

## Memorandum

To: University of Tennessee Graduate Council and Faculty Senate  
From: The Faculty of the University of Tennessee College of Law  
Date: April 2, 2020  
Regarding: University of Tennessee College of Law Spring 2020 Grading and Related Graduation Policy Amendments to Address the COVID-19 Pandemic

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The Faculty of the College of Law provides this memorandum in support of its grading and graduation policy changes for spring 2020. The first section describes the changes that the faculty adopted and requests approval of these changes. Because the faculty understands the significance of these decisions to College of Law students, additional information in the following sections about the decision-making process, the materials that were considered, and the factors that weighed in favor of the ultimate decision are provided.

### **A. Spring 2020 Grading and Related Graduation Policy Amendments Adopted by the University of Tennessee College of Law Faculty**

- University of Tennessee College of Law Spring 2020 Semester classes that otherwise would have been graded on the College's 4.3 scale will be graded as Honors, Satisfactory, or No Credit.
- The "Honors" designation acknowledges excellent student work, even though the work will not receive a numeric grade and will not impact the student's GPA or class rank. For a class subject to the mandatory curve under UT Law Academic Policies, Honors will be reserved for up to the top 20% of the class. For all other classes, the Honors designation may be awarded for student work that would have received a course grade of 3.5 or higher if the work had received a numeric grade.
- One of the College of Law's current graduation requirements provides that graduates must receive "a grade of 2.00 in at least 21 hours of required, numerically graded first-year courses." Because UT Law's current first-year law students will only receive grades in 15 hours of numerically graded classes, the faculty has voted to suspend this graduation requirement for anyone who was a first-year law student in the 2019-2020 academic year.

### **B. The Decision-Making Process**

University of Tennessee administration announced the move to online learning two days before spring break, on March 12, 2020. The Wednesday after spring break, March 25, 2020, the UT Law Academic Standards & Curriculum Committee met to discuss the issue of grades for the Spring 2020 Semester. The Committee is composed of six faculty members (including the Associate Dean for Academic Affairs as an ex officio member) and two student members. The Committee considered a large compilation of information that included: (1) input from UT Law Students (discussed more fully below); (2) decisions made by other US law schools (discussed more fully below); (3) news items and articles concerning the issue of grading

during the pandemic; and (4) information about how exams likely would be administered in the spring 2020 semester.<sup>1</sup>

On March 25, 2020, the Academic Standards and Curriculum Committee voted “to recommend to the faculty that it consider and adopt a mandatory satisfactory/no credit grading scale for all law classes during the spring semester.”

The faculty was provided with and considered the same categories of information considered by the Academic Standards Committee (discussed in detail in sections 1 and 2, below). Beyond that, members of the faculty had many conversations with students on the topic of spring 2020 grading.

The faculty began discussing the spring 2020 grading issue in a meeting on March 26, 2020, the Thursday following spring break. The faculty continued that discussion in two meetings on March 30, 2020, voting in favor of a mandatory policy of honors/satisfactory/no credit at the conclusion of those meetings. On April 2, 2020, the faculty met again to discuss the graduation requirement implicated by the grading change and voted to make the amendment described above. The following sections provide more detailed information about information considered by the faculty.

### **1. Consideration of UT Law Student Input**

The legal job market can be competitive, employers often compare candidates’ transcripts, and some entry-level positions (in law firms, government offices, and judicial clerkships) are easier to obtain if a student is ranked in the top of the law school class. Some legal employers specifically advertise that they will only extend interviews to law students ranked at or above a certain point in the class. This background is provided to explain, in part, why law students are so passionate about the issue. Each possible change to the grading system—changes that no one expected this semester—will impact ranks and grades (even if that impact is to maintain the status quo). While law school is usually stressful enough, many students are experiencing great disruptions in their lives caused by the COVID-19 pandemic. These challenges include the move to online learning (often in a challenging setting), changes in family situations (schools closed, jobs impacted, etc.), illnesses of a family member or self, and possible delays for the July 2020 bar exam.

During spring break, just after the University announced the move to distance learning, members of each of the three classes (1Ls, 2Ls, and 3Ls) surveyed students about their opinions about a move to pass-fail grading. The faculty did not request these surveys; they

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<sup>1</sup> The Committee reported to the faculty that Associate Dean Schaefer had consulted with Technology Services Director Chris Bombardo about IT capabilities and Assistant Dean for Students Affairs Maria Saez Tatman about the ability of the Student Records Office to administer exams. The consensus is that the College of Law has the ability to administer timed, take-home exams through the law school portal. It was noted that in administering the exam, the College of Law would not have the ability to limit access to materials on the student’s computer, would not be able to monitor the materials that a student consults, and would not be able to limit the ability of students to print or otherwise keep a copy of the exam.

were initiated by students. The results revealed a variety of views, with a majority of those completing the survey in each class supporting pass-fail grading for Spring 2020.

On March 25, 2020, students presented College of Law administration with a petition for mandatory pass-fail grading. The petition makes the argument for pass-fail grading and against an elective pass-fail policy, arguing that an optional policy “ignores the reality that disruptions are unequally distributed, with some students impacted more than others.” The letter was signed by 185 of our 368 students.

Individual members of the faculty and administration received numerous, passionate emails from students with every view on the subject. Some students provided additional arguments for mandatory pass-fail grading. Other students favored classes being graded. These students explained that they had been working hard to earn their grades, and they wanted something to show for that work. Still others favored optional pass-fail grading. They recognized that some students were facing challenges that justified the need for a pass-fail option, but they wanted other students to be able to opt to receive their grades.

## **2. Consideration of Approaches Taken by Other Accredited US Law Schools**

Accredited US law schools have considered various approaches to the issue of grading in light of COVID-19. The faculty at the College of Law considered and discussed the advantages and disadvantages of most of these approaches.

Although numerous schools are still considering the issue, the overwhelming majority that have decided the issue are moving to either a mandatory pass-fail<sup>2</sup> system or an optional pass-fail system at the election of the student. Below is a general description of the approaches law schools have taken. The numbers listed here are based upon information shared in legal blogs and administrator listservs, and are included to give some rough idea of the landscape.<sup>3</sup>

(1) No change in grading: To date, it appears that fewer than ten law schools that have announced a decision on the issue have chosen to make no change to their current grading policies. Some of these law schools report that this decision was directed by their university administration and was not left to the law school.

(2) Administrator approval required to change to Pass/Fail: Arizona State University has adopted a policy whereby students will receive grades, but a student may petition an administrator for a change to Pass/Fail grading based on a showing of hardship.

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<sup>2</sup> Some schools, like the University of Tennessee, refer to such a system as a satisfactory/no credit system. In this memo, we use the term “pass-fail” as interchangeable with satisfactory/no credit.

<sup>3</sup> The law faculty recognizes that some schools’ policies may not be publicly available and that information publicly shared by others may be incomplete.

(3) Optional Pass/Fail, selected either before or after students see final grades: Around 25 schools have decided to give students the ability to opt for Pass/Fail either before or after they see their final grades.

(4) Mandatory Pass/Fail with exceptions for certain classes: A handful of schools have adopted a Mandatory Pass/Fail system with a carve-out that provides for grades in certain specified courses (such as legal clinics or classes in which students wrote papers).

(5) Mandatory Pass/Fail: Over eighty law schools have adopted a mandatory Pass/Fail system with no exceptions. Some of these schools have adopted a policy – like that approved by the faculty at the College of Law – of awarding a “High Pass” or “Honors” grade for a certain percentage of the class (*e.g.*, Tulane has a 15% cap on the number of “High Pass” grades that can be awarded).

(6) Miscellaneous: Several schools have adopted policies that are difficult to categorize. The College of Law faculty did not seriously consider these approaches. (For example, the University of Dayton is giving students with a GPA above a 2.2 the option to elect to either go credit/no credit before final exams. Students with a GPA below a 2.2 can elect to restart the semester in Fall of 2020 or they can elect to have the semester graded as normal.)

### **C. Factors Weighed by the Faculty in Reaching the Honors/Satisfactory/No Credit Decision**

Several considerations were important to the faculty in selecting a satisfactory/no credit policy over a graded or optionally-graded system. Perhaps most important, faculty recognized the unprecedented nature of this crisis and understood the real challenges many students must endure as a result of the move to online learning while society is engaged in social distancing. Our students’ challenges include caring for children who are home from school, attempting to learn difficult subject matter via a poor internet connection, loss of a job or a partner’s income, and the threat of illness for themselves or members of their families. These concerns were reflected in student surveys and other communications with faculty. The faculty also discussed the challenges that have not yet been experienced in Tennessee, but that may be coming in the short weeks ahead. Americans have seen how rapidly things have worsened in New York City, and the faculty knows the UT community is not immune. Because so many students have faced or may face these challenges, the faculty recognized that a satisfactory/no credit change to the grading policy would allow all students to be treated equally this semester, despite their different challenges.

The biggest detriment the faculty recognized in adopting a satisfactory/no credit policy was that it would cause some students to lose the opportunity to receive the grades they had been working to earn. The faculty talked about numerous specific situations students had explained in various communications. The faculty also discussed the students who are part of the College’s first-year academic enrichment program, who hoped to show improvement in their GPAs this semester with numeric grades. The faculty also considered the students who have completed exemplary work in our College’s numerous clinics. And, finally, the faculty talked about the students who are enrolled in courses whose grades are largely

finalized, with the majority of their assessments being completed before the COVID-19 pandemic worsened. The faculty discussion focused on the unfairness a mandatory move to satisfactory/no credit would exact on these students in particular.

As a result of these concerns, the faculty gave significant consideration to a satisfactory/no credit system that would include a carve-out allowing grades to be received in clinics and other classes where significant graded work had been completed earlier in the semester. But, the policy that was ultimately adopted (without the carve-out) reflected a concern that allowing students in some classes to receive grades would necessarily impact other students who were not enrolled in those classes. Similarly, in discussing the possibility of a satisfactory/no credit system with an “opt in” for grades, the faculty discussed the problems such a system would create in classes with a mandatory curve. The faculty recognized the inequities of allowing some students to earn grades at a time when so many other students are unable to do so because of their circumstances.

Ultimately, the faculty adopted the inclusion of an “Honors” grade in the proposed system in order to recognize excellent work this semester. Even though this designation will not help students’ GPA or class rank, the faculty hopes it will reward students for the excellent work they have already completed and that it will incentivize students to continue to work in the weeks to come. Again, the faculty recognizes there is unfairness in this designation, too. Students most impacted by the current crisis may not be able to compete fairly for this designation. And the faculty knows that there are many students who, despite not receiving this designation, will have still experienced learning and growth this semester. A grade might have been a better signal of this growth to would-be employers.

It is clear that no grading system works for everyone in this unprecedented time. However, the College of Law faculty has considered all of the facts, and has come to a decision that places the College well within the mainstream of legal education and that the faculty hopes serves the best interests of the student body in this challenging situation.