

HI ED 560
Legal Issues in Higher Education

Spring Semester 2011

Robert M. Hendrickson, Instructor

COURSE SYLLABUS

I. Goals and Objectives

This course is designed to teach a process of legal analysis. Benchmark cases have been chosen to illuminate basic issues. Updates on particular issues will be provided. The course has been designed to expose the student to a range of administrative problems at the postsecondary level which entail legal implications. The course experiences should ultimately help current and prospective administrators to envision the legal dimensions of collegiate-level decision processes. No attempt will be made to provide definitive legal outlines at any stage; that is a task for the institutional attorney, the state attorney general, and the courts. Explicit recognition is made of the importance of developing law to higher education and to administrative training, but the overall effort will be illustrative rather than comprehensive.

II. Procedures

The course will be conducted in a mixed seminar and lecture format. The instructor will assume responsibility for laying out the structure of problem areas and discussing some of the major legal issues involved. Student assignments will be made for particular session and will require law-related research for the benefit of the seminar. This detailed research will be pivotal to the particular class session.

Discussion is highly appropriate at all times, and the instructor encourages students to initiate questions or arguments whenever it seems appropriate. Semi-structured discussions will be organized from time to time, depending upon the nature of the issue scheduled for exploration.

III. Requirements

A. A final examination will be given. The format will be open book and open notes. Students will be asked to write an essay on the question submitted. The format for the exam will be similar to one faced in the qualifying examination. Students will be given instructions on the format of the response. Responses will be submitted electronically in Microsoft Word document.

B. Class Participation. Students will be expected to have read the background materials and other assigned readings before coming to class. We will not spend time reviewing what we have read but will analyze issues based on our knowledge from the readings. It will be obvious whether students have come to class prepared to participate in these discussions and will be graded accordingly.

C. Presentation /Discussion. Each student will be assigned a topic and is responsible for leading a 15 minute discussion of the issues surrounding this topic. Each student will identify key issues surrounding the topic and lead a class discussion on the impact of this issue on administration and policy in higher education. If there are one or 2 more recent cases that demonstrate the impact on administration the student will briefly describe the case and provide a citation for the class. The student will frame the issues and areas to be discussed. This discussion would take the form of clarifying legal doctrine and should ultimately get to the impact on education policy. A one-page handout outlining the issues and discussion points will be prepared for distribution to the class the day of the assigned discussion. The Schedule for these presentations will be set the first day of class.

IV. Grading

Class Participation & Preparation – 30 points
Presentation, Discussion Leadership – 30 points
Final Examination – 40 points

Total points available 100

V. Texts

-- Cases and readings marked by an * in the syllabus are available on electronic reserve.

Kerry Brian Melear, Laurence B. Alexander, Robert M. Hendrickson, & Joseph Beckham (2010). *Student Free Speech in Public Higher Education*. Education Law Association, Dayton, Ohio. Pp 86.

-- Hendrickson, Robert M.(1999) *The Colleges, Their Constituencies and the Courts*, 2nd Ed. Dayton, OH: Education Law Association. Pp 258.

-- Kaplin and Lee, *The Law and Higher Education*, 3rd Ed. Jossey-Bass, 1995. **Optional**.

VI. Resource Material on Reserve--Electronic Reserve, Pattee Library

Resource materials for this class are on electronic reserve and can be accessed at <http://reserve.libraries.psu.edu> or by simply clicking on the electronic reserve on the course homepage.

OTHER HIGHER EDUCATION LAW TEXTS:

Alexander, K., and Solomon, E. *College and University Law*. Charlottesville, VA: Michie, 1972.

Edward, Harry T., and Nordin, Virginia D. *Higher Education and the Law*. Cambridge, MA: Harvard University, Institute for Educational Management, 1979.

Hendrickson, Robert M., and Gibbs, Annette. *The College, the Constitution, and the Consumer Student: Implications for Policy and Practice*. ASHE-ERIC Higher Education Report No. 7. Washington, DC: Association for the Study of Higher Education, 1986.

Hendrickson, Robert, and Mangum, Ronald. *Governing Board and Administrator Liability*. Washington, DC: ERIC-AAHE Clearinghouse on Higher Education, 1977.

Hollander, Patricia. *Legal Handbook for Educators*. Boulder, CO: Westview Press, 1978.

Hornsby, D. "Delegating Authority to the Community of Scholars." *Duke Law Journal*, Vol. 1975 (1975):229.

BIBLIOGRAPHY OF LEGAL RESEARCH TOOLS:

Academic Universe/Lesix-Nexis Legal Search accessible through Lias.

Current Index to Legal Periodicals. Information Access Corporation, in cooperation with the American Association of Law Libraries.

Federal Reporter, 3d Series. St. Paul, MN: West Publishing Company.

VII. Sources of Law and Legal Research

Rights, responsibilities, duties, and liabilities in colleges and universities are affected by virtually all kinds of "law." Included at various points in our discussions will be examples of constitutional and statutory law at both federal and state levels, common law, administrative law, and private law.

Law, or the set of rules by which civilized people agree to abide, is a product of interaction among the three branches of government: The legislature makes law (writes legislation), the executive applies or administers law, and the courts interpret the law. The functions of the three separate branches are defined by the Constitution, which limits powers in addition to granting them.

There are 51 separate legal jurisdictions in the federal system: Each state has its own constitution, its own statutes, its own governmental system. The federal government is but one source of law affecting higher education. The law of each state is distinct from the law of any other state, and cases decided in the courts of one state theoretically do not bind the courts of any other state. Similarly, the constitutions and statutes of the 50 states differ from one another. So, Texas has a state constitutional provision granting equal rights to women; cases involving sex discrimination in that state may be decided in favor of women, while in another state without such a provision (and lacking a federal constitutional amendment) the decision would go the other way.

For any given factual situation in higher education, numerous laws and legal theories may come into play. It is important, then, to have a working knowledge of how to pursue the subject, or matter at issue, through the various legal reporting systems. The following is a brief and very simple outline of the sources of different laws.

A. Federal Law

Constitution. The *United States Code* and the *United States Code Annotated* both provide the text of the Constitution. ("Annotated," in legal bibliographic terms, indicates that the actual text of laws is supplemented with references to cases and articles in legal journals which interpret, construe, or otherwise illuminate the provision.) Copies of the Constitution are reproduced in many legal texts, including the prominent ones dealing with education (e.g., Morris), as well as in any number of books, pamphlets, etc. Your work in this course would be easier if you obtained a copy somewhere.

Statutes. The essential sources of federal statutes are the *United States Code* and the *United States Code Annotated*. The *Code* is divided into titles, each dealing with broad general topics. (Title 20 deals with education; Title 42 with civil rights.) It is indexed by title (appearing in each volume), by descriptive words (in the General Index to U.S.C.A.), and by the popular name of the act. For example, by referring to the last volume of the General Index, one could identify the location of the "Education Amendments of 1972," or the "Civil Rights Act of 1964." U.S.C.A. is kept current by the addition of "pocket supplements" to each volume. This method is also used to update state statutes, saving the need to republish annually the massive main volumes.

Citations to the *United States Code Annotated* give the title, the abbreviation (U.S.C. or U.S.C.A.) for the code, and the section: 42 U.S.C. 1983 should guide you to Title 42 of the *United States Code*, section 1983.

Administrative Guidelines and Regulations. Statutes frequently delegate broad powers of implementation to the executive branch. The appropriate agency (H.E.W., for example) formulates its program for attaining the goals outlined in the statute and publishes them for public comment as proposed regulations in the *Federal Register*. After a specified lapse, the proposed regulations are revised and added to the *Code of Federal Regulations* (C.F.R.). Once a regulation has been so published, it is considered to have the force of law. The C.F.R. is published annually to reflect existent regulations on January 1. Use the *Federal Register* to follow changes issued during the year. Titles in the C.F.R. normally follow titles in the U.S.C. and the citation system is similar: Title, C.F.R., section.

Court Decisions. The federal judiciary is divided into three tiers: District courts are trial courts, where questions of fact and law are established for the record. They can, of course, deal only with questions involving federal law. A faculty member alleging violation of federal constitutional rights would begin his case here. District court decisions are published in the *Federal Supplement* (F. Supp.). Appeals from district court decisions (normally involving questions of law) are made to the appropriate U.S. Circuit Court of Appeals. The nation is divided geographically into eleven circuits (Pennsylvania is in the Third Circuit). Appellate court decisions are published in the *Federal Register*, 3d Series (F. 3d). Few cases (relatively

speaking) are appealed beyond this level to the U.S. Supreme Court, and fewer still are accepted for review at that level. However, the major precedents are shaped at that level, and many of the most important principles which guide lower federal courts are issued in Supreme Court decisions. The official record of the Supreme Court is *United States Reports* (U.S.). *The Supreme Court Reporter* (S.Ct.) is more consistent with the format of both F.2d and F. Supp., and may be more useful to the legally unsophisticated reader.

B. State Law

Constitution and Statutes. Revised and annotated statutes of each of the 50 states are published in a set of volumes not unlike the U.S.C.A. However, each state has its own unique "code," and each state's "code" (or set of laws) is organized distinctively. Often, however, there is an education code which covers the public school and higher education systems of the state. (In some states, Michigan and California, for example, the state university is set up in the constitution rather than in the statutes. The legal significance of this is important, as no ordinary act of the legislature can alter the authority or mission of the university so established; it takes a constitutional amendment to make such an alteration.) As is the case with the U.S.C.A., pocket supplements keep the code current.

Administrative Guidelines and Regulations. State agencies exercise powers similar to those exercised by federal agencies, but there is no systematic codification parallel to the C.F.R. The statutory powers of state administrative agencies frequently impinge directly upon the operations of at least the public sector of higher education: Coordinating agencies, personnel agencies, purchasing agencies, and budget bureaus are some of the commonly involved ones.

Court Decisions. State courts decide matters involving state law. (Civil actions in which the "matter in controversy exceeds \$10,000" may be tried in the federal district courts.) Two separate reporting systems cover state courts. The West Publishing Company groups states into regions and publishes a total of nine "national reporter system" volumes. New York and California generate so much litigation that two separate volumes cover each of those states. Also, each state publishes the decisions of its own courts in an official reporter. Not every case is reported. Primarily appeals court decisions are produced. Citations to the regional reporters are explained as follows. (Since the 1930s, all regional reporters have started a "second series," thus the 2d in the citations.)

A.3d = *Atlantic Reporter, 3rd Series*. Covers Maine, New Hampshire, Vermont, Connecticut, Rhode Island, New Jersey, Pennsylvania, Maryland, and Delaware.

S.E.3d = *South Eastern Reporter, 3rd Series*. Covers West Virginia, Virginia, North Carolina, South Carolina, Georgia.

So.3d = *Southern Reporter, 3rd Series*. Covers Florida, Alabama, Mississippi, and Louisiana.

N.E.3d = *North Eastern Reporter, 3rd Series*. Covers Massachusetts, New York, Ohio, Indiana, and Illinois.

N.Y.S.3d= *New York Supplement, 3rd Series*. Covers New York.

N.W.3d = *North Western Reporter, 3rd Series*. Covers Michigan, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, and Nebraska.

S.W.3d = *South Western Reporter, 3rd Series*. Covers Kentucky, Tennessee, Missouri, Arkansas, and Texas.

P.3d = *Pacific Reporter, 3rd Series*. Covers Kansas, Oklahoma, Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Nevada, Arizona, Washington, Oregon, California, Alaska, and Hawaii.

Cal.Reptr = *California Reporter*. Covers California.

(NOTE: As in the federal reporter system, citations read: Volume number, title of reporter, and page.)

IX. Legal Research Aids

Dictionaries. The very technical and evolutionary meaning of words in the legal process makes specialized dictionaries essential to legal research. *Black's* is one commonly used dictionary. *Words and Phrases* is a useful compilation (kept current with pocket supplements) of cases which interpret and/or define key words and concepts.

Encyclopedias. For general overviews (but not always authoritative ones) of important concepts, two basic legal encyclopedias can be helpful. They are: *Corpus Juris Secundum* (C.J.S.), and *American Jurisprudence 2d* (Am.Jr.2d).

Digests. Annotated summaries of case law are available in several digests. The *General Digest* is useful for locating cases dealing with particular subjects since 1966. ("Colleges and Universities" is one subject heading.) For annotated summaries of case law preceding 1966, see the *Seventh Decennial Digest*. Alternatively, *American Law Reports* (covering state courts) and *American Law Reports--Federal* (covering federal courts) provide current digests of law.

Citators. By using the appropriate volume of *Shepard's Citations*, one can trace the developments in a given area subsequent to a particular case. *Shepard's* shows all cases which have quoted, relied upon, or otherwise cited any given case. So, one could find the citation of *Perry v. Sindermann* (408 U.S. 546) in the appropriate citator (U.S. Citations) and see listed with it the citations of all cases which have subsequently used *Perry* in some way. Special codes identify the particular place it played in the opinion.

U.S. Law Week. This is a commercially published service which updates developments in the state and lower federal courts ("General Law" section) and in the U.S. Supreme Court ("Supreme Court" section) on a weekly basis. It is the most current source of information, if not always the most reliable.

Law Reviews. Important conceptual writing appears in the legal journals published by most major law schools, and in those published with specialized focuses in mind. (Of the latter, the *Journal of Law and Education* and the *Journal of College and University Law* are of particular interest.) The *Current Index to Legal Periodicals* indexes most of the law journals and can serve to locate articles dealing with major topical areas.

Electronic Tools on WEB. <http://guide.lp.findlaw.com/casecode/index.html>

Federal Supplement. St. Paul, MN: West Publishing Company.

Hicks, Frederick C. *Materials and Methods of Legal Research.* Rochester, NY: The Lawyers Cooperative Publishing Company, 1933.

Index to Legal Periodicals. The H.W. Wilson Company.

Shepard's Inc. of Colorado Springs or *Shepard (Frank) Company* or *Shepard's Citations, Inc.* Colorado Springs, CO.

Supreme Court Reporter. St. Paul, MN: West Publishing Company.

United States Reports. Washington, DC: United States Government Printing Office.