



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL *of* LAW

CIVIL RIGHTS LAW

COURSE No. 747

SPRING 2018

PROFESSOR NORRIS

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THE PROFESSOR

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OFFICE HOURS: Mondays and Wednesdays
2-3pm
(All other times by appointment only)

NOTE FROM THE PROFESSOR:

The professor utilizes Blackboard for submitting recent cases, previous exams, articles, messages, etc. to the class. Be sure to sign in to Lexis ASAP to access the web courses.

COURSE BOOKS & MATERIAL

Required Textbook: Charles F. Abernathy, *Civil Rights and Constitutional Litigation*, 5th ed., 2012; ISBN 978-0-314-26787-0.

COURSE DESCRIPTION & LEARNING OBJECTIVES

DESCRIPTION:

During the semester, we will discuss cases and materials which will be included on your final exam. The Civil Rights Law Course provides an opportunity for students to engage in experiential learning opportunities and to hear from civil rights experts in different fields. The course highlights statutory and constitutional sources of civil rights law and how these interact when the rights of people are affected based on race, color, religion, national origin, sexual orientation, and gender. Specifically, we will study congressional statutes and judicial interpretations to determine how these statutes are enforced. Once students complete this course, they will be in position to identify what statutory and constitutional rights have been possibly violated and will then be able to prepare the necessary pleadings to prosecute and defend against these claims in a court of law. With this introduction, graduates should be in position to handle



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litigation as either counsel for plaintiffs or as defense counsel for both private businesses and public governmental agencies.

The issues addressed in the course include governmental torts, qualified and absolute immunity from liability, employment discrimination issues under the Civil Rights Acts of 1866 and 1964, disability claims as well under federal legislation, and the granting of attorney's fees. The course should enable graduates of this course to handle litigation as either counsel for plaintiffs or as defense counsel for both private businesses and public governmental agencies.

STUDENT LEARNING OUTCOMES

Student Learning Objectives (SLOs): SLOs are the knowledge base and skills that the professor desires the students to exhibit at the completion of the course.

SLOs are measured by performance criteria that indicate the specific characteristics students should exhibit to demonstrate the desired achievement of the learning outcome.

Eventually, the student should be able to engage in various progressive levels of analysis:

- * Remembering the unique facts,
- * Understanding their importance,
- * Applying them to the legal standards,
- * Analyzing the overall impact,
- * Evaluating and determining the guilt or innocence or the guilt to a lesser included level of crime from that originally charged.

After completing course materials and participating in class discussions, a student in Civil Rights Law will be in position to identify what statutory and constitutional rights have been possibly violated, will be able to assess the merits of a claim, and will then be able to prepare the necessary pleadings to prosecute claims for an alleged plaintiff victim or to defend against these claims.

To evaluate the student's accomplishment of these objectives, the professor will employ an end-of-the-term essay exam by which the students will be able to apply their knowledge of the material.

Some of the topics to be covered include:

Elements of a Plaintiff's 1983 Claim



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The “Under Color of” Law Concept—State Action

Actions as to Official and Individual Capacity

Private Persons as State Actors

Combination of Private and Public Actors

Policymakers and Persons, Monell v. Department of Social Services, NY

Policymakers: Single act; lack of training

Bivens v. Six unknown named agents, actions against Federal Officers

Routes to Governmental Liability: Direct action [official policy]; custom; attribution; failure to train, and others

Defenses to Liability

Absolute Immunity: Legislative; Judicial; Prosecutorial;

Exception to Absolute: Qualified Immunity if acting outside jurisdiction

Qualified Immunity: The Clearly Established Law Concept

The Status of states as Persons

Causation: Cause in fact vs. Proximate or Legal Cause; mixed motives; supervisory liability; remote consequences; intervening acts

Compensatory vs Punitive Damages

Injunctive Relief

Property

Liberty

Procedural Due Process

Substantive Due Process

Fourth Am & Police Misconduct

Equal Protection

Public Employee Speech Rights

Litigation of Section 1983 claims in State court



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Eleventh Am. Jurisprudence

Attorney's Fees

GRADING

The Course Grade will total 100 points, from which I will assess a letter grade [an A will range from 85-100 points]. The class project involves researching specific assigned topics leading to the preparation of an Amicus Brief for a case that will be assigned in class. The experiential learning project will be worth up to 35 points. The final exam on a date TBA will total 65 points. It will be a multiple-choice exam covering matters discussed in class and provided to you via your Lexis web course.

ACCOMMODATIONS

Accommodations are available for those that meet the guidelines. Consult with the office of the Dean of Students for this purpose.

PARTICIPATION, ATTENDANCE & PROFESSIONALISM

Considering the nature of the course as well as the delicate topics to be discussed, all students should participate in constructive class discussion, always respecting the opinions of your fellow classmates. The professor should and will obviously do the same. If he deviates, students should feel comfortable in bringing any perceived intolerance to his attention.

Attendance policy: It is your responsibility to be punctual. Arriving after roll call and once the lecture begins constitutes an absence. This is established in the student faculty manual. There is no "excused" absence that the professor can grant. Please understand that concept. Carefully review the number of absences you are entitled to for each class.



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ACADEMIC CALENDAR

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

First Day of Class Monday January 8, 2018

Last Day to ADD/DROP Wednesday January 10, 2018

MLK Holiday (NO CLASSES) Monday January 15, 2018

Purge of all unpaid course selections Wednesday February 7, 2018

Mid Term Examinations Mon – Fri March 5-9, 2018

Spring Break Mon – Fri March 12 – 16, 2018

Spring Break (University Closed) Mon – Wed March 12 – 14, 2018

Good Friday (No Classes) Friday March 30, 2018

Last Day of Classes Wednesday April 25, 2018

Last Day to Drop a Class Wednesday April 25, 2018

First Year Professors' Grades due Wednesday April 25, 2018

Reading Period (NO CLASS) Thursday – Sunday April 26 - 29, 2018

Final Examinations Monday – Friday April 30-May 11, 2018

POLICIES & PROCEDURES

Incorporated above.

READING ASSIGNMENTS

Abbreviations:

Aka=also known as

D/L=Download case [Do this in situations where the book does not provide sufficient information for a good understanding of the holding—at least download the syllabus]

DP=Due Process

End of maj. Op.=Read through the end of the majority portion of the opinion.

n.=note or notes section right after the case opinions; if I state in the syllabus, n. 3 and it has sections a, b, & c, then I mean for you to read only n. 3 and not a, b, c; n. 1, 1a=read both P 1 and P 1a; I will specify at times, e.g., n. 1, 1a, 1b; this means to read those 3 Ps.

P=Paragraph

PC=probable cause

Week 1

1/8 Introduction to Civil Rights Law, Review of the Syllabus.

1/10 Overview of Civil Rights Statutes, Appendix, 941-74; Ch. 1, Sec. 1983, Monroe, 2-9.

Week 2

1/15 MLK Holiday Observed (No Classes)

1/17 Ch. 1, Sec. 1983, Monell, 12-18; n. 4, 20; Elements of Sec 1983, 22-26 [end of Whirl]

Week 3

1/22 Estelle note, 27 n. 3(b); 33-34, n.5; Estelle case, the 8th Amendment and the care of prisoners' serious medical needs, 34-37; examples of serious medical needs, 37-38, n. 1a; Whitley v. Albers, 41-47; strip searches, 49, n. 4b; D/L: Florence v. Board of Chosen Freeholders, 132 S. Ct. 1510 (2012); Farmer, the transsexual case, 51, read only P1 for the holding.

1/24 Houston [Police Misconduct Litigation]; 4th Amendment, Garner, 60-65; Graham, the objective standard of reasonableness, 70-73; Safford, 76, n. 3a; Rodney King, US v. Koon, 76, n. 3b;



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Compare Koon case to Anastasio Hernandez-Rojas Beating [both involved excessive force beyond initial permissible force]; Brower, Hodari, the subjective aspect of a seizure, 77 n. 5; Sacramento, 77-78, seizure not intentional, n. 5 (a); Scott, 4th not violated by officer's use of force to stop a dangerous high speed chase, 79-81.

Week 4

1/29 Substantive DP, 87-88; Shock the Conscience Test, 96, n. 1, 1a; De Shaney, 103-10; Equal protection, Davis, n. 3, 124; Feeney, n. 4, 125; Mt. Healthy, n. 5, 126.

1/31 Under color of law, Atkins, 130-31; Adickes, n. 1a, 132 [custom]; Notes, Private actors who join state actors, Conspiracy cases, Price, n. 2, 146; Private actor, Glover, 2a, 146; Burton, n. 3, 147; Evans, 164-66 [dissenting op only].

Week 5

2/5 State neutrality, as state action, Reitman, n. 1b, 166; Compare with Schuette v. Coalition to Defend Affirmative Action, 134 S. Ct. 1623 (2014) {CivRtsSchuetteSyllabus2014}

2/7 Shelley, n. 2a, 167; Palmore, n. 4, 4a 168; Pierson [judge], official immunity, 170-74; Source of immunities, n. 1, 174; Dennis, n. 4, 177-78; Pulliam, n. 5, 178; Forrester, Judicial Immunity, 179-83; Absolute immunity for Judicial acts, Stump & Mireles, 184-85, n. 2; Butz, Administrative law judge immunity, n. 5, 187.

Week 6

2/12 Kalina, 188-93; Scope or Prosecutorial Immunity, Briscoe, 196 n. 5c; Qualified immunity, 198; Harlow, 198-203, Notes, 203-09; Malley, 209-13

2/14 Note, Qualified immunity & Civ Proc Rules, 213-15, n. 1, 2, 2a, 2b, 2c; City of Monterey, 216-17, n. 4, 4a, 4b, 4c; Defenses, Limitations, Wilson, 220 [holding: 2 year S/L in Texas; based on personal injury state rule]; Notice of claim rule, Felder, 227-31 [maj. Op. only]; Note, Sec 1983 in State Cts, 233-35.

Week 7

2/19 Relief, Damages, Smith, 238-43 [end of maj op]; schuet

2/21 Injunctions, Lyons, 261-67; Notes on Injunctive relief, Lankford and Rizzo, 269-70; Horne v. Flores, FRCP 60 (b), 290-91, n. 6; Heck, 300-03 [end of maj op only] [exhaustion of habeas and other remedies before Sec 1983 action may be used to attack legality of confinement];



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Week 8

2/26 Procedural DP, Parratt, 313-16; Zinermon, 318-23 [end of maj. Op.]; Younger, 329-35; Compare Dombrowski to Younger, n. 4, 338-39;

2/28 Steffel, declaratory judgment not precluded, 345 [Prof's comment]; Hicks, dissenting opinion only, 352-53; Suits vs Govts, Local Govts, Liability, Monell, 370; Heller, 371; Note, Govt Liability, 371, n. 1, 1a; 372, n. 1c, 2; Pembaur, 374-79 [end of maj op]; Note on Policymakers, Prapotnik, 382-83, n. 2; Bryan Co., 384-85, n. 4

Week 9

3/5 Petition for Certiorari/Trial Memorandum project with Student Exam Number due this date; failure to submit results in zero points; regular class will be conducted; Tuttle, 385-88 [end of maj op]; Note, Govt Responsibility for non-policymaking officers [Allee], 388-89, n. 2, 2a, 2b; Canton, 391-95 [end of maj op] [Failure to train and deliberate indifference]; Connick, Failure to Train Prosecutors re Brady duties, 398, n. 2a; Defenses to Local Govt Liability, Owen, 400-07 [end of maj op];

3/7 City of Newport, 410 [no punitive damages against the city]; Will, whether the state or a state official acting in an official capacity is a person, 411-15; Note, Eleventh Am Jurisprudence, 415-17; Note, Official Capacity, n. 2, 418-19; Personal Capacity, n. 3, 419-20; Effect of official capacity, n. 4a-c, 420; Edelman, prospective injunctive relief ok, 421-26; Note on Relief not barred by 11th Am, 428, Milliken, n.2, 427; Fitzpatrick, 429, n. 5;

Week 10

3/12 Spring Break (No Classes)

3/14 Spring Break (No Classes)

Week 11

3/19 Ch 2, Sec 1981 & 1982, Private Racial Disc & the 13th Am, 444-46; Jones, 446-52; Notes on Interpretation of the 1866 Civ Rts Act, The Civil Rights Cases, 455 n. 2b; "Badges and incidents of slavery," 457, n. 1 & 2 & 458, n. 4a; Runyon, 478-84 [end of maj op]; Patterson, 487, n. 2; n. 2a, 2b; Civ Rts Act of 1991, n. 2c, 487-88; S/L catch-all 4-year rule, 488, 2d; Gay rights, 489-90, n.5; Cook, meaning of contract, 493-94; compare to Scott, 494, n. 1, 1a, 1b.

3/21 McDonald, white plaintiff victim, 500-03; St. Francis College, Iraqi-American, 503-06; Note, Racial groups covered by Sec 1981, 507, n. 1c [whites can discriminate against whites, etc] [Partida grand jury case]; covered groups, 507, n. 2a; Jews, 508, 2c; Aliens, 508, 2d; Sex discrimination, 508, n. 4, 4b; Bailey v. Alabama, 510-11, n. 2; Note, Peonage, 510, n. 1b; [discuss US v. Nelson, slavery]; Bailey, 511, n. 2; Kozminski, 512, n. 4 [mere psychological coercion not covered by involuntary servitude].



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Week 12

3/26 Ch 3, Sec 1985 (3) Conspiracy coverage, 513-15; Griffin, 516-21; Rights assertable, The Chart of Rights, 528-31; Racial and “Otherwise Class-Based Invidiously Discriminatory Animus, Novotny, 534-35; Notes, Classes covered by Sec 1985 (3), Is Sex Disc such an Animus, 535, n. 1a; Should we limit coverage to “race?”, 536, n. 2a & n. 3; Scott, 536, 537-39, II, A, B [delete C], D, 540-41, Dissent, 541-42; Bray, 545-48 [end of maj op]; Morrison [Brief] Violence Against Women Act [VAWA], 42 USC Sec. 13981 not constitutional and cannot provide a civil remedy [date rape situation], 552-57.

3/28 View Videotape of The Killing of Randy Webster, a 1981 movie which resulted from Professor Salinas’s 1978-79 prosecution of several Houston police officers for depriving Webster of his right not to be deprived of liberty [death] without due process of law.

Week 13

4/2 Ch 4, Federal officials, Direct Constitutional Claims, Bivens, 568-71; Davis, 575-78 [end of maj op]; Notes, Chappell, Special exceptions [military] to a Bivens action, 580, n. 2; Nixon [absolute immunity] & Clinton [no immunity for activities outside presidential function], 581, n. 4, 4a, & 4b; Correctional Serv. Corp., 590, n. 4;

4/4 Ch 5, Title II, Public Accommodations, Civ Rts Act of 1964, Heart of Atlanta Motel, 594-95, #7, 596-98; Ch 6, Title VI, 606-08; Lau v. Nichols, Intent v. Effect, 608-12; Notes on Effect Test, Bakke, 612-13, n. 2; Fisher v. U. of Texas, 5th Cir. 2014 {CivRtsRaceFishervUT5thCirJuly152014LexisCitationOnlyBrf} [Lexis]; Schuette Refresher;

Week 14

4/9 Grantees covered by title VI, 614-15, n. 3, 3a, 3b, & 4a; Language Rts, Sandoval, 616, n. 4d; Title VI and Need for Disc Intent Proof?, Guardians Ass’n, 617-19 [end of J. Marshall dissent]; Plaintiff-initiated litigation limited to intent test theory, Alexander v. Sandoval, 625, n. 6, 6a; Agency enforcement, 42 USC Sec. 2000d-1, n. 6c; Title IX, Educ Amendments of 1972, Grove City College, 665-69; Note, Leg. Reversal, 671, n. 4.

4/11 Ch. 7, Title VII, Emp Disc, 723-25; Griggs, 725-29; Watson, 730-31, n. 3b [adversely affected]; Note, Disparate Treatment [Intentional Disc], 747-48; Burdine, 748-51; Hopkins, 763-67 [end of maj op]; Ledbetter, 848-49, n. 2a [She spoke at Demo Convention for Obama]; Croson [Barring aff action, Part V], 863-64; Voluntary aff action, Grutter aftermath, 866-67, n. 4 & 4c, Michigan voters by 67% vote voided aff action, Michigan Const’al Am to Forbid Racial Preferences, MCLA Const. Art. Sec 26 [2006], upheld in Schuette; see Sotomayor Dissent {CivRtsSchuetteSyllabus2014}



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Week 15

4/16 Ch 8, Voting Rights Act of 1965 [amended in 1975 and 2006—effective through 2032]; Section 5 Preclearance, Georgia v. US, 908-11; 2006 Amendments, 924, n. 3d; Sec 2, Results test, Gingles, 927-33; The Southern Strategy—Lee Atwater 1980s: The Current Effects; Shelby County v. Holder, 133 S. Ct. 2612 (2013), Sec. 5 Case, {CivRtsShelbyCountyvHolder133SCt2612Yr2013Brf}; Voter IDs; Texas v. United States, [Lexis] {CivRtsTexasvUS887FSupp2d133vacatedShelbyCo3rdAttyFeesforMinority2011}.

4/18 Ch 8, Voting Rights Act of 1965 [amended in 1975 and 2006—effective through 2032]; Section 5 Preclearance, Georgia v. US, 908-11; 2006 Amendments, 924, n. 3d; Sec 2, Results test, Gingles, 927-33; The Southern Strategy—Lee Atwater 1980s: The Current Effects; Shelby County v. Holder, 133 S. Ct. 2612 (2013), Sec. 5 Case, {CivRtsShelbyCountyvHolder133SCt2612Yr2013Brf}; Voter IDs; Texas v. United States, [Lexis] {CivRtsTexasvUS887FSupp2d133vacatedShelbyCo3rdAttyFeesforMinority2011}.

Week 16

4/23 Review

4/25 Last Official Class Day; Class Previously Covered

Week 17

4/30 Final Examination – Room TBA