

## WESTERN STATE COLLEGE OF LAW

### SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION (SOGIE) AND THE LAW – Spring 2020

#### SYLLABUS AND COURSE POLICIES

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(he/him/his)  
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#### Office hours:

Tuesday: 9:00 – 10:15 AM; 12:30 – 4:00 PM and Thursday 9:00 – 10:15 AM for all students by appointment. Also, immediately before class for students in that class only. These pre-class office hours are first come, first served and in the assigned classroom. Questions can also be submitted via email.

I will be available for office hours by appointment. Please make appointments in the book outside the faculty offices on the 2nd floor. Please do not contact me to schedule appointments. If you have scheduled an appointment and need to cancel, please call them as soon as possible. Other students may be waiting for appointments and may be able to take your slot. You may make telephone appointments, if you cannot make scheduled office hours in person.

#### Texts

**Required books:** There is a required course webpage available at <https://lawschool.lexisnexis.com> then search for Lexis Classroom and our course. Please join and review the course webpage before the first day of class since there may be assignments due before that date in addition to the readings. You will need a passcode to access the course. The passcode is: **BMX6DJ**

All assignments and notices will be on the course webpage. Read the original cases listed on the course website for the week assigned. You should have and be able to use the current Bluebook (A Uniform System for Citation) from your legal writing classes. See <https://www.legalbluebook.com/>

**Recommended Books:** Eugene Volokh, ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW, (5th Ed., Foundation Press) (2016).

The required cases for that week are to be brought to all classes as well as any other materials provided. Additional handouts may be assigned.

### Course description and objectives:

SOGIE and the Law is a two-unit, graded course. It fulfills the upper-level writing requirement for all students.

The relevant section of the WSCL Student Handbook regarding Upper Level Writing Requirement Courses is set out below. Please make sure you have understood and commit to following and completing those requirements.

#### Upper Level Writing Requirement (ULWR)

- ...
- a. *The Associate Dean of Academic Affairs may designate an upper level course as satisfying the (ULWR) pursuant to these guidelines. To earn ULWR credit, each of the following requirements must be met:*
    - i. *A substantial written product that demonstrates legal research, analysis, and contains ample citation to legal authority. Categories may include: a scholarly article, a legal memorandum, or trial or appellate brief. In some cases, a compilation of shorter submissions from a single semester-long course might satisfy the ULWR. If a compilation is submitted, then the underlying research completed must be fully documented for review and approval by the instructor. Journals, diaries, and other writings that do not reflect such research and analysis do not meet this requirement.*
    - ii. *At least one outline or draft of the written product that receives individualized feedback in writing from the instructor.*
    - iii. *At least one student-instructor conference for the purpose of individualized assessment of the student's written product.*
    - iv. *At least one of the following: a research log; a self-critique or peer-critique experience; feedback on further drafts at the option of the instructor.*
    - v. *The final written product must be evaluated by the instructor and the student must earn a grade of at least 2.0 or its equivalent on the written product.*
    - vi. *The instructor certifies in writing to the Associate Dean of Academic Affairs that the student has complied with requirements i through v.*

#### b. *ULWR Credit for Law Review*

*Completion of a written product for LAW510 Law Review will receive ULWR credit only where an instructor certifies in writing to the Associate Dean of Academic Affairs that the student has met all of the above requirements.*

...

**Students will be required to make in-class presentations, to have responsibility for leading class discussions and to prepare an analytical paper on a topic on a self-selected SOGIE topic and law.**

This seminar will examine the relationship among sexual orientation, gender identity and expression and the law. The class will focus on the interaction between the law and broader attitudes about sexual orientation and gender identity by closely examining how social, cultural and political forces shape, and are shaped by, legal doctrine. Within this rubric, students will explore subjects across many traditional legal domains - including constitutional, criminal, family and antidiscrimination law.

Topics may include, for example, regulation of sexuality and sexual identity; legal recognition of LGBTQ+ families and relationships; the debate over civil rights legislation; and policies relating to LGBTQ+ people in the military, sexuality and schools, and other matters of contemporary controversy. As students approach these subjects, the course will situate the legal questions within larger theoretical debates about law and equality.

### **Grading:**

Grading in this class shall be numerical on a 4.0 scale. You will work on the paper throughout the semester. In a WSCL ULWR course, you must earn a 2.0 or higher to obtain ULWR credit.

Course grades will be based on the final 10-12-page paper (60%), the submitted first draft (15%), and Participation & Professionalism (P&P) (25%). This P&P component includes two in-class presentations and seminar discussion and commentary. Grading of the papers and P&P is explained in greater detail below.

### **Participation, Professionalism, and Presentations**

**Participation & Professionalism (P&P):** Be prepared to participate in class. This class is most productive and your individual papers are improved if you have thought about the classroom material and are able to discuss it. All viewpoints are welcome. 25% of your final course grade will be based on the quality and quantity of your contributions to class discussions, attendance and punctuality, conduct during class time, the two group presentations to the class, and overall professionalism.

**Group Presentation:** As will be discussed in greater detail during the first class, each student will be assigned to a collaboration group. And each group will have in-class presentations or other tasks throughout the semester. This collaborative work is graded as part of the P&P component.

### **Information on the first draft and final paper**

Throughout the semester there will be discussion material regarding the ULWR, the first draft, and the final paper.

**1) General factors in grading papers:** The following four factors are utilized: 1) organization; 2) research; 3) creativity; 4) clarity. The paper is to be at least 10 to 12 pages in length, 12-point font, double-spaced (including footnotes single-spaced at bottom of each page per Bluebook citation form).

**2) This is a writing course:** As a writing course, the course requires a number of additional work hours. It requires the picking/narrowing of a topic, possible outlines, personal or email conversations with me regarding progress and direction, and probably more than two drafts – one of which must be submitted for a grade by the date specified.

**3) Picking a topic:** *Make your work original. If you plagiarize another's work, I will know, and you will fail the class.*

There are essentially two ways of fulfilling the writing requirement in this class. First, you can pick a topic that is relatively new and lacking in substantial existing scholarly work. Seek to write on a topic that is interesting to you and relatively unaddressed in legal academia. Secondly (a little easier and therefore worth a little less if not done well) is to review the literature on a topic on which a lot has been written, explain the various views, and then *take a position on the topic, and defend that position.*

**4) Research:** Good places to start are law review articles and journals. Once you know what's out there, you'll then get a feel for what you want to add and what you need to say. You need enough research to support all of your propositions and your legal arguments. Internet sources may also be used and can be cited per the Bluebook.

**5) The Paper:** Organize appropriately, please. First, the introduction should set a clear road map for the reader. Second, you should provide enough background information to let the inexperienced reader know what you are talking about and to give your argument some context. Third, case law, statutes, law reviews, and journals should support your argument or should be addressed and dealt with if they disagree with your argument. Finally, your conclusion(s) should logically follow from your analysis.

**6) Footnotes:** Quotations, non-original ideas, back-up for your ideas, and digressions should *all* be footnoted. Footnotes serve two major functions: First, they give the reader the exact sources for your propositions and quotes; second, they be used to digress from the text. Anything that doesn't fit neatly into the text

may be discussed in the footnotes. Related issues may be identified and discussed. Footnotes provide a great opportunity to discuss your personal opinions and views on the issues without taking away from your legal arguments in the text. As a general rule of thumb, there should be at least 50 footnotes per 10 pages; while not carved in stone, this number should serve as a guideline; you will not be graded so much on the number of footnotes as on their appropriate use.

**7) Editing:** The editing stage is the most important stage in writing. Great papers are not written in one draft. Use the editing process to make sure that all of your citations are correct, to fix any transitional errors or “flow” problems throughout your text and edit to correct any spelling and grammatical issues you may encounter. Furthermore, use the editing process to fill in gaps in your argument and to add additional ideas that may occur to you upon rereading your paper.

**8) Communication:** Stay in contact with me and use the first few weeks of class to brainstorm about ideas.

## Attendance and Participation

Legal Education is a cooperative venture. My commitment to you is to be as prepared as possible for every class session, to have read and thought about the material in advance of the class, and to participate fully in the classroom. I expect no less of you than I do of myself. I do not expect you to know the answer to every question; I do expect that you will use your best efforts.

Class preparation varies by student. However, normal expectations are that a student will prepare outside of class for 2 hours for every in-class hour. That means a minimum of 4 hours of outside work for this 2-hour class.

A seating chart will be distributed at the beginning of the semester. Please print your name legibly in the seat you choose for your permanent seat. If you wish to change your seat, please notify me so that the seating chart can be adjusted accordingly.

This is a small, limited-enrollment seminar. Everyone will participate in each class (see P&P discussion above).

I will take attendance at the beginning of each class. **In accordance with the WSCL student handbook, if you miss more than two classes, you will be academically dismissed from the course.** Additionally, if you arrive late or

depart early without permission, you may be marked absent for the entire session.

### **Disability Services Statement:**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at [aeasley@wsulaw.edu](mailto:aeasley@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

### **Assignments:**

I have listed the reading assignments for the first two week. The rest of the entire semester will be listed on the course website. Please read the entire assignment *before* the first class for each topic.

*During the first class, we will discuss the format of the course, presentation groups, and how to complete the assignments, etc.*

### **COURSE SCHEDULE**

Date	Reading Assignment	ULWR topics	Presentation Group	Commenting Group
Jan. 21	<p>Read these cases for <b>Problem #1:</b> <u>Harms v. Sprague</u>, 105 Ill. 2d 215, 473 N.E.2d 930 (1984); <u>In re Will of Kaufmann</u>, 247 N.Y.S.2d 664, 20 A.D. 464 (1964); <u>In re Anonymous</u>, 106 Misc. 2d 792 *, 435 N.Y.S.2d 527 **, 1981 N.Y. Misc. LEXIS 2019 *** (1981); <u>In re adoption of Robert Paul P</u>, 63 N.Y.2d 233 *, 471 N.E.2d 424 **, 481 N.Y.S.2d 652 ***, 1984 N.Y. LEXIS 4628 **** (1984). <u>Baker v. Nelson</u>, 291 Minn. 310, 191 N.W.2d 185 (1971), Appeal dismissed for lack of a substantial</p>	<p>(2) <u>Obergefell v. Hodges</u>, 576 U. S. ___, 135 S.Ct. 2584 (2015); <u>Pavan v. Smith</u>, 582 US ___, 137 S. Ct. 2075 (2017)(per curiam); <u>Pidgeon v. Turner</u>, 538 S.W.3d 73 (Tex. 2017).</p>		

	federal question, 409 U.S. 810 (1972).			
Jan. 28	<b>Problem #2</b> Read: <i>Obergefell v. Hodges</i> , 576 U. S. ___, 135 S.Ct. 2584 (2015); <i>Pavan v. Smith</i> , 582 US __, 137 S. Ct. 2075 (2017)(per curiam); <i>Pidgeon v. Turner</i> , 538 S.W.3d 73 (Tex. 2017).	Selecting a topic	Group 1	Group 3
Feb. 4	<b>Problem #3</b>	Writing thesis statements	Group 2	Group 4
Feb.11	<b>Problem #4</b>	Formatting and writing drafts	Group 3	Group 2
Feb. 18	<b>No class, WSCL “Monday”</b>			
Feb. 25	<b>Problem #5</b>	Revisiting “roadmaps” and parenthetical citations	Group 4	Group 1
Mar. 3	<b>No class work on drafts</b>	<b>1st Draft Due 5 pm Pacific time to <a href="mailto:tbrower@wsulaw.edu">tbrower@wsulaw.edu</a></b> <b>No exceptions</b>		



Mar. 10	Class time reserved for individual conferences	<b>Individual Conferences on 1st draft</b>	<b>20 min. appointments per person</b>	<b>4:00 – 7:20 pm</b>
Mar. 17	<b>No Class – Spring Break</b>			
Mar. 24	Class time reserved for individual conferences	<b>Individual Conferences on 1st draft</b>	<b>20 min. appointments per person</b>	<b>4:00 – 7:20 pm</b>
Mar. 31	<b>Problem #6</b>		Group 1	Group 2
Apr. 7	<b>Problem #7</b>		Group 2	Group 1
Apr. 14	<b>Problem #8</b>		Group 3	Group 4
Apr. 21	Work on papers		No class meeting	
Apr. 28	Work on papers		No class meeting	
May 5	<b>Final Papers Due 9:00 AM</b>	<b>By email to: tbrower@wsulaw.edu</b>	<b>No exceptions</b>	<b>(No final exam)</b>

### Course Learning Goals

After completion of this course, students should be able to:

- Make policy-based arguments, including the ability to identify the underlying public policies of a law and their implications.
- Evaluate legal arguments, including the ability to evaluate the strengths and weaknesses of particular rules and policies.
- Acknowledge the existence of diverse ideological viewpoints when considering SOGIE issues.
- Advocate, in both oral and written formats, the legal, economic, and social strengths and weaknesses of a rule or policy and use case law, statutes, and policy to persuade others.
- Recognize ethical, social and other issues inherent in the way certain legal policies affect members of the LGBTQ+ communities and their families and how those individuals affect and shape society and the greater community.

## **Western State College of Law – Programmatic Learning Outcomes**

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

### **Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

### **Practice Skills**

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

### **Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are

legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

### **Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

### **Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

### **Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

### **Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

## **Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.