Higher Education and the Law

I. Course Description

Study of basic legal issues as they relate to governance in higher education; including legal issues relating to trustees, administrators, staff, faculty and students; legal relationships with local, state and federal government. The course also addresses legal issues relating to accrediting, athletic and faculty associations. Legal relationships with the business/industrial community are also covered.

II. Rationale

Disclaimer: As we interact with legal issues, there are immediate matters of concern to attend to. First, the descriptions, insights, communication, and all other interaction by me are only for course information only. They are neither intended for nor endorsed as legal counsel. Second, if you give legal advice in this course, you do so at your own risk and it is not sanctioned by me or any representative of this university. Third, all assignment information for the course work, such as case studies, is fictional and any correlation to actual events is purely coincidental. Fourth, legal issues are generally context specific, therefore descriptions and perceptions derived from the assignments are intended to provide general insights into the legal environment of higher education and may not be applicable to definitive, individual, actual situations.

Truth is an interesting concept. It may be defined by our experience, our education, our expertise, and what we think we are entitled to. However, in a legal environment, truth—and this is of grave consequence—whether we agree with it or not, is defined by law. It does not matter what our views are, what our bias is, what we believe is ethical and moral. What matters, as an administrator, is what the law says. Good—nay—excellent administrators are able to set aside their personal beliefs, all personal beliefs, when they have to make decisions based on matters of the law. Truth, whether we believe it or not, is a matter of the law. If we want the truth, it is found in the specifics of a law as it applies to particular situations. (If it sounds like I am being redundant, I am. That is how important this is.) When dealing with matters of law, we may see a conflict between it and what we think ought to be done for the good of students, faculty, staff, stakeholders, and the overall health and well being of a campus. However, if we do things that we believe are right, but violate the law, we not only place the institution in harm's way, but our own well being.

Olivas (2005) pretty much characterized the legal environment for all US higher education in one sentence. "In modern higher education, few major decisions are made without considering the legal consequences" (p. 226). Olivas is not alone in his perspective. Kaplin and Lee (2007) indicated that campuses face multiple challenges and they frequently involve legal matters. Even Beckham and Dagley (2005) wrote, "Colleges and universities remain vulnerable to lawsuits and face an increasingly litigious environment" (p. 18). This sentiment—this reality—is problematic.

The matter is so important that The Chronicle of Higher Education has an entire section dedicated to legal issues: http://chronicle.com/section/Legal/23/. Beckham and Dagley (2005) further added administrators need
to be informed of legal issues in order for more effective collaboration, development of risk management strategies, compliance, and policy development. Today's administrators not only need to be experts in their field, but also must have a strong understanding of the laws that govern their professional area and those that impact the campus.


III. State Adopted Proficiencies for Teachers and/or Administrators/Counselors n/a

IV. TExES Competencies n/a

V. Course Objectives/Learning Objectives

- Develop how colleges and universities legally relate to states.
- Defend a legal position regarding faculty rights.
- Defend a legal position regarding student rights.
- Interpret how the law applies to college and university business and community liability and obligations.
- Justify how federal laws and regulations apply to employee protections.
- Interpret a college or university situation by utilizing appropriate legal concepts.

VI. Course Topics

- College and University Environment: Because colleges and universities differ, such as public, private, and religious, the law applies to them differently.
- Faculty: Faculty form the core of the college and university academics and often have privileges other employees do not have, must balance lives as faculty and employees.
- Students: Student expectations have changed in recent years to include contractual obligations they must fulfill as they seek a degree.
- Employment: For an academic enterprise to function it must abide by a seemingly myriad of employment conditions.
- Business & Community: Colleges and universities are not just academic institutions but businesses as well. They must abide by general and specific laws and regulation as well as meet community responsibilities.
VII. Instructional Methods and Activities

- **Lectures:** The purpose of lecture is to develop conceptual structures about a subject matter.
- **Discussions:** The purpose of discussion is to develop thinking skills in three areas: critical thinking; creative thinking; and dialogical thinking.
- **Case Studies:** Real life situations in a safe environment provide introductions to problems to be solved.
- **Workshops:** Workshops are in-class activities designed to facilitate better understanding of individual collaborative projects.

VIII. Evaluation and Grade Assignment

- **Readings:** Required reading is from two texts. The chapters and due dates are listed below in the section on Course Schedule.
- **Some Guidelines for All Written Assignments:**
  
a. Follow APA guidelines, including proper cover page and reference page. Up to 11% of points can be deducted for not following APA guidelines. Times New Roman 12 font is used throughout.

b. Papers are to be double spaced throughout and use standard paragraph indentation. Often Word defaults to extra spacing between paragraphs. To have only double spacing throughout the paper, highlight your entire document; click on 'Paragraph' in the toolbar; under 'Spacing' make sure 'Before' and 'After' are set at '0'; under 'Line Spacing' click the arrow and select 'Double' and this will make the entire document double spaced.

c. No first person or second person pronouns are to be used unless a paper or a section requires a reflection.

d. The paper is left justified except for headings. Major headings must be centered, boldface, no italics, no underline. Sub-headings are left justified and boldface.

e. Here are some keys for writing.

   1) Punctuation goes inside quotation marks. For example: In today's litigious environment "the ignorant, arrogant, or uninformed administrator acts in peril" according to Jamison (2010, p. 329). Also, in scholarly and professional writing (in contrast to creative writing, e.g.) a series of concepts is separated by commas. For example: Cantrell (2009) suggested the rights of students, faculty, staff, and administrators are found in several legal theories, such as constitutional laws, torts, contracts, and state legislation, and federal laws. If there is a series that requires colons and semi-colons for clarification the format is as follows. There are four major areas in which administrators should be trained: federal mandates; state laws; system policies; and campus policies (Nesmy, 2008). Never use abbreviations, such as 'e.g.' or 'i.e.' or 'vs.' in the body of the paper but only in parentheses. Never use 'etc' because information must be provided and not assumed.

   2) Do not quote material extensively. At the doctoral level, it is expected you can evaluate material, synthesize it, and restate it in your own words while giving proper credit. For example: Kenedy and Wright (2010) wrote that the legal environment on campuses has done as much to paralyze creativity as it has to offer protection.
3) If you quote from a source make sure APA is followed, including following the format according to APA for citing from the internet (see the bottom of page 171 & top of 172 for internet citation information in text).

4) Use the word 'and' when in the body of the paper and the ampersand (&) in parentheses, except in the reference page. For example: Tannen *fonfi* Sanders (2007) related greed *fonfi* arrogance often lead to legal violations. An alternative to this is format is: Greed *fonfi* and arrogance often lead to legal violations (Tannen *fonfi* Sanders, 2007)*1 Notice the placement of both the ampersand and the punctuation.

5) Never use first names when citing authors. Only use authors' first and/or middle initials in the reference page and never in the body of the paper. The following is incorrect: ... often lead to legal violations (Tannen, B. D. & Sanders, A. R., 2007).

6) Never use language such as: In the article "Employee Speech and the First Amendment." from the journal *fonfi* Academy of *fonfi* Postsecondary Legal Issues, James Landers (2011) explained how the first amendment protects speech as a matter of public concern and when and where it can be applied. The proper structure is: Landers (2011) explained how the first amendment protects speech as a matter of public concern and when and where it can be applied.

Only scholarly and professional material is to be used for support and examples. Sources, such as magazines, wikipedia, dictionaries, and encyclopedias are neither scholarly nor professional sources.

The running head for the cover page is different than the header for all other pages. Make sure this is correct. See pages 41-49 for examples. To make the cover page header different than the following pages in your paper: click on 'Page Layout' in the tool bar; click on the arrow to the right of 'Page Setup'; when the new popup window appears, click the 'Layout' tab; click the box 'Different first page'; click 'okay' to save the format. Make sure you place information in the header and that it is not typed at the top of every page. Also, make sure you have appropriate page numbers. Word does not automatically default to Times New Roman 12 for header information so make sure you make the changes. Again, the entire paper is Times New Roman 12 font.

If papers do not conform to these and other APA standards, they will not be assessed, will be returned with a grade of '0* and you will have three days to make the corrections to resubmit it from the time I return it to you.

Do not write an abstract as that is for research manuscripts.
1. **Online, Asynchronous Discussions:** Discussion topics are provided in the course. Each discussion is worth up to 80 points and there are 6 discussions for a total of 480 points. They are generally case based and require a working knowledge of the course reading, as well as your experience and expertise. Each discussion will be assessed according to the following:

<table>
<thead>
<tr>
<th></th>
<th>Not satisfactory</th>
<th>Introductory</th>
<th>Practiced</th>
<th>Skilled</th>
<th>Total 80</th>
</tr>
</thead>
<tbody>
<tr>
<td>Content Knowledge</td>
<td>Inadequate</td>
<td>The identification of the issue and application of appropriate legal theories is vague.</td>
<td>The identification of the issue and application of appropriate legal theories is discernible.</td>
<td>The identification of the issue and application of appropriate legal theories is accurate.</td>
<td></td>
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<tr>
<td>Points</td>
<td>0-13</td>
<td>14-15</td>
<td>16-17</td>
<td>18-20</td>
<td></td>
</tr>
<tr>
<td>Thinking Skills</td>
<td>Inadequate</td>
<td>Identifies a position that is somewhat related and support is evident.</td>
<td>Identifies a relevant position to the topic and demonstrates some support for it.</td>
<td>Contributions skillfully apply concepts from course and related material to build and support a position.</td>
<td></td>
</tr>
<tr>
<td>Points</td>
<td>0-13</td>
<td>14-15</td>
<td>16-17</td>
<td>18-20</td>
<td></td>
</tr>
<tr>
<td>Scholarship</td>
<td>Inadequate</td>
<td>Alludes to sources and/or support is weak.</td>
<td>References to sources and/or support are evident.</td>
<td>Cites sources directly and uses them for strong support of perspectives.</td>
<td></td>
</tr>
<tr>
<td>Points</td>
<td>0-13</td>
<td>14-15</td>
<td>16-17</td>
<td>18-20</td>
<td></td>
</tr>
<tr>
<td>Participation</td>
<td>Inadequate</td>
<td>Remains on mostly topic, dealing mainly with the proposed subject matter.</td>
<td>Remains on topic, alluding to additional material.</td>
<td>Expands the issue, bringing in additional relevant perspectives.</td>
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<tr>
<td>Points</td>
<td>0-13</td>
<td>14-15</td>
<td>16-17</td>
<td>18-20</td>
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Up to 10% can be deducted for not following proper English writing and/or APA.

Disrespectful interaction can lead up to a 20% reduction in the grade.

Discussion Guidelines:

- Discussions begin each Tuesday of the dates found in the online portion of the course and related in the schedule on the following pages.

- Contributions to the discussion are to be posted early and often; by Thursday evening or Friday at the latest; by often, there is no set number. However, since this is a discussion, only posting one or two times leaves little room for interaction and suggests that your postings are only to address the questions posed for the assignment and not interaction with others. The questions provide a basic framework to explore more deeply the concepts, theories, ideas, philosophies, and implications surrounding them. So, the discussion should move beyond the basic questions.
During discussions you should be building a position and supporting it from a legal perspective that guides the issues and when appropriate with scholarly and professional literature (see the syllabus for what is considered scholarly and professional).

Use your experience, knowledge, background, and scholarly and professional literature to address the questions and advance the discussion. Although experience, knowledge, and background (and opinions) are welcome and should be used as examples, illustrations, and clarifications, they are not the basis for advanced work in a doctoral program. Therefore, it is imperative to use the material as support where needed. When citing scholarly and professional material, APA format is to be followed. References are to be provided at the bottom of a post when cited in the text of your responses.

Run spell check. Or, type your response in Word then copy and paste it into the discussion. Be careful to double check your postings when you do this because sometimes additional characters show up in the transfer.

Interaction is to be on a professional level, which also includes standard English language protocols. Absolutely no "texting" language, for example: ur for "you are"; btw for "by the way"; G2CU for "good to see you"; or anything else found on the list from the following link or texting language invention. An occasional LOL (laugh out loud) is okay, though. Frankly, some things are just too funny not to reply without an occasional LOL. [http://www.innocentenglish.com/news/texting-abbreviations-collection-texting-slang.html](http://www.innocentenglish.com/news/texting-abbreviations-collection-texting-slang.html)

Do not use second person pronouns, such as you, your, yours, unless the information is directed to a specific person. They do not apply in this type of professional interaction as they are too informal. See the APA manual as well for how "you" can be used in specific instances.

Responses are to be higher education related. People may have different backgrounds from higher education, however, this is a higher education course and input must be within this field of study.

Sometimes responses prompt personal discussions. Personal discussions are to be done at a different setting and not to be conducted during the discussion.

Sometimes responses trigger related topics and these should be explored when relevant to the main topic.

This is a discussion, not a paper. So, thoughts, ideas, perceptions, and building a position often develop throughout the week and throughout the discussion. Please do not provide lengthy posts, again, as this is not a paper. It is important to be succinct, precise, and direct, as well as strong with support (all skills applied to the dissertation).

Discussions will be assessed according to intellectual contributions based on relevance to the material and advancement of scholarly thought. A rubric has been provided in this syllabus and will be the basis for assessment. APA, appropriate grammar, syntax, and punctuation will also be considered.
2. **Case Studies:** There are numerous legal topics covered in the course. For each meeting time, whether on campus or online, there will be a case study according to the legal principals found in the reading for that week. Case studies involving the online discussion will be assessed according to the discussion rubric provided above. For the case studies requiring written assignments, the guidelines are as follows. There are 3 written assignments worth 170 points each for a total of 510 points.

   a. **Introduction:** This section conveys the context of the legal environment in which the scenario you selected occurs and ends with the purpose of your paper in 1 short paragraph. For example: It is the purpose of this paper to examine how contracts apply to student admission processes in higher education. This section is worth up to 10 points.

   b. **Legal Analysis:** Identity the specific legal problem or problems in the scenario. Identify the appropriate law or laws from the text that apply to the scenario. Interpret the how the law or laws apply to the scenario. Remember, laws must apply within a specific context so be certain to select the appropriate law. This section of the paper is approximately 1-2 pages in length and worth up to 100 points.

   c. **Decision Making:** As an administrator in a college or university, explain what decision should be made as a result of interpreting the law or laws in the scenario. The decision must be based on the accurate interpretation of the law for the scenario and not personal views. This section of the paper is to be 2 paragraphs and is worth up to 50 points.

   d. **Conclusion:** This section of the paper summarizes the major points made and reiterates the purpose of the paper. This section of the paper is one short paragraph and is worth up to 10 points.

Each paper must have appropriate cover and reference pages. Every paper must be formatted with headings according to the sections described above. The entire paper is to be Times New Roman 12 font, use 1" margins, have standard paragraph indentation, and be double spaced. Any paper that does not meet these basic requirements will be sent back with a grade of 0 and you will have three days to resubmit it from the time I return it. The figure below is an example of how to format the content of the paper. It must have appropriate cover and reference pages as well.

All papers are to be submitted via email to: randall.bowden@tamucc.edu. They are due no later than midnight on the assigned dates.
3. **On Campus Participation:** We will meet 5 times on campus, 3 of which will involve case studies. These meetings will cover the topic assigned to the night and activities will include discussions and analyses of scenarios involving legal concerns. Make sure you complete the reading as the material will directly apply to classroom activities. Each classroom meeting for case studies will be worth up to 40 points for participation for a total of 120 points. Assessment will be similar to online discussions with accuracy of identification of the issue and application of appropriate legal theories; contributions to build and support a position; reference to material for support; and contributions to advance the discussions.
Assignment Summary

<table>
<thead>
<tr>
<th>Assignments</th>
<th>Points</th>
<th>Due Date</th>
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<tbody>
<tr>
<td>6 Online Discussions</td>
<td>80 points each for 480 points total</td>
<td>1.24.12</td>
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<td></td>
<td></td>
<td>1.31.12</td>
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<td></td>
<td></td>
<td>2.14.12</td>
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<td></td>
<td></td>
<td>2.28.12</td>
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<tr>
<td></td>
<td></td>
<td>3.27.12</td>
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<td></td>
<td></td>
<td>4.17.12</td>
</tr>
<tr>
<td>3 Papers—Case Studies (online)</td>
<td>170 points each for 510 points total</td>
<td>2.21.12</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3.20.12</td>
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<td></td>
<td></td>
<td>4.10.12</td>
</tr>
<tr>
<td>3 Classroom Meetings—Case Studies</td>
<td>40 points each for a total of 120 points</td>
<td>2.7.12</td>
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<tr>
<td></td>
<td></td>
<td>3.6.12</td>
</tr>
<tr>
<td></td>
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<td>4.3.12</td>
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<tr>
<td>Total</td>
<td>1110</td>
<td></td>
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</tbody>
</table>

Grading

90-100% = A; 80-89% = B; 70-79% = C; 60-69% - D; 50-59% = F

IX. Course Schedule and Policies

A. Course Schedule

Required Reading & Meetings

- FMB = Contemporary Issues in Higher Education text by Fossey, R., Melear, K. B., & Beckham, J. (Eds.)
- CL = Meet on campus in the classroom
- OL = Online with Blackboard

Date      Topics and Assignments

1.17 CL   (1) Review Syllabus; Introductions; Navigating Blackboard 9
          (2) The Law and the American Legal System
          FMB Chapter 1

1.24 OL   (1) System Governance
          FMB Chapter 2
          -Discussion: System Governance
1.31 OL  
(1) Private Colleges & Universities  
FMB Chapter 3  
-Discussion: Private Colleges and Universities

2.7 CL  
(1) Faculty Employment  
(2) Faculty Speech  
FMB Chapters 4 & 5

2.14 OL  
(1) Non-academic Personnel  
(2) Discrimination in Employment Under Title VII  
FMB Chapters 6 & 7  
-Discussion: Non-academic Personnel Case

2.21 OL  
(1) Sexual Harassment  
(2) Federal Disability Laws  
FMB Chapters 8 & 9  
-Paper Due: Federal Mandates Case Study

2.28 OL  
(1) Negligent Liability Involving Colleges and Students  
(2) Fraudulent Misrepresentation  
FMB Chapters 10 & 11  
-Discussion: Institutions' Relations to the State

3.6 CL  
(1) Student Speech  
(2) Contracts with Students  
FMB Chapters 12 & 13

3.13 Spring Break—No Class

3.20 OL  
(1) Students' Right to Due Process  
FMB Chapter 14  
-Paper Due: Rights of Students on Campus Case Study

3.27 OL  
(1) A Student's Right to Privacy in a College Residence Hall  
(2) Student Privacy and Campus Safety  
FMB Chapters 15 & 16  
-Discussion: Rights of Students on Campus

4.3 CL  
(1) Equal Protection Clause of the Fourteenth Amendment  
FMB Chapter 17

4.10 OL  
(1) Business Management in Colleges and Universities  
(2) Intellectual Property and Higher Education  
FMB Chapters 19  
-Paper Due: Managing the Enterprise Case Study
4.17 OL (1) Intercollegiate Athletics
(2) Town and Gown Issues
FMB Chapters 20 & 21
-Discussion: Ancillary Functions

4.24 OL (1) Reflections
-Discussion: How have the legal issues shaped your view of higher education?

5.1 CL Course Wrap Up

B. Course Policies

**Attendance/tardiness:** It is expected that you attend every class session and are on time.

**Late work:** No late work is accepted except for extenuating circumstances approved by the instructor.

**Extra Credit:** No extra credit work is provided.

**Cell Phone/Electronic Device Usage:** Cell phones and other electronic devices are to be turned off during class time. Approved electronic devices include the use of a computer for note taking.

**Academic Integrity/Plagiarism.**

University students are expected to conduct themselves in accordance with the highest standards of academic honesty. Academic misconduct for which a student is subject to penalty includes all forms of cheating, such as illicit possession of examinations or examination materials, falsification, forgery, complicity or plagiarism. (Plagiarism is the presentation of the work of another as one's own work.) In this class, academic misconduct or complicity in an act of academic misconduct on an assignment or test will result in an "F" for an assignment. Additional academic dishonesty and/or plagiarism will result in an "F" for the course.

**Dropping a Class**

I hope that you never find it necessary to drop this or any other class. However, events can sometimes occur that make dropping a course necessary or wise. Please consult with me before you decide to drop to be sure it is the best thing to do. Should dropping the course be the best course of action, you must initiate the process to drop the course by going to the Student Services Center and filling out a course drop form. Just stopping attendance and participation WILL NOT automatically result in your being dropped from the class. Friday, March 30, 2012 is the last day to drop a class with an automatic grade of "W" this term.

**Required methods of scholarly citations:** AP A 6’ Edition
Classroom/professional behavior

It is expected that classroom, campus, and community behavior are exemplary of professionals and scholars in higher education. Although we can have a great deal of fun and should enjoy the educational experience, overall behavior should reflect dignity and respect for each other, the field of study, and the society we serve.

X. Required Textbooks


XI. Bibliography