

Special Topics in Discrimination Law:  
Sexual Orientation  
Prof. Christopher Bacon  
Fall 2012 (revised)

Introduction: In this course we will explore the relationship between sexual orientation (and/or identity) and the law. We will examine the manner in which the state regulates sexuality, gender, gender roles, and sexual orientation, in a variety of substantive legal areas. We will explore how the law is influenced by theories or myths regarding homosexuality and sexual identity as well as prevailing styles of judicial reasoning. The doctrinal discussions will focus both on the substantive law and a number of larger themes: the nature/nurture debate and its legal ramifications; the public/private distinction as exhibited in the legal conflicts between free expression and “coming out” and the right to be let alone; the reason/desire distinction, as manifested through sexual status versus sexual conduct; and the equality/diversity distinction which arises in the context of assimilation versus difference.

Instructor: Professor Bacon may be reached at (713) 758-1148 or at CBACON@VELAW.COM. Feel free to call me at my office.

Text: The text of this course is William B. Rubenstein’s Sexual Orientation and the Law (4th edition 2011). Supplementary materials will be distributed in class.

Evaluation: Your grade will be based entirely on a written two hour closed book final examination on December 18, 2012.

Attendance: Attendance is required and you will be dropped for excessive absences. (Missing more than four hours of class time either because of absences or late arrivals or early departures will be considered excessive).

### **Syllabus/Reading Assignments**

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| Aug. 28:  | Text: pp. 1-43   |
| Sept 4:   | Text: p. 102 (sample statutes), 117-126, 133-164<br>Supplementary materials: Interview with Michael Hardwick                             |
| Sept. 11: | Text: pp. 176-188, 200-210<br>Supplementary materials: <i>Lee v. State of Texas</i> , 1997 WL 418516 (Tex. App. – Dallas 1997, no writ). |
| Sept. 19: | Text: pp. 211-229, 241-261, 266-286  |

Sept. 26: Text: pp. 300-329, 340-345  
 Supplementary Materials: *Nabozny v. Podlesny*, 92 F.2d 446 (7<sup>th</sup> Cir. 1997).

Oct. 2: Text: pp. 349-375, 385-410

Oct. 9: Text: pp. 411-453

Oct. 16: Text: pp. 453-502

Oct. 23: Text: pp. 502-528, 535-563

Oct. 30: Text: pp. 574-581, 73- 83, 594-629

Nov. 7: Text: pp. 629-631, 639-678

Nov. 14: Text: pp. 678-686  
 Supplementary Materials: *Commonwealth of Massachusetts v. United States Dept. Of Health and Human Services*, (1<sup>st</sup> Cir. 2012); *Windsor v. United States*, (2<sup>nd</sup> Cir. 1012).

Nov. 20: Text: pp. 714-719; 720-734; 742-758; 766-796; 813-822

Nov. 27: Review