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**CONSTITUTIONAL LAW OF RELIGION
CL & CR 957-101/201
COURSE INFORMATION
FALL SEMESTER 2015
(revised August 9, 2015)**

MEETING ROOM: 236 Katz/ Carlisle 124
MEETING TIME: Mondays, Wednesdays 9:45 A.M. - 11:00 A.M.
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CONFERENCE HOURS: Mondays and Wednesdays 4:00 P.M. TO 6:00 P.M., AND BY APPOINTMENT
QUESTIONS: e-mail anytime
FINAL EXAM DATE: CLASS RELATED QUESTIONS VIA EMAIL
24 HOUR TAKE HOME FINAL to be taken anytime
between 9:00A.: December 3 and 3 P-M. December 17, 2015

COURSE MATERIALS

REQUIRED:

1. FRANK S. RAVITCH AND LARRY CATÁ BACKER, LAW AND RELIGION: CASES, MATERIALS AND Readings (3rd ed., West Academic, 2015)
ISBN- 978-0-314-28407-5 (TEXT)
2. LESLIE GRIFFIN (ED.), LAW AND RELIGION (Aspen Publishers, 2010)
ISBN 978-0-7355-7819-7 (GRIFFIN)

COURSE INFORMATION AND RULES

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . .”

U.S. Const. Amend. 1.

This course examines current constitutional doctrine interpreting and applying the Religion Clauses of the First Amendment to the Federal Constitution. The course will focus primarily on “Church/State” law- the legal doctrines that have arisen in cases under the Establishment Clause and Free Exercise Clause of the First Amendment. Additionally, the course will explore the role of law in various religious traditions and the role of religion in law and public discourse. Topics addressed will include religion and public schools, government aid to religious institutions (including school vouchers and charitable choice), government endorsement of religious symbols, the role of public forum doctrine in religion cases, freedom of religious expression, the freedom to practice one’s religion, and legal disputes within religious entities. In addition, the course will introduce students to religious law and the approach to law and religion in other major jurisdictions.

Required readings will be announced in class from time to time. Substantially all such readings will be drawn from the Text. Further readings may be added or substituted throughout the semester. I plan to follow the Text, covering most chapters as detailed in the syllabus below. Stay tuned. A review of the table of contents of those chapters of the Text will give you a good idea of the materials to be covered this semester.

Please bring Text, Statutes, and any other assigned readings with you to class as appropriate. Please note that you will be responsible for all assigned readings whether or not discussed in class.

Understand that there is no guarantee that we will be able to cover in class all material assigned for reading for that class session, or that we will get through all of the assignments described in the syllabus by semester’s end. Anticipate, therefore, that there may be occasions when you will have read ahead. Do not panic; do not become irritated; do not conclude that there is something amiss; humor me and assume that there is a reason for the pacing of the course. If in doubt, please be sure to see me.

I will be emphasizing client problem solving and advice, rather than litigation strategy or student oriented case analysis. The problems presented in the Text will provide a thematic and systematic introduction to the sorts of problems the practitioner encounters in the practice of corporate law. Those problems ordinarily will be the focus of class discussion. As such, I recommend that in preparing for class you focus on the problems in the Text and to be prepared to discuss them in class. Note also that my final exam is patterned on the problems we discuss in class; practice with the problems in the Text will aid you immeasurably in preparing for the final exam.

ATTENDANCE AND CLASS PARTICIPATION

Law School rules require me to notify students of my attendance policy. First year and introductory classes provide the basis for your legal education. It is important for you to attend class. Also, I remind you that material not in your readings and for which you will be responsible will likely be covered in class from time to time during the course of class discussion (and may find its way into the final exam).

Class attendance is required. Law school policy imposes on students the obligation to attend class regularly and punctually. I will take attendance. You will be required to sign in at each class session. I anticipate missing a few classes (mostly Wednesdays). I will try to tape those classes (inviting those interested to the taping sessions) that you may view them on ANGEL.

Students with more than four (4) unexcused absences can have their grade lowered one full grade (from A to A- for example) in my discretion. Also, I remind you that material not in your readings and for which you will be responsible will likely be covered in class from time to time during the course of class discussion (and may find its way into the final exam).

Attendance will be taken through Angel. At the start of each class session I will provide you with the attendance code necessary to mark yourself present.

You are responsible for marking your attendance.

THERE WILL BE AT LEAST ONE GROUP PROJECT. EACH OF YOU WILL BE ASSIGNED TO A GROUP AND EACH GROUP WILL BE REQUIRED TO MAKE A CLASS PRESENTATION (WITH POWERPOINT) TO PRESENT THE MATERIALS ASSIGNED AND ANSWER QUESTIONS. THE GROUP PROJECT WILL NOT BE GRADED BUT FAILURE TO PARTICIPATE IN THE GROUP PROJECT WILL REDUCE YOUR GRADE IN CLASS BY ONE LETTER GRADE.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). Please note that I do not intend to make this a lecture course. All of you will find yourselves participating in at least some of the discussion. At the end of each class I will designate one or more students as class participation leaders for the next class. I reserve the right to call on students at random. **Outstanding participation may result in an increase in your grade, again at my discretion.**

SEATING IS NOT ASSIGNED. I will be handing out NAME CARDS at the start of class. PLEASE BRING THESE NAME CARDS WITH YOU FOR EACH CLASS.

My approach to class: or why I can challenge you, tell you that you are wrong, and still like you and respect you.

This is not a lecture course. I hope to begin to teach you not only the substantive rules of basic corporate law, but also how to approach any corporate law problem as a corporate practitioner would. For purposes of this course, I will consider you all to be my young associates working for a senior corporate lawyer. You should begin think like a corporate lawyer, how to argue and defend a position before your peers, and how to approach the legal and business considerations underlying the typical "problems" your business clients will present you with (just like you'll have to do in court or at a meeting). To that end, the bulk of each class session will consist of discussion. Also, please do not get upset if I do not tell you where the answer is, especially if the answer is in a statute that was part of the assigned reading. Acquiring a feel for the corporate code, how it is organized, what the statutes ordinarily provide, etc., is an important part of the learning this semester. And that learning is best acquired by practicing.

You should anticipate being challenged on every answer you give and every question you ask. You will be expected to learn to work in an environment in which you are dealing with senior members of your firm, clients and opposing counsel on issues that can potentially expose your client or firm to significant liability.

Understand that one of my goals for this year is to teach you how to defend your answers, and present your analysis, even under aggressive questioning. **Don't take it personally.** As the semester progresses, ask yourself often the following two questions: (1) what substantive rules am I learning, and (2) how am I being taught to go about understanding the substantive rules and the process of applying them creatively in a business context in which a client will not accept from you any response that begins: "You cannot do that."

Class Notes and Recording of Class. Take all the notes you like. Of course, I encourage note taking only to the extent each of you find useful. Please feel free to get together with your classmates for studying and sharing notes. It is sometimes efficient. On the other hand, the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. **To that end, all of my classes are taped and you are encouraged to review those tapes at your convenience on ANGEL.**

NO PERSONAL RECORDING OF CLASS.

The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about meaning, please contact the Office of the Associate Dean:

- A. Student Access to Class Recordings; Open Access:

All Class/Open Access. All class recordings will be posted on the course ANGEL site for access by any student enrolled in this course. Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B. Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member. If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on ANGEL for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without prior express authorization of the faculty member. Unauthorized use of course materials is a violation of the Honor Code. Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C. Questions, Special Requests. You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

The course grade will be based on a **take home exam**.

THE EXAM IS OPEN BOOK. You must work alone. You will have 24 hours to complete the exam from the time you pick it up. Students will be given the option of choosing the time you take the exam. The exam may be picked up on any day from the first day of final exams to 3:00 P.M. on the last day of the final exams period (Thursday, December 3, 2015 through Thursday, December 17, 2015).

Exams will be distributed through ANGEL and will be submitted through ANGEL. More detailed instructions will be made available later in the semester. **EXAMS MUST BE SUBMITTED NO LATER THAN 24 HOURS AFTER PICK UP. The Clock in ANGEL WILL BE TREATED AS PRESUMPTIVELY ACCURATE. I will not police you – you are on your honor to comply with final exam rules.**

ANY EXAM DELIVERED AFTER 3 P.M. ON THURSDAY, December 17, 2015 OR MORE THAN 24 HOURS AFTER PICK UP WILL RECEIVE A GRADE OF “F”.

The awarding of grades is based on the curve system adopted by the faculty of the Law School and is subject to the limitations of those curve rules. I will adhere to this system. Students interested in discussing the curve system itself, its wisdom, or making proposals with respect to the system, are advised to consult their academic dean.

CONFERENCES

I try to maintain an open door policy. I encourage you to see if me should you have any questions or concerns. While face time is important, students should not consider it necessarily the best or exclusive means for communicating with me. There is little excuse for the complaint – ‘he is not available’ – when communication is possible by telephonic and electronic means.

TECHNOLOGY HAS MADE IT EASY TO COMMUNICATE.

PLEASE TAKE ADVANTAGE OF IT.

You are encouraged to contact me by e-mail. I will respond promptly.

<lcb911@me.com>

ANGEL

This year I will be relying on PSU’s ANGEL system for communication with you. I will post questions to the ANGEL class site and send e-mails via that site. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

UNIVERSITY DISABILITIES POLICY STATEMENT

To comply with University policy regarding persons with disabilities, please include the statement below in your course syllabi:

Penn State welcomes students with disabilities into the University's educational programs. If you have a disability-related need for reasonable academic adjustments in this course: UP students should contact the Office for Disability Services (ODS) at 814-863-1807 (V/TTY); Carlisle students should e-mail Holly Parrish, Director of Law School Student Services (hap15@psu.edu). For information and procedures regarding law school disability services, visit the law school Student Services website at http://law.psu.edu/office_for_student_services/disability_services. For information about ODS, please visit <http://equity.psu.edu/ods/>.

To receive consideration for course accommodations, you must provide documentation of your disability (see the documentation guidelines at <http://equity.psu.edu/ods/guidelines/documentation-guidelines>). If the documentation supports the need for academic adjustments, ODS will provide a letter identifying appropriate academic adjustments. You must contact ODS and request academic adjustment letters at the beginning of each semester.

SYLLABUS:

Class 1: Read Larry Catá Backer, “God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21st Century,” *Mississippi Law Review*, Vol. 27:11-65 (2008). It may be downloaded by clicking on the appropriate link at <http://ssrn.com/abstract=1070381>.

Class Policies and Procedures
Constitutional and International Context

Class 2: Read TEXT pp. 3-37; GRIFFIN pp. 1-7.

Background on Law & Religion
Introduction
The Early Development of Establishment Clause Doctrine

Class 3: Read TEXT pp. 37-63

The Early School Prayer Cases

Class 4: Read TEXT pp. 65-95

Public Religious Exercises
- Organized “Religious” Exercises in the Public Schools

Class 5: Read TEXT pp. 95-124

Public Religious Exercises Cont...
- The Supreme Court and Organized “Student Initiated Prayer
- Moment of Silence Laws

Class 6: Read TEXT pp. 124-180; GRIFFIN pp. 232-250

Creationism/Intelligent Design in Public Schools

Class 7: Read pp. 180-211;

Religious Exercises
- Ceremonial Deism: The Pledge of Allegiance
- Ceremonial Deism Generally

Class 8: Read pp. 211-253

- Legislative Prayer
- Municipal Prayer

Class 9: Read TEXT pp. 255-281; GRIFFIN pp. 179-202

Religious Symbolism and Public Displays

Class 10: Read TEXT pp. 281-336

Religious Symbolism and Public Displays Cont....

- The Ten Commandments Cases

Class 11: Read TEXT pp. 336-397; GRIFFIN pp. 252-270

Religious Symbolism and Public Displays Cont....

- Other Displays

Religious Symbolism and Public Displays

- Privately Sponsored Displays on Public Property

Equal Access to Government Facilities and Programs

Class 12: Read TEXT pp. 399-419; GRIFFIN pp. 153-176

Government Aid to Religion or Religious Institutions

- The Lemon Test

- The Move Toward Formal Neutrality

Class 13: Read TEXT pp. 419-454; GRIFFIN pp. 203-230

Government Aid to Religion or Religious Institutions Cont...

- School Vouchers

Class 14: Read TEXT pp. 454-465

Government Aid to Religion or Religious Institutions Cont...

- Must Government Fund Religion Under General Funding Programs?

Class 15: Read TEXT pp. 599-617; GRIFFIN pp. 33-49

The Free Exercise Clause

- What is Religion?

- Free Exercise Clause Exemptions: The Early Cases

- Free Exercise Clause Exemptions and the Compelling Interest Test

Class 16: Read TEXT pp. 617-638; GRIFFIN pp. 72-85; 85-105

The Free Exercise Clause Cont...

-The Retreat From the Compelling Interest Test

Class 17: Read TEXT pp. 638-682; GRIFFIN pp. 107-127; 128-149

The Free Exercise Clause Cont...

- Laws of "General Applicability"

- Intentional Discrimination and Free Exercise Rights

Class 18: TEXT Read pp. 682-735

The Free Exercise Clause Cont...

The Legislative Response to Smith

Class 19: Read TEXT pp. 849-885

Religious Entities: Property Disputes & Schisms

Class 20: Read TEXT pp. 885-919
Liability for Clergy Abuse

Class 21: Read TEXT pp. 919-942
Standing and the Religion Clauses
Mootness, Ripeness and the Religion Clauses

Class 22-23 GROUP PRESENTATIONS
GROUP A: Read TEXT pp. 945-983
The Role of Law in Religious Traditions
- Jewish Law: Halakha

GROUP B: Read TEXT pp. 983-1016
The Role of Law in Religious Traditions
--Islamic Law: Shari'ah

GROUP C: Read TEXT pp. 1016-1038
The Role of Law in Religious Traditions
- Buddhist Law
- Hindu Law

GROUP D: Read TEXT pp. 1039-1087
The Role of Law in Religious Traditions
- Christian Law: Catholic Canon Law
- Christian Law: Protestantism and Law

Class 24: Read TEXT pp. 1089-1144
Law and Religion beyond the U.S.
--Introduction; Background
--The U.S.
--Turkey

Class 25: Read TEXT pp. 1145-1213
Law and religion beyond the U.S. cont.
--France
--United Kingdom

Class 26: Read TEXT pp. 1223-1258
Other national Approaches
--China
--An Introduction to theocratic Constitutionalism

Class 27-28: Read TEXT pp. 1295-1327
Emerging International Framework