

## Sexuality, Gender, and the Law

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Philosophy Seminar  
PHL 385  
Topic : Sexuality, Gender, and the Law

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In this seminar we will examine an increasingly important area of law, that concerning sexuality and gender. Central legal elements in this area are, the right to privacy, the equal protection guaranteed by the 14th Amendment, and the right to free speech protected by the 1st Amendment. The right to privacy now includes the right to use contraceptives, obtain an abortion, as well as to engage in premarital sex-but not, interestingly, the right to engage in homosexual sex. Interpretation of the right to equal protection arises in discussions of admissions in the military, single-sex schools, and anti-gay legislation. Conflicts about sexual speech involve the 1st Amendment, especially since sexual speech (sometimes pejoratively referred to as pornography) is no longer regarded as "obscene" speech but instead as political speech. The courts are also increasingly addressing cases of racial and anti-homosexual "hate speech". Finally, such disparate matters as religious beliefs, academic freedom, public sex education, AIDS education, marriage rights, the right to adopt children, employer and employee rights in matters of sex discrimination, cross-dressing, and sexual and racial harassment in the work place all concern sexuality and gender rights.

I will not be presuming that students have a background knowledge in legal theory; however, it is important that students have had at least 6 credits in philosophy prior to this course.

Required Text:

*Sexuality, Gender, and the Law*, eds. William N. Eskridge and Nan D. Hunter

Course Requirements:

Weekly write-ups: Since the class will meet just once a week, it is essential that students come to class prepared to discuss the material. To ensure that that happens, students are required to bring to class a short "write up" summarizing the assigned reading material. These write-ups should be about 250 words long (about 1 typed page, double-spaced). I do have a strong preference that they be typed, however, very neatly hand-written write-ups will be accepted. The write-ups should prove a familiarity with the key points of the

assigned readings. These write-ups will be graded. The average of the scores will count for 20% of the final course grade.

**Web Discussion Participation:** To encourage students further to think through class discussions after the class has met, students will be required to post their ideas and comments to a discussion group that will be created for this course. In each chapter there are "Problems" (see Problem 1-1, page 19 for an example) and students must write their considered opinions in response to those questions or respond to another student's post. The posts will be graded on a Credit/No Credit basis. I will print up each student's post, write comments on it if they are warranted, and a "check mark" indicating full credit has been awarded, or a "minus" if no credit has been awarded. (A response that merely states that one agrees with everything another student wrote will receive a No Credit.) The deadline for posting is Sunday at midnight. In other words, after meeting on January 22nd, for example, you will have until Sunday, January 28th, to post a response to the Problem for that week. Missed posts cannot be made up later in the semester. Since there are 13 weeks of instruction, students are required to write 13 posts. The web grade will be determined by dividing the number of "credited" posts by 13. The web grade will count for a total of 20% of the course grade.

The web page for this course is: <http://spruce.flint.umich.edu/~jamia/>

**Term Papers:** Students will be required to write three (3) term papers (approximately 7-8 pages in length). Students will be allowed to rewrite each paper once. Rewrites for term papers 1 and 2 will be due two weeks after the graded papers have been returned. If you decide to rewrite a term paper, you must hand in the original graded version with my comments on it along with your second version. Each term paper will count for 20% of the course grade.

**Schedule of Topics:**

Jan 8: introduction to the course  
required reading: Constitutional Rights, pages xxxix - liv  
web: question given in class (due Sunday, Jan 21st, at midnight)

Jan 15: No class (no web post due)

Jan 22: Chapter 1: The Constitution and Sexuality  
Section 1: The Rights to Sexual Privacy, pages 1-36  
Section 2: State Regulation of Sexual Practices, pages 37 - 72  
web: Problems 1-1 or 1-2

Jan 29: Chapter 1 continued  
Section 3: Other Constitutional Strategies for Challenging State Regulation of Sexuality and Gender, pages 73-131  
web: Problem 1-3

Feb 5: Chapter 4: U.S. Military Exclusions and the Construction of Manhood  
Section 2: The Exclusion of Women From Combat, pages 342 - 365  
Section 3: The Military's Exclusion of Lesbians, Gay Men, and Bisexuals, pages 366 - 407  
web: 4-2, 4-3, 4-4, 4-5 or 4-6

Feb 12: Chapter 5: Identity Speech in the Body Politic  
Section 1: Political Speech, Publication, and Association, pages 409 - 462  
web: 5-1 or 5-2  
term paper 1 due

Feb 19: Chapter 5 continued  
Section 2: Privacy and Sexual "Outing", pages 463 - 490  
web: 5-3 (due March 4th, midnight)

Feb 26: No Class (Winter Break) (no web post due)

Mar 5: Chapter 5 continued  
Section 3: Hate Speech, pages 491 - 506  
web: question given in class (due Mar 11th, midnight)

Mar 12: Chapter 6: Sexual Speech and the First Amendment  
Section 1: Sexual Speech and the First Amendment, pages 507 - 532  
web: 6-1 or 6-2 (due Mar 18th, midnight)

Mar 19: Chapter 6 continued  
Section 2: Feminist Theories of Sexual Speech and its Regulation, pages 533 - 562  
Section 3: Cutting Edge Issues of Sexual Speech Law, pages 563 - 573  
web: 6-3 (due Mar 25th, midnight)  
term paper 2 due

Mar 26: Chapter 7: Sexuality and Gender in Education  
Section 1: Regulating Student Exploration and Expression of Sexuality, pages 595 - 619  
Section 3: Legal Issues Arising Out of Public Sex Education, pages 652 - 681  
web: 7-1, 7-2, 7-4, 7-5 or 7-6 (due Apr 1st, midnight)

Apr 2: Chapter 9: Families We Choose  
Section 2: The Expanding Right to Marry, pages 795 - 826  
web: 9-2 or 9-3 (due Apr 8th, midnight)

Apr 9: Chapter 10: Sexuality and Gender in the Workplace  
Section 2: The Statutory Ban Against Sex Discrimination, pages 898 - 937  
Section 3: Current Issues in Workplace Discrimination, pages 938 - 967  
web: 10-2, 10-3, 10-4 or 10-5 (due Apr 15th, midnight)

Apr 16: Chapter 11: The Law's Construction of Consent

Section 1: Forcible Sex, pages 969 - 1020

web: 11-1, 11-2, 11-3 or 11-4 (due April 22nd, midnight)

Apr 19: Chapter 11 continued

Section 2: Sex By and With Minors, pages 1021 - 1043

same web assignment

first version of term paper 3 due

Apr 20: 10 a.m.: first version of term paper 3 available for pick up from French Hall 544

final version of term paper 3 due April 26th, before the Philosophy office closes at 5:00