

Higher Education and the Law
Law 6936 Section 29087
HH 285A
Mondays 10:00-12:00

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This is a seminar in the law of higher education. There are over 4,800 institutions of higher education (colleges and universities) in the United States, each of which has an office of general counsel that advises its Board of Trustees and its college President about everything from contracts for food services and dormitories to intellectual property from research outcomes to speech rights of students, faculty, and outside speakers. Many of these institutions offer tenure protections to faculty, as well as academic freedom and shared governance responsibilities that intersect with the first amendment, employment law, and fiduciary duties. In Florida, public universities are subject to the open records and open meetings requirements of the sunshine law and are a party to collective bargaining for faculty, graduate students, and other workers. In universities with medical schools and hospitals there are HIPPA limitations on medical records and complicated rules on animal uses and care in research. College athletes are now able to capitalize on their names, images, and likenesses thanks to state legislation and new NCAA rules. Are student athletes employees or students? Many institutions have received generous gifts and donations with limitations and conditions, like Confederate Memorial Hall at Vanderbilt, which incurred significant litigation in dealing with the removal of the conditions. Presidential searches are no longer in the sunshine according to Florida law and recent legislation limits the ability of public institutions to offer diversity, equity, and inclusion programs as well as teach certain subjects. Florida institutions are also required to teach other subjects, such as civic literacy and the “canon” of western literature. Changes to tenure require impact bargaining among Florida institutions while Title IX procedures are changing to accommodate the needs of trans students even as bills are being passed to limit bathroom access.

Many general counsel offices, like that of the University of Florida, employ numerous attorneys with specializations in everything from medical malpractice to real estate to constitutional law to employment law. In many respects, a general counsel office resembles a small law firm with specialists in numerous subject areas and skillsets, including litigation, mediation, transactional work, and collective bargaining. In this class, each student will research an area of higher education law, make a presentation to the class, and write a memorandum on the law in response to a legal question facing the institution. We will have guests from the UF general counsel’s office speak about some of the issues facing their office and they will provide information on typical issues they deal with.

STUDENT LEARNING OUTCOMES:

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

- Research the law related to a higher education issue and write a memorandum addressing the issue
- Link the many legal issues together to understand how they interact with each other in the unique setting of higher education
- Present your research to the class as though you were in a law firm and were expected to brief your colleagues on an emerging topic
- Write a sustained legal memorandum on a topic of immediate concern

REQUIRED READING MATERIALS:

Because each person will be researching a different topic and presenting their memorandum to the class, the required reading material will consist of a packet of information provided on the first day, and then classmates' memos that you will need to read prior to each presentation. Each person will become an expert on a subject and will present the class with a memo on the law and provide additional reading material for the class. Every student will be expected to read your classmates' memos as well do your own research on your topic. Please be sure to register for the Canvas course where reading materials will be posted.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Because this is a seminar and the work product will satisfy your advanced writing requirement, I expect that everyone will do a significant research project, prepare a short memo for the class, prepare a longer memorandum for the final work product, and present your research to the class. Your final grade will be based on the following:

Class participation	20%
Class presentation	20%
Class memorandum	10%
Final memorandum	<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 each class meeting. Students are allowed 2 absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. 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 progress as follows. The first class will consist of a general discussion and review of relevant recent legislation involving many of the subjects we will be dealing with in the class.

During the next 4 weeks we will discuss 3 or 4 subjects per week with guest speakers from the UF general counsel’s office. These weeks will be devoted to gaining general knowledge of the myriad issues facing higher education.

The next 2 weeks we will have no class so you can work on your research and memorandum for presentation to the class.

The next 4 weeks will be presentations of 3-4 subjects per week.

The 12th week will be off so you can work on your final paper.

Week 13 – final paper due and wrap up.

You will be choosing your research topic from among the following list:

- Academic Freedom and the First Amendment
- Name, Image, and Likeness rules
- Gift restrictions/conditions/naming of physical structures
- Title IX rules and procedures – sexual harassment
- Privacy rules – HIPPA, FIRPA
- Collective bargaining and impact bargaining
- Tenure and employment (grounds for termination)
- FOIA and public records and open meetings laws (presidential searches)
- Conflicts of Interest and Conflicts of Commitment
- Intellectual Property and Work Product
- Fiduciary duties of boards and administrators/shared governance
- Censorship and Prohibited Curriculum
- Trans Healthcare limitations and Abortion regulations
- Academic Misconduct (student and faculty)
- IRB, IACUC, federal regulation of research
- Bond issuance and building construction
- Policing, Frats and Sororities, On and Off-campus criminal activities
- Environmental law, sustainability, master plans, and land-use planning
- Affirmative action and enrollment management
- A topic of your choosing that fits the theme of the class