

**Law 370, Section 001
Firearms Law and the Second Amendment**

Robert Leider

MW: 4:00–5:25 PM
Fall Semester 2023:
August 21 through November 20

Office Hours: Wednesdays, 3:00 PM
to 4:00 PM, and by appointment
E-mail: rleider@gmu.edu
Exam: Wed., Dec. 6 at 12:00 PM

“The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law. Which . . . is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.” – William Blackstone

Overview:

Gun control remains politically controversial and legally significant. In both state and federal court, a significant percentage of criminal law cases involve weapons offenses, and recently courts have been more receptive to claims that these laws may violate the right to bear arms. This course will survey how the law regulates firearms.

The first part of the course will be an advanced class in criminal law. This part of the course will examine the state and federal statutes that regulate the manufacture, possession, carrying, transfer, and use of firearms. In the process, this part will also pay special attention to criminal law topics that have relevance beyond firearm laws, including *mens rea*, possession, the categorical approach, the rule of lenity, “stop and frisk,” and the right of self-defense.

The second part of the class will survey how other areas of law intersect with firearms. This part will cover tort law, products regulation, administrative law, and local government law. Topics in this part will include firearm licensing, products liability, nuisance, and state preemption laws and home rule.

The final part of the course will consider the limitations on the regulation of firearms imposed by the right to keep and bear arms. Both state and federal constitutional decisions will be examined. Topics will include the purpose and scope of the Second Amendment, the police power, the army/militia debates, and the Anglo-American amateur military and police traditions.

Learning Outcomes:

By the end of this course, you should be proficient in firearm law legal doctrines and in the debates involving the Second Amendment. You should also continue to develop your legal reasoning skills.

Doctrinal Knowledge. You are expected to know the legal doctrines discussed in the overview section, including (for example) criminal law relating to the possession and carrying of weapons, to administrative law as it relates to firearm licensing, and to constitutional debates involving the right to bear arms.

Legal Reasoning. You are expected to develop your legal reasoning skills. In response to hypotheticals with novel fact patterns, you must be able to reason from analogy and apply general principles of criminal law.

Academic Knowledge and Reasoning. You are expected to learn and evaluate the various methodologies for interpreting statutes and the Constitution.

Requirements:

1. A final examination
2. Class participation (discretionary 1/3 letter grade)

Books for Class:

1. Course reader with assigned cases and academic materials
2. Other readings will either be handed out during class or posted on Blackboard (“BB”).

Office Hours:

Office hours will be after class on Wednesdays, from 3:00 PM until 4:00 PM. I am also liberally available by appointment. To schedule appointments, please e-mail me. Office hours will be held in person and concurrently on Zoom. I will set up a meeting room and a waiting room. I will monitor the waiting room every few minutes. Please be patient, however. If you are waiting on Zoom, I may have someone with whom I am meeting in person. It also never hurts to send me an e-mail if you plan to attend office hours.

Attendance:

Attendance is mandatory. The ABA prohibits students who miss more than 20% of classes from taking the exam. I will take attendance during each class. Those attending class are required to abide by all university policies on in-person attendance, including COVID-19 protocols.

For those who experience symptoms of contagious illness during the semester, I will liberally authorize the use of online/hybrid classes. Please e-mail me if you need such accommodations. I am also trusting that you will act responsibly in both directions—staying home if you may be sick, but not abusing the privilege of taking classes online because you do not want to attend in person that day.

If online classes become necessary, I will take attendance using the attendance report for each class. If your name will not be on the attendance report (e.g., you had to phone in), please e-mail me that you attended and include how you will appear on the attendance report (e.g., the phone number you used).

When holding class online, I encourage individuals to have their cameras on during class. In an online environment, we must all work to build a classroom community. That is easier when you can see your classmates’ faces. That said, I do not require that your camera be on, so please feel free to turn off your camera if you have a reason (e.g., children running around in the background). (Should too many students keep their cameras off, I reserve the right to require people to stay on camera.) Please mute your microphone when you are not speaking.

Electronics Policy:

When class is in person, I prohibit the use of computers or other electronic devices. Studies have shown that students who use computers during class do not learn as well. Please have printed copies of all reading materials.

Obviously, prohibiting electronics is not possible if class is held online. But I encourage you to simulate a no-computer environment the best you can by taking handwritten notes in a notebook and avoiding online distractions. You will likely learn more through taking handwritten notes and then consolidating those notes into a computer outline.

Recording Policy:

I strictly forbid anyone to record (video or audio) any of the lectures. This is both to protect intellectual property and the privacy of class discussion.

My general policy is not to record class lectures, even when students face an occasional absence. I also recognize, however, that students may face special circumstances at this time, which may result in longer term absences or distractions. Given this, I will record a lecture where there is a reasonable necessity for doing so, if arrangements are made with me in advance. I will make that lecture available for a limited time. Lectures will be deleted after the affected student has a reasonable opportunity to view it. Recording, copying, or disseminating the lecture in any way is prohibited.

Academic Integrity:

An important part of practicing law is having honor and integrity. Scalia Law School has adopted an honor code, which is available on the Honor Committee's website (<https://sls.gmu.edu/honor/>). Students are prohibited from lying, cheating, or stealing, being an accomplice or accessory to someone else who is cheating, bringing a prohibited material or device to an exam, or failing to report an honor code violation if the person has reasonable cause to believe that a violation has occurred.

All exams in this class will be **closed book**. You may not bring your textbook, access the Internet, bring notes, or have another aid of any kind. During the exam, the use of any resource with artificial intelligence is prohibited. The only things that you should bring to your exam are your word processor and a pen. I will supply all necessary materials (e.g., statutory supplements).

Cheating often occurs as an act of desperation by those who do not understand the material or have competing pressures preventing studying. The best way to prevent the temptation to cheat is to stay up to date on your assignments. If you have personal circumstances putting you under undue pressure, you should speak to me about your situation as soon as possible before the exam.

You are also strongly encouraged to ask me (or a member of the Honor Committee) if any questions arise.

Disability Accommodations:

George Mason University's Office of Disability Services provides for the reasonable accommodation of students with disabilities. If you need an accommodation (including modification of any course policy), please coordinate with that office. Please also do so as early as possible; accommodations can take time to process. Please note that I am not authorized to grant accommodations.

Unexpected Cancellations:

If the law school has an unexpected closure (e.g., a snow day), **class will still be held on the regular schedule** using the Blackboard virtual classroom. We will hold class online on an extended basis if the university discontinues in-person classes for any reason.

Online Classroom (when necessary):

Unless otherwise noted, all online class sessions (including hybrid sessions) will meet on Zoom.

Unexpected Server Problems:

If Zoom becomes unavailable during class, we will use Blackboard Collaborate Ultra. Please make sure you have all your accounts set up and download any necessary plugins. Should both services fail or my Internet goes down, we will reschedule class.

In emergency circumstances, I will send updates by e-mail to your GMU account, so please monitor your e-mail. And if you run into problems, it is helpful to me if you e-mail me right away. If you have significant trouble logging on, there is a good chance other students are, too. The earlier I know of problems, the faster I can correct them with minimal class disruption.

When scheduling activities, please try to leave yourself some buffer after class. If we run into unexpected problems, I would much rather hold class a little later than reschedule entirely.

Modifications of the Syllabus:

This entire syllabus, including course policies and the course schedule, is **tentative**. This is the first iteration of this course. Modifications throughout the semester will be necessary. Among other things, I may narrow the readings or add new cases and interesting news stories that arise during the semester. I will also add relevant laws to discuss during lectures. I also reserve the right to modify the syllabus (including adding exams or quizzes) if I believe it is necessary to facilitate learning. Please use the syllabus on Blackboard; that syllabus is kept current and will reflect any changes that occur. Please also do not get too far ahead in the reading.

Course Prerequisites:

To take this course, you must have taken a first-year course in Criminal Law. From the first day of class, all students are expected to know criminal law doctrines typically covered in a first-year course.

8/21 Introduction to Firearms Law

Franklin E. Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. LEG. STUD. 133 (1975).

William J. Vizzard, *The Gun Control Act of 1968*, 18 ST. LOUIS U. PUB. L. REV. 79 (1999).

Jacob D. Charles & Brandon L. Garrett, *The Trajectory of Federal Gun Crimes*, 170 U. PA. L. REV. 637, 639–672 (2021) (note the page limits, but print out the whole article; you'll need most of the rest for Wednesday's class).

Skim for background:

The Gun Control Act of 1968, 18 U.S.C. §§ 921–934

National Firearms Act, 26 U.S.C. §§ 5801–5872.

Virginia's laws governing weapons, Va. Code § 18.2-279–18.2-311.2

Note: These legal provisions cover over 100 pages, and it is too much for you to read closely for the first day. It is also unnecessary; we are going to be studying many provisions in depth this semester. Instead, I want you to skim through and get a rough sense of the overall structure of federal gun laws and the laws of one state (Virginia). Do not get caught up in the minutiae of each individual provision.

8/23 Firearms and Federalism

Charles & Garrett, pp. 672–695.

The following readings are available on Blackboard, in edited form:

Eric C. Blondel, *The Structure of Criminal Federalism*, 98 N.D. L. Rev. 1037 (2023).

Cases:

United States v. Lopez, 514 U.S. 549 (1995).

United States v. Bass, 404 U.S. 336 (1971).

Scarborough v. United States, 431 U.S. 563

United States v. Danks, 221 F.3d 1037

United States v. Stewart, 348 F.3d 1132

United States v. Stewart, 451 F.3d 1071

United States v. Missouri, 2023 WL 2390677

[Future classes to be inserted]

12/6 **FINAL EXAM at 12:00 PM**