Course Description

This course is designed for students who are interested in pursuing careers as administrators in a higher education setting. The purpose of the course is to help students develop an understanding of the U.S. legal system (how laws and regulations are developed, interpreted, and enforced) and how law informs the development of higher education policies and practices. The course will also cover contractual relationships in the higher education environment and how policies and practices are influenced by, and serve as a mechanism for ensuring compliance with, an institution’s contractual undertakings / obligations. The course is intended to help administrators factor a broad range of legal and contractual considerations into their daily decision making.

Learning Outcomes

By virtue of taking this course, students should be able to:

1. Understand how laws affecting higher education are created and enforced, including the roles played by the legislative, executive and judicial branches of government;

2. Understand how laws and other legal obligations inform and influence the development of institutional policy and practice;

3. Understand core legal concepts relating to institutional governance, faculty, staff, students, research and intellectual property;

4. Identify issues in higher education administration that require consideration of legal issues, and where appropriate, consultation with University counsel; and

5. Develop an analytical framework for consideration of legal issues in daily decision-making.

Course Structure

The course will have 4 components: required readings, class meetings, writing assignments and final examination.

Required Readings. Required readings will include excerpts from the text book for this course (available at the Carnegie Mellon Bookstore) as well as cases, articles and essays that will be
provided by the Instructor each week. The text book for the course is: *The Law of Higher Education*, by William A. Kaplan and Barbara A. Lee, 4th Edition (Student Version) (2007) ISBN-13: 978-0-7879-7095-0. Assigned readings must be completed prior to the class session in which they are noted because they are essential to active participation and meaningful contribution to class discussions.

**Class Meetings.** We will have 7 class meetings, Mondays from 5:30pm - 8:20pm. Attendance and participation are expected. Grading will take into consideration a student’s level of preparedness based on required readings and contribution to class discussion.

**Writing Assignments.** There will be 5 writing assignments of 750-1,000 words (3-4 pages). Writing assignments should be submitted by e-mail attachment to jamercol@andrew.cmu.edu by 9:00a.m. on the Monday morning on which each is due. Writing assignments should be type written and double-spaced.

**Final Examination.** A final examination will be given during the final class session on May 2 to assess understanding of core concepts and ability to apply them in a practical exercise. One hour will be provided for the exam. (The examination will be hand-written in blue books provided by the instructor.)

**Grading**

Final grades in the course will be based on the following:

- Class Attendance, Preparation & Discussion / Participation (25%)
- 5 Short Writing Assignments (each 10%, aggregate 50%)
- Final Examination (25%)

Writing assignments will be graded within one week of submission.

**Ethics**

Students are expected to maintain the highest ethical standards and academic integrity. Although collaboration will be encouraged in class, students are not permitted to collaborate on writing assignments or the final exam. Students will be expected to provide a complete citation of the work of others. Neither Cheating, nor plagiarism will be tolerated on any writing assignments or the final exam. Students who violate academic standards of integrity will at a minimum receive a failing grade for the applicable assignment or exam, and may also receive a failing grade for the course.
Attendance

Given the limited number of class sessions, it is important that students attend all of them. A single missed session with a valid medical or equivalent rationale will be allowed without penalty. Any subsequent missed session, with valid rationale, will result in a loss of class participation credit for that session. For all missed class sessions, regardless of the reason, there will be an additional requirement to write a 3 – 4 page paper analyzing the assigned readings for the missed class period. A missed class session without valid rationale should prompt consideration of dropping the course outright, in consultation with the instructor.

Faculty-Student Advising

Students should feel free to schedule an appointment through Gretchen Colbert at gcolbert@andrew.cmu.edu. Appointments are generally available weekdays between 9:00am and 7:00pm, or at other times, as needed. In addition, it is expected that there will be time immediately before and after class. Direct email contact with the instructor is welcomed at any time at jamercol@andrew.cmu.edu

Course Evaluation

The instructor reserves the right to make adjustments in the design and delivery of the course where appropriate to insure that the course objectives are met. To this end, feedback from students will be welcome throughout the mini-semester, and may be provided directly or anonymously through Brenda Peyser, Associate Dean of the Heinz College.

Instructor Background

James Mercolini is the University’s Deputy General Counsel. In this role, he oversees litigation matters, and regularly provides advice on a wide variety of legal issues relating to student affairs, faculty matters, human resources / benefits issues, regulatory matters, internal investigations, and policy interpretation and application. Prior to joining the University, he was a partner in the private law firm of Klett Rooney Lieber & Schorling (now merged into Buchanan, Ingersoll & Rooney) where he practiced for fourteen years. While in private practice, Jim focused primarily on complex commercial litigation. Mr. Mercolini received his B.A. and J.D. from the University of Pittsburgh.
**Class Schedule**

**Monday, March 14, 2011**

Required Reading: Kaplin & Lee, pp. 11 – 59

Topics: Course Overview  
U.S. Legal System  
Sources of Higher Education Law  
Public vs. Private Institutions

Guest Speaker: Higher Education Opportunity Act (HEOA) and  
Federal Acquisition Regulations / Ethics Code

Discussion: Development of institutional policies and other  
ways to achieve compliance with the law

**Monday, March 21, 2011**

Required Reading: Kaplin & Lee, pp. 60 - 116

Topics: Corporate Governance and Liability Issues  
The University, its Trustees, Faculty, Staff and Students  
Institutional Liability vs. Personal Liability  
Risk Management Concepts / Insuring Against Loss

Guest Speaker: Sarbanes-Oxley

Discussion: How political, economic and other world events impact higher  
education – from Enron to the Financial Collapse, 9/11 and  
Virginia Tech

(First Writing Assignment Due: 9:00 a.m.)

**Monday, March 28, 2011**

Required Reading: Kaplin & Lee, pp. 117 – 182, 429 - 446

Topics: The Staff  
Nature of Relationship  
Employment Laws  
Benefits
Unions / Labor Laws

Guest Speaker: Employment Discrimination

Discussion: Policy prohibiting discrimination, creating a process for bringing forward complaints internally, external complaints and remedies

(Second Writing Assignment Due: 9:00 a.m.)

Monday, April 4, 2011


Topics: Students & Student Organizations
Student Discipline / Academic Discipline
Student Records / FERPA
Liability to Students and for Student Behavior
Admissions and Affirmative Action

Guest Speaker: Dealing with Students in Crisis

Discussion: Interpreting and applying the law - - the lesson of FERPA and Virginia Tech

(Third Writing Assignment Due: 9:00 a.m.)

Monday, April 11, 2011

Required Reading: Kaplin & Lee, pp. 185 – 289, 475 - 503

Topics: The Faculty
The Handbook
Tenure
“The Freedoms - - Academic, Expression and Association”

Guest Speaker: The First Amendment

Discussion: Freedom of Expression / Speech
Faculty and Students

(Fourth Writing Assignment Due: 9:00 a.m.)
Monday, April 18, 2011

Required Reading: Kaplin & Lee, pp. 649 - 657

Topics: The Research Institution
         Research Agreements
         Intellectual Property Policy
         Commercialization
         Baye-Dole

Guest Speakers: IP and Technology Transfer

Discussion: IP Policy – Effective Compliance Mechanisms

(Fifth Writing Assignment Due: 9:00 a.m.)

Monday, April 25, 2011

Required Reading: Kaplin & Lee, pp. 593 – 643, 361 - 380

Topics: Federal Funding and Related Obligations
         Research Funding
         Research Misconduct, Export Controls, OFAQ and E-Verify
         Student Aid
         Federally Funded Research and Development Centers

Guest Speakers: Research Compliance Programs

Discussion: Self-Policing / Internal Audits and Investigations
            Governmental Investigations

Monday, May 2, 2011

Final Examination