

LAW & SEX

STRONG & SEXUALLY EXPLICIT LANGUAGE WILL BE USED IN THIS CLASS. IF YOU ARE OR MAY BE OFFENDED BY PROFANITY, NUDITY, SEXUALITY, OR OBSCENITY YOU SHOULD NOT TAKE THIS CLASS.

SYLLABUS

LAW & SEX
University of California, San Diego
Fall 2014
MATTHEUS E. STEPHENS, ESQ.

September 5, 2014

INTRODUCTION & COURSE DESCRIPTION

This four credit course will provide an in-depth exploration of the legal issues surrounding sexuality and the way law regulates sexuality and sexual orientation. The objective of the course is to familiarize students with the historical relationships between the law and its treatment of sexuality; to introduce students to the historical legal and doctrinal context as well as academic theory relating to sexuality; and to enable students to expand legal-thinking such that they can meaningfully explore the interrelationships between sexuality, gender, sexual orientation and the law and legal developments through course readings, material and class discussion.

An important goal of the course is to develop a deeper understanding of the critical constitutional law concepts in the areas of the First Amendment, Substantive Due Process and Equal Protection doctrine. Specific constitutional law topics include privacy, free speech, association rights, criminal regulation of sexual conduct, and equal protection doctrine as applied to sexuality.

The text for the course is W. Eskridge, Jr. & N. Hunter, *Sexuality, Gender and the Law* (Foundation Press), 3d Ed., 2011.

The class meets Monday from 6:00 p.m. to 8:50 p.m. There is so much material to cover that it's important to start class on time. We will be hard-pressed to finish all the material by the end of the semester. To get the most out of this class, you will be required to do a lot of reading, re-reading and case summaries. It is also helpful if you talk in class. Students who are able to articulate concepts in class generally do quite well on the exams.

You are **not** permitted to record the lectures or class discussion without prior authorization. These lectures are a dialogue between you, your classmates and me. They are not intended for posting or use in other forums. Please respect this request.

ACADEMIC DISHONESTY

Fair and effective education requires academic honesty, and any violation is a very serious matter. UCSD rules concerning academic dishonesty are spelled out in the Student Conduct Code. Note especially the strict prohibition against plagiarism, i.e.,

submitting as your own or without proper attribution work done wholly or in part by another person. Plagiarism includes unauthorized collaboration on course assignments. Exams are *closed-book*, with no aids allowed. These rules will strictly be enforced. Any academic dishonesty will **without exception** be reported to the student's dean for disciplinary action. Please go to the following website for the entire UCSD Conduct Code: http://students.ucsd.edu/studentlife/_organizations/studentconduct/regulations/index.html).

CONTROVERSIAL TOPICS

Students of all viewpoints, philosophies, religions, and backgrounds are encouraged to express their thoughts in this class. In fact, it is critical to the success of the course. Open communication between classmates, regardless of your social, political or religious views or status is fundamental to achieving a full dialogue on these contentious and sometimes divisive topics. There is only one rule that **MUST** unequivocally be followed: all class participants must treat each other with courtesy and respect. There will be **ABSOLUTELY** no personal attacks or name-calling. This class will emphasize your reasoning and analysis skills – not the arguments you make or the positions you support or defend. Indeed, class discussion relies on your ability to present oral argument in support of a legal position even when (especially when) you personally do not agree with that position.

DISCLAIMER

Strong and sometimes-offensive language will be used in the class. There will also be frank and graphic discussions about sexuality, including but not limited to, viewing graphic and sexually explicit photographs (particularly during the film “Dirty Pictures”) The candor required for this course, and the use of said language and pictures, is necessary to properly convey the material – particularly the material on the First Amendment. **If you believe you will find such language or photographs offensive, you need to drop this class!**

OFFICE HOURS AND CONTACT INFORMATION

I am not a full-time professor. I am a practicing lawyer, which makes regular office hours challenging. Unless otherwise indicated, on-campus office hours will be each Monday before class from 5:00 to 6:00, and also by appointment. My office address, phone number and e-mail address are listed below.

Office: (619) 234-5488; Email: Matt@progressivelawgroup.com. My office is located at 600 B Street, Suite 2200, San Diego, CA 92101 (on B Street between Sixth and Seventh Street). Parking in the building is \$8.00 per hour. We do not validate. But, there are

also generally metered parking spaces available along the streets and Horton Plaza is about eight minutes, walking distance.

READING ASSIGNMENTS

October 6 [Week One]

- Overview of the Class / Syllabus
- How to Read/Brief Case Law
- Film: Sex in the 20th Century, Part I
 - *The Century Turns On*
 - Call No.: FVLV 4842-4 vol. 1
- Summary of Kinsey Study on Sexuality Hand Out

October 13 [Week Two]

❖ ***Eskridge & Hunter, Chapter 1, § 1, pg. 3 - 29***

- The Right to Sexual Privacy: Contraception and Abortion
 - *New York v. Sanger*, p. 5
 - *Poe v. Ullman*, pg. 9-12
 - *Griswold v. CT*, pg. 12-14
 - *Stanley v. Georgia*, pg. 19
 - *Eisenstadt v. Baird*, pg. 20-24
 - *Roe v. Wade*, pg. 26-28

October 20 [Week Three]

❖ ***Eskridge & Hunter, Chapter 1, § 2, pg. 30 - 53***

- State Regulations of Sexual Practices: Sodomy
 - *Boutilier v. INS*, pg. 33-36
 - *People v. Onofre*, pg. 45
 - *Bowers v. Hardwick*, pg. 37-45
 - *KY v. Wasson*, pg. 49-50
 - *Powell v. State*, pg. 49

October 27 [Week Four]

❖ ***Eskridge & Hunter, Chapter 2, § 1A and 2A, pg. 177-187 and 197-221***

- The Watershed in Substantive Due Process
 - *Planned Parenthood v. Casey*, pg. 178-185
 - *Lawrence & Garner v. Texas*, pg. 199 – 216
- ***Midterm Recap and Review***

November 3 [Week Five]

- **MIDTERM EXAM**

November 10 [Week Six]

❖ ***Eskridge & Hunter, Chapter 3, § 2A, B and C, pg. 311 – 326***

- The “M” Word: Legal Arguments About Marriage and What it Means
 - *Loving v. Virginia*, pg. 311-314
 - *Zablocki v. Redhail*, pg. 316
 - *Turner v. Safely*, pg. 316
 - *Baehr v. Lewin*, pg.316
 - *Baehr v. Miike*, pg. 316
 - *DOMA*, pg. 316-318
 - *Baker v. State (VT)*, pg. 319
 - *Goodridge v. Dept. of Health (MA)*, pg. 320-323

November 17 [Week Seven]

❖ ***Eskridge & Hunter, Chapter 3, § 2A, B and C, pg. 337 -369***

- *In re Marriage Cases* (The California Marriage Decision) pg. 337-348
- Proposition 8 (CA Law), pg. 352-354
- *Strauss v. Horton*, pg. 354-361
- The *Perry* Case, pg. 365-368
- The *Windsor* Decision, pg.
- What now?
- New states adding marriage

November 24 [Week Nine]

❖ ***Eskridge & Hunter, Chapter 1, § 5, pg. 122-125***

- Sexuality and the First Amendment: Obscenity or Political Speech? Is it Art? An Overview
- A Film: *Dirty Pictures*

December 1 [Week Ten]

❖ ***Eskridge & Hunter, Chapter 1, § 5, pg. 125 – 132; 151 - 171***

- Obscenity or Protected Speech?
 - *One Inc.*, pg. 124
 - *GSO v. Bonner*, pg. 125- 127
 - *NGTF v. Bd. of Ed. City of Oklahoma City*, pg. 127-129
 - *GLSA v. PT&T*, pg. 129-131
- Identity, Viewpoint & Association
 - *Hurley v. Irish American*, pg. 151-154
 - *Roberts v. Jaycees*, pg. 157-158
 - *BSA v. Dale*, pg. 158-170

Midterm & Final Exam

The midterm will be a closed-book exam on November 3, 2014 and count for 40% of your grade. The final exam, worth 60% of your grade, is scheduled for December 15, 2014 from 7:00 p.m. to 10:00 p.m. The exams will be a combination of multiple choice, fill in the blank and a small number of short answer.

I hope you enjoy this class. It is designed to have both substantive content and to expand your reading, analysis and argument skills. All that is required is that you do the reading and participate in the lively discussions.

Mattheus E. Stephens, Esq.