The Law and Higher Education, Fall 2021
16:507:520

Professor Barbara Lee
Office hours by appt.
Wednesdays, 5:00 – 6:30 p.m. Synchronous
Remainder of class time Asynchronous

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Catalog Description

A survey of significant laws, court opinions, and regulations affecting public and private colleges and universities. Includes reviews of student and faculty contract and constitutional rights, federal student financial aid and civil rights laws, privacy laws, and tort law.

Course Objectives

This is a doctoral-level course that requires substantial reading and analysis of the course text, journal articles, and the decisions of state and federal courts. The course has the following general learning goals:

1. Enable the student to understand the foundational legal principles affecting the operations and leadership of colleges and universities
2. Provide the tools to equip the student to analyze a situation and identify potential legal issues
3. Enable the student to understand how to incorporate legal principles into the policy development process

Specific Learning Outcomes—Based upon ACPA/NASPA Professional Competencies

At the end of the course, the successful student should be able to:

1. Explain the basic tenets of personal or organizational risk and liability as they relate to one’s work
2. Explain the differences between public and private higher education with respect to the legal system and what they may mean for students, faculty, and staff at both types of institutions.
3. Describe the evolving legal theories that define the student–institution relationship and how they affect professional practice
4. Describe how national constitutions and laws influence the rights that students, faculty, and staff have on public and private college campuses.
5. Explain the concepts of risk management and liability reduction strategies.
6. Explain when to consult with one’s immediate supervisor and campus legal counsel about those matters that may have legal ramifications.
7. Act in accordance with federal and state/province laws and institutional policies regarding nondiscrimination.
8. Identify the internal and external special interest groups that influence policy makers at the department, institutional, local, state/province, and federal levels.

9. Describe the public debates surrounding the major policy issues in higher education, including access, affordability, accountability, and quality.

10. Describe the governance systems at one’s institution, including the governance structures for faculty, staff, and students.

11. Describe the system used to govern or coordinate one’s state/province system of higher education, including community college, for-profit, and private higher education.

12. Describe the federal and state/province role in higher education.

**Course Requirements and Grading**

The course will be delivered via Zoom and will be fully remote. In order to make the most of the limited class time, students will be expected to complete ALL assignments, including reading the written assignments, watching recorded video lectures and participating in threaded discussions, prior to each Wednesday’s synchronous class. The class will be divided into two segments: a synchronous component of 90 minutes on Wednesday evenings (5:00 – 6:30 p.m.) and an asynchronous component that will involve watching pre-recorded lectures, student involvement in online threaded discussion, drafting of written course assignments, conducting research and writing the required research paper, and other assignments throughout the semester. Students will be expected to have completed the assignments for both the synchronous and asynchronous parts of the course by each Wednesday at 5:00 p.m.

The course will rely heavily on analysis of course readings, student discussion and consideration of the implications of the law for policy. Students are responsible for all assigned reading and for participation in class discussion. Evaluation of students will include:

Two short papers responding to a practical problem encountered by higher education administrators (six pages maximum—topic prompt is in Assignments) 20 percent
Research paper on topic of student’s choice (must be approved by instructor) 60 percent
Presentation of research paper to class 10 percent
Class participation (including participation in threaded discussions) 10 percent

**Required Course Materials**

Academic Integrity Policy

The Office of Student Conduct supervises issues related to violations of academic integrity (see http://academicintegrity.rutgers.edu). Please familiarize yourself with the university policy on academic integrity at http://academicintegrity.rutgers.edu/academic-integrity-policy/.

Students with Disabilities

Rutgers University is committed to the creation of an inclusive and safe learning environment for all students, and welcomes students with disabilities into all the University's educational programs. The Office of Disability Services (ODS) is responsible for the determination of appropriate accommodations for students who encounter barriers due to disability. Once a student has completed the ODS process (registration, initial appointment, and submitted documentation) and reasonable accommodations are determined to be necessary and appropriate, a Letter of Accommodation (LOA) will be provided. The LOA must be given to each course instructor by the student and followed up with a discussion. This should be done as early in the semester as possible as accommodations are not retroactive. More information can be found at www.ods.rutgers.edu. You can contact ODS at (848)445-6800 or via email at dsoffice@echo.rutgers.edu.

Assignments

9/1/21

**Unit One: Introduction to the course**
Structure of higher education regulation; public/private differences; governance

Assignment for 9/1/21
Text, pp. xlv-liii; 3-28; 38-40
Lectures:
- Structure and Regulation of Higher Education
- Primary Areas of Regulation of Higher Education
- Conducting Legal Research
Basics of Legal Research
Introduction to the Federal Court System,
Research paper guidelines

Asynchronous Assignment for 9/1/21
None

9/8/21

No class (Monday classes meet tonight)
9/15/21

**Unit Two: Tort liability issues**
Premises liability; on-campus injuries; off-campus injuries
Student activities; student suicide; outreach programs
Educational malpractice; defamation

**Assignment for 9/15/21** (posted in Module 2)

Text, pp. 93-125
Lectures:
- Tort Law Overview
- On and Off Campus Injuries
- Special Relationship
- Defamation in Higher Education


Regents of University of California v. Superior Court, 413 P.3d 656 (Cal. 2018)

**Asynchronous Assignment:**
Threaded discussion responding to “Alice at the Fort” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

9/22/21

**Unit Three: Employment issues**
Collective bargaining, employment discrimination

**Assignment for 9/22/21**

Text, pp. 137-146, 162-213
Lectures:
- Collective Bargaining Basics
- Nondiscrimination Law Overview
- Stereotyping, Sexual Orientation & Gender Identity


Bostock v. Clayton County, 140 S. Ct. 1731 (2020)

Asynchronous assignment:
Threaded Discussion responding to “Professor Thomas and the New Chair” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”
9/29/21

**Unit Four: Special issues in faculty employment**
Tenure; academic freedom; role of AAUP; termination

**Assignment for 9/29/21**

Text, pp. 239-255; 260-294; 295-356
Lectures:
- Academic Freedom and Faculty Free Speech
- Academic Freedom in Teaching
- Faculty Tenure and Promotion Decisions
- AAUP 1940 Statement on Academic Freedom and Tenure
- AAUP Statement on Professional Ethics

**Short paper #1 due by 7:15 p.m. on 9/29/21**

**Asynchronous assignment**
Threaded discussion responding to “Toxic Environment” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

10/6/21

**Unit Five: Affirmative action in admissions**

**Assignment for 10/6/21**

Text, pp. 392-446
Lectures:
- Affirmative Action in Admissions
- Affirmative Action Lawsuit Against Harvard
- *Students for Fair Admissions v. President and Fellows of Harvard College*, 980 F.3d 157 (1st Cir. 2020)

**Asynchronous assignment**
Threaded discussion responding to “Advice for Harvard” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

10/13/21

**Unit Six: Citizenship status; DACA; financial aid issues**

**Assignment for 10/13/21**
Text, pp. 449-473
Lectures:
  - Financial Aid Overview
  - Noncitizens and DACA

Asynchronous assignment
Threaded discussion responding to “Universal Service?” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

10/20/21

**Unit Seven: Student Academic Issues**

Assignment for 10/20/21

Text, pp. 545-577; 599-620
Lectures:
  - Student Challenges to Academic Decisions
  - Academic Dismissals
*Emeldi v. University of Oregon*, 698 F.3d 715 (9th Cir. 2012)

Topic paragraph and rough outline of research paper due by 7:15 p.m. on 10/20/21

Asynchronous assignment
Threaded discussion responding to “Last Minute Changes” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

10/27/21

**Unit Eight: Student organizations; nondiscrimination policies and First Amendment**

Assignment for 10/27/21

Text, pp. 693-699; 708-742
Lectures:
Student Organizations and Nondiscrimination

Fraternal Organizations

InterVarsity Christian Fellowship/USA v. Univ. of Iowa, ___F.4th___, 2021 WL 3008743 (8th Cir. 7/16/21).


Short paper #2 due by 7:15 p.m. on 10/27/21

Asynchronous assignment
Threaded discussion responding to “Duelling Nondiscrimination”
(students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

Unit Nine: Student discipline; student free speech; FERPA

Assignment for 11/3/21

Text, pp. 621-692; 527-543
Lectures:
  Student Discipline
  Student Free Speech
  FERPA

Mahanoy Area School Dist. v. B.L., 141 S. Ct. 2038 (June 23, 2021)
Tatro v. University of Minnesota, 816 N.W.2d 509 (Minn. 2012)
Erwin Chemerinsky and Howard Gillman, Free Speech on Campus, chapter 5.

Asynchronous assignment
Threaded discussion responding to “Free Speech vs. Academic Program Rules” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

Unit Ten: Religious college and universities

Assignment for 11/10/21

Text pp. 40-55; 213-219; 233-239; 356-359
Lectures:
  Religious College and Universities
  Ministerial Exception
Amanda Bryk, “Note: Title IX Giveth and the Religious Exemption

Asynchronous assignment
Threaded discussion responding to “Religious Colleges” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

11/17/21

Unit Eleven: Title IX

Assignment for 11/17/21

Text, pp. 577-599; 861-879
Lectures:
   Title IX Overview and Athletics
   Sexual Harassment and Assault
OCR Title IX interpretation re: sexual orientation and gender identity
Davis v. Monroe County Board of Education, 526 U.S. 629 (1999)
Doe v. Baum, 903 F.3d 575 (6th Cir. 2018)

Asynchronous assignment
Threaded discussion responding to “Title IX Expansion” (students are expected to post early in the period between classes and to respond to the posts of classmates—at least three substantial posts in all for each assignment.) In Canvas under “Assignments”

11/24/21

No class
Please note that there are two classes next week—one on Monday November 29th and one on Wednesday December 1. This is mandated by the University’s academic schedule

11/29/21

Unit Twelve: Athletics

Assignment for 11/29/21

Text pp. 762-803
Lectures:
   Athletics
   NCAA Challenges
**Northwestern University and College Athletes Players Association** (on Canvas course website under Module 12)

*NCAA v. Alston*, 141 S. Ct. 2141 (2021) (syllabus only, on Canvas course website under Module 12)

**Draft of research paper due at 7:15 p.m. tonight and posted to Class website**

Asynchronous assignment
None

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<th>Date</th>
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<tr>
<td>12/1/21</td>
<td>Presentations of research papers</td>
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<td>Assignment for 12/1/21</td>
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<td>Read research papers scheduled to be presented on 12/1/21</td>
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<td>12/15/21</td>
<td><strong>Final draft of research paper due to instructor today by 7:15 p.m.</strong></td>
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