity (especially in representing gay, lesbian, bisexual and transgender clients); therefore, this the course will also address laws related to domestic partnerships, adoption, marriage, child custody, and discussion of sexual identity in various private and public settings, such as schools and the workplace.

References to numbered pages that appear below refer to the Casebook. The syllabus contains a topical outline of the course, as well as a schedule of course coverage. The schedule tracks the topical outline by indicating on which days we will cover which topics.

Class	Date	Unit	Reading
1	Tue. 1/16	Foundational Theories <ul style="list-style-type: none"> • Sexual orientation • Gender Identity 	Preface (minus the last ¶ and Acknowledgements) 1 – 24 27 – 75
2	Tue. 1/23	Sexuality & Liberty <ul style="list-style-type: none"> • ConLaw refresher (<i>Griswold, Roe, and Casey</i>) • Sodomy laws (<i>Bowers and Lawrence</i>) 	Skim: 79 – 83; 89 – 92; 93 – 102 104 – 146
3	Tue. 1/30	Sexuality, Gender & Equality <ul style="list-style-type: none"> • Scrutiny • Sexual Orientation Discrimination and Sex Discrimination • Gender Identity Discrimination and Sex Discrimination • Heightened scrutiny? • <i>Romer</i> 	233 – 243 245 – 262 263 – 287 293 – 315
4	Tue. 2/6	Working, cont. <ul style="list-style-type: none"> • <i>Boh Brothers</i> • Gender identity and Title VII 	370 – 382 393 – 411 419 – 420

5	Tue. 2/13	Working <ul style="list-style-type: none"> • Lived experiences • Sexual orientation and Title VII 	325 – 335 337 – 353
6	Tue. 2/20	Coupling <ul style="list-style-type: none"> • <i>Loving</i> and movement cases 	493 – 573 (Skim: First Generation Cases)
Reaction Paper Assigned; due at the following class meeting			
7	Tue. 2/27	Coupling, cont. <ul style="list-style-type: none"> • DOMA and <i>Windsor</i> 	573 – 599
8	Tue. 3/6	Coupling, cont. <ul style="list-style-type: none"> • <i>Obergefell</i> and nationwide marriage equality 	602 – 638
9	Tue. 3/13	Parenting <ul style="list-style-type: none"> • Custody cases • Adoptions 	651 – 671 711 - 721 Supplement to be distributed
10	Tue. 3/20	Schools & Free Speech	777 – 793 800 – 812
11	Tue. 4/3	Free Speech, cont.	813 – 831 832 - 842
Paper thesis proposal due on 4/3, returned on 4/17			
12	Tue. 4/10	Conflict between Religious Liberty and LGBT Equality	844 – 868 Supplement to be distributed
13	Tue. 4/17	Religious exemptions	869 – 884 Supplement to be distributed
14	Tue. 4/24	Topic TBD, as voted upon by class	TBD (Supplement to be distributed, upon selection)
Final paper due [Date TBD]			