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/](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: (a) federal mandates; (b) state laws; (c) system policies; and (d) 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 and Sanders (2007) related greed and arrogance often lead to legal violations. An alternative to this is format is: Greed and arrogance often lead to legal violations (Tannen & Sanders, 2007). 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 Academy of 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.

f. 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.

g. 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.

h. 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.

i. Do not write an abstract as that is for research manuscripts.
1. 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.**

   j. **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.

   k. **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.

   l. **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.

   m. **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.
2. **Participation:** We will meet on campus. 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 440 points. Assessment will be similar to requirements for written assignments 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>3 Papers—Case Studies</td>
<td>170 points each for 510 points total</td>
<td>10.10, 10.31, 11.21</td>
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<tr>
<td>11 Classroom Meetings—Case Studies—no make-up assignments for missing a class</td>
<td>40 points each for a total of 440 points</td>
<td>See the schedule</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>950</strong></td>
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**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.)

<table>
<thead>
<tr>
<th>Date</th>
<th>Topics and Assignments</th>
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<tbody>
<tr>
<td>9.5</td>
<td>(1) Review Syllabus; Introductions</td>
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<td></td>
<td>(2) The Law and the American Legal System</td>
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<tr>
<td></td>
<td>FMB Chapter 1</td>
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<tr>
<td>9.12</td>
<td>(1) System Governance</td>
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<td>FMB Chapter 2</td>
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<td>9.19</td>
<td>(1) Private Colleges &amp; Universities</td>
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<td>FMB Chapter 3</td>
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<td>9.26</td>
<td>(1) Faculty Employment</td>
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<td></td>
<td>(2) Faculty Speech</td>
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<td>FMB Chapters 4 &amp; 5</td>
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<tr>
<td>10.3</td>
<td>(1) Non-academic Personnel</td>
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<tr>
<td></td>
<td>(2) Discrimination in Employment Under Title VII</td>
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<tr>
<td></td>
<td>FMB Chapters 6 &amp; 7</td>
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</table>
10.10  (1) Federal Disability Laws  
(2) Sexual Harassment in Academe  
FMB Chapters 8 & 9  
~Paper Due: (Choice of a Case)

10.17  (1) Negligent Liability Involving Colleges and Students  
(2) Defamation  
FMB Chapters 10 & 11

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

10.31  (1) Students’ Right to Due Process  
FMB Chapter 14  
~Paper Due: (Choice of a Case)

11.7  (1) A Student’s Right to Privacy in a College Residence Hall  
(2) Student Privacy and Campus Safety  
FMB Chapters 15 & 16

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

11.21  (1) Business Management in Colleges and Universities  
(2) Intellectual Property and Higher Education  
FMB Chapters 18 & 19  
~Paper Due: (Choice of a Case)

11.28  Thanksgiving

12.5  (1) Intercollegiate Athletics  
(2) Town and Gown Issues  
FMB Chapters 20 & 21

12.12  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 and “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, November 15, 2013 is the last day to drop a class with an automatic grade of “W” this term.

Required methods of scholarly citations: APA 6th 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


*The Journal of College and University Law*. http://www.nd.edu/~jcul/