

Constitutional Law II
Spring 2009
Professor Bryant

Course Introduction
& Syllabus

Course Description, Goals, and Objectives: This second of two semesters of constitutional law during your first year is devoted to the study of the protection the federal Constitution, as construed by the U.S. Supreme Court, affords individuals from federal and state governmental action. In particular, after canvassing the state action doctrine, we will examine the leading Supreme Court decisions concerning “unenumerated” or “implied” constitutional rights, procedural due process, freedom of expression, and religious freedom.

As for goals and objectives, I hope and expect that over the course of the next four months all of us, in addition to increasing our knowledge of these rich subjects, will also develop a greater facility with the materials and methods of analysis and argument prevailing in the administration of the law generally and of constitutional law in particular. For example, this course should enhance one’s understanding of the various methods of interpreting the Constitution, the role of the judiciary in doing the same, and the contending claims of pragmatic and formalistic approaches to issues arising in modern constitutional law.

Finally, I believe that studying the law brings with it special responsibilities, analogous to those memorialized by the medical profession’s Hippocratic oath. In the United States, lawyers necessarily shoulder a special duty to lead public efforts to understand, preserve, and perhaps even improve our constitutional order so that both present and future generations may enjoy the inestimable benefits of limited, constitutional government. I hope that this course may play some small part in better preparing all of us to meet that duty.

The “Nuts & Bolts”

Required Text: GEOFFREY R. STONE, ET AL., CONSTITUTIONAL LAW (5^h ed. 2005) (hereinafter “STONE”). Note: The case supplement is NOT required.

CONSTITUTIONAL LAW STORIES (Michael Dorf ed., 2004) (Hereinafter “Dorf”).

Class Attendance, Preparation for Class, and Grading: At the beginning of each class session (not including our first couple of sessions), I will pass an attendance sheet for you to sign or initial if present. Of course, you may NOT sign the sheet on behalf of someone else. More than four **unexcused** absences during the semester will lower your final grade (see discussion of grading, below). More than eight **unexcused** absences may result in your withdrawal from the course. Whether such a withdrawal would be deemed “authorized” or “unauthorized, failing” would ultimately be the decision of Associate Dean Oliver. (I would, of course, contact you and offer you an opportunity to explain your absences before asking that you be removed from the course.) An excused absence does NOT count against EITHER of these tallies. If you are seeking an *excused* absence, please give me a brief explanation in writing (or

by email). Illness or personal or family emergencies always constitute valid excuses for missing class, and I will entertain other grounds for excuse on a case by case basis. Of course, I will also honor the College's policy of respecting observance of any religious holidays.

As a general matter, I will call on students at random, inviting comments by volunteers from time to time. If you are not fully prepared for a particular class session, please let me know before class so that I will know not to call on you that day. (You may avail yourself of this privilege no more than twice a semester.) Although your grade will be based primarily on your performance on the final examination at the end of the semester, outstanding attendance, preparation, and class participation may raise final grades as much as ½ a letter grade (*i.e.* from a B to a B+). Poor attendance (more than four *unexcused* absences during the semester), preparation, or class participation may lower final grades ½ a letter grade.

The final examination for this course will be a three-hour, closed-book, closed-note examination, consisting of two sections. The first section, worth 1/3 of your exam grade, will ask you choose one from a list of three questions, each of which will ask you to write a brief essay articulating and defending a normative critique of the current state of the law governing one of the more controversial topics studied during the semester. After the last class session of the semester I will hand out a list of five essay questions, three of which will appear on the final in section I. The second and last section of the exam, worth 2/3s of your exam grade, will consist of a traditional law-school, hypothetical fact pattern. You will be asked identify and analyze the constitutional law II legal issues raised on the hypothetical facts.

Office Hours and Contact Information: Please feel free to contact me as often as you wish to ask me questions or communicate any suggestions or concerns about the course, law school, or the legal profession. My office is in room 427 (phone: 556-0099), and I will make every effort to be there, available to meet with you (and take your phone calls) at the following times (at a minimum):

Mondays 3:00-5:00

Thursdays 11:00-noon

I realize these office hours are rather lean; they are a floor, not a ceiling. I will also frequently be available at my office at other times and at *any mutually convenient time by appointment*. My email address is chris.bryant@UC.Edu, and I will try to check my voicemail and email messages at least once each business day. (I may, though, take more than a day to get back to you.) I encourage you to write me comments or questions about the subjects we will be covering in class. As often these questions will be of interest to your fellow students, *I reserve the right to forward your questions and my answers to your classmates, unless your email asks that your communication remain confidential, in which case I will always honor the request for confidentiality.*

Course web page: I have set up a TWEN (The West Education Network) web page for this course. Please register on that web page as soon as possible by going to www.westlaw.com,

signing on with your student password, selecting first TWEN from the menu at the lower left-hand side of the screen, and when on the TWEN page selecting the web page for this course. TWEN will then walk you through registration. You will need to supply an email address that you check on a routine basis. When one of us adds anything to the course web page, you will receive an email message notifying you of this addition. *It is your responsibility to keep your TWEN email address current and to check your email frequently. Throughout the semester I will use the TWEN page to distribute course-related materials, to address administrative issues (including revisions to assignments or, if need be, cancellation and rescheduling of class sessions), and to answer student questions about the course. You are responsible for all material and information distributed via the TWEN page, without regard to whether I also mention the same in class.* Should you have any difficulty using TWEN, please contact your student westlaw representative. Please let me know should he or she prove unable to remedy any problems you may have.

Students with Disabilities: Please contact Associate Dean Oliver for appropriate accommodations.

Reading Assignments: The lesson plan for the course is set forth below. I may make additions or deletions as we progress through the material. In addition, I will occasionally supplement the materials in the casebook with handouts.

READING ASSIGNMENTS

<u>Session & Date</u>	<u>Subjects/Principal cases</u>	<u>Pages in STONE CB</u>
Requirement of Governmental Action		
1. Jan. 12	State Action Doctrine	1583-1601
2. 1/13	And Governmental Neutrality	1601-20
Implied Fundamental Rights		
3. 1/15	Methods of Interp./ <i>Slaughterhouse Cases</i>	717-33
Martin Luther King Holiday (no class)		
4. 1/20	Incorporation	734-41 (& handout)
5. 1/22	Early Substantive Due Process (<i>Lochner</i>)	741-55 & DORF at 325-57
6. 1/26	The Rise & Fall of the So-called <i>Lochner</i> Era	755-68
7. 1/27	The Contracts Clause	989-97
8. 1/29	Catch-up Day	No new assignment

<u>Session #/Date</u>	<u>Subjects/Principal cases</u>	<u>Pages in STONE CB</u>
9. 2/2	Modern substantive Due Process: <i>Griswold</i>	845-57
10. 2/3	<i>Roe v. Wade</i>	857-69 & DORF at 359-405
11. 2/5	<i>Casey</i>	884-904
12. 2/9	Family & Sexual Autonomy (<i>Lawrence</i>)	924-29 (nn.6-10) & 935-49
13. 2/10	<i>Cruzan</i>	950-57
14. 2/12	<i>Glucksberg</i>	957-67
Procedural Requirements		
15. 2/16	Procedural Due Process	967-68 & 977-88
Freedom of Expression		
16. 2/17	Introduction; Subversive advocacy, pt. 1	1049-70
17. 2/19	Subversive advocacy, pt. 2/ <i>Gitlow</i>	1070-78
18. 2/23	<i>Whitney</i>	1079-84 & DORF at 407-31
19. 2/24	<i>Dennis</i>	1084-93
20. 2/26	<i>Brandenburg</i>	1094-1103
<u>Session #/Date</u>	<u>Subjects/Principal cases</u>	<u>Pages in STONE CB</u>

21. 3/2	Hostile audience reaction & fighting words	1108-1122
22. 3/3	Hate speech & threats	1260-64, 1273-84, & 1122-24
23. 3/5	Confidential info./ <i>New York Times v. U.S.</i>	1125-42

Content-Based Restrictions on “Low” Value Speech

24. 3/9	False statements of fact/ <i>New York Times v. Sullivan</i>	1163-80
25. 3/10	Commercial advertising	1185-1208
26. 3/12	Same as above	No new assignment

27. 3/16	Obscenity	1208-14, 1216-27 & 1284-90
28. 3/17	Profanity & indecency, pt. 1	1234-41
29. 3/19	Profanity & indecency, pt. 2	1241-51

SPRING BREAK!

Content-Neutral Restrictions

30. 3/30	Intro/The Public Forum Doctrine, pt. 1	1291-1307
31. 3/31	The Public Forum Doctrine, pt. 2	1307-12 (through n.2) & 1319-22 & 1334-43
32. 4/2	Symbolic conduct	1367-82

<u>Session #/Date</u>	<u>Subjects/Principal cases</u>	<u>Pages in STONE CB</u>
	<u>Other Expressive Behavior</u>	
33. 4/6	Campaign finance regulation	Handout
34. 4/7	Catch-up Day	No new assignment
	Freedom of Religion	
35. 4/9	Background & Establishment, pt. 1	1485-1500 (for background) & 1501-1512 (for class discussion)
36. 4/13	Establishment, pt. 2	1512-26
37. 4/14	Establishment, pt. 3	1526-30
38. 4/16	Establishment, pt. 4: Incidental Aid to Religion	Handout
39. 4//20	Free Exercise	1556-66 & Dorf at 477-503
40. 4/21	Same as above	No new assignment