

University of Houston Law Center

Syllabus

Sexual Orientation & the Law Spring 2023

Instructor:

Corey E. Devine

Muskat, Mahony & Devine, LLP

(713) 495-2329

cdevine@m2dlaw.com

www.m2dlaw.com

Required Text:

- Ball, Schacter, NeJaime, & Rubenstein, *Cases and Materials on Sexuality, Gender Identity, and the Law* (7th ed. 2022)
- Additional readings will be distributed electronically

Course Description:

This course deals with one of the most dynamic areas of the law over the last several decades. We will examine the manner in which the state regulates sex, sexuality, gender, gender roles, and sexual orientation in a variety of substantive legal areas, including criminal 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 the movement for LGBT+ legal rights.

Course Objectives:

- Explore what sexual orientation and gender identity are
- 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:

The UH registration system instruction mode for this course is face-to-face. After student registration in November, there may be instruction mode changes to this course up through Jan. 5, 2022, but notice of such changes will be sent to then-registered students.

Instructors and students are expected to normally be physically present in the classroom. Whether this instructor will offer “remote presence” (starting a zoom meeting from the podium computer to enable student remote access on an occasional basis) for part or all of the semester is not known, but students should not rely on an expectation that remote presence will be available.

Your grade will be based on an open-book final examination. The exam will be distributed and, thereafter, you will have 24-hours to complete and return it.

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.
- I will use a variety of teaching methods, 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.
- Some students in past years have commented that this course feels like a “seminar.” This is because active discussion/debate is such an important part of the course. This is not a course where we will simply learn what the law is. Instead, we will ask why the law is what it is and whether it could be different (and if so, what the implications of different regulatory regimes might be).

Attendance:

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. If you are experiencing any circumstance that is interfering with your ability to attend class, please contact me so that we can discuss. When you know you will miss class, please contact me ahead of time and let me know.

Recording of Class:

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Center for Students with DisABILITIES. If you have an accommodation to record class-related activities, those recordings may not be shared

with any other student, whether in this course or not, or with any other person or on any other platform. Class may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written consent of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Syllabus Changes:

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through e-mail.

Office Hours:

Because I am an adjunct professor, I do not keep office hours. 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.

Counseling and Psychological Services (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 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.

The Texas Lawyers' Assistance Program ("TLAP") also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students:

<https://www.tlaphelps.org/law-students>.

Pronouns:

I use he, him, his as my pronouns. Please reach out to me in person, by e-mail, or by phone if you have preferred pronouns you would like for me to use. I'll try my best to honor your preferences. Please attribute any lapses to failings of memory, and do not feel embarrassed to correct me if I make any mistakes.

Anti-Discrimination and Sexual Misconduct:

UHLC and the University of Houston are committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University System's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08.

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

SYLLABUS
Sexual Orientation & the Law
Spring 2023
Wed. 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* (7th ed. 2022). I will distribute additional cases and materials via e-mail, and I will adjust reading assignments throughout the semester.

I. Foundations

Class 1 **Why study sex?**
Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality, Gayle S. Rubin (Handout)

Class 2 **Foundational Concepts**
Pages 1-8, 11-17, 20-23, 24-29, 32-35, 37-38, 43-47

II. Sexuality & Liberty

Class 3 **Sodomy laws**
Pages 79-121

Class 4 **What does *Lawrence* mean?**
Pages 147-188

III. Sexual Identity and Equality

Class 5 **Level of scrutiny debate**
Pages 189-224

Class 6 *Romer v. Evans*
Pages 224-255

IV. Equality at Work and School

Class 7 **Sexual Orientation & Title VII**
Pages 269-304

Class 8 **Gender Identity & Title VII**
Pages 304-356

Class 9 **Equality at School**
Pages 396-448

V. Coupling

Class 10 *Obergefell*
Pages: 462-472, 488-527

VI. Sexuality, Gender, & the First Amendment

Class 11 **The High School and College Cases**
Pages 706-736

Class 12 **Anti-Gay Speech/Conversion Therapy**
Pages 736-759

Class 13 **LGBT Equality v. Religious Liberty**
Pages 790-809

VII. Wrap-up & Review

Class 14 **Wrap-up & Review**