

DePaul University College of Law

Spring 2009  
Monday and Wednesday  
1:00 – 2:15 p.m.  
Room 804

Professor Donald H.J. Hermann  
Office: Room 829  
Phone: 312-362-8383

**SEXUAL ORIENTATION AND THE LAW**

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**Course Description**

Legal developments involving sexuality and sexual orientation have been among the most dynamic and dramatic changes in American law in the last twenty-five years. Statutes and judicial opinions have mirrored changes in social attitudes toward gays and lesbians moving them from criminal class to a minority with recognized claims to rights and protection from discrimination. While significant areas of legal dispute continue, particularly regarding military service and the right to same sex marriage, other areas of legal rights and protection seem firmly established. This course will examine developments in sexual orientation law including constitutional, judicial and legislative. Underlying issues of sexual identity and social attitudes will be considered. Regulation of sexuality as well as bans on discrimination will provide a focus along with specific areas of study including same sex marriage, civil union, parenting, employment, education, and military service.

**Methodology**

This course will involve lecture, dialogue and classroom discussion of assigned reading. A take-home final examination will be based on the course assignments and classroom discussions and lectures.

**Required Materials**

William Eskridge and Nan Hunter, Sexuality, Gender and the Law (2<sup>nd</sup> ed.) FOUNDATION PRESS – THOMSON/WEST: New York (2004).

2007 Supplement to Sexuality, Gender and the Law. FOUNDATION PRESS – THOMSON/WEST: New York (2007).

Donald H.J. Hermann, "Legal Incorporation and Cinematic Reflections of Psychological Conceptions of Homosexuality," 70 UMKC LAW REVIEW, 495-544 (2002).

**Evaluation**

Course grade will be based on a take-home final examination distributed on April 22, 2009 at the end of class and due on May 6, 2009 at 12:00 p.m. C.S.T. Final examinations should be time stamped and placed in the take-home final examination box provided by the College of Law.

## Class Schedule and Reading Assignments

Class 1	January 12, 2009	<i>Introduction: Conceptions of Homosexuality</i> (Status v. Conduct; Nature v. Nurture etc.)
Class 2	January 14, 2009	<i>Images and Attitudes Toward Homosexuality</i> <b>Reading:</b> Hermann, 70 UMKC LAW REV. 495-544 (2002) <b>Film:</b> <u>The Celluloid Closet</u> (Sony Pictures, 2007)
Class 3	January 19, 2009	Martin Luther King Day
Class 4	January 21, 2009	Conclusion of <i>Images and Attitudes</i> <b>Film:</b> <u>The Celluloid Closet</u> (Conclusion)
Class 5	January 26, 2009	<i>Sexual Privacy</i> <b>Reading:</b> <u>Casebook</u> , pp. 3-19
Class 6	January 28, 2009	<i>Sexual Privacy</i> (continued) <b>Reading:</b> <u>Casebook</u> , pp. 23-43
Class 7	February 2, 2009	<i>Sodomy cases</i> <b>Reading:</b> <u>Casebook</u> , pp. 49-63; 74-91; 99-100 Supplement pp. 1-6
Class 8	February 4, 2009	<i>Sexual Discrimination</i> <b>Reading:</b> <u>Casebook</u> , pp. 165-176; 177-204
Class 9	February 9, 2009	<i>Transgender and Sexual Orientation Discrimination</i> <b>Reading:</b> <u>Casebook</u> , pp. 204-254 Supplement pp.7-22
Class 10	February 11, 2009	Continuation of <i>Sexual Orientation Discrimination</i>
Class 11	February 16, 2009	<i>Limiting Sexual Orientation Discrimination</i> <b>Reading:</b> <u>Casebook</u> , pp. 258-297 Supplement pp.23-36
Class 12	February 18, 2009	Continuation of <i>Limiting Sexual Orientation Discrimination</i>
Class 13	February 23, 2009	<i>Sexual Orientation Discrimination and Sex Discrimination</i> <b>Reading:</b> <u>Casebook</u> , pp. 298-320
Class 14	February 25, 2009	<i>Sexual Orientation Before Stonewall</i> <b>Film:</b> <u>Before Stonewall</u> (First Run Feature, 1985)
Class 15	March 2, 2009	<i>First Amendment Based Claims</i> <b>Reading:</b> <u>Casebook</u> , pp. 323-354, 360-370
Class 16	March 4, 2009	<i>Right of Association</i> <b>Reading:</b> <u>Casebook</u> , pp. 371-418 Supplement pp.37-45
Class 17	March 9, 2009	<i>Military Exclusion (Race and Gender)</i> <b>Reading:</b> <u>Casebook</u> , pp. 653-706

## Class Schedule and Reading Assignments

Class 18	March 11, 2009	<i>Military Exclusion – Sexual Orientation</i> <b>Reading:</b> <u>Casebook</u> , pp. 707-756 Supplement pp.47-56
Class 19	March 16, 2009	<i>Public Employment</i> <b>Reading:</b> <u>Casebook</u> , pp. 765-801
Class 20	March 18, 2009	Continuation of <i>Public Employment</i>
	March 23, 2009	<b>SPRING BREAK</b>
	March 25, 2009	<b>SPRING BREAK</b>
Class 21	March 30, 2009	<i>Statutory Ban on Sex Discrimination</i> <b>Reading:</b> <u>Casebook</u> , pp. 802-864, 600-607
Class 22	April 1, 2009	<i>Statutory Ban on Sexual Orientation Discrimination</i> <b>Reading:</b> <u>Casebook</u> , pp. 865-897
Class 23	April 6, 2009	<i>Domestic Partnerships – Gay Marriage</i> <b>Reading:</b> <u>Casebook</u> , pp. 1048-1086
Class 24	April 8, 2009	<i>Same-Sex Marriage and Limits on Recognition</i> <b>Reading:</b> <u>Casebook</u> , pp. 1086-1110, 1553-1563 Supplement pp. 57-84
Class 25	April 13, 2009	<i>Surrogacy, Custody, and Visitation</i> <b>Reading:</b> <u>Casebook</u> , pp. 1139-1188 Supplement pp.85-86
Class 26	April 15, 2009	<i>Adoption and Defacto Parenting</i> <b>Reading:</b> <u>Casebook</u> , pp. 1189-1226 Supplement pp. 87-96
Class 27	April 20, 2009	Conclusion: Domestic Law Issues AND <i>Sexual Orientation after Stonewall</i> <b>Film:</b> <u>After Stonewall</u> [First Features, 1999]
Class 28	April 22, 2009	Conclusion: “ <i>After Stonewall</i> ” Distribution of Take-Home Examination Due: May 6, 2009 at noon (C.S.T.)

## **Class Schedule and Reading Assignments**

### **Final Examination**

**Distributed: April 22, 2009**

**Due: May 6, 2009 at 12:00 p.m. (noon) C.S.T.**

**Completed exams are due by May 6, 2009 at 12:00 p.m. (noon) C.S.T. (Exam should be submitted in an envelope which has been time stamped. The time stamp machine is located on the 1st floor at 25 E. Jackson Blvd. Lewis Center (LC) at the end of the hall next to the security guard's station.) Your completed paper should be placed inside of the Take Home Drop-Off Box located in the hallway of the 9<sup>th</sup> fl. LC which is directly outside the "Office of the Dean" suite doors.**