**DRAFT**

**Fall 2023 Syllabus**

**George Washington University Law School**

ANTI-SEMITISM AND THE LAW (1 cr.)

Professor Kenneth L. Marcus

Cell phone number for weekdays 9am to 6pm: 571-271-8278

Class will meet in-person. If it is necessary because of inclement weather or other unanticipated circumstances to meet virtually or to reschedule a session, I will provide as much advance notice as practicable.

**Course Description**

This class will explore the relationship between anti-Semitism and the law. This includes actual and historical uses of law either to reduce anti-Semitism or, perversely, to institutionalize it, as well as the limits of law’s ability to eradicate social problems and, worse, the tendency of some legal efforts to worsen them. The relationship between law, anti-Jewish animus, and evolving conceptions of Jewish cultural identity will be studied with a view to historical continuities and discontinuities.

**Course Time**

TBD

**Office hours:** TBD

**Reading Materials**

Many of the issues covered in this course are related to real world events. From time to time, I may e-mail the class short optional readings about current events that relate to course materials. Reviewing these articles, or other articles relating to these events, may help students to prepare for class discussion.

**Grading and Assignments**

Grading is pass/fail. Each student is nevertheless expected to participate actively in class discussion; to write an original research paper on a subject related to the focus of the course; and to provide the class with a presentation of the research.

**Final papers are due at midnight (Eastern time) on \_\_\_\_\_\_\_\_** and should extend no less than 8 pages nor more than 12 pages of typed, double-spaced text, with one-inch margins and 12-point type. All papers must be paginated at the bottom of each page, and sources must be properly cited in footnotes rather than end notes. The student’s name may appear at the top of the first page or on an optional title page. Title pages do not count towards page limits.

**Paper proposals (1 page) are due on or before [DATE]**. Students are strongly encouraged to check-in during the course to ensure that you are progressing appropriately towards a quality paper.

**Learning Outcomes**

By the end of the course, students should have acquired:

* An understanding of the nature and sources of contemporary anti-Semitism and key legal strategies that have been used to address it;
* Familiarity with certain major U.S. cases, laws, regulations, and administrative guidance, relating to anti-Semitism, as well as associated policy questions and controversies; and
* Ability to analyze federal administrative agency documents, as well as judicial cases, pertinent to the subject of this course.

**Attendance**

Each class I will send a sign-in sheet around the class. Please sign in, or you will be marked absent. If you arrive late, please let me know either during a break or at the end of class. If you will be absent from class, please contact me in advance via email.

**Reading Assignments**

**Week One: Understanding Anti-Semitism**

U.S. Commission on Civil Rights**,** “The U.S. Commission on Civil Rights Expresses Concern Over Spike in Anti Semitism in the United States Surrounding the Outbreak of Violence Between Israel and Hamas in May 2021” (July 2021), <https://www.usccr.gov/files/2021/07-23-Anti-Semitism-Statement-2021.pdf>

OSCE/UNESCO, *Addressing Anti-Semitism Through Education: Guidelines for Policymakers*, pp. 12-14, 21-25, 28-30, 80-84 (2018), <https://unesdoc.unesco.org/ark:/48223/pf0000263702> (16 pages).

Laurie Zoloth, email reprinted in Alice Sparberg Alexious, “Anti-Semitism on Campus…in the U.S.,” *Lillith*, <https://lilith.org/articles/anti-semitism-on-campus-in-the-u-s/>

Kenneth L. Marcus, “Matryoshka Questions” in *The Definition of Anti-Semitism* (Oxford University Press 2015), pp. 29-32. (4pp.)

**Week Two: Historical Background: Enlightenment and Modernity**

Jonathan Bush, “You’re Gonna Miss Me When I’m Gone: Early Modern Common Law Discourse and the Case of the Jews,” 1993 Wis. L. Rev. 1225, pp. 1225-1286 (1993) (Read 1226-1229, skim 1230-1275, read 1276-1285). (61 pages).

Walter Laqueur, “The Enlightenment and After” and “Racialism and Jewish Conspiracies” in *The Changing Face of Anti-Semitism from Ancient Times to the Present Day* (New York: Oxford University Press, 2004), pp. 71-107.

**Week Three: Historical Background: Holocaust and Post-Holocaust**

Michael Bazyler, “The Holocaust: A Legal History,” in *Holocaust,* *Genocide, and the Law: A Quest for Justice in a Post-Holocaust World* (New York: Oxford University Press 2016), pp. 5-32. (27 pages)

David Seymour, “Continuity and Discontinuity: From Antisemitism to Antizionism and the Reconfiguration of the Jewish Question,” *Journal for the Study of Contemporary Antisemitism* (2019)  [(23](https://ijl.org/wp-content/uploads/2019/11/2019-AGG-Bio.pdf%20(23) pages).

**Week Four: Jewish Identity I: Hate Crimes, Employment, and Erasive Anti-Semitism**

Didi Herman, “An Unfortunate Coincidence: Jews and Jewishness in Twentieth Century English Judicial Discourse,” *Journal of Law and Society*, Vol. 33, No. 2 (June 2006), pp. 277-301 (24 pages).

Shaare Tefila Congregation v. Cobb, 785 F.2d 523-534 (4th Cir. 1986), <https://casetext.com/case/shaare-tefila-congregation-v-cobb>

Sha’are Tefilah v. Cobb, Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987), <https://www.law.cornell.edu/supremecourt/text/481/615>

Daphna Kaufman, et al., *Erasive Anti-Semitism: A New Threat Arising Within Contemporary Progressive Discourse - Policy Paper – Version A* (summary), <https://www.reutgroup.org/Publications/ERASIVE-ANTI-SEMITISM>

**Week Five: Jewish Identity II: Higher Education**

Kenneth L. Marcus, *Jewish Identity and Civil Rights in America* (Cambridge University Press 2010), pp. 17-36.

U.S. Commission on Civil Rights, *Campus Anti-Semitism* at 1-3, 72-73, [http://www.usccr.gov/pubs/081506campusantibrief07.pdf (13](http://www.usccr.gov/pubs/081506campusantibrief07.pdf%20(13) pages)

U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter re Title VI and Title IX Discrimination in Colleges and Schools (September 13, 2004), <https://www2.ed.gov/about/offices/list/ocr/letters/religious-rights2004.pdf> (2 pages)

U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter re Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability (Oct. 26, 2010), pp. 5-6, [https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf (2](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf%20(2) pages)

**Week Six: Defining Anti-Semitism**

U.S. Department of Education, Office for Civil Rights, re: Complaint No. Case No. 02-19-2174 (New York University), Resolution Letter, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02192174-a.pdf>

Executive Order 13899 (Combating Anti-Semitism), 84 Fed. Reg. 68779 (Dec. 11, 2019), [https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism (2](https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism%20(2) pages)

U.S. Department of Education, Office for Civil Rights, Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR’s Enforcement of Title VI of the Civil Rights Act of 1964, [https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf (3](https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf%20(3) 1/2 pages)

Mark D. Goldfeder, “Defining Antisemitism,” *Seton Hall Law Review* (forthcoming), pp. 1-24, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3798093> (24 pages)

Statement of Hon. Paul Clement before the Committee of the Judiciary, U.S. House of Representatives, for a Hearing Entitled “Examining Anti-Semitism on College Campuses” (Nov. 17, 2017), <https://republicans-judiciary.house.gov/wp-content/uploads/2017/10/Clement-Testimony-11.07.17.pdf> (7 pp.)

Palestine Legal, FAQs About Executive Order 13899, ‘Combating Anti-Semitism’ <https://palestinelegal.org/executiveorder>

**Week Seven: The United Nations and Israel-related Boycotts**

Arkansas Times LP v. Waldrip, 988 F.3d 453 (8th Cir. Feb. 12, 2021) (17 pages)

Ahmeed Shaheed, Special Rapporteur on freedom of religion or belief, *Report on combating antisemitism to eliminate discrimination and intolerance based on religion or belief*, OHCHR (Sept. 20, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/289/00/PDF/N1928900.pdf?OpenElement> (23pages)

U.S. Department of State, “Anti-Semitism in the United Nations System” in Contemporary Global Anti-Semitism (March 2008), pp. 47-53, <https://2009-2017.state.gov/documents/organization/102301.pdf>