

# University of Houston Law Center

## Syllabus

### Sexual Orientation & the Law Spring 2018

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#### **Instructor:**

**Corey E. Devine**

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(713) 495-2329

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#### **Required Text:**

- Ball, Schacter, NeJaime, & Rubenstein, *Cases and Materials on Sexuality, Gender Identity, and the Law* (6th ed. 2017)
- Additional readings will be distributed to incorporate recent developments.

#### **Course Description:**

This course deals with one of the most dynamic areas of the law over the past three decades: how the legal system regulates sexual orientation and gender identity. We will examine the manner in which the state regulates sexuality, gender, gender roles, and sexual orientation in a variety of substantive legal areas, including criminal law, family law, employment law, and constitutional law. Many areas covered by this course involve significant ongoing legal disputes, including transgender rights. We will consider the intersection between law and politics over the course of a new legal movement.

#### **Course Objectives:**

- Explore what sexual orientation and gender identity are, including by examining historical, theoretical, and anthropological texts
- Examine how U.S. law regulates sexual orientation and gender identity
- Analyze how the regulation of sexual orientation and gender identity impacts LGBT people

#### **Grading & Final Exam:**

Your grade will be based on a closed-book final examination given during the regular exam period.

### **Course Requirements & Teaching Methods**

The success of this class depends on your active engagement. To promote your engagement, the following rules apply:

- We will cover in this class controversial topics. All views are welcomed, especially those that challenge pro-LGBT positions. Constructive disagreement is encouraged. To foster such disagreement, all students must commit to listen and to treat others with respect.
- Attendance is required. If you know that you will miss a class, please let me know in advance. In appropriate circumstances, I will enforce UHLC's minimum attendance rule. Under this rule, a student who misses 3 or more classes will be dropped or forced to withdraw from class.
- I will use a variety of teaching methods in class, including the Socratic Method. This means that I will call on you throughout the semester in hopes of helping you develop your verbal argumentation skills. Preparation and participation are very important.

### **Office Hours:**

Because I am an adjunct professor, I do not keep office hours. On most days, I will be available to answer questions before or after class. If you would like to meet separately, please send me an e-mail to make an appointment. I am available to answer any questions you have about the class or course material. I also am more than happy to talk more generally with you about the practice of law, your job search, or any other issues that arise in law school.

### **CAPS**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

**SYLLABUS**  
**Sexual Orientation & the Law**  
**Spring 2018**  
**Tues. 5:30-7:30 p.m.**

**Corey E. Devine**  
**Muskat, Mahony & Devine, LLP**  
**(713) 495-2329**  
**cdevine@m2dlaw.com**  
**office hours by e-mail appointment**

**Reading Assignments:**

All page numbers refer to Ball, Schacter, NeJaime, & Rubenstein, *Cases and Materials on Sexuality, Gender Identity, and the Law* (6th ed. 2017). I will distribute additional cases and materials via e-mail, and I will adjust reading assignments throughout the semester.

**I. Foundations**

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|--|---|
| <b>Tuesday, January 16</b><br><b>Class 1</b> | <b>What is sexual orientation?</b><br>Pages 1-8, 15-21, 27-36, 43-52  |
| <b>Tuesday, January 23</b><br><b>Class 2</b> | <b>What is sex? What is gender?</b><br>Pages 52-75<br><i>Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality</i> , Gayle S. Rubin (Handout) |

**II. Sexuality & Liberty**

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| <b>Tuesday, January 30</b><br><b>Class 3</b> | <b>Sodomy laws</b><br>Pages 104-146  |
| <b>Tuesday, February 6</b><br><b>Class 4</b> | <b>The Meaning of <i>Lawrence</i></b><br>Pages 164-171 ( <i>State v. Holm</i> ), 185-193 ( <i>Williams v. Attorney General of Alabama</i> ), 195-200 ( <i>Lowe v. Swanson</i> ), 205-208 ( <i>Singson v. Commonwealth</i> ), 213-219 ( <i>United States v. Lanning</i> ), 226-231 ( <i>Roe v. Rector and Visitors of George Mason University</i> ) |

### **III. Sexual Identity and Equality**

**Tuesday, February 13**  
**Class 5**                      **Level of scrutiny debate**  
Pages 233-282

**Tuesday, February 20**  
**Class 6**                      ***Romer v. Evans***  
Pages 293-324

### **IV. Working**

**Tuesday, February 27**  
**Class 7**                      **Sexual Orientation & Title VII**  
Pages 339-344, 354-382, 387-392  
*Hively v. Ivy Tech Community College* (Handout)

**Tuesday, March 6**  
**Class 8**                      **Gender Identity & Title VII**  
Pages 393-418

**Tuesday, March 13**                      **NO CLASS (SPRING BREAK)**

### **V. Coupling**

**Tuesday, March 20**  
**Class 9**                      **Introduction & State Litigation**  
Pages: 493-536

**Tuesday, March 27**  
**Class 10**                      **Federal Litigation**  
Pages: 562-599

**Tuesday, April 3**  
**Class 11**                      ***Obergefell v. Hodges***  
Pages: 602-640

### **VII. Sexuality, Gender, & the First Amendment**

**Tuesday, April 10**  
**Class 12**                      **The high school and college cases**  
Pages 777-813

**Tuesday, April 17**  
**Class 13**                      **Anti-Gay Speech**  
Pages 813-844

**Tuesday, April 24**  
**Class 14**

**LGBT Equality v. Religious Liberty**  
**Pages 844-883**