

Law 300: Concepts in American Law (Spring 2019)

Professor Daniel Klerman
Mondays & Wednesdays 2-3:40PM
Law School Rm. 101
4 units

Class Webpage

www.klerman.com and click on "Law 300" button at left

or

<http://dklerman.usc.edu/Law300.htm>

Much important information, including slides, readings, and assignments, will be posted to the webpage.

Professor's Contact Information & Office Hours

Office: Law School Rm. 460

Office Hours. Mondays & Wednesdays 3:40-4:40PM. Office hours will start in Law School Rm. 101 after class and then continue in my office, Rm 460.

Email address: dklerman@law.usc.edu (I will try to respond to emails within 24 hours. If you don't receive a response within 24 hours, please send the email again)

Phone. 213 740 7973 (but email is the best way to reach me.)

Teaching Assistants' Contact Information & Office Hours

Chrissie Cheung. christine.cheung.2020@lawmail.usc.edu.

Office hours: Wednesdays 12:30-1:30 in Law School Room 307C (which is in the Law Library. Get off the elevator on the 2nd floor)

Benjamin Reinach. benjamin.reinach.2020@lawmail.usc.edu

Office hours: Mondays 12:30-1:30 in Law School Room 307C (which is in the Law Library. Get off the elevator on the 2nd floor)

Prof. Klerman's Assistant, Chris Emerson

Email: cemerson@law.usc.edu

Phone: 213 740 2099

Office: Rm. 473

Note that Chris Emerson is not a law student. He is a full-time USC employee. In some places, he might be called a secretary.

Chris shares an office with Margaret Miller, and she can also help with issues related to Law 300.

Course Description

This course will be structured around four legal topics:

Title VII. Statutory interpretation and employment discrimination, with special attention to affirmative action, sexual harassment, and transgender rights.

Products Liability. Common law interpretation and consumer safety, with special attention both to the historical development of the law and to modern litigation about fat, sugar and tobacco.

The Second Amendment. Constitutional interpretation and gun rights, with attention both to the historical background of the Second Amendment and to recent cases.

Self-Driving Cars. Regulation and new technologies.

The goal is to use these issues as vehicles for teaching legal reasoning and broader concepts about American Law. Topics will be taught using cases, statutes, and theoretical/academic articles. Students will be encouraged to formulate their own legal arguments, understand and critique legal arguments they read in cases and academic materials, and debate with each other. I also hope to help students understand the relationship between policy arguments and legal arguments through both theoretical materials addressing that topic and through the cases and statutes we discuss.

Learning Objectives and Outcomes

This course has five principal learning goals:

Students will learn to read cases critically.

Students will develop the capacity for reasoning-giving in statutory interpretation, common law, and constitutional law.

Students will develop an ability to notice how claims about history, culture, society, politics, morality, and other elements of the human condition are asserted in the course of legal reasoning.

Students will become attentive to way law uses language to make meaning and the way legal language gives rise to conflicting interpretations.

Students will look at law from both internal and external points of view.

Prerequisite(s): None

Co-Requisite(s): None

Concurrent Enrollment: None

Recommended Preparation: None

Course Notes

Much important information, including slides, readings, and assignments, will be posted to the webpage. You can access the web page by:

www.klerman.com and click on "Law 300" button at left

or

<http://dklerman.usc.edu/Law300.htm>

Blackboard will be used for quizzes, for turning in writing assignments, and perhaps for other purposes.

Technological Proficiency and Hardware/Software Required

None

Required Readings and Supplementary Materials

I will distribute required readings in class and post them to the class webpage. You don't need to buy any books or a course reader.

Description and Assessment of Assignments, Grading Breakdown, Assignment Submission Policy, & Grading Timeline

Students will be graded based on performance on six items.

1. Class participations (10% of grade)

I expect you to come to class prepared and to participate actively. A large part of the law is oral, and class is much more fun if everyone participates. I will grade you based on the quality and quantity of your comments in class. Note that, in accordance with law school tradition, I will use the "Socratic Method" and "cold call." That means, I may call on you even if you don't raise your hand. This helps to ensure wide participation in class discussion. If you are not prepared for class or if you will be absent or if you are uncomfortable discussing the material, please let me know in advance by emailing me at dklerman@law.usc.edu. Please put "Law300" in the subject line. There will be no penalty for sending a reasonable number of such emails, but if I call on you and you are absent or not prepared, that will have a negative impact on your participation grade. I will let you know if I think you are close to make an unreasonable number of requests not to be called on.

2. Blackboard quizzes (5% of grade)

To help you prepare for class, I will sometimes post a few questions to Blackboard relating to the readings. These questions will be relatively easy. Their primary purpose is to make sure everyone comes to class with a basic understanding of the readings.

Grading of the Blackboard quizzes will be generous. I don't expect students to get all the questions right, but merely to try. You will receive full credit if you answer 90% of the questions and get at least 50% correct. Blackboard quizzes must

be completed at least 15 minutes before class begins. Late work will receive no credit, because answers will be discussed in class.

After you "submit" your answer to each question, please be sure to click on "ok" in the lower right hand corner to "review results." This will tell you if you got the right answer, and it will provide an explanation of the legal reasoning behind the correct answer. This feedback is a key part of why I am putting questions on Blackboard. I want you to get feedback on the easy questions (the ones I put on Blackboard) before you tackle the harder questions (the ones we will discuss in class).

3. Short (1-page) papers (15% of grade)

Along with each reading assignment, I will give you questions related to the readings. These are the questions that I will ask in the next class. The best way to prepare for class (and the long papers, midterm, and final) is to write out answers to all of those questions. I do not require that, but I encourage it. I will, however, require you to write out answers to a small number of those questions once a week. I will assign different questions to different groups of students. Some students will have answers due on Mondays 15 minutes before class begins, while others will have answers due on Wednesdays 15 minutes before class begins. I will try to accommodate your preferences as to which day you prefer.

You may discuss the questions with classmates (and, indeed, I encourage you to do so), but assignments must be written up independently.

Students will receive up to 100 points for each required question they answer, depending on quality. In addition, if a student answers a question that was not required for him or her (but was assigned and mandatory for others), the student will receive up to 10 points, depending on quality. You may skip two mandatory writing assignments without penalty. If you skip only one writing assignment, I will grade one of your assignments as though it was optional (e.g. up to 10 points for each question answered, rather up to 100 points). If you skip no assignments, I will grade two of your assignments as though they were optional (e.g. up to 10 points for each question answered correctly rather than up to 100 points).

A paper answering only the required questions should be approximately one page long, single spaced.

Writing assignments should be submitted in Microsoft Word format.

All papers should be submitted to Blackboard at least 15 minutes before class begins. Papers received after class has begun will receive no credit, because answers will be discussed in class. Papers received in the 15 minutes before class begins will be penalized 10%.

Short papers will ordinarily be graded within one week.

3. Longer (5-page) writing assignments (25% of grade)

I will assign three longer papers. These papers will ask you to analyze a legal problem and will be similar to questions I will ask on the midterm and final.

The due dates for the writing assignments are noted in the course schedule chart below.

You may discuss the questions with classmates (and, indeed, I encourage you to do so), but assignments must be written up independently.

These papers should be no longer than 5 pages, single spaced.

All papers should be submitted to Blackboard.

Writing assignments should be submitted in Microsoft Word format.

Late work will be penalized 5% (if less than 2 hours late), 10% (if between 2 hours and 24 hours late) plus 10% for each additional day or fraction of day late.

Longer papers will ordinarily be graded within two weeks.

4. Midterm (20% of grade)

The midterm exam will contain multiple-choice questions, short answer questions, and/or a short essay. It will be administered in class before spring break and will be "open book." The midterm will be graded within 2 weeks.

5. Final exam (25% of grade)

The final exam will include multiple choice questions, short answer questions, and/or one or more essay questions. It will be "open book." The final will be Monday, May 6th, 2019, 2:00pm – 4:00 p.m.

Additional policies and information

See below, after the Course Schedule

Course Schedule

Note that the readings and assignment due dates may be adjusted somewhat as the semester progresses. Notice of all changes will be given in class, by email, and/or on this webpage.

Note that readings will generally be short (less than 20 pages per class). In this course, I will emphasize thinking, not reading.

| Week | Class | Date | Topic & Readings | Slides | Model Answers | Writing Assignments |
|---|-------|--------|---|--------|---------------|--|
| 1 | 1 | M 1/7 | Introduction (No assigned reading) | | | |
| I: Statutory Interpretation A. Title VII (Employment Discrimination) | | | | | | |
| | 2 | W 1/9 | The Text of Title VII | | | |
| 2 | 3 | M 1/14 | The Legislative History of Title VII | | | |
| | 4 | W 1/16 | Discriminatory Impact <i>Griggs v. Duke Power</i> , 401 U.S. 424 (1971) | | | |
| 3 | | M 1/21 | Class Cancelled. M. L. King Day | | | |
| | 5 | W 1/23 | Affirmative Action <i>United Steelworkers v. Weber</i> , 443 US 193 (1979) Elizabeth Garrett, "Legislation and Statutory Interpretation" (2008) | | | 1st Writing Assignment distributed |
| 4 | 6 | M 1/28 | Sexual Harassment Catherine Mackinnon, <i>Sexual Harassment of Working Women</i> (1979) <i>Meritor Savings v Vinson</i> , 477 U.S. 57 (1986) | | | |
| | 7 | W 1/30 | Transgender Rights <i>Ulane v. Eastern Airlines</i> , 581 F. Supp. 821 (N.D. Ill.); 742 F. 2d 1081 (1984) | | | 1st Writing Assignment due Thursday 1/31 5PM |
| B. Interpreting Other Statutes | | | | | | |
| 5 | 8 | M 2/4 | ObamaCare <i>King v Burwell</i> | | | |
| | 9 | W 2/6 | Discussion of First Writing Assignment | | | |
| II. Constitutional Interpretation A. The Second Amendment (Gun Rights) | | | | | | |
| 6 | 10 | M 2/11 | The History of the Gun Rights | | | |
| | 11 | W 2/13 | <i>United States v. Miller</i> , 307 U.S. 174 (1939) Levinson, "The Embarassing Second Amendment" (1989) | | | |
| 7 | | M 2/18 | Class Cancelled. Presidents Day | | | |
| | 12 | W 2/20 | <i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) | | | 2nd Writing Assignment distributed |
| 8 | 13 | M 2/25 | Gun rights after <i>Heller</i> | | | |
| B. Other Constitutional Issues | | | | | | |
| | 14 | W 2/27 | Abortion <i>Roe v Wade</i> | | | 2nd Writing Assignment due Thursday 2/28 5PM |
| 9 | 15 | M 3/4 | Discussion of Second Writing Assignment | | | |
| | 16 | W 3/6 | Midterm | | | |
| III. Common Law Interpretation A. Products Liability | | | | | | |
| 10 | 17 | M 3/18 | <i>Levy v. Langridge</i> <i>Winterbottom v. Wright</i> , 20 M. & W. 109 (Ex.of Pleas [England] 1842) | | | |
| | 19 | W 3/20 | <i>Thomas v. Winchester</i> , 6 N.Y. 397 (1852) <i>Loop v. Litchfield</i> , 42 N.Y. 351 (1870) | | | |
| 11 | 20 | M 3/25 | <i>Devlin v. Smith</i> , 89 N.Y. 470 (1882) <i>Macpherson v. Buick Motor Company</i> (1916) | | | |
| | 21 | W 3/27 | Leonard Levy, <i>An Introduction to Legal Reasoning</i> | | | 3rd Writing Assignment |

| | | | | | | |
|--|----|--------|--|--|--|--|
| | | | <i>Escola v Coca Cola</i> (Cal. 1944) Restatement of Tort, Second 402A (1965) | | | distributed |
| 12 | 22 | M 4/2 | Critiques of Products Liability George Priest Polinsky & Shavell | | | |
| B. Other Common Law Issues | | | | | | |
| | 23 | W 4/4 | Finders <i>Armory v. Delamirie</i> | | | 3rd Writing Assignment due Thursday 4/5 5PM |
| 13 | 24 | M 4/8 | Discussion of Third Writing Assignment | | | |
| IV. Law, Regulation, & Self-Driving Cars | | | | | | |
| | 25 | M 4/10 | Introduction to Automous Vehicles Regulation of Ordinary Vehicles | | | |
| 14 | 26 | M 4/15 | Regulations for Testing Autonomous Vehicles | | | |
| | 27 | W 4/17 | Product Liaibility and Autonomous Vehicles | | | |
| 15 | 28 | M 4/22 | The Trolley Problem & Autonomous Vehicles | | | |
| | 29 | W 4/24 | To Be Announced | | | |
| | | M 5/6 | Final exam. 2-4PM. Place TBA | | | |

Additional policies and information

Lunches

I will be organizing lunches with small groups of students. Sign-up sheets will be available in class. Lunches will usually take place on Wednesdays 1-2PM. Discussion need not be limited to topics covered in Law 300. In fact, I hope it's not. To preserve an informal atmosphere, I will limit lunch to 10 students. Please bring your lunch or purchase it before 1PM.

Study Groups

As generations of law students have discovered, the dialogic character of law makes studying with a group an ideal way to prepare for class, exams, and writing assignments. I will be assigning everyone to a small study group, and I encourage you to meet with your study partners regularly. Ideally, each study group would meet the evening before each class to go over the readings and discussion questions. Although you must write up your work independently, I encourage you to discuss the short paper questions and longer writing assignments with your study group.

Laptops and Other Screens

Devices with screens -- laptops, tablets, cellphones, eReaders, iPads, Kindles, and similar devices --- may not be used during class for notes or for any other purpose. While in class, please focus on thinking, not note taking. To make most note taking unnecessary, I will distribute my PowerPoint slides and post an audio recording of each class.

Audio Recordings

Audio recordings of every class will be posted soon after the relevant class has ended. To access recordings, log onto Blackboard and click on "Recordings" in the left panel. You do not need to ask permission from me to access recordings

Model Answers

Model answers to all class writing assignments will be distributed after all question have been discussed in class.

Distribution will use Hogo, a secure document sharing and distribution service. I wrote these model answers myself.

Model answers cannot be printed, downloaded, or shared. This enables me to reuse questions from year-to-year, and ensure that no students have an unfair advantage through access through answers to the prior year's questions. Even if you figure out how to defeat Hogo's security provisions, please do not share model answers with students in future classes or anyone else. Giving answers to future students will not really help them (because they will not have the benefit of learning the material themselves) and will cause unfairness.

Attendance

Because I will be posting an audio recording of each class as well as my PowerPoint Slides and model answers, it may be tempting to skip class. To counteract that temptation, class attendance is mandatory.

Limited Circulation of Class Materials

Class materials, including model answers, PowerPoint Slides and audio recordings, are for use by Spring 2019 Law 300 students only. You may not share them with future Law 300 students or anyone else. Doing so would be a violation of both USC Law School rules and copyright law. The purpose of this policy is to preserve my ability to reuse some questions in future classes. If model answers, PowerPoint Slides, audio recordings, or other class materials are shared with next year's class, students with access to those materials will have an unfair advantage and will be deprived of the benefit of working out the answers themselves.

Reasonable disagreement and mutual respect

Disagreements (even reasonable disagreements) about what the law means and/or should be are integral to legal reasoning. They also can implicate our sense of right and wrong and our convictions about the meaning and worth of our lives. In other words, our disagreements will sometimes touch a nerve. We will strive to find ways to have reasoned disagreements, and make reasoned arguments, while remaining friendly. Ultimately, my goal is that you will see arguing with your classmates as a sign of respect. You show your respect for them by taking their arguments seriously, and by taking the time to explain why you think they are mistaken. As William Blake wrote, "Opposition is true friendship," as is sensitivity to one another's feelings. Sometimes I will encourage you to make arguments for a side you don't believe in, and I encourage you to do so even when I have not specifically asked you to do so. This class is about making reasoned arguments, not broadcasting your views and preferences (and certainly not about criticizing others for views or arguments they express in class).

The "Socratic method"

I use the traditional "Socratic method," commonly practiced in American law schools. That means that in addition to calling on people who volunteer to speak, I will also "cold call" students. The questions I pose are meant to stimulate the reason-giving process. They are not meant to elicit the "right answer." More often than not, there is disagreement about what the right answer is, and I want you to make a reasoned argument not get the "right answer" (which may not exist). Accordingly, if I follow up on your initial answer by asking you another question or by offering an objection, or by testing your answer with a hypothetical scenario, I am not commenting adversely on your answer. Instead, I am investigating—and encouraging you and the rest of the class to participate in investigating—to think harder about your reasoning. This process of inquiry may cause you to revise your initial answer, or to elaborate upon it with more detail, or to recognize that there is more than one valid answer. Or you may push back on my questions and suggest that I am the one whose reasoning is weak. This is all part of the process and therefore you should not be worried about failing to give the "right" answer. Though this so-called "Socratic method" can cause some anxiety, I use this method despite that effect, not because of it. It is an important part of legal reasoning, because it is based on the kind of dialog that takes place at oral argument in appellate courts, when judges ask counsel tough questions about the position they are advocating.

As noted above, if you are not prepared for class or if you will be absent or if you are uncomfortable discussing the material, please let me know in advance by emailing me at dklerman@law.usc.edu. Please put "Law300" in the subject line. There will be no penalty for sending a reasonable number of such emails, but if I call on you and you are absent or not prepared, that will have a negative impact on your participation grade. I will let you know if I think you are close to make an unreasonable number of requests not to be called on.

Reading Ahead

I do not recommend reading ahead, because each reading builds upon the prior class's discussion. So, if, for example, you try to do both Monday's and Wednesday's readings over the weekend, you will not be able to fully comprehend Wednesday's readings, because you will not yet have had the benefit of Monday's class discussion. If you have extra time, I suggest you review rather than read ahead. If, because of special circumstances, you need to read ahead, please let me know and I will give you the assignment in advance. If your need to read ahead is related to a disability for which confidentiality is desired, please contact the appropriate administrator so that your request can be transmitted to me anonymously.

Research

Unless specifically stated, I neither expect nor encourage you to do legal research when preparing for my class. When I assign questions, I expect you to answer them based on class materials. Even when I give you a question that is based on a real case, I discourage you from trying to find the case upon which the question was based. I discourage research for three reasons. (1) I may have changed the facts of a case, so the reasoning in the case may not be applicable to the question I have asked. (2) In class, I am seldom looking for a single right answer. Rather, I am hoping that you will discover several plausible ways of addressing the legal issue. If you find a case on point, you may find one plausible answer to my question,

but not other plausible answers. (3) The key goal of this class is to help you learn how to make good legal arguments on your own. If you find legal arguments through research, you won't develop the skills you need to formulate your own legal arguments. For similar reasons, I discourage you from trying to consult materials from prior years of my class (and former students are forbidden to share them with you).

Newspapers and Public Radio

If you don't already do so, I strongly encourage you to keep up with current events by subscribing to a daily newspaper and/or listening to public radio. You will understand law better if you understand business, politics and culture. In addition, such understanding will help you interview better for jobs, make you a better citizen, and make you a more interesting conversation partner at parties and other events. As a student, you are eligible for substantial discounts. In particular, I recommend:

The Wall Street Journal. \$1 per week print and digital subscription.

https://buy.wsj.com/wsjtls17/?trackingCode=aaqntppl&cid=WSJ_SC_NA_SALE_PROF

The New York Times. \$1 per week web and smartphone subscription.

<http://www.nytimes.com/subscriptions/edu/lp8LQFK.html?src=898Q4&campaignId=393W8>

KPCC. 89.3 FM. online at www.kpcc.org. Free mobile apps.

Note also that, if you are planning to live in a different city after graduation, you can listen to the public radio station(s) for that city on the web and via free mobile apps. That way you can get relevant local as well as national and international news. Many cities' newspapers are also available online, but local newspapers are not a substitute for national newspapers such as the Wall Street Journal and New York Times.

Statement on Academic Conduct and Support Systems

Academic Conduct:

Plagiarism – presenting someone else's ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, "Behavior Violating University Standards" policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, policy.usc.edu/scientific-misconduct.

Support Systems:

Student Health Counseling Services - (213) 740-7711 – 24/7 on call

engemannshc.usc.edu/counseling

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call

suicidepreventionlifeline.org

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-4900 – 24/7 on call

engemannshc.usc.edu/rsvp

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

Office of Equity and Diversity (OED) | Title IX - (213) 740-5086

equity.usc.edu, titleix.usc.edu

Information about how to get help or help a survivor of harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following protected characteristics: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital

status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

Bias Assessment Response and Support - (213) 740-2421

studentaffairs.usc.edu/bias-assessment-response-support

Avenue to report incidents of bias, hate crimes, and microaggressions for appropriate investigation and response.

The Office of Disability Services and Programs - (213) 740-0776

dsp.usc.edu

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

USC Support and Advocacy - (213) 821-4710

studentaffairs.usc.edu/ssa

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

Diversity at USC - (213) 740-2101

diversity.usc.edu

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call

dps.usc.edu, emergency.usc.edu

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call

dps.usc.edu

Non-emergency assistance or information.