**Law 286.8 - Sexual Orientation and the Law**

**Boalt Hall School of Law**

**Spring 2012 (2 credits)**

**Monday 6:25-8:15 pm**

**Instructor: Anne Tamar-Mattis**

**Phone: 415-505-4251 (cell)**

**Email:** **atm\_628@yahoo.com**

**Office Hours: Mon. 5-6 pm in Café Zeb**

**Course Materials**

Required texts:

* Eskridge & Hunter, Sexuality, Gender, and the Law (3rd Ed.) [hereinafter SGL]
* Currah, Juang & Minter, Transgender Rights (University of Minnesota Press 2006) [hereinafter TR]

Both texts are on reserve in the library. Other reading assignments are available on the web or Lexis and Westlaw, or will be handed out in class. Additional material may be assigned to keep pace with developments in the law. Students are expected to complete all required readings and be prepared to discuss them. Recommended readings are optional.

**Class Requirements**

Attendance

Attendance is mandatory and students will be asked to sign in. More than one absence will result in a lowered grade. In rare instances, at the instructor’s discretion, it may be possible to make up an absence with submission of a short paper.

Class Participation

Because this is a small seminar and only meets once a week, your preparation and full participation are necessary to the success of the course. Class participation will account for 20% of your grade.

Dissenting viewpoints and an open airing of diverse perspectives are strongly encouraged. No student will be penalized or advantaged on the basis of his or her political opinions.

Please note that I consider surfing the web, checking email, and other off-topic uses of the computer to be a serious breach of etiquette. It is an insult to the instructor and, in a discussion seminar, to your classmates. Such use of the computer during class time will negatively impact the class participation portion of your grade. Computer use is acceptable for note-taking and for researching items that will directly contribute to the discussion at hand.

Research Paper

In addition to the weekly reading, each student must complete one 20-25 page research paper. The paper will be due in stages, as follows:

1. • **Feb. ??, 2012**: A one-paragraph description of your paper topic.
2. • **Mar. ??, 2012**: (1) Either an outline *or* a detailed abstract, *and* (2) a bibliography of 4-10 major sources.
3. • **May 10, 2012**: Final paper due. Your paper must be emailed to me at atm\_628@yahoo.com by midnight.

Format requirements: 12-point type, double-spaced, 1-inch margins. Footnotes (not endnotes) in rough bluebook format, 10-point type, single-spaced throughout. Please email the paper to me as a Word document, or in a format that can be opened in Word.

Instructor will suggest research questions; topics must be approved in advance. Students are encouraged to submit a draft for comment and review prior to turning in a final paper. Drafts must be turned by the last day of class, and I will return them within a week. Students who do not submit a draft will not be penalized.

If you have never written a legal research paper, I recommend that you read the helpful article by Eugene Volokh, *Writing A Student Article*, 48 JOURNAL OF LEGAL EDUCATION 247 (June 1998). Volokh later expanded this article into a book, ACADEMIC LEGAL WRITING (Foundation).

Grading

Your final grade will be based on the following factors:

Class Participation 20%

Topic Statement 5%

Outline/Abstract/Bibliography 5%

Final Paper 70%

**Course Reading assignments**

**Class 1, Jan. 9**

***Required:***

* ABA White Paper, pp. 12-15, available at: <http://www.americanbar.org/content/dam/aba/migrated/family/reports/WhitePaper.authcheckdam.pdf>
* Lambda Legal, *An Unfulfilled Promise: Lesbian and Gay Inequality Under American Law*, available at <http://data.lambdalegal.org/publications/downloads/fs_an-unfulfilled-promise.pdf>
* Lisa Keen, *Leadership Summit Sets LGBT Strategy for Obama Administration*, Bay Windows, Dec. 9, 2008, available at <http://www.thetaskforce.org/TF_in_news/08_1211/stories/2_leadership_summit.pdf>
* TR: pp. 3-24 (Currah, *Gender Pluralisms Under the Transgender Umbrella*); pp. 141-159 (Minter, *Do Transsexuals Dream of Gay Rights?: Getting Real About Transgender Inclusion*)
* SGL pp. 483-488 (with attention to footnote on 483-484); 538-542

***Recommended:***

* *Transgender Equality*, pp. 1-12, available at: <http://www.thetaskforce.org/downloads/reports/reports/TransgenderEquality.pdf> (for basic background on transgender identities)

**Employment Discrimination and LGB People**

**Class 2, Jan. 23**

***Required:***

* Keith J. Hilzendeger, *Walking Title VII’s Tightrope: Advice for Gay and Lesbian Title VII Plaintiffs*, 13 Law & Sex. 705 (2004)
* SGL pp. 118-119 (Koppelman, *Why Discrimination Against Lesbians and Gay Men is Sex Discrimination*); 567-570 (overview of Title VII); 622-625 (more on Title VII); 506-513 (Price Waterhouse v. Hopkins and commentary); 645-651 and 653-661 (Oncale v. Sundowner Offshore Services, Inc.; Rene v. MGM Grand Hotel, Inc.; Prowel v. Wise Business Forms, Inc.; and commentary); 625-631 (Jespersen v. Harrah’s Casino)

**Transgender Rights: Sex Discrimination and Disability Discrimination Theories**

**Class 3, Jan. 30**

***Required:***

* TR: pp. 93-101 (Broadus, *The Evolution of Employment Discrimination Protections for Transgender People*); pp. 274-298 (Butler, *Undiagnosing Gender*)
* *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984)
* *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004)
* *Doe v. Yunits*, 2000 WL 33162199 (Mass. Super. 2000).
* SGL pp. 633-639 (*Schroer v. Billington* and commentary)

***Recommended:***

* Abby Lloyd, *Defining the Human: Are Transgender People Strangers to the Law?*, 20 Berkeley J. Gender, L. & Just. 150 (2005).
* National Transgender Discrimination Survey - <http://www.thetaskforce.org/downloads/reports/fact_sheets/transsurvey_prelim_findings.pdf>

**Class 4, Feb. 6**

* **Discrimination on the basis of disability**
* **Bathrooms and single sex facilities**

**Equal Protection and Due Process**

**Class 5, Feb. 13**

* **Equal Protection and Due Process**
* **Background on Due Process**

**Class 6, Feb. 27 – Bowers v. Hardwick and Romer v. Evans**

* **Bowers v. Hardwick**
* **Effect of *Bowers* on claims under the Equal Protection Clause**:
* **Romer v. Evans**

**Class 7, Mar. 5 – Lawrence v. Texas**

**Relationship Recognition**

**Class 8, Mar. 12 – Marriage and Statutory Protections**

**Class 9, Mar. 19 – Theories underlying right-to-marry suits**

**Class 10, Apr. 2 – Gender Identity & Marriage**

**Parenting & Custody**

**Class 11, Apr. 9: Different-sex Custody Disputes**

**Class 12, Apr. 16: Gay Adoption and Same-sex Custody Disputes**

**Class 13, Apr. 23: More on same-sex couples; transgender parents**

**intersex issues**

**Class 14, Apr. 24**