

**DISABILITY (DISCRIMINATION) LAW**  
**Law 617-1001**  
**Syllabus, Policies and Procedures**  
Fall 2016

Mondays and Wednesdays, 9:00 to 10:25 a.m.  
Room 110

**COURSE DESCRIPTION**

Examines the law of disability discrimination, focusing on the Americans with Disabilities Act of 1990, the ADAAA amendments, and other federal and state statutes, case law, and regulations governing the civil rights of persons with disabilities with respect to education, employment, public accommodations, and housing.

**LEARNING OUTCOMES**

Students will become acquainted with the major federal and state laws governing disability discrimination in employment, education, and accommodation. These statutes include the Americans with Disabilities Act of 1990 (ADA), The American with Disabilities Amendments Act (2009), The Rehabilitation Act, and Nevada Revised Statutes 433.

Students will gain an understanding of and be able to analyze the statutory definitions of persons with disabilities, the rights accorded by the statutes to persons with disabilities, and different theories under which a plaintiff can bring a cause of action against an employer, an educational institution, or a public accommodation, as well as the defenses the defendants can assert.

Students will consider how, as lawyers representing clients, they can help their clients avoid liability and further the rights of persons with disabilities through alternate dispute resolution.

**REQUIRED TEXTS:**

Laura Rothstein and Ann C. McGinley, *Disability Law: Cases, Materials, Problems* (5<sup>th</sup> edition 2010) (referred to as "casebook" or "CB" in syllabus).

Laura Rothstein and Ann C. McGinley, *Disability Law: Cases, Materials, Problems* (2016 Supplement – available on TWEN)

Statutory Supplements – Available on TWEN.

## **OPTIONAL TEXT:**

Laura Rothstein and Ann C. McGinley, *Disability Law: Statutory Appendix, Federal Statutes and Regulations* (2013). **NOTE:** This is listed as optional on the booklist as portions of this text are no longer current.

## **REFERENCE BOOKS IN LIBRARY:**

**There are many books in the library dealing with the issue of disabilities. A few of them that are recommended are:**

Lennard J. Davis, *Enabling Acts: The Hidden Story of How the Americans with Disabilities Act Gave the Largest US Minority Its Rights* (2015).

*Backlash Against the ADA: Reinterpreting Disability Rights*, (ed. Linda Hamilton Krieger) (2003).

David M. Engel, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*, (2003).

Nancy Lee Jones, *The Americans with Disabilities Act: Overview, Regulations and Interpretations*, (2003).

John Parry, *Handbook on Disability Law*, (2003).

Henry H. Perritt, Jr., *The ADA Handbook*, (2003).

Lex Larson, *Employment Discrimination*, 2d ed. (Matthew Bender)(multi-volume treatise).

Barbara Lindemann & Paul Grossman, *Employment Discrimination Law*, 3d ed. (ABA Section of Labor and Employment Law)(multi-volume treatise).

## **VITAL INFORMATION:**

### **Office Hours, Contacting the Professor**

My office is located on the 4<sup>th</sup> floor of the Beverly Rogers Literature and Law Building in Room 456 (tucked away behind the library). I will have office hours from 4:00 - 6:00 p.m. on Mondays. I will also be in my office during these hours on most Wednesdays. Also, feel free to drop by to see me anytime except for the 45 minutes before class time. You can also call me for an appointment or send me an email. My office phone is 702-895-2436. My office phone is NOT the best way to contact me. You will have better luck if you email me. My email is [ann.mcginley@unlv.edu](mailto:ann.mcginley@unlv.edu). I try to respond to all emails within 24 hours, and often do so much sooner.

## Class Attendance

Class attendance is mandatory. I will pass an attendance sheet in every class and you will sign it if present. There will be NO credit for attending if you do not sign the sheet. IT IS AN HONOR CODE VIOLATION TO SIGN THE SHEET ON BEHALF OF SOMEONE ELSE.

Your class attendance, as well as your class preparation and participation will be factored into your grade. Students with four or more absences may be dis-enrolled from the course.

## Class Preparation

Class preparation is mandatory. I will call on students regularly to discuss the cases assigned and to participate in the class. I expect you to be prepared at all times. This is your class. You will learn more by participating than by avoiding participation. The frequency and quality of your preparation will count toward your final grade.

## **PROFESSIONALISM:**

It is important that you act in professional school as professionals. This means that you need to treat other students, the professor, and yourself with civility and dignity. Here are the initial rules of professionalism that I have drafted for the class

### **Punctuality**

Please arrive on time for class. The class starts promptly at 9:00 a.m. If for some reason—such as a car accident—you do arrive late, **enter the classroom quietly and please do not let the door slam behind you. (This is one of my pet peeves. People who are otherwise polite go in and out of classrooms, courtrooms, etc. and let the door bang.)**

### **Cell Phones, Computers and Internet Access**

Please turn off your cell phones or any other devices that ring or record. There has been increasing research demonstrating that using computers in class can be distracting and problematic for students' learning. Because of this research, you are encouraged **not** to use your laptops or other electronic devices in class. Because this is such a small class, however, I will not impose an absolute ban on computers. So that you have a complete set of notes, I will have two volunteers for each class take notes on a computer and share the notes with the class within 24 hours of the class by putting them on the TWEN page. You will then be able to edit those notes to add the substance that will be useful to you. This should help you review the class when it is fresh in your mind and begin working on an outline for studying for the exam. During the first week of class, you will be able to sign up for the day or days when you will be responsible to take notes.

I will be posting the PowerPoints on TWEN. When possible, I will post the PowerPoints before the class so that you can look at them before class. **I recommend that you read the PowerPoints before class and think about the questions raised on the slides, print them**

**out and bring them to class.** This way you will have a complete set (keep it in a binder) for studying for and working on the final exam. (Remember that your final exam will be open book so any preparation of this sort as you go along will help with the exam.)

### **Appropriate Attire**

Please dress appropriately for class.

### **Respect of Others' Opinions**

It is important that lawyers learn the ability to express differences of opinion about matters that are controversial in a civil, dignified, and respectable way. This means that good lawyers will not only treat others with respect, but will also attempt to hear the others' viewpoints and to react to them appropriately. We will be dealing with some topics that are quite sensitive in this class. It is important that we all feel comfortable to express our opinions in a professional manner. **I, like other thinking human beings, have some opinions about controversial matters we will discuss in class. These opinions, however, have nothing to do with how I judge your work, even if your opinions differ substantially from mine. Please do NOT try to mimic what you think I want to hear in your class comments, your papers or your exams.**

### **Honor Code**

Please remember that you are expected to abide by the honor code for each and every assignment. If you have any questions about whether you may consult anyone outside of class for help, please discuss with the professor.

### **GRADING AND ASSIGNMENTS:**

#### **1. Final Exam**

There will be a final exam. It will consist primarily of essays and/or short answers. The final exam will be a 3-hour, in-class, open book exam; it will count for **50% of your grade**.

#### **2. Attendance, Preparation and Participation, Class Hypothetical Problems, Quizzes, Short Assignments, etc.**

I will evaluate your daily class participation for frequency and quality of participation. I will judge the quality of your participation by considering how closely you have read the materials for class, your legal analysis, fresh, new ideas about the material, and your art in presenting these ideas in a civil and persuasive manner. Throughout the reading material in the casebook, there are hypothetical problems that precede the pertinent reading material. It is **very important** to read these hypothetical problems **before** reading the materials so that you can consider how the materials apply as you read them. After reading the materials, go back to the hypothetical problem and write an outline of your answer, using references to the reading materials. While I may not collect every outline, I will definitely go over these hypothetical problems in class and I may collect the outlines or give a short quiz on the

material. I may give individual students a topic to discuss for a few minutes at the beginning of certain classes or I may give you a short assignment for class, and/or we will have short assignments to research for meeting with a class visitor. These assignments are all part of your class participation grade. I will take your attendance, preparation and participation, class hypos, outlines, quizzes, etc. into account in determining your grade on attendance, preparation and participation. This grade will be worth **30% of your final grade**.

### 3. Class Projects

Near the end of the course you will also have a project to do for the class with another student that will involve an accessibility evaluation of a building or some other practical skill. I will ask you to hand in a short paper discussing your project and to prepare a PowerPoint on the project. **These projects will count for 20%.**

#### **UNLV-required Disclosures:**

**Academic Misconduct**—Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This Student Honor Code (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the UNLV Student Conduct Code and the Law School Student Policy Handbook. Violations of the Honor Code will be subject to the procedures and sanctions of the Honor Code, as set forth below.

<https://portal.law.unlv.edu/files/portal/Student%20Handbook.12-13.Honor%20Code.pdf>

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005) located at: <https://www.unlv.edu/studentconduct/student-conduct>.

**Academic Success Program/CASE** —The Boyd Academic Success Program assists students in removing barriers to academic success. This includes reviewing past

exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues.

The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period. More information can be found here: <https://law.unlv.edu/academics/asp/current-students>

**Copyright**—The University requires all members of the University Community to familiarize themselves with and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

**Disability Resource Center (DRC)**—The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

**Law Library**—The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, see <https://law.unlv.edu/law-library> and <https://law.unlv.edu/academics/law-library/student>.

**Religious Holidays Policy**—Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

**Rebelmail**—Rebelmail is UNLV's official email system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students

receive a Rebelmail account after they have been admitted to the university. Students' email prefixes are listed on class rosters. The suffix is always [@unlv.nevada.edu](mailto:unlv.nevada.edu). The law school has two general email lists for students: INFO and ADMIN-MSGS. Some faculty will use TWEN or personal gmail groups to send specific class messages.

## **ASSIGNMENTS:**

**Please read the applicable statutes and regulations from the Statutory Supplement (on TWEN) or online. Also, please read the portions of the 2016 Supplement that correspond to the reading in your casebook. Also, I will put the PowerPoints on TWEN in advance of the class (to the extent this is possible). Please read them and consider the questions asked on the slides before the class. Many of the PowerPoints will have the important statutory language and/or the regulations as well. Print out the PowerPoints and bring them to class.**

### **CLASS #1: MONDAY, 8/29**

#### **1. Introduction**

Chapter 1 – CB pp. 1-24; 2016 Supplement; Statutes

#### **2. Who is Protected?**

Chapter 2 – CB pp. 25-35; 35-42 (skim statutes); 2016 Supplement; Statutes

SIGN on to TWEN.

### **CLASS #2: WEDNESDAY, 8/31**

CB pp. 42-69; 2016 Supplement; Statutes

ALSO, GO TO THE IMPLICIT ASSESSMENT TEST WEBSITE AND DO THE TEST FOR DISABILITY AND AT LEAST ONE OTHER CATEGORY. GO TO THE FOLLOWING WEBSITE:

[HTTPS://IMPLICIT.HARVARD.EDU/IMPLICIT/](https://implicit.harvard.edu/implicit/)

CLICK ON “DEMONSTRATION” AND GO FROM THERE. I WILL NOT ASK YOU TO TELL THE CLASS HOW YOUR RESULTS TURNED OUT. I THINK IT IS HELPFUL, THOUGH, TO SEE HOW THEY TURN OUT. WE WILL DISCUSS THE TEST AND ITS POSSIBLE APPLICATION IN CLASS.

**Monday, 9/5 = Labor Day = No Class**

### **CLASS #3, WEDNESDAY, 9/7**

CB pp. 69-89; 2016 Supplement; Statutes

Also, when you are walking or exercising or driving in the car, please listen to the following podcast: Invisibilia - NPR, "How to Become Batman." (This is about an hour long so I recommend that you do it while you are doing something else such as exercising, etc. I think you will find it really interesting). Here's the link:

<http://www.npr.org/programs/invisibilia/378577902/how-to-become-batman>. We will discuss this podcast in class.

#### **CLASS #4, MONDAY, 9/12**

### **3. Employment**

- **Applicability of ADA and Rehabilitation Act**

CB pp. 91-107; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.1

#### **CLASS #5, WEDNESDAY, 9/14**

- **Qualification Standards**

CB pp. 107-127; 129-30; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.2

#### **CLASS #6, MONDAY, 9/19**

- **What Constitutes Discrimination?**

CB pp. 130-146; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.3

#### **CLASS #7, WEDNESDAY, 9/21**

- **Qualifications**

CB pp. 146-165; 2016 Supplement; Statutes

#### **CLASS #8, MONDAY, 9/26**

- **Direct Threat to the Health and Safety of the Individual and Others**

CB pp. 171-179; 181-185; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.4

- **Reasonable Accommodation and Undue Hardship**

CB pp. 185-188; 195-209; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.5

**CLASS #9, WEDNESDAY, 9/28**

CB pp. 209-230; (When reading Huber v. Howard County, Md, 849 F. Supp. 407 (D. Md. 1994), look up the first paragraph in the case. It will make more sense when you read what is in the casebook). 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.6

CB pp. 230-235; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 3.7

**CLASS #10, MONDAY, 10/3**

- **Defenses & Enforcement**

CB pp. 242-259; 2016 Supplement; Statutes

**4. Public Accommodations**

- **Overview**

CB pp. 265-287; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 4.1

**CLASS #11, WEDNESDAY, 10/5**

- **Nondiscrimination**
- **Modification of Policies, Practices and Procedures**

CB 287-291; 295-302; 2016 Supplement; Statutes

- **Architectural Barriers**

CB pp. 302-317; 2016 Supplement; Statutes

**CLASS #12, MONDAY, 10/10**

On Thursday, October 6, there will be an embarrassment of riches. We have Professor Mark Rothstein giving a talk at lunchtime for faculty on bioethics (to which our class will be invited) and Professor Laura Rothstein, who will give a talk on Education and Disability Law at 4pm. For our class on Monday, you will be expected to attend **at least one of these talks**. I highly encourage you to attend both of them. More information about the talks to come.

On Monday in class **we will discuss these two presentations**. You will let me know in advance which presentation(s) you will attend, and I will assign you to prepare for our discussions based on which talk you attend.

We will also discuss Title III and the regulations on existing facilities. Look at these in the statutes and Supplement. Also read the ADA Checklist for Existing Facilities, <http://www.adachecklist.org/doc/fullchecklist/ada-checklist.pdf>. We will discuss this checklist. (You will be using this checklist for your class project.)

### **CLASS #13, WEDNESDAY, 10/12**

#### **5. Government Services and Programs**

- **Nondiscrimination**
- **Architectural Barriers**

CB pp. 353-365; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 5.1

- **Licensing Practices**

CB pp. 374-393; 2016 Supplement; Statutes

### **CLASS #14, MONDAY, 10/17**

- **Access to Justice**
- **Enforcement**

CB pp. 394-403; 409-414; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 5.3

**WEDNESDAY, 10/19 – THERE IS NO CLASS BECAUSE OF THE PRESIDENTIAL DEBATE.**

### **CLASS #15, MONDAY, 10/24**

#### **6. Higher Education**

- **Nondiscrimination**
- **Admissions**

CB pp. 415-449; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 6.1

### **CLASS #16, WEDNESDAY, 10/26**

- **The Enrolled Student**

CB pp. 440-449; CB pp. 466-480; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 6.3

**CLASS #17, MONDAY, 10/31**

CB pp. 489-497; 2015 Supplement; Statutes  
Prepare Hypothetical Problem 6.5

**7. Education**

- **Historical Perspective**
- **Substantive Protections under the IDEA**

CB pp. 507-509; 515-529; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 7.1

**CLASS #18, WEDNESDAY, 11/2**

CB pp. 529-530; 534-539; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 7.2

CB pp. 539-545; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 7.3

CB pp. 550-558; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 7.4

Preliminary discussion of your class projects. Be prepared to discuss where you intend to do your project, what you have done so far on your project, etc.

**CLASS #19, MONDAY, 11/7**

**8. Health Care**

- **Nondiscrimination**
- **Architectural Barriers and Access to Services**

CB pp. 655-656; 675-683; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 9.1

CB pp. 684-700; 2016 Supplement; Statutes  
Prepare Hypothetical Problem 9.2

**CLASS #20, WEDNESDAY 11/9**

Class visit by Dr. Kate Martin (Date is Tentative – we will reorganize the syllabus if we need to change this date.) Student projects related to this visit.

**CLASS #21, MONDAY 11/14**

**9. Housing**

CB pp. 599-620; 620-629  
Prepare Hypothetical Problem 8.1

**CLASS #22, WEDNESDAY, 11/16**

CB pp. 634-653

**CLASS #23, MONDAY, 11/21**

Review problems. Prepare for Class. On TWEN.

**CLASS #24, WEDNESDAY, 11/23**

Finish review problems.

Some students will present class projects.

**CLASS #25, MONDAY, 11/28**

Remaining students will present class projects.

**CLASS #26, MONDAY, DECEMBER 5.**

This is a makeup from October 19. Please note this date. We will meet in room 110 from 9-11:00 a.m.

**Exam Review**

I will hand out problems for review in advance. **Prepare problems for review.** If you have questions you would like me to answer, please send them to me by email by 6:00 p.m. on Monday.

**Final Exam – Tuesday, December 6, 2016 at 1:00 p.m.**