

Prof. Amanda Shanor

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**Class Meetings:** Tuesdays & Thursdays  
10:30 – noon (JMHH G50) and 1:30-3:00 (JMHH F60)

**Office Hours:** Wednesdays, 3-5 pm, or feel free to email me to set up a meeting.

**TA:** Sierra Blazer, sblazer@pennlaw.upenn.edu.

### **Course Description and Objectives**

This course is a critical introduction to the institutions and key concepts of American law. It is widely understood that legal rules govern the conduct of large classes of people and provide incentives for how they should act in the future—shaping institutions and influencing issues from economic prosperity to climate change to racial justice. Law allocates power and distributes resources.

This course is designed to integrate the various fields of law in a fashion that emphasizes common themes and problems. The first half of the course focuses on private law—including the law of property, contract, and torts. The second half explores public law in the modern administrative state. This includes an extended look at U.S. constitutional law.

This approach aims to help students become comfortable approaching an array of legal problems and legal developments. Our readings, and my ambition, are oriented around a key objective: to develop in you the capacity for inquiry, critique, and problem solving associated with the American legal tradition.

### **Materials**

All readings can be found on the course's Canvas web site or via a straightforward web search.

Tentative reading assignments are listed at the schedule at the end of the syllabus. I may change or add to the readings over the course of the semester. If so, I will let you know in class and post the updated assignment on Canvas. We may also have occasional visiting lecturers from the legal and business worlds.

### **Device Policy**

Electronic devices will not be permitted in class. If an emergency requires that you have connectivity, talk with me before class.

## Grading and Assignments

Your final grade in this course will be based on the following:

- Quizzes & reading responses (25%)
- Class participation (20%)
- Group/individual presentation (5%)
- Midterm (25%)
- Final exam (25%)

### *Quizzes & Reading Responses (25%)*

**The most important thing you can and should do for this class is to do the readings and think critically about what you read. It is key that you complete the assigned readings *before* class on the day shown.**

At every class for which readings are assigned, there will be a 45% chance of having to take a short in class quiz that tests your knowledge of the day's readings. Whether or not you have a quiz will be determined by a random number generator. Thus, having a quiz one day is not predictive of whether you will have a quiz the next day (*i.e.*, don't fall prey to the gambler's fallacy!).

These quizzes are designed to ensure that you have carefully read and considered the assigned readings. Most of the quizzes will require you to summarize or analyze one or more of the readings or explain a question they raised for you, but other quiz formats are possible. Each quiz will be graded on a scale ranging from 0 to 2. **Your lowest quiz score will be dropped.**

You will receive a score of zero if you are absent or late for a quiz. However, you can erase three quizzes from your record if, prior to the start of class, you submit a well-written summary and analysis of the reading(s) on the day you will miss. You should submit this summary via email to me (shanor@upenn.edu). The subject line of your email should be: "LGST 101: Reading Response."

Your reading response should include ~250 words of summary and ~250 words of thoughtful analysis. It is not to exceed one page, single-spaced, using 12-point Times New Roman font and one-inch margins. Submissions that do not adhere to these requirements will not be accepted. You must show that you have carefully read and understood the assigned readings and that you put time, thought, and effort into your reading response. A last minute, slipshod effort will not be accepted—and neither will a reading response submitted after the start of class. Each reading response will be graded on the same scale as the quizzes, ranging from 0 to 2, and will replace the grade of the quiz you missed.

Sometimes life happens. Up to once in the semester, therefore, if you cannot finish the day's readings, you can email me at least one hour before the start of class, and I will not call on you or expect you to take a quiz if one occurs.

### ***Class Participation (20%)***

Law and business are communicative and collaborative endeavors. My central goal is for you not only to learn, explore, and consider the ideas covered in this class—but to learn how to think, critique, strategize, and problem solve in the ways characteristic of American law, policy, and scholarship. That is, to learn some of the ways of thinking, norms, and practices key to success in law—which are useful far beyond it as well.

The course will combine lectures, “cold calling” (the instructional method commonly used in American law schools), and group discussion. Your grade is based in part on your participation in each, according to the criteria below.

### ***Group/Individual Presentation (5%)***

Each class day student(s) will present a brief (~2 minute) review of the big ideas from the last class and pose questions for the group’s discussion, based on the readings. You all will choose when and on what you present.

### ***Midterm (25%) and Final (25%) Exams***

I will provide more information on both the midterm and final exams as they approach. They will include types of questions common to law school exams (including issue spotters, short answer, and essay questions).

In the week prior to both exams, you should post all questions to the discussion board on Canvas—if you have a question, chances are other people do, too—and I will answer them for everyone.

### ***Grading Criteria***

All assignments and class participation will be graded on seven criteria:

- *Creativity and insight:* Your ideas are original, engaging, and evince compelling insight.
- *Analytical rigor:* Your ideas are presented in an analytically rigorous manner.
- *Depth and quality of analysis:* You demonstrate thorough reading/ research, incisive thinking, and thoughtful consideration.
- *Integration with course content:* You use, apply, and extend concepts covered in the class.
- *Organization and structure:* You employ a logical, clear framework.
- *Legal norms:* You display an increasing ability to talk, think, and problem solve like a legal actor.
- *Style:* You write and verbally present using appropriate grammar, spelling, punctuation, and the like.

## ***Policies for Grades and Late Assignments***

Grades are final. There are no re-grades. This is to ensure fairness to all students. As in the business and legal worlds, work must be submitted on time. You are always welcome to hand in an assignment before its due date if you know that you will be busy as the due date approaches.

## **Feedback and Questions**

You are important to me! I want this course to be a valuable learning experience for you. I also welcome your feedback and questions any time during the semester. It is easiest to reach me by email or office hours, but I am always happy to set up an appointment.

## **Informal Get-Togethers & Field Trips**

Let's get coffee or a meal! My TA, Sierra, will also put together at least one social gathering for the class, place and time TBA.

If there is sufficient interest, I will organize trips to a local prison and/or a Third Circuit Court of Appeals argument.

## **Instructor Biosketch**

Amanda Shanor is an Assistant Professor at the Wharton School at the University of Pennsylvania, where her scholarship focuses on constitutional law, and in particular free speech and economic regulation.

Prior to joining the academy, Shanor was a practicing lawyer in the National Legal Department of the American Civil Liberties Union, where she worked on the organization's Supreme Court litigation. This included *Masterpiece Cakeshop*, a case involving a bakery that declined to sell a wedding cake to a gay couple.

Shanor is a graduate of Yale Law School and Yale College, and a PhD candidate in law at Yale University. She served as a law clerk to Judges Cornelia T.L. Pillard and Judith W. Rogers on the D.C. Circuit, and Judge Robert W. Sweet in the Southern District of New York.

She has taught at both Yale and Georgetown law schools and has published in the *New York University Law Review*, the *Harvard Law Review Forum*, and the *Yale Law Journal Forum*, among others. She is a contributor to the blog *Take Care* and the co-author of a textbook on counterterrorism law.

Previously, while a fellow at Georgetown Law, Shanor litigated a number of constitutional and national security cases with Professor David Cole, including *Humanitarian Law Project v. Holder*, a First Amendment case argued before the Supreme Court. Before law school, Shanor worked in social movement organizing, immigrant workers rights, and corporate social responsibility.

**CLASS SCHEDULE 1.0**

|   | <u>DATE</u> | <u>TOPIC</u>                                       | <u>ASSIGNMENT</u>   |
|---|-------------|--|---|
| 1 | January 17  | What is Law?                                       | A Preliminary Note<br><br>Mann & Roberts, <i>BUSINESS LAW</i> , ch. 1, <i>Introduction to Law</i><br><br>Orin Kerr, <a href="#"><i>How to Read a Judicial Opinion</i></a>   |
| 2 | January 22  | Introduction to Fields of Law                      | Calabresi & Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , Introduction (p. 1089-93)<br><br>Morton Horwitz, <i>The History of the Public/Private Distinction</i><br><br>Syllabus (yes, read please it!)<br><br>Open book questionnaire (on canvas)<br><br>Sign up for presentations (on canvas)<br><br>Read the readings from the first class if you haven't already. |
| 3 | January 24  | Property I – What is Property?                     | <i>Jaque v. Steenberg Homes, Inc.</i><br><i>Hinman v. Pacific Air Transport</i><br>Penner, <i>The Idea of Property in Law</i><br>Grey, <i>The Disintegration of Property</i><br>Note on Owner Sovereignty & its Limits<br><br>OPTIONAL:<br><i>Hendricks v. Stalnakar</i><br>& Notes on the Trespass/Nuisance Divide<br><br>Feineman, <i>LAW 101</i> , ch. 7 –<br><i>The Law of Property: You Are What You Own</i>       |
| 4 | January 29  | Property II – Where Does Property Come From?       | Blackstone, <i>Commentaries</i><br>Various Notes<br><i>Popov v. Hayashi</i><br><i>International News Service v. Associated Press</i>  |
| 5 | January 31  | Property III – Some Limits on the Right to Exclude | <i>Ploof v. Putnam</i><br><i>Shelley v Kraemer</i><br>& Notes on Public Accommodations & Antidiscrimination Laws<br><br>OPTIONAL:<br><i>State v. Shack</i>  |

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|    |             |  | <i>Uston v. Resorts International Hotel, Inc.</i><br>& Public Policy Exception Notes  |
| 6  | February 5  | Property IV –<br>The Tragedy of<br>the Commons<br>& the<br>Anticommons                             | <i>Hardin, The Tragedy of the Commons</i><br><br><i>Heller &amp; Eisenberg, Can Patents Deter<br/>Innovation? The Anticommons in Biomedical<br/>Research</i><br><br>OPTIONAL:<br><i>Demsetz, Toward a Theory of Property Rights</i>   |
| 7  | February 7  | Property V –<br>What is<br>Property For?<br>And Does Law<br>Matter?                                | <i>Coase, The Problem of Social Cost</i><br><i>Ellickson, Order Without Law</i><br><i>Jolls, Sunstein &amp; Thaler, A Behavioral<br/>Approach to Law &amp; Economics</i><br><br>OPTIONAL:<br><i>Mark Kelman, Consumption Theory,<br/>Production Theory, and Ideology in the Coase<br/>Theorem</i> |
| 8  | February 12 | Contracts I –<br>Promises  | <i>Mann &amp; Roberts, ch. 9 –<br/>Introduction to Contracts</i><br><br><i>Mann &amp; Roberts, ch. 15 –<br/>Contracts in Writing</i><br><br><i>Ignacio v. Lyons</i><br><br>OPTIONAL:<br><i>Feinman, LAW 101, ch. 6 –<br/>When is a Deal a Deal?</i>   |
| 9  | February 14 | Contracts II –<br>Problems of<br>Meeting Minds<br>& Unequal<br>Bargaining<br>Power                 | <i>Mann &amp; Roberts, ch. 10, Mutual Assent</i><br><br><i>Williams v. Walter-Thomas Furniture Co.</i><br><br><i>Silver-Greenberg &amp; Gebeloff, <a href="#">Arbitration<br/>Everywhere, Stacking the Deck of Justice</a>, N.Y.<br/>TIMES (2015)</i>   |
| 10 | February 19 | Contracts III –<br>Unenforceable<br>Contracts &<br>Things the Law<br>Won't Let You<br>Contract For | <i>Sandel, What Money Can't Buy: The Moral<br/>Limits of Markets, Introduction</i><br><br><i>Cases, Problems &amp; Materials on Contracts --<br/>Consideration, ch. 2 (stop before problem 38)</i><br><br>Remedies, CONTRACTS IN A NUTSHELL   |
| 11 | February 21 | Torts I –<br>What is a Tort?   | <i>Feinman, LAW 101, ch. 5 –<br/>Hot Coffee and Crashing Cars: Tort Law</i>   |

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| 12 | February 26 | Torts II –<br>The Problem of<br>Value      | Guido Calabresi, <i>THE COST OF ACCIDENTS</i><br>(1970)   |
| 13 | February 28 | <b>In Class<br/>Midterm</b>                | Open book, open notes [not open internet]   |
|    | March 2-10  |  | <b>SPRING BREAK</b>   |
| 14 | March 12    | The Courts                                 | Mann & Roberts, <i>BUSINESS LAW</i> , ch. 3,<br><i>Civil Dispute Resolution</i><br><br>Note on Standing   |
| 15 | March 14    | Introduction to<br>Public Law              | The U.S. Constitution<br><br>Reva Siegel, <i>Constitutional Culture, Social<br/>Movement Conflict and Constitutional Change:<br/>The Case of the de facto ERA</i> ,<br>Introduction, p. 1323-32   |
| 16 | March 19    | Classical<br>Liberalism &<br>Legal Realism | <i>Lochner v. New York</i> (1905) & Notes<br><br>Summary of Robert Hale’s <i>Coercion and<br/>Distribution in a Supposedly Non-Coercive State</i>   |
| 17 | March 21    | The New Deal                               | <i>West Coast Hotel v. Parrish</i> (1937)<br><i>Williamson v. Lee Optical Co.</i> (1955)<br>& Notes<br>Note on Constitutional Revolution  |
| 18 | March 26    | The Commerce<br>Clause                     | <i>United States v. Darby</i> (1941)<br><i>Wickard v. Filburn</i> (1942)<br><i>Heart of Atlanta Motel v. United States</i> (1964)<br><i>National Federation of Independent Business v.<br/>Sebelius</i> (2012) & Notes<br><br>OPTIONAL:<br><i>United States v. Lopez</i> (1995) |
| 19 | March 28    | Takings                                    | Epstein & Walker, <i>The Takings Clause</i><br><br>OPTIONAL:<br>Notes on Modern Taking Clause Doctrine  |
| 20 | April 2     | Separation of<br>Powers                    | <i>Youngstown Sheet &amp; Tube Co. v. Sawyer</i> (1952)<br>(focus on Justice Jackson’s opinion, p. 944-48,<br>and skim the rest)<br><br>David Kris, Testimony before the Senate<br>Judiciary Committee (2006),<br>p. 2-3 (I & II.A), 8-10 (IV. Intro & IV.A)                    |

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| 21 | April 4  | Administrative Law I – Nondelegation                                | <p><i>A.L.A. Schechter Poultry Co. v. United States</i></p> <p>Posner &amp; Vermeule, <i>Interring the Non-Delegation Doctrine</i>, Introduction (p. 1721-25)</p> <p>OPTIONAL:<br/>Mila Sohoni, <a href="#">Argument Preview for <i>Gundy v. United States</i></a>, SCOTUSBlog.com (2018)</p>  |
| 22 | April 9  | Administrative Law II – Interpretation & the APA                    | <p><i>Chevron v. Natural Resources Defense Council, Inc.</i> (1984) &amp; Notes</p> <p>Bressman et al., <i>Theories of Statutory Interpretation</i> (excerpt)</p> <p>OPTIONAL:<br/>Bressman et al., <i>Theories of Statutory Interpretation</i> (full text)</p>  |
| 23 | April 11 | Administrative Law III – Risk Regulation & The Problem of Democracy | <p>Bressman et al., <i>Justifications for Regulation</i></p> <p>Mashaw et al., Notes on Administrative Theory</p> <p>Richard Thaler &amp; Cass Sunstein, <i>Libertarian Paternalism</i></p>  |
| 24 | April 16 | What Classifications Should Receive Strict Scrutiny?                | <p><i>United States v. Carolene Products Co.</i> (1938) &amp; Notes</p> <p>John Hart Ely, DEMOCRACY AND DISTRUST</p> <p>Bruce Ackerman, <i>Beyond Carolene Products</i>, Introduction (p. 713-18)</p>  |
| 25 | April 18 | Equal Protection  | <p><i>Brown v. Board of Education</i> (1954)</p> <p><i>Loving v. Virginia</i> (1967)</p> <p><i>Frontiero v. Richardson</i> (1973) &amp; Notes</p>  |
| 26 | April 23 | Introduction to the First Amendment                                 | <p>The History &amp; Philosophy of Free Expression</p> <p><i>Abrams v. United States</i> (1919)</p> <p><i>New York Times v. Sullivan</i> (1964)</p>  |
| 27 | April 25 | Commercial Speech   | <p><i>Valentine v. Chrestensen</i> (1942)</p> <p><i>Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.</i> (1976)</p> <p><i>Central Hudson Gas v. Public Service Comm'n</i> (1980)</p> <p><a href="#">Parking Space App Shuts Down in San Francisco</a>, cnet.com (2014)</p> <p><a href="#">Exxon Ramps Up Free Speech Argument in</a></p> |

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|    |          |                                | <a href="#"><i>Fighting Climate Fraud Investigations</i></a> , Inside Climate News (2018)   |
| 28 | April 30 | Conclusion, Overflow, & Review | <p>Read anything you have not already read carefully, and re-read anything you are unsure of or have questions about.</p> <p>Bring your questions!</p> <p>Exam will be open book and open notes [but not open internet]</p> |
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|    | May 2-3  |                                | READING DAYS  |
|    | May 6-14 |                                | FINAL EXAMS   |