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.
August 24, 2016

INTRODUCTION & COURSE DESCRIPTION

This four credit course will provide an in-depth exploration of the legal issues surrounding sexuality and the way law regulates sexual activity, 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 Tuesday from 5:00 p.m. to 7:50 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 constraint.

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](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 4:00 to 5:00, and also by appointment. My office address, phone number and e-mail address are listed below.

Office: (619) 234-5488; Email: [Matt@progressivelawgroup.com](mailto: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 ASSIGMENTS

**September 27 [Week One]**

- Overview of the Class / Syllabus
- How to Read/Brief Case Law
- Film: History of Sex, Part IV
  - *From Don Juan to Queen Victoria*
  - Call No.: FVLV 4842-4
- Summary of Kinsey Study on Sexuality Hand Out

**October 4 [Week Two]**

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

- The Right to Sexual Privacy: Contraception and Abortion
  - *Poe v. Ullman*, pg. 9-12
  - *Griswold v. CT*, pg. 12-14
  - *Stanley v. Georgia*, pg. 19

❖ *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
  - *KY v. Wasson*, pg. 49-50
  - *Powell v. State*, pg. 49
October 18 [Week Four]

- **Eskridge & Hunter, Chapter 2, § 1A and 2A, pg. 177-187, 197-221 and Supp. pp. 1-
  - The Watershed in Substantive Due Process
    - Planned Parenthood v. Casey, pg. 178-185
    - Whole Women's Health v. Hellerstedt (TX), Supp. pg. 1-14
    - Lawrence & Garner v. Texas, pg. 199 – 216
  - Midterm Recap and Review

October 25 [Week Five]

- MIDTERM EXAM

November 1 [Week Six]

- **Eskridge & Hunter, Chapter 3, § 2A, B and C, pg. 311 – 326
  - The “M” Word: Legal Arguments About Marriage and What it Meant
    - 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 8 [Week Seven]

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

 o In re Marriage Cases (The California Marriage Decision) pg. 337-348
 o Proposition 8 (CA Law), pg. 352-354
 o Strauss v. Horton, pg. 354-361
 o The Perry Case, Supp. pg. 79-82
 o The Windsor Decision, Supp. pg. 68-79
 o Obergerfell v. Hodges, Supp. pg. 83-103
 o What now?

November 15 [Week Eight]

❖ 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

November 22 [Week Nine]

❖ Eskridge & Hunter, Chapter 1, § 5, pg. 125 – 132; 151 – 171; Supp. pg. 15-34

 • Obscenity or Protected Speech?
 o One Inc., pg. 124
 o GSO v. Bonner, pg. 125- 127
 o NGTF v. Bd. of Ed. City of Oklahoma City, pg. 127-129
 o GLSA v. PT&T, pg. 129-131
 o See Next Page for Additional Reading
November 22 [Week Nine][Con’t]

- Identity, Viewpoint & Association
  - *Hurley v. Irish American*, pg. 151-154
  - *Roberts v. Jaycees*, pg. 157-158
  - *BSA v. Dale*, pg. 158-170
  - *Hobby Lobby*, Supp. pg. 15-34

November 29 [Week Ten]

Catch up and Review Session

Midterm & Final Exam

The midterm will be a closed-book exam on October 25, 2016 and count for 40% of your grade. The final exam, worth 60% of your grade, is scheduled for December 9, 2016 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 short answer essay.

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.