

Sexual Orientation and the Law

Professor Greg Johnson

Spring 2021

Tuesday, 3:35-5:10

On Teams

SYLLABUS

This course will explore the many ways the law affects the lives of LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex, and Asexual) community members. We will analyze the LGBTQ+ civil rights struggle in an historical and a contemporary context. We will consider how the legal system regulates sexuality; expressions of identity; workplace discrimination; same-sex relationships; parenting; and transgender rights. Much of the legal doctrine considered in the course is constitutional in nature, including in-depth studies of the right to privacy, the First Amendment, and the Equal Protection Clause. The course also encompasses statutory (e.g., Title VII) and common law doctrines (e.g., family law). Finally, we will take time to look at all of these developments through the lens of “queer theory.” Is the movement’s focus on marriage equality a distraction from real liberation? Is equality the goal, or justice?

Open Office Hours on Teams: Tuesday, 9-11 am; Thursday, 1-3 pm; and by appointment

Texts: 1). Carlos Ball, et al., *Cases and Materials on Sexuality, Gender Identity, and the Law* (6th ed. 2017) (2020 Supplement is available on TWEN).
2). Course materials (available on TWEN).

Seminar Paper: You must write a paper for this course. There is no final. Papers must be 17-20 pages in length. Papers should evidence a high degree of understanding of the topic, creative thinking, thorough research, good organization, careful editing, and proper Bluebook citation. If you are using this paper for your AWR, please let me know at the start of the semester so we can set up the appropriate briefing and meeting schedule.

Seminar Paper Schedule:

February 8: Select a topic (one paragraph summary)
March 22: Comprehensive draft due
April 20: Final paper due

Grading:

Final Paper: 80%

Class Participation: 20% (includes good-faith effort on first draft of paper)

Learning Outcomes:

By the end of this course, you will:

1. Demonstrate an understanding of the key points (legal, social, and political) in the history of the LGBT civil rights movement.
2. Become conversant in the dominant themes of contemporary Queer Theory.
3. Build on what you learned in Con Law about Equal Protection and Due Process.
4. Learn basic principles of First Amendment law.
5. Write a scholarly paper on an issue of your choosing related to LGBT civil rights.

CLASS SCHEDULE

Class One	Jan. 12	<u>Identity</u> Textbook, pages 1-8, 15-21, 44-46, 48-67, 70-75. Readings for Class One (on TWEN).
Class Two	Jan. 19	<u>The Right to Sexual Intimacy</u> , Textbook, pages 107-19, 122-54. Readings for Class Two (on TWEN).
Class Three	Jan. 26	<u>Polygamy; Sex Toys, Incest, Sex Outdoors, S/M</u> , Textbook, pages 164-71; 185-200, 205-19. Readings for Class Three (on TWEN).
Class Four	Feb. 2	<u>Equal Protection</u> , Textbook, pages 245-51, 267-82, 293-324. Readings for Class Four (on TWEN).
Class Five	Feb. 9	<u>Workplace Discrimination, Part I</u> Textbook, pages 335-53. 2020 Supplement, pages 2-33 (<i>Bostock</i>) (on TWEN) Readings for Class Five (on TWEN).
Class Six	Feb. 16	<u>Workplace Discrimination, Part II</u> , Textbook, pages 433-37, 447-68, 476-78. 2020 Supplement, pages 33-38 Readings for Class Six (on TWEN).
Class Seven	Feb. 23	<u>The Bathroom Debate</u> , Textbook, pages 413-18. <i>Gavin Grimm</i> decision (on TWEN) Readings for Class Seven (on TWEN).
Class Eight	March 9	<u>Coupling, Part I</u> , Textbook, pages 501-28, 546-48. Readings for Class Eight (on TWEN).
Class Nine	March 16	<u>Coupling, Part II</u> , Textbook, pages 605-41. 2020 Supplement, pp. 40-43 (<i>Pavan v. Smith</i> and notes) Readings for Class Nine (on TWEN).

- Class Ten March 23 Parenting, Part I, Textbook, pages 651-677, 710-25.
Reading for Class Ten (on TWEN).
- Class Eleven March 30 Parenting, Part II, Textbook, pages 725-48, 760-76.
2020 Supplement, pp. 39-40 and 44-45
Reading for Class Eleven (on TWEN).
- Class Twelve April 6 The First Amendment Part I, Textbook, pages 777-813.
Readings for Class Twelve (on TWEN)
- Class Thirteen April 13 The First Amendment, Part II, Textbook, pages 813-44.
Readings for Week Thirteen (on TWEN)
- Class Fourteen April 20 LGBT Equality and Religious Liberty, Textbook, pages 844-77.
2020 Supplement, pp. 46-55