

Prof. Amanda Shanor
shanor@upenn.edu (preferred)
215.898.1729

Class Meetings -002: Tuesdays & Thursdays, 1:30-3:00pm (online, synchronous)

Class Meetings -003: Tuesdays & Thursdays, 3:00-4:30pm (online, synchronous)

Student Hours: Tuesdays 4:30pm, or feel free to email me to set up a meeting!

TA: Chloé Nurik, cnurik@pennlaw.upenn.edu - Please cc Chloé on emails to me

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.

My Course & You

You are important to me. Not only as a student, but as a person.

I want to get to know each of you and your interests and passions. I also want you to know that I understand that this is a stressful semester and tumultuous moment in history. Please always reach out to me (and/or Chloé) if you have questions, concerns, or if there's anything we can do to support you. I want this course to bring ideas, excitement, and joy to your life.

Materials

My goal is to make the course as accessible and affordable as possible. Most if not all assigned readings, videos, etc. can be found on the course's Canvas web site (most under the library reserves tab or linked from the syllabus page) or via a straightforward web search. Please let me & Chloé know if you ever have problems accessing course materials.

Tentative assignments are listed at the schedule at the end of the syllabus. I may change or add to the readings / videos over the course of the semester, especially if there are significant or interesting legal developments. 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.

Course Structure

The class will meet synchronously over zoom twice a week. Law is a discursive, collaborative endeavor – and a goal of the course is to teach the communicative skills of law. It's therefore important that you come to class and participate!

If you are in a time-zone that makes joining synchronously difficult, however, do not worry. I will make all class recordings and slides available online. I will also distribute a survey at the start of the semester to see where everyone is and match you up with students in similar time zones for discussion and project groups. As you'll see below, there are lots of ways that you can participate asynchronously.

Grading and Assignments

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's key that you complete the assigned readings *before* class on the day shown!

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

- Quizzes (20%)
- Participation (20%)
- Midterm group project (30%)
- Final exam (30%)

Quizzes (20%)

At every class for which readings/ videos are assigned, there will be a 45% chance of having to take a short (5 minute) in class quiz (i.e. on canvas at the start of class) that tests your knowledge of the day's readings. Whether or not you have a quiz will be determined by a random number generator.

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, analyze, or apply one or more of the readings. Each quiz will be graded on a scale ranging from 0 to 2. **Your lowest quiz score will be dropped.** Life happens! Once in the semester if you can't finish the day's readings or attend class, you can email me at least one hour before the start of class, and you will not need to take the quiz if one occurs.

If you are a synchronous student and ever have life issues that interfere with your ability to come to class and so take a quiz, please let me know. If needed, you can make up a quiz with one of the forms of participation offered to asynchronous students (see below). Similarly, if you are a synchronous student and need to move to asynchronous involvement, please let me know.

If you are participating asynchronously, when you watch the class video on canvas there will also be a 45% chance it will give you a quiz (so you may or may not have a quiz on the same day as the synchronous class but will end up with roughly the same number of quiz grades).

Class Participation (20%)

Law and business are communicative and collaborative endeavors. My 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 synchronous course will combine lectures, “cold calling” (the teaching method commonly used in American law schools), a panel system, and group discussion.

I will set up a panel system; when your group is up you are in charge of leading the discussion and chiming in. Panels and cold calling ensure we hear from a diversity of people and viewpoints. I want to hear from all of you!

If you are in a time zone that makes synchronous participation difficult, you have many ways to participate:

- For six (6) classes, roughly one every other week, you can watch the class video and send me and Chloé an email with one or two short comments or questions you would have added to the discussion.
- For six (6) classes, roughly one every other week, you can watch the class video and send me and Chloé a video of you making one or two short comments or questions you would have added to the discussion.
- For six (6) classes, roughly one every other week, you can either:

1. Have a discussion with 1-5 classmates about the week's material and write a joint post about your conversation of no more than 150 words on the canvas discussion board. You only need to do one post for the group. Please include who was in your group in the post! I will help you form groups if you would like.
 2. On your own, write a short discussion post of no more than 150 words on the canvas discussion board.
 - So everyone can read the posts before class, they should be posted by 10am EST before the class in question. Please feel free to respond to other people's posts.
- You can mix or match any of the above, so long as you participate six (6) times over the course of the semester.

Midterm Group Project (30%)

I will provide more information about the midterm project as it approaches. It will be a group project on a cutting-edge legal issue and involve written and oral presentation components. And it will give you an opportunity to connect, work with, and get to know other class members.

Final Exam (30%)

I will provide more information about the final exam as it approaches. It will include types of questions common to law school exams (including issue spotters, short answer, and essay questions). It will be open book and open note.

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.

Student Hours

You are important to me. Please come by at least one student hours session (Tuesdays 4:30-5:30pm ET) or email me to chat sometime during the semester. I'd love to get to know you, what you're interested in, and what matters to you.

Informal Get-Togethers & Field Trips

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

If there is interest, I will also organize virtual trips to U.S. Supreme Court and/or Third Circuit Court of Appeals arguments. I may also arrange a movie showing.

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.

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 has published or has work forthcoming in the *New York University Law Review*, the *UCLA Law Review*, the *Wisconsin 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.

Shanor teaches first-year Constitutional Law at Penn Law and has also taught at both Yale and Georgetown law schools.

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.

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.

TA Biosketch

Chloé Nurik is a Ph.D./J.D. candidate at the Annenberg School for Communication and the University of Pennsylvania Law School. She researches

freedom of expression protections and limitations, business ethics, self-regulation of media industries, and gender discrimination. Her work has been published in the following journals: *International Journal of Communication*, *Communication, Culture and Critique*, *Information Research*, *Communication and the Public*, *Sexual Health*, and *Electronic Journal of Communication*. Chloé is currently writing her dissertation on the self-regulation of social media sites and how this form of governance impacts historically marginalized groups and communities. Her internships during graduate school include the Federal Communications Commission (FCC) and AT&T Global Public Policy. Chloé is involved in several on-campus activities such as the *University of Pennsylvania Law Review* and Disability Advocacy @ Penn. She has an MA in communication and a BA in history (with a gender concentration) from the University of Pennsylvania. Chloé grew up in Roswell, Georgia and enjoys taking endless photos of her chihuahua, Pistachio.

CLASS SCHEDULE 1.0

	<u>DATE</u>	<u>TOPIC</u>	<u>ASSIGNMENT</u>
1	January 21	What is Law?	Welcome! A Preliminary Note Mann & Roberts, BUSINESS LAW, ch. 1, <i>Introduction to Law</i> Orin Kerr, How to Read a Judicial Opinion
2	January 26	Introduction to Fields of Law	Calabresi & Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , Introduction (p. 1089-93) Morton Horwitz, <i>The History of the Public/Private Distinction</i> Syllabus (yes, please read it!) Welcome survey (under the quizzes tab on canvas) Read the readings from the first class you haven't already.
3	January 28	The Courts	Mann & Roberts, BUSINESS LAW, ch. 3, <i>Civil Dispute Resolution</i> Note on Standing
4	February 2	Property I –	<i>Jaque v. Steenberg Homes, Inc.</i> <i>Hinman v. Pacific Air Transport</i>

		What is Property?	Penner, <i>The Idea of Property in Law</i> Grey, <i>The Disintegration of Property</i> Note on Owner Sovereignty & its Limits <i>Hendricks v. Stalnaker</i> & Notes on the Trespass/Nuisance Divide OPTIONAL: Feinman, LAW 101, ch. 7 – <i>The Law of Property: You Are What You Own</i>
5	February 4	Property II – Where Does Property Come From?	Blackstone, <i>Commentaries</i> Various Notes <i>Popov v. Hayashi</i> <i>International News Service v. Associated Press</i>
6	February 9	Property III – Some Limits on the Right to Exclude	<i>Ploof v. Putnam</i> <i>Shelley v. Kraemer</i> Notes on Public Accommodations & Antidiscrimination Laws OPTIONAL: <i>State v. Shack</i> <i>Uston v. Resorts International Hotel, Inc.</i> & Public Policy Exception Notes
7	February 11	Property IV – The Tragedy of the Commons & the Anticommons	Hardin, <i>The Tragedy of the Commons</i> Heller & Eisenberg, <i>Can Patents Deter Innovation? The Anticommons in Biomedical Research</i> OPTIONAL: <i>Demsetz, Toward a Theory of Property Rights</i>
8	February 16	Property V – What is Property For? And Does Law Matter?	Coase, <i>The Problem of Social Cost</i> Ellickson, <i>Order Without Law</i> Jolls, Sunstein & Thaler, <i>A Behavioral Approach to Law & Economics</i>
9	February 18	Contracts I – Promises	Mann & Roberts, ch. 9 – <i>Introduction to Contracts</i> Mann & Roberts, ch. 15 – <i>Contracts in Writing</i> <i>Ignacio v. Lyons</i> OPTIONAL: Feinman, LAW 101, ch. 6 – <i>When is a Deal a Deal?</i>

10	February 23	Contracts II – Problems of Meeting Minds & Unequal Bargaining Power	Mann & Roberts, ch. 10, <i>Mutual Assent</i> <i>Williams v. Walter-Thomas Furniture Co.</i> Silver-Greenberg & Gebeloff, <i>Arbitration Everywhere, Stacking the Deck of Justice</i> , N.Y. TIMES (2015)
11	February 25	Contracts III – Unenforceable Contracts & Things the Law Won't Let You Contract For	Sandel, <i>What Money Can't Buy: The Moral Limits of Markets</i> , Introduction <i>Cases, Problems & Materials on Contracts – Consideration</i> , ch. 2 (stop before problem 38) Remedies, CONTRACTS IN A NUTSHELL
12	March 2	Torts I – What is a Tort?	Feinman, LAW 101, ch. 5 – <i>Hot Coffee and Crashing Cars: Tort Law</i>
13	March 4	Torts II – The Problem of Value	Guido Calabresi, THE COST OF ACCIDENTS (1970) (excerpts)
14	March 9		Group Projects
		March 10-11	SPRING BREAK
15	March 16	Introduction to Public Law	The U.S. Constitution Philip Bobbitt, <i>Constitutional Law & Interpretation</i> Reva Siegel, <i>Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA</i> , Introduction, p. 1323-32
16	March 18	Reconstruction, Classical Liberalism & Legal Realism	Re-read the 13th, 14th, & 15th Amendments <i>The Civil Rights Cases</i> (1883) <i>Lochner v. New York</i> (1905) & Notes Summary of Robert Hale's <i>Coercion and Distribution in a Supposedly Non-Coercive State</i> OPTIONAL: <i>Plessy v. Ferguson</i> (1896) <i>Dred Scott v. Sandford</i> (1857) <i>The Slaughterhouse Cases</i> (1873) <i>Jacobson v. Massachusetts</i> (1905)

17	March 23	The New Deal	<i>West Coast Hotel v. Parrish</i> (1937) <i>Williamson v. Lee Optical Co.</i> (1955) & Notes Note on Constitutional Revolution
18	March 25	Takings	Epstein & Walker, <i>The Takings Clause</i> OPTIONAL: Notes on Modern Taking Clause Doctrine
19	April 1	Federalism & The Commerce Clause	<i>Hammer v. Dagenhart</i> (1918) <i>United States v. Darby</i> (1941) <i>Wickard v. Filburn</i> (1942) <i>Heart of Atlanta Motel v. United States</i> (1964) <i>United States v. Lopez</i> (1995) OPTIONAL: <i>United States v. Morrison</i> (2000) <i>National Federation of Independent Business v. Sebelius</i> (2012) & Notes
20	April 6	Separation of Powers	<i>Youngstown Sheet & Tube Co. v. Sawyer</i> (1952) (focus on Justice Jackson's opinion, p. 944-48) <i>A.L.A. Schechter Poultry Co. v. United States</i> OPTIONAL: <i>Rendition</i> (2007) (streaming movie) Summary of UK Supreme Court decision on prorogation SCOTUSblog summary of <i>Gundy v. United States</i> (2018)
21	April 8	Class Activity / Overflow day	[TBA]
22	April 13	Administrative Law I – Interpretation	Bressman et al., <i>Theories of Statutory Interpretation</i> (excerpt) <i>Chevron v. Natural Resources Defense Council, Inc.</i> (1984) & Notes OPTIONAL: Bressman et al., <i>Theories of Statutory Interpretation</i> (full text)

23	April 15	Administrative Law II – Risk Regulation & The Problem of Democracy	Bressman et al., <i>Justifications for Regulation</i> Richard Thaler & Cass Sunstein, <i>Libertarian Paternalism</i>
24	April 20	What Classifications Should Receive Strict Scrutiny?	<i>United States v. Carolene Products Co.</i> (1938) & Notes John Hart Ely, DEMOCRACY AND DISTRUST (excerpt) Bruce Ackerman, <i>Beyond Carolene Products</i> , Introduction (p. 713-18) Letter from the Attorney General to Congress on DOMA litigation (only “Standard of Review” section) OPTIONAL: <i>San Antonio Independent School Dist. v. Rodriguez</i> (1973) (Marshall, J. dissenting)
25	April 22	Equal Protection I	<i>Brown v. Board of Education</i> (1954) <i>Loving v. Virginia</i> (1967) OPTIONAL: <i>Korematsu v. United States</i> (1944) <i>McCleskey v. Kemp</i> (1987)
26	April 27	Equal Protection II	<i>Frontiero v. Richardson</i> (1973) & Notes OPTIONAL: Pauli Murray, <i>Jane Crow</i> (1965)
27	April 29	Reparations	Ta-Nehisi Coates, The Case for Reparations (2014) (available as text and audio)
		TBA	Review Session
	April 30- May 3		READING DAYS
	May 4-11		FINAL EXAMS