

Prisons and the Law (Law 779)
Margo Schlanger & Amy Fetting
University of Michigan Law School, Winter 2022 (T, Th, 4:30 – 6:30 pm)

Course Description: The United States has the highest incarceration rate in the world. In 1980, approximately 500,000 people were behind bars in this country. Now, even after significant pandemic-related decarceration, the figure approaches 2 million (over two-thirds of whom are non-white), locked up in jails, state prisons, and federal prisons. This course will examine both constitutional law and statutory law relevant to their incarceration. The central topics are the Eighth Amendment's ban on cruel and unusual punishments and its Fourteenth Amendment analog, and Congress's regulation of prison-related litigation in the Prison Litigation Reform Act. We'll also examine First Amendment and related statutory rights in prison, solitary and supermax confinement, race discrimination inside jails and prison, and the law of injunctive relief in constitutional cases brought by incarcerated people. (We will not discuss criminal procedure, habeas corpus, or sentencing.) This course is for anyone interested in civil rights, criminal prosecution, or criminal defense.

NOTE: The class will meet for 10 sessions on Tuesdays and Thursdays, 4:30 to 6:30. There will also be an extensive negotiation exercise on 2/5 or 2/6, for 5-6 hours. Attendance at the negotiation exercise is required: please save both dates.

Reading will be largely from a casebook, SCHLANGER, BEDI, SHAPIRO & BRANHAM, LAW OF INCARCERATION: CASES AND MATERIALS (West 2020). It is available in either hard-copy (soft cover) or as an e-book. Any other reading will be posted on the Canvas website. There is a lot of supplemental material that might be of interest to you, organized by casebook chapter, at <http://incarcerationlaw.com>.

Goals:

- Substantive law: To develop basic understanding of the doctrines/statutes just mentioned.
- Law and society: To better understand recent controversies relating to incarceration and its regulation.

Expectations:

- As in all law school classes, attendance at all class sessions is required (including makeup classes, unless you have a conflict). If you must miss class because you are sick, please let us know.
- We will post each week's reading assignment on Canvas in the middle of the prior week.
- Each student is "on call" at all class sessions; that is, we feel free to call on any student for any question we're asking in class. Class works much better if people don't "pass" when called on. That said, life is complicated, and you may pass if you choose.
- Class participation should be respectful of other class members.
- It is our goal to create a learning experience that is as accessible as possible. If you anticipate any issues related to the format, materials, or requirements of this course, please meet with one or both of us outside of class so we can explore potential solutions. Students with disabilities may also wish to work with the Office of Student Life to discuss a range of options to removing barriers in this course, including official accommodations.
- The evidence is clear that taking notes by hand (and avoiding multitasking) have major educational benefits. At the same time, many of you will prefer to access the reading on your computers. We are not regulating the use of computers in class—but we strongly suggest that you use your computer only for reading, *not* for notetaking. In any event, please do not use it for other things.
- We are available to speak with students after class, during office hours (**Fetting: Thursdays, 12-2 pm; Schlanger, Tuesdays, 1:15-3:15**) and by appointment (set up via email). We usually find that in-person discussion is more productive than email, so while you are free to email, we may well ask for a meeting rather than responding substantively by email.

| | | |
|--|------------|---|
| 1. Introduction | Chapter 1 | Background: pp. 1-46: Ruffin v. Commonwealth, Cooper v. Pate. pp. 47-54 |
| 2. Conditions of Confinement | Chapter 2 | pp. 57-71: Jackson v. Bishop, Estelle v. Gamble |
| | | pp. 71-109: Rhodes v. Chapman, Whitley v. Albers, Wilson v. Seiter, Hudson v. McMillian |
| | | pp. 110-59: Helling v. McKinney, Farmer v. Brennan, Bell v. Wolfish |
| | | pp. 160-75, 184-85: Kingsley v. Hendrickson |
| 3. Solitary Confinement | Chapter 3 | pp. 187-228: In re Medley, Madrid v. Gomez, The Mandela Rules |
| 4. Injunctive Litigation | Chapter 14 | pp. 705-07, 711-735, 747-56, 760-71: Hutto v. Finney, Lewis v. Casey, Prison Litigation Reform Act (PLRA) |
| | | pp. 771-811, 813-24: Brown v. Plata, PLRA |
| 5. Litigation Process | Chapter 16 | pp. 887-914: PLRA; Woodford v. Ngo, Ross v. Blake |
| NEGOTIATION EXERCISE | | TBA |
| 6. Freedom of Expression and Religion | Chapter 6 | pp. 335-38, 355-66, 386-99: Turner v. Safley, Beard v. Banks |
| | | pp. 421-38: Religious Freedom Restoration Act, Religious Land Use and Institutionalized Persons Act, Holt v. Hobbs. |
| 7. Race and National Origin Discrimination | Chapter 10 | pp. 541-64: Washington v. Lee, Lee v. Washington, Johnson v. California |