A. COURSE OBJECTIVES

This course is focused on the regulation of sexuality in America law. Our course will be divided into three sections of study. We will begin our study with a consideration of the basic concepts and premises that necessarily underlie a study of sexuality and law. Towards that end, Part I will consider various understandings of human sexuality as an identity, a behavior, a cultural construct, a moral status, a social status, and a legal status. In this section we will examine a range of contemporary perspectives on the role of sexuality in public life, as well as the historical and theoretical contexts from which our modern conceptions have emerged.

In Part II, we will study sexuality and “liberty.” Here, we will study ways in which the regulation of sexuality intersects with various (legally-relevant) understandings of liberty. We will explore whether and the degree to which the legal regulation of sexual behavior or status imposes upon the liberty of the individuals who are subject to those regulations. We will also consider whether and the degree to which the absence of law affects the liberty of sexual minorities. Similarly, we will consider the degree to which law (or absence of law) imposes upon the liberty of those who favor the regulation of sexuality (as, for example, religious objections to same-sex marriage).

Part III will take up the intersection of sexuality and “equality.” In this section, we will think about ways in which traditional Equal Protection analysis applies in the context of sexuality regulation. We will also consider ways in which conceptions of “equality” animate the Obergefell same-sex marriage decision, as well as critical takes on the rhetoric of equality within the pre-(and post) Obergefell push for same-sex marriage. Finally, we will turn to questions of equality in the context of same-sex adoption, reproduction, custody, and visitation.

B. SYLLABUS OF STUDY

Unless otherwise indicated, readings below are from the assigned text Ball, Schacter, and NeJaime, SEXUAL ORIENTATION AND THE LAW (West Academic Press, 5th ed.).

I. Sexuality as Identity, Behavior, Construct, and Status

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<td>Introduction to Sexuality and the Law</td>
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II. Sexuality and Liberty

A. Due Process Rights

1. Same-Sex Sexual Privacy and/or Zone of Dignity

Class 5: Same-sex “sodomy” as fundamental right: *Hardwick*  pp. 109-120, pp. 128-146
Class 6: Sexual privacy: fundamental right/zone of dignity: *Lawrence*  pp. 147-185
Class 7: Sexual privacy after *Lawrence*  pp. 185-219

2. Beyond Same-Sex: Other Sexual Privacies and Zones of Dignity

Class 8: Prostitution; BDSM; Bestiality  Handout 3
Class 9: Minors; Adult incest; Public sex  Handout 4

B. First Amendment: Free Speech

Class 10: LGBT free speech  pp. 341-382
Class 11: Free speech in opposition to LGBT issues/practices  pp. 389-428
Class 12: Free speech in opposition to LGBT issues/practices, Part II  pp. 429-463

C. First Amendment: Religious Freedom

Class 13: Religious liberty in the context of public institutions  pp. 377-410
Class 14: Religious liberty in the context of private institutions  Handout 5

III. Sexuality and Equality

A. Equal Protection

Class 15: Sexual orientation, Equal Protection, and levels of scrutiny  pp. 237-239; pp. 249-270
Class 16: Equal Protection in *Romer v. Evans*  pp. 272-298  Handout 6
Class 17: Sexuality or transgender discrimination as sex discrimination  pp. 318-339;

B. Equality in Marriage

Class 18: *Obergefell* and Same-Sex Marriage  Handout 7
Class 19: Marriage after *Obergefell*  pp. 794-811  Handout 8

C. Equality in Parenting

Class 20: Disputes between LGBT people and heterosexual people  pp. 813-853
Class 21: LGBT adoption  pp. 853-891
Class 22: Reproduction in LGBT families  pp. 891-933
Class 23: Custody and visitation  pp. 933-969
C. CLASS POLICIES

1. Contacting Me

Please do not hesitate to contact me (via phone, email, or simply drop by my office) during the semester. While I encourage you to take advantage of my posted office hours (Wednesdays 1:00 pm – 2:00 pm), I am happy to be available at other times by appointment.

2. Class preparation and participation

Adequate class preparation is a requirement for this course. A student who makes a particularly strong contribution to class discussion (as measured by the quality rather than the quantity of their contributions) may have his or her final grade raised by 1/3 of a letter grade (i.e. from a B to a B+). Also, in the extraordinary circumstance in which a student’s classroom contribution is particularly unsatisfactory (due, for example, to lack of preparation, distracting use of internet, or other markedly unprofessional behavior), that student may have his or her final grade lowered 1/3 of a letter grade.

3. Attendance policy

You are permitted 4 absences per semester. For every absence over the 4 permitted (that is not excused due to emergency or extended illness), I will reduce your final grade by 1/3 of a letter grade (i.e. from B to B-). A student who misses more than 6 classes during the semester will not be permitted to sit the exam. You are responsible for monitoring your compliance with this policy, including making arrangements with me to discuss absences due to emergency or illness. You are also responsible for signing the attendance sheet provided for each class session. If you come in after I have begun the lecture, please do not sign the attendance sheet.

4. Use of electronic devices

You are, of course, permitted to use laptop computers during class time to take notes. However, the recreational use of computers and other electronic devices during class time can be distracting and annoying to your colleagues (and your instructor), so please confine your in-class computer use to note-taking. The use of cell phones and other mobile devices is not permitted during class sessions. The recording of classes is not permitted without prior permission.

5. Evaluation

This is an exam course. Except for allowances concerning class participation (see above), your grade for this class will be based on a self-scheduled essay exam.

6. Accommodations

The Law School is committed to meeting the needs of students with disabilities. To request disability accommodations, please contact the Law School’s Dean of Academic Affairs.