

SEX AND THE SUPREME COURT, OLLI (Berkeley) Winter 2018, Marshall Krause, Instructor

This class will review regulation of human sexual activity by the US Supreme Court both currently and historically in the fields described in the catalog summary of the class. It will also involve the application of more general moral, religious, and social standards to human sexual activity. The class will encourage discussion of these topics by students applying their frankly-expressed personal beliefs and moral standards to the issues raised.

1.

Roth vs USA (1957) 354 US 476 established the test for what material does not receive protection under the free speech and press clauses of the First Amendment:

A State may not constitutionally inhibit the distribution of material as obscene unless '(a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value,' emphasizing that the 'three elements must coalesce,' and that no such material can 'be proscribed unless it is found to be utterly without redeeming social value.'

2.

US Constitution, First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

3.

SEXUAL HARASSMENT DEFINED (EEOC):

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

4.

The following outline will be followed as much as possible. Students are encouraged to suggest additions. (This material is discussed in depth in "Sex and the Constitution, Sex, Religion, and Law from America's Origins to the Twenty-First Century" (2017). By Professor Geoffrey R. Stone of the University of Chicago.)

## I. SEXUAL EXPRESSION

- A. First Amendment, free speech and press.
- B. Historical Development

- C. Obscene speech and press defined and applied
- D. Film, theater, radio, TV, internet, public exhibits
- E. Overbreadth and chilling effect

## II. SEXUAL ABUSE

- A. Rape, consent, resistance
- B. Statutory rape
- C. Public nudity, indecent exposure
- D. Child sexual abuse
- E. Child marriage
- F. Sexual harassment

## III. SEXUAL DISCRIMINATION

- A. Employment, public and private
- B. Same sex relationships
- C. Sterilization and eugenics
- D. Miscegenation
- E. Transgender and decline to state

## IV. SEXUAL CONDUCT

- A. Sex, lust and evil; religious influence
- B. Sex education
- C. Bigamy and incest
- D. Adultery, fornication, masturbation
- E. Prostitution
- F. Marital privacy; contraception
- G. Abortion
- H. Differing cultural standards

## V. FUTURE SEX

