

SEXUALITY & THE LAW

WGST 5930/WGST4930/LAW 8740/POLS 4126

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Textbook: Ball, Schacter, NeJaime & Rubenstein,
edition.

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Course Description:

This seminar explores the relationship between law and sexuality—how they reflect and impact each other. Law forms a backdrop to our own negotiations about our sexualities and our sexed and gendered identities, producing and regulating our sexual subjectivities and gendered selves as good/bad, healthy/harmful, or natural/unnatural. Interestingly, to find the legal norms and frameworks that regulate sexual behavior and gender identity, we have to study cases involving not only the "right to privacy" or "don't ask don't tell," but cases raising questions about freedom of assembly, association, and expression; freedom of religion; immigration; and employment policies. That is to say, ideas about gender and sexuality pervade our whole system of law. As a result, we trace throughout the semester, giving us broad exposure to the legal system. Finally, we also read legal decisions not only as judicial documents but also as political and theoretical ones that give expression to ideas about human nature, social goods, normalcy and deviancy, socially appropriate and constructive behavior, the relationships between private and public, and how gender, sexuality, disability and race interact. These approaches complement but do not replicate those in other disciplines.

Learning goals:

Students will

Analyze the logic and assumptions of law's varying relationships to the private and public aspects of sex roles, sexual orientations, and sexual practices.

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PART I: INTRODUCTORY MATERIAL

M 1/14: INTRODUCTIONS TO THE COURSE AND EACH OTHER

Feminist citizenship in the classroom

"The Lawes Resolutions of Women's Rights" (1632)

W1/16: SOME STARTING POINTS IN LAW REGARDING GENDER & SEXUALITY

Comstock Law (1873) <http://law.jrank.org/pages/5508/Comstock-Law-1873.html>

PETRIE v ILLINOIS HIGH SCHOOL ASS'N (Ill. App. 1979),
<https://www.courtlistener.com/opinion/2045848/petrie-v-illinois-high-school-assn/>
COHEN v BROWN UNIVERSITY (1st Cir. 1996),
https://scholar.google.com/scholar_case?case=7931563980578497860&hl=en&as_sdt=6&as_vis=1&oi=scholar

PART III: REPRODUCTION, SEXUALITY, AND THE EVOLUTION OF 'PRIVACY'

W 2/13

Sterilization

BUCK v BELL (1927) 274 U.S. 200

<http://www.law.cornell.edu/supremecourt/text/274/200>

SKINNER v OKLAHOMA (1942) 316 U.S. 535

<https://supreme.justia.com/cases/federal/us/316/535/>

WALKER v PIERCE (1977) 560 F.2D 609

http://www.leagle.com/decision/19771169560F2d609_11072.xml/WALKER%20v.%20PIERCE

M 2/18 Birth Control

GRISWOLD v CONNECTICUT (1965) p 79

EISENSTADT v BAIRD (1972) p 84

W 2/20

BURWELL v HOBBY LOBBY AND CONESTOGA WOOD (2014) p 877

M 2/25 Abortion

ROE v WADE (1973) p 89

PLANNED PARENTHOOD v CASEY (1992) p 93

W 2/27 Reproductive Technology

DMT v DMH (2013) p 689

RAFTOPOL v RAMEY (2011) p 763

Radhika Viswanathan,

VOX (July 28, 2018), <https://www.vox.com/2018/7/24/17596354/mitochondrial-replacement-therapy-three-parent-baby-controversy>

M 3/4 Attend the Bridge Lecture (Readings by Imani Perry TBD)

W 3/6 MIDTERM (Take-home portion due at the beginning of class)

SPRING BREAK

PART IV: Gay Marriage, Polygamy, etc.

M 3/18 The Sodomy Cases

BOWERS v HARDWICK (1986) p 110

LAWRENCE v TEXAS (2003) p 122

W 3/20 Marriage Equality

US v WINDSOR (2013) p 318

OBERGEFELL v HODGES (2015) p 321

M 3/25 Non-Judicial Readings on Marriage Equality

Supreme Court when the Dep't of Education rescinded guidance that required the school to allow GG to use the bathroom of the gender he identified as. Here is the decision on remand:

DESCRIPTION OF ASSIGNMENTS FOR TAKE-HOME PORTION. CHOOSE ONE.

BOXERS are our alternative to legal briefs. Boxers are looser (pleasant to write and read), functional (cover all the essentials), individualized (light blue cotton or scooby-doo flannels?), and clean (no holes in the arguments; appearance would not embarrass mom or dad). The main idea is to have one case developed in detail, and to use that detail to bring in particular aspects of other cases and events by comparison. So pick a juicy case, rich with material, for your central one.

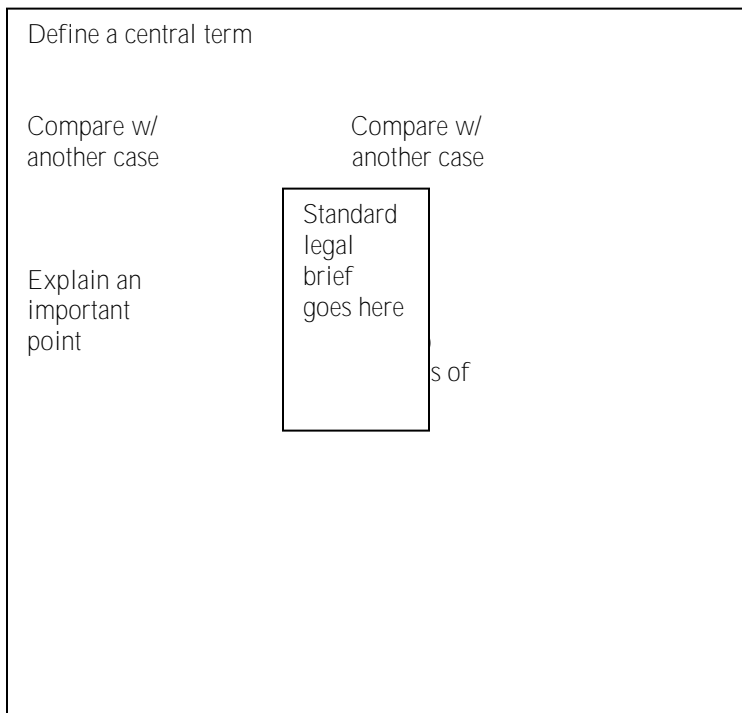
Exhibit A: The extended brief (one model)

Put the central brief in the middle of the page or on a separate sheet.

Make links, indicating with lines or numbers in the brief what you're linking with the various aspects of the case.

Some possible things to draw out:

- Define a central term
- Compare the facts with another case
- Compare the decision with another case
- Tie some aspect of the case to a current event in the news
- Compare two approaches to the framing of the case
- Other items of your choosing are welcome



NEWS LINKS invite you to pick a current (from this semester) news item, and develop 3 substantive connections between elements of the news story and 3 specific cases. Begin with a short summary of the news item. Then turn to connections. Be clear about (1) the subject of the comparison, (2) what the article and the cases say about it, and (3) how they differ or overlap. Conclude with a few reflections. Attach a copy of the news story.

THE ARTS invite you to write poetry, compose (and present!) a song, paint a picture, or use another art form to convey information and ideas about the cases. Art projects, like News Links, must include references to three specific cases, either directly or, where appropriate, in an accompanying explanation of what you are capturing in your artistic creation.