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Zero Textbook Cost Syllabus for COM 3045 (Communication, Law, and Free Speech)

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Communication, Law, and Free Speech

COM 3045

Course: COM 3045, Communication, Law, and Free Speech

Instructor: Donovan Bisbee

Semester:

Meetings:

Instructor email:

Office Hours:

Office Phone:

Required Materials and Tools:

- This is a ZTC (zero-textbook cost) class. All readings for this course are freely available, but the vast majority will be accessed through the Newman Library resources. Please ensure that you have your Baruch username and password and are able to easily access library materials from off-campus: <https://library.baruch.cuny.edu/help/logging-in-to-library-resources-and-services/>
- A laptop computer or tablet capable of word-processing, annotating PDFs or readings, and accessing Blackboard. Please contact me as soon as possible if you are planning on using your smartphone as your primary means of interacting with the course. The Microsoft Office Suite is available free to all Baruch students: <https://www.baruch.cuny.edu/bctc/software/msoffice/index.html>

Course Description (What CUNY first says):

From pornography to political speech, from the lewd to the libelous, and everywhere in between, the law is forever drawing lines that divide protected speech (what you can say in America) from unprotected speech (what you cannot say in America). This is an interdisciplinary course that draws on philosophical, legal, and rhetorical theories of communication to help explain how those lines are drawn. Readings include famous court cases involving freedom of speech, as well as political and philosophical writings on all sides of the free speech debate. This course is part of the required core for the Communication Studies Major, may be used as an elective in the Corporate Communication major, or in the Tier III minor in Communication Studies. This course is cross-listed as PHI 3045.

Course Overview and Learning Objectives (The “Promise” of the Course):

You are all here for different reasons, but I am glad that you are all here. As the course description you saw when registering teases, Free Speech is an enduring controversial issue that excites strong emotions, passionate debates, and *a lot* of litigation. The guarantee that the Federal Government (and later the states) cannot prevent an individual (or group, or corporation) from speaking is one of the core promises of the First Amendment to the U.S. Constitution. That amendment, which also deals with religion, petition, and assembly, is the source of a massively complex set of laws, rulings, ideas, and debates. In law school, the Constitution is typically split into two courses. One deals with the First Amendment, the other one deals with...everything else. When it comes to free speech, there’s a lot to cover.

This course examines the interplay among the three nouns that make up the title: Communication, Law, and Free Speech. Instead of focusing purely on case law or legal rulings

surrounding free speech, this course looks at how these issues intersect. We'll study the pairings of Free Speech and Law, Communication and Free Speech, and Communication and Law. This means that, yes, you'll learn about time, place, and manner restrictions, the state action doctrine, and chilling effects. However, this is not a law school class, and (in theory) the majority of you aren't planning on becoming lawyers. So, we'll also take a rhetorical perspective to communication, grounded in the study of public discourse. By the end of the course, you should have a working knowledge of not just free speech regulations, but what philosophical arguments and ideas shape those regulations, how regulating expression in the U.S differs from other democratic systems, how the means of communication (broadcast and social media) are regulated, and how these legal forces shape our shared public culture. Overall, about 75% of the course deals with specific rulings and legal doctrine, with 25% focused on larger issues.

So, this set of objectives is my "promise" to you. *If you stay with the course, buy in, and show up ready to talk and think about these ideas, then by the end of the course, you should be able to do the following things:*

- Describe the key elements of SCOTUS and the judiciary's rhetorical situation
- Identify and explain many of the major court rulings and related legal doctrines that shape free speech law and media regulation in the United States
- Distinguish between major doctrinal elements of speech regulation, e.g. content-based vs content-neutral, chilling effects, imminent lawless action, etc.
- Explain and apply free speech doctrine
- Conduct independent research investigating a question about law, communication, and free speech.
- Apply existing regulatory frames to hypothetical situations
- Explain major intersections between communication and the law
- Analyze legal texts and summarize 1) content/argument and 2) persuasive strategies

What Will We Do (How do we Pursue These Objectives)?

With our goals above as the guiding principles of the class, we will complete the following assessments throughout the semester. The syllabus offers a brief overview so you have a sense of how the semester will go.

Ongoing Work and Participation: 65% of Course Grade. Throughout the semester, there will be opportunities for you to complete smaller assignments that emphasize skills of summary, synthesis, and analysis. These assignments are not "busy work." Instead, they're carefully tailored to help achieve the learning objectives about analyzing legal texts, conducting research, and finding connections. They'll also help support our meetings and discussions. Mostly, you'll get to choose when to engage with different work and choose prompts/ideas that interest you, but I would recommend mapping out when you plan to complete these early in the semester.

- Reading Response Papers: 40%
 - Most weeks, there will be a prompt that asks you to answer a few specific questions based on the assigned materials. To successfully complete the assignment, you'll need to read carefully, summarize, and then reflect on/extend your summary. There will be 8 paper prompts, and you will be evaluated on your best 4. You can complete just 4, all 8, or anything in between.

- Expert Summary: 25%
 - French essayist Joseph Joubert is often credited with the saying “to teach is to learn twice,” and that idea forms the core of this assignment. Throughout our time together, we’ll encounter a number of new terms, ideas, and concepts, ranging from technical legal terms to communication theories. Essentially, we’re building a lexicon of ideas that will be useful both in the class (say preparing for an exam, reviewing for a paper, or finding a starting point for your circumlectio) and beyond the class (in future courses and even beyond Baruch).
 - On one class day, you’ll give a brief presentation (approximately 5 minutes) on a topic/concept that you’ll select from a list during the first week of class, serving as our in-class expert on that topic. You’ll also compile a list of sources that you used to help you learn about the concept and a basic overview, which will comprise part of this grade and be available to other students as a resource throughout the semester.

Other Assignments: 30% of course grade

- Circumlectio: 25%
 - From the Greek translating roughly as “to read around,” this assignment sets you free to go try and answer a question you have about persuasion/ideas from the course. I love this assignment, and students typically do as well, but *it is deceptively challenging*. It asks you to conduct research to try to answer a question. We’ll talk more about it later, but this will happen shortly after the midpoint of the semester.
- Final Project: 10%
 - This is a communication course, so ultimately I’ll be asking you to exercise your speech (or expression) rights by creating something substantive that is intended for a public audience (whether you actually circulate it or not is up to you). The prompt itself is purposefully open-ended, since I want you to choose something that is both 1) interesting and engaging to you and 2) a meaningful mode of expression to you as a student, person, and civic actor. What you create is entirely up to you, but it should directly engage one or more of the issues and ideas we’ve explored. You might write an editorial for the Baruch student newspaper (or a larger paper if you want), record a podcast episode explaining or talking about the history of a free speech doctrine or an interesting case, make a video, build a game or website, make music. That’s just scratching the surface. I’ll provide more details as we get into the semester, but be thinking about what interests you and what you might want to create.

How Will We Judge How We’re Doing? (Grading Scale)

Following the Baruch College Faculty Handbook and in accordance with the grading scale articulated by Baruch’s Registrar, grades in the course will be evaluated on the following scale. This course will be calculated using the standard grading scale with percentages. Thus, if there were 1000 points in the course, it would be assessed this way.

A: 930-1000	B+871-899
A-: 900-929	B: 830-870
B-: 800-829	C+: 771-799
C: 730-770	C-: 700-729
D+: 671-699	D: 600-670 F: 599 and below

I'll provide you with a rubric (beforehand) for major assignments, and I'll provide timely feedback (one week for typical turnaround on assignments). I will keep our Blackboard Gradebook updated as well, so you and I are always on the same page about your progress in the course.

What Policies and Procedures Will Shape our Environment?

Attendance:

There is not a formal attendance policy for this course. This fall is full of uncertainty, so I won't penalize your grade arbitrarily if you miss classes. However, attendance and engagement are crucial to succeeding in the class and achieving the learning goals. This is not a pure lecture class nor a "data dump" that you can succeed in purely reviewing notes or the readings. If you routinely miss or cannot engage in course meetings, it will have a severe adverse effect on your performance. We will sometimes do participation work in class that cannot be made up.

Late Work:

I hope we can get things turned in when they're marked as due. Each week is designed to build off the prior one, so having trailing work can quickly start to snowball. However, I want you to have a chance to succeed. Honestly, please reach out to me beforehand. I am usually happy to give you an extension, work with a challenging schedule, or find a way to make things work. The work and its educational value are what matters. The earlier you let me know you might need more time, the more likely it is that we can help you succeed. I reserve the right to not accept work that is later than one week past the due date. For open-ended assignments with "cutoff" dates (like the circumlectio), late work will not be accepted without prior arrangement.

Grades and Feedback:

You will receive substantive feedback on all major assignments, typically in the Blackboard Grade center. That feedback will both explain the evaluation and highlight steps for future improvement. For most major assignments you will be provided a rubric. If, after reading your feedback and consulting the rubric, you have questions or concerns about the grade, please wait 24 hours before reaching out to me. After that time, I would be happy to find a time to meet so that we can discuss your concern.

What Can You (Students) Expect of Me (Donovan)?

I love this course, and I love teaching. I am committed to making this a fantastic adventure. Legal rhetoric is one of my research areas, and I love teaching about it. The things we read can be difficult to understand at first, but we get to talk about some really fascinating, complex, engaging issues.

I will generally respond to email within 24 hours (other than weekends), and be available in office hours. I will keep a gradebook on Blackboard that you can access that is updated in a timely manner and clearly indicates your overall progress in the course. I will return your work in a timely manner with feedback that helps you know where to improve. My jokes are bad, I have a 2 year old toddler, and I love dogs. You can expect these things to enter class (figuratively) on occasion. I will always be supportive of you, even if you're going through it or fall behind.

You can also expect that there may be some challenges, but I will always be clear about what is happening and communicate if anything is changing. Also, you should expect that I am flexible and willing to work with you. Please reach out to me. I will not let your success in the course be blocked by attendance, overwork, or other problems.

Are there resources, procedures, or other things you want me to know about?
Yes, but to make the syllabus discernible rather than “Terms and Conditions,” you will find those on our Blackboard page under “Syllabus”

Week and Day	Class Topic and Activities	Assignments	Read/Watch for Next Class
Unit 1: Communication and Law			
Week 1 Introductions, Course Overview, Free Speech, Truth, and Lies		Welcome! Course Overview, Free Speech, Law, and Communication	Introductions/Overview of the Federal Court System (US Attorneys and Federal Judicial Center—links on Blackboard)
		The Federal Judiciary; <i>U.S. v. Alvarez</i> : Big Little Lies	Review Expert Summary Assignment and Term (Choose term by Day 1 of Week 2, expert summary due on the day concept is discussed in class) Kerr, “How to Read a Legal Opinion”
Week 2 Legal Style, “Thinking Like a Lawyer,” and Judicial Review		Legal Style, Opinions, and <i>U.S. v. Alvarez</i>	Response Paper Opportunity 1 Opens () Breyer, Selections from “Making our Democracy Work” (1999-2011)
		“The Least Dangerous Branch”: The US Supreme Court and Judicial Review	Response Paper Opportunity 2 Opens () LaRue, “Telling Stories about Constitutional Law” Selections from Everson v. Board of Education (Black Majority, 1-18)
Week 3 Law and Rhetoric: Situations and Narratives		Telling Stories about the Law: Narratives, Legal Opinions, and “Fictions”	Circumlectio Assignment Opens (due end of Week 12) Prentice, “Supreme Court Rhetoric”
		Rhetorical (Legal Situations)	Response Paper Opportunity 3 opens () Selections from Streiff v. Utah (Thomas Majority, 1-4, 8-10; Sotomayor Dissent, 1-5) Start working on selections from Aeropagitica (Section 2, pp. 6-15; section 3, pp 15-25; Section 5, pp 33-50, Conclusion pp 50-675)
Week 4 Philosophical Foundations and		Bags of Meth and Poisoned Trees: The 4 th	Selections of Aeropagitica (Section 2, pp. 6-15; section 3, pp 15-25; Section 5, pp

Dueling Narratives		Amendment and legal narrative		33-50, Conclusion pp 50-675)
		Paradise Lost: Why Protect Speech at All?	Response Paper Opportunity 4 Opens ()	Selections of Clark v. CCNV (White majority 288-299, Marshall dissent 301-316)
Unit 2: Law and Free Speech				
Week 5 Time, Place, and Manner; Content-Based Restrictions		Time Place and Manner Restrictions		Selections of Boos v. Barry (O'Connor Majority 315-329)
		Content-Based Restrictions and Presumptive Invalidity		Selections of R.A.V. vs. St. Paul (Scalia Majority 377-396)
Week 6 Symbolic Speech and Hate Symbols		Viewpoint Neutrality: Things get more confusing and <i>Boos</i> strikes back	Response Paper Opportunity 5 opens ()	Selections of United States v. O'Brien (Warren Majority, 382-391)
		Symbolic Speech, "Intermediate Scrutiny," and a hunk a hunk of burning draft cards	Midterm Examination Opens	Stromberg v. California (Hughes Majority 360-370) Texas v. Johnson (Brennan Majority 397-420, skim Rehnquist dissent 421-432).
Week 7 Intermediate Scrutiny and the Categorical Approach		Symbolic Speech and Expressive Conduct: Red Flags and Burning Flags		
		Let's Finish the Category: When Speech Falls Outside the Umbrella.		Chaplinsky v. New Hampshire (Entire opinion) Virginia v. Black (O'Connor plurality, 347-363)
Week 8 Danger Danger! True Threats and Incitement		True Threats and Fighting Words: "You wanna step outside?" and "I'm gonna kill that guy"!	Response Paper 6 Opens ()	Brandenburg v. Ohio (Entire Opinion) Whitney v. California (Entire Opinion)
		Incitement: "Clear and Present Danger" → "Imminent Lawless Action"		New York Times co. v. Sullivan (Brennan Majority 256-283)
Week 9 Defamation, Libel, Slander, and Emotional Distress		"Slander is Spoken. In Print, it's Libel"; Defamation, the <i>New York Times</i> , and "Actual Malice"		New York Times co. v US (Per Curiam opinion, Black concurrence, 713-720) Hustler v. Falwell (Rehnquist majority, 47-57).
		Not Tortes, Torts: Intentional Infliction of Emotional Distress Prior Restraint	Response Paper 7 Opens ()	Miller v. California (Burger Majority 16-37)

				<i>Brown v. Entertainment Merchant's Association</i> (Scalia Majority, 1-18)
Week 10 Student Speech and Obscenity		“That’s Obscene!” Obscenity and the Miller Test		<i>West Virginia v. Barnette</i> (Jackson Majority, 625-642) <i>Tinker v Des Moines</i> (Fortas Majority, 504-514)
		“This school would be easy to run if not for all these students”: Student Speech		<i>FCC v. Pacifica</i> (Stevens plurality, 726-751 especially 744-751)
Week 11 Indecent Airwaves and Free Money- Speech		“Words you Can’t Say” The FCC and the regulation of Indecency		<i>Citizens United v. FEC</i> (Kennedy plurality, 1-2, 20-25, skim lightly 31-50; Stevens dissent, 1-3, 17-23, 56-68)
		“Corporations are People, My Friend”: Campaign Finance Reform and Money-Speech		<i>Walker v. Sons of Confederate Veterans</i> (Breyer Majority, 1-19)
Week 12 Government Speech and Commercial Speech		“You Can’t Make Me Say That!”: Government Speech and Commercial Speech	Response Paper Opportunity 8 Opens ()	Review Readings and bring questions
		Finishing the Law: Reviewing questions, cases, and concepts		Dorf, “ <u>Hate Speech is Free Speech, but Maybe it Shouldn’t Be</u> ”
Unit 3: Free Speech and Communication				
Week 13 Free Speech: The Familiar and the Necessary		“You’re saying There’s an Easier Way?” Other Models of Speech Regulation	Final Project Opens (due during Final Exam Period)	Fish, “ <u>There’s no Such Thing as Free Speech, and That’s a Good Thing</u> ” (Chapter 8, Pages 102-119)
		Free Speech isn’t Real, but it is Useful		
Week 14 Metaphors of Finality: Free Speech and Words we Live By		Metaphors we Live By: Marketplaces		
		Free Speech and Democratic Society: What have we done and what should we want to do?		
FINAL			Final Project Due	