

Readings in American Law: The Roots of Telecom Regulation (395-001), Autumn 2017

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Classes: We will meet on Thursdays from 9:00 to 11:50 a.m. in Room [TBA]. The class is scheduled to meet until 11:40 a.m., but we will meet until 11:50 a.m. to make up for the fact that we will not meet on October 19. Office hours by appointment.

Purpose and sketch of the course: In this course you will spend most weeks doing four things: (1) reading the Wolff book or primary sources; (2) taking turns (one week on, one week off) either (a) writing and presenting very short micro-research-papers (no shorter than 500 words, no longer than 1,000 words) about interesting legal matters in or closely related to the assigned reading or (b) reading and critiquing the papers written by your classmates; (3) taking a quiz about what you've read; and (4) talking about what you have read, researched, and written. What is the point of studying a bunch of old law stuff like this? In fact, there are at least three points: (1) to practice the healthy skepticism and intellectual initiative that should be parts of every lawyer's professional reading habits; (2) to enjoy one of the most enriching of lawyerly activities — reading about law and then probing its meaning and function with engaged colleagues; and, finally and not least importantly, (3) to develop some useful points of reference for your own understanding of modern law and lawyering, and a sense of trends in the development of legal institutions and law practice. In other words, this course is an opportunity to develop not only your skills in legal research, analysis, and presentation but also your skills as a collaborator-in-law. There is a lot of reading, and pre-class thinking and research, but if you like those activities you will like this course, because there isn't much else required (the quizzes and micro-papers are pretty easy for anyone who does a good job of reading and preparing for discussion). To learn more, read this: Gregory F. Jacob, *Using History to Teach Students How to be Lawyers*, 53 Am. J. Legal History 493 (2013).

Assignments: Please do the assigned reading and come to class prepared to be quizzed on it and to discuss it, and (at least during those weeks when you are writing a micro-paper) do outside research to support your contributions to the discussion. Make no mistake, as heavy as the assigned reading may feel sometimes, doing that reading is only the first half of your mission. The second half is to engage in some investigation of the context and quality of the reading material. So, as you read the assigned reading and the micro-papers, note points — legal and factual points directly related to the reading — where you want to know more or feel a bit skeptical. Remarks unsupported by reference to specific passages in the reading or specific research findings will be rejected — cut off as politely as possible. Think about it this way: This is a meeting of professionals where you must share your expertise, not a book club where you may share your casual or unsupported observations. On the first day of class we will establish a schedule under which students will take turns delivering micro-papers — one half of the class will deliver papers each week (which means everyone will end up writing six micro-papers), while the other half will read those papers and then critique them in class. The deadline for micro-papers will always be 9:00 p.m. Eastern Time on the Tuesday before the class session in which we will be discussing the reading that prompted the research. Your papers must use contemporary primary sources — that is, documents (cases, statutes, regulations, periodicals, books, and so on) from the time period about which you are writing — and they must be analytically, rhetorically, grammatically, and technically sharp. No one you deal with in the legal world is going to take you seriously if you cannot express yourself accurately and clearly. That includes spelling, punctuation, citations, and so on — all those things that are sometimes described as mere trifles imposed by dullards to interfere with the speedy and easy expression of brilliance by their betters. But as Daniel Webster told his friend Thomas Merrill in 1803 (when Webster was studying for the bar):

“Accuracy and diligence are much more necessary to a lawyer, than great comprehension of mind, or brilliancy of talent. His business is to refine, define, and split hairs, to look into authorities, and compare cases. A man can never gallop over the fields of law on Pegasus, nor fly across them on the wing of oratory. If he would stand on *terra firma* he must descend; if he would be a great lawyer, he must first consent to be only a great drudge.”¹

Webster was being both hyperbolic and simplistic, but he did a good job of vividly making an important point about commitment to the finer points of our craft and calling. He turned out to be a pretty good lawyer, with plenty of opportunities to gallop.

Texts:

Joshua D. Wolff, *Western Union and the Creation of the American Corporate Order, 1845-1893* (2013) (“Wolff”)

Buy or borrow the Wolff book. You will need it for the first class session and it will probably be useful thereafter. Everything else is available for free online. If you cannot find something, consult with one of our law school's reference librarians. Every one of them is a research expert and an able and enthusiastic teacher. Or you can buy rather expensive print editions, if you like. Whether you opt for free online or not-free print, you should get the texts soon and start reading, because the quizzing begins on the first day of class. Also, since much of our time together will be devoted to discussion of the assigned reading and the micro-papers, you must bring them to class. On paper or on a laptop or an e-reader is fine. Failure to bring the current reading, the week's micro-papers, and your notes to class will affect your class participation grade. An asterisk (*) next to an assignment means a quiz will be given on it on that date.

*Aug. 17: Wolff pages 1-9; U.S. Department of State, *Outline of U.S. History*, chapters 5-9 (2011)

*Aug. 24: Wolff pages 10-47

*Aug. 31: *O'Reilly v. Morse*, 56 U.S. 62 (1854)

*Sept. 7: Wolff pages 48-83

*Sept. 14: Wolff pages 84-112

*Sept. 21: *National Telegraph Act*, 14 Stat. 221 (1866); *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U.S. 1 (1878)

*Sept. 28: Wolff pages 113-150

*Oct. 5: Wolff pages 151-188

*Oct. 12: H.R. Rep. No. 40-32 (1869); S. Rep. No. 41-18 (1870)

¹ Letter from D. Webster to Mr. Merrill, Nov. 11, 1803, in 1 *The Private Correspondence of Daniel Webster* 149, 150-51 (1875) (Fletcher Webster, ed.).

- *Oct. 26: Wolff pages 189-231
- *Nov. 2: Wolff pages 232-262
- *Nov. 9: Wolff pages 263-291
- *Nov. 16: TBA

For each class session, please:

- (a) Read, take notes, think about the assigned material, and (if you have a paper to write, or if you're simply curious) do some research. Stay an assignment or two ahead of schedule, just in case.
- (b) Leave all electronics outside the classroom or, if you must bring them with you, keep them stowed during class. There is just one exception to this rule: You may use a laptop or e-reader to access the readings, your notes, and your classmates' micro-papers, but only if your gadget is not connected to the internet. Using an internet-connected gadget during class will affect your class participation grade. This means, of course, that you should prepare discussion notes for class ahead of time.
- (c) Note and follow in-class instruction. If you miss a class you must get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences. There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.
- (d) Look up words you do not know. Use a good dictionary or two. Words that are interesting or important are good quiz candidates.

Grades: Your grade is based on closed-book quizzes and participation. Quizzes count for 1/3 of the grade. A quiz consisting of a few (eight or ten or so) straightforward questions about the assigned reading (and, sometimes, the student-written papers) is given at the start of most classes. They are designed merely to determine whether you have, in fact, done the reading and paid attention. They are easy for anyone who has done the reading but not for someone who has not. There are no make-ups: miss a class in which a quiz is administered, miss that quiz. Skipping class to avoid a quiz can be costly for two reasons: (1) grades are based mostly on participation and someone who is absent will find it hard to participate, and (2) if a student takes all quizzes, the lowest quiz score is excluded from final grade calculations. Participation counts for 2/3 of the grade. Let us be clear about this up front: The evaluation of participation is largely subjective, which means that if you do not like your participation grade there will be no basis for challenging it. Having said that, you are unlikely to get a bad grade if you come to every class prepared to make useful contributions, do in fact make them, and respectfully listen to and comment on the contributions of others. (Micro-papers are not graded separately. They are included in the participation grade.) It is because of those expectations that there is an electronics restriction for this course. No one can google whatever we are talking about and then read something off a screen, passing it off as his or her own thought. All of us must read and reflect and do a little bit of our own thinking (and, often, research) before class in order to be sure we have something useful to share. What a wonderful thing! Caution: Hesitate before making a decision about enrolling in this course if you hope (due, for example, to success in a moot court competition) or expect (due, for example, to plans for out-of-town travel) to have a schedule that conflicts with this course. In this course there is no substitute for participation, and a before- or after-class private chat with an instructor about what will or did go on in class is no substitute for an absence that deprives your classmates of your contributions to our work together. So, generally speaking, the more class sessions you miss the lower your grade will be, and a failure to attend the number of class sessions required by our school's regulations (they are available on the school website, and you are responsible for knowing and following them) will make you ineligible for course credit.

Intellectual property: The instructor owns all course content, regardless of form. You may share copies of that content with classmates during the course, but other than that you must keep all of it in any format to yourself forever. Recording of class sessions: Is forbidden.

I have read and do understand the rules of this course, and I know that following those rules is an important part of class participation. I will abide by all of them. Name (print): _____ Signature (scribble): _____ Date: __/__/__