

Law and Religion Seminar
Spring 2022
Law 635
MW 9:50-11:15 am

Professor: Helen Alvaré
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1. **REQUIRED TEXT:** Michael W. McConnell, Thomas C. Berg, Christopher Lund, *Religion and the Constitution, 4th ed.*, Aspen.

I will also provide you with handouts, usually via TWEN.

2. **CLASS METHOD:** I expect you to read all of the assigned material and to be prepared for a lively class discussion, which discussion will occupy the largest part of each meeting. I also expect regular volunteering, but will also call on students who are not volunteering regularly.

3. **GRADING:**

The law school's Academic Regulation 3-3.2(b) states that "[s]tudents who are not enrolled in a specialty track must take one graded 400- or 600- level seminar course requiring a major paper, and must also complete either an additional such seminar or a course designated as a writing course." Law and Religion is a 600 level seminar course requiring a major paper. The paper must be between 25-40 double-spaced, typewritten pages, footnotes included. The topic must be approved in advance by me, before end of day February 16, 2022. A first draft is due before end of day March 11, and a final version by April 27. We will discuss the requirements for this paper early in the semester.

Your final grade will be based 55% upon the quality of your class participation, and 45% upon the quality of your paper.

4. **OFFICE HOURS:** Mondays after class, and by appointment.
5. **ATTENDANCE:** Academic Regulation 4-1 governs attendance. Should the weather interfere with in-person class, we will conduct online class on the Zoom platform during the same hours class is scheduled.

ASSIGNMENTS:

Wed Jan 19

A survey of the constitutional questions raised by the First Amendment religion clauses; and the historical beginnings of the religion clauses
TEXT: 1-39

Monday Jan. 24- Wed Jan. 26

History of the First Amend, cont'd
TEXT: 39 - 50; 56a. - 65

Religion in the Regulatory State: Is Accommodation Required?
TEXT: 77-129 (stop before Yoder)

Mon Jan. 31 – Wed Feb. 2

Early Free Exercise and Accommodation: Broad Exemptions for Religion; Later Narrowing
TEXT: 129-150

The Decline of Broad Exemptions (cont'd)
TEXT: 150-207

Monday Feb 7 – Wed Feb. 9

Finish Decline of Exemptions 207-221

Masterpiece Cakeshop:

https://www.supremecourt.gov/opinions/17pdf/16-111_j4el.pdf
Fulton, https://www.supremecourt.gov/opinions/20pdf/19-123_g3bi.pdf

Are Accommodations Unconstitutional?
TEXT: 221 – 257

Mon Feb. 14 – Wed Feb. 16

Freedom of the Church/Institution?

TEXT: 257 – 290

READ: *Our Lady of Guadalupe*,

https://www.supremecourt.gov/opinions/19pdf/19-267_1an2.pdf

Funding Religion?

TEXT: 303 - 54

Monday Feb. 21 – Wed Feb. 23

Funding Religion? (cont'd)

TEXT: 354 - 86

HANDOUT <http://www.jstor.org/pss/20403361> Frances C. Fowler,
The French Experience with Public Aid to Private Schools , Phi Delta Kappa
International

TEXT 386 - 401

And *Trinity Lutheran Church of Columbia v. Comer*,
https://www.supremecourt.gov/opinions/16pdf/15-577_khlp.pdf
Espinoza, https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf

Mon Feb 28 – Wed March 2

Funding Religion? (finish discussion of *Trinity*)

TEXT (tax exemptions and gov't contracts as aid) 401 – 31

Law and Religion in the Family Law Context: Handout posted on TWEN

Mon Mar. 7 - Wed Mar. 9

Religious and Governmental Messaging in Schools and other Public Places

TEXT: 451 – 503

Public Religious Displays:

Handout: *American Legion v. American Humanist Assn*

BREAK MARCH 14 - 18

Mon Mar. 21-Wed Mar. 23

School Curriculum: Evolution, etc.

TEXT: 522 - 36; 545 – 58

Government as Property Owner

TEXT: 569 – 91

Mon Mar 28 – Wed March 30

Government as Property Owner (cont'd)

TEXT: 591-603

Gov't v. Private Speech

TEXT: 603 – 618 (with Professor briefly lecturing also on *NIFLA v. Becerra*)

Monday April 4 - Wed April 6

Religion Within Democratic Branches

TEXT: 619 – 45

Religion and Elected Officials:

Read **HANDOUTS:**

-Gov. Mario Cuomo, Religious Belief and Public Morality: A Catholic Governor's Perspective (John A. O'Brien lecture at the University of Notre Dame, Sept 13, 1984).

-Governor Mitt Romney, Faith in America, (2007).

-Barack Obama, Call to Renewal (2006)

(And any other candidate who looks interesting by this time in 2020! And has spoken about the place of faith in governing.)

Monday April 11 – Wed April 13

What is Religion?

TEXT: 665 - 701

Monday April 18 – Wed. April 20

Religion, Political Activities, and Religious Freedom – from *within* the perspective of various religious traditions.

Robert Gordis, Religious Liberty _ A Jewish Perspective, SIDIC Periodical XIII, 1980/3 Religious Liberty, available at http://www.notredamedesion.org/en/dialogue_sidicView.php?id=1060.

Read Abdullah Saeed, "The Islamic Case for Religious Liberty," First Things, Nov. 2011 (excerpted).

Read HANDOUT *Dignitatis Humanae* (Roman Catholic) and Congregation for the Doctrine of the Faith, Catholics in Political Life (Roman Catholic) (excerpted)

Read HANDOUT – Baptist Joint Committee for Religious Liberty http://www.bjconline.org/index.php?option=com_docman&task=cat_view&gid=59&Itemid=76 (excerpted).

Read HANDOUT - Transcript of Elder Dallin H. Oaks speech given at Chapman University School of Law on 4 February 2011 (excerpted).

Mon April 25 - TBD