

Higher Education and the Law
Law 6936 Section 26510
HH 283/284
[Tuesdays 10:00-12:00]

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Office Hours: Tuesdays 12:00-1:00pm in person and Thursdays from 8:00am-9:00am. The Zoom link for office hours will be in Canvas.

This seminar course explores the rapidly evolving legal landscape in higher education, covering key areas of constitutional law, governance, public policy, athletics, student and faculty issues, and international matters. in the law and operations of higher education. With colleges and universities navigating unprecedented challenges, this course delves into the legal complexities facing institutions today. Topics include First Amendment rights on campus for students and faculty, the emerging athletics model and NIL, the responsibility of trustees in governance, the influence of legislative developments on higher education operations, student and faculty safety, and the role university counsel plays in each of these areas. There are thousands of college and university in-house counsel across the country, and many legal experts serving as external counsel to the higher education world.

Many university general counsel's offices, like that of the University of Florida, employ numerous attorneys with specializations in everything from health affairs to real estate to constitutional law to employment law. In many respects, today's general counsel offices resemble a combination of law firm expertise, government relations knowledge and general business acumen, with specialists in numerous subject areas and with different skillsets.

In this class, each student will analyze cutting-edge legal issues affecting higher education, engage in class debate and discussion, make a presentation to the class (either solo or in a group of no more than three), and write a memorandum on the law in response to a legal question facing the institution. We will have guest experts speak about some of the issues facing colleges and universities and they will share real world examples of issues they face.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- Research and analyze cutting-edge legal issues affecting higher education and write a seminar paper addressing an issue of choice;
- Explore the intersection of law, policy, and governance in a university setting;
- Understand the constitutional implications of free speech and religious freedom on campus and associated operational issues;
- Examine the impending changes in intercollegiate athletics and consider business models for success;

- Present your research to the class as though you were presenting a continuing legal education session to colleagues at a law firm.

REQUIRED READING MATERIALS:

The required reading material will consist of a packet of information provided on the first day and from time to time throughout the course, to include case law, legislative analysis, governing board education, news releases, and other key materials related to the topics covered. Each person will become knowledgeable on a subject and will present the class with a memo on the law and attendant issues that will be included as additional reading material for the class.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Because this is a seminar and the work product will satisfy your advanced writing requirement, each student will complete a significant research project, prepare a paper for the final work product, and present your research to the class.

Your final grade will be based on the following:

Class attendance and participation	25%
Class presentation	25%
Final paper	<u>50%</u>
Total	100%

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at the beginning of each class meeting. Students are allowed 2 absences during the course of the semester. A student who fails to meet the attendance requirement will be dropped from the course. The law school’s policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each weekly class is approximately 2 hours in length, requiring at least **4 hours of preparation** outside of class including reading the assigned materials, writing critical analyses, and developing your final paper.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

The course will proceed as follows. The first class will consist of a general discussion and review of relevant information involving many of the subjects we will be dealing with in the class, and a beginning of the first subject. For the next 8 weeks, we will discuss 2 to 3 subjects per week.

The last 4 weeks will include presentations of 2 to 4 subjects per week. Your final paper will be due on the last day of class. A detailed list of topics and foundational reading assignments for each topic is below:

Week 1: Introduction to Higher Education Law and Practicing Law in the Sunshine

Topics: Overview of higher education law and governance; Role of a “General Counsel” in a college or university setting; Role of the legislature and the courts in shaping higher education policy; Sunshine laws and working at a public institution; balancing transparency and privacy.

Week 2: Academic Freedom and the First Amendment on Campus

Topics: Free speech rights of students, employees, and visitors; Reason for academic freedom; Faculty rights and institutional authority; Regulation of controversial speakers and events;

Reading Assignments: Christian Legal Society v. Martinez (2010); Chemerinsky & Gillman, Free Speech on Campus, selected chapters.

Week 3: Advising on Student and Employee Rights and Discipline; Discrimination cases and regulations

Topics: Due process in student and employee disciplinary actions; Student protest and demonstration rights.

Reading Assignments: Tinker v. Des Moines (1969); select Florida statutes; Pickering v. Board of Education (1968); Garcetti v. Ceballos; Grutter v. Bollinger (2003); Students for Fair Admissions v. Harvard (2023)

Week 4: Institutional Governance and Autonomy

Topics: Role of trustees, administrators, and faculty; State vs. institutional autonomy.

Readings: Regents of the University of Michigan v. Ewing (1985); Board of Regents v. Southworth (2000); UF Board of Trustees Bylaws and Governance Standards.

Week 5: Legislative Session in Florida and General Counsel Roles

Topics: A real-time discussion of how legislative session works; policy legislation and process; review of current year bills

Reading Assignments: House and Senate select bills

Week 6: Athletics

Topics: The Emerging landscape of college sports in the midst of the House settlement; NCAA regulations and compliance; Legal disputes in college athletics.

Reading Assignment: House v. NCAA settlement

Week 7: Emerging Issues in Higher Education

Topics: Online learning and intellectual property; Data privacy and cybersecurity; AI Ethics; Emerging Issues in Health law.

Reading Assignments: Selected articles on digital transformation in higher education

Week 8: The Real World – Practical Path to becomes a University Lawyer and Working Across the University Enterprise

Topics: Approaches to steps that can be taken from law school to career path, separating fact from fiction, and how to approach competing interests, and navigating the role of the general counsel in a single-client environment with diverging opinions from many stakeholders.

Reading Assignment: Select articles from local and national media.