
Days/Times: Tuesday, 3:30 - 5:20 p.m.
Room: 281
Email: TFreyer@law.ua.edu

Professor Freyer
Office: 315 Law Center
Phone: 348-1116
Office: Tues., 1:00 - 2:00 p.m. or by appointment

Reading: See following Assignment Calendar; all assigned readings from books are on reserve at the Law Library main desk under title of seminar; cases and Law Review articles available electronically.

Grade: 80% based on final draft of paper; narrative, at least 20, typed double-spaced pages, plus notes, on topic agreed to with Professor Freyer – Final draft of paper due November 29.

Full set: One page summary of reading discussed during each class period (10%).
Critiques of rough drafts of papers (10%), following Calendar.

Honor Code: It is assumed that each student will comply with the Law School's and the University's Honor Code.

Attendance: Required

Purpose: 1. Broaden understanding of commerce-clause jurisprudence
2. Prepare a writing sample.

Makeup: See Professor Freyer

Paper Topic: To be chosen in consultation with Professor Freyer no later than class period, October 4 (see Calendar). A first draft will be researched and written Oct.4-Nov. 8; then presented and critiqued during class, according to Calendar [order of presentation chosen by lot?]: November 8-15. November 29: Give Professor Freyer final draft of seminar paper; discuss and turn in one-page summary relating your paper to future of commerce clause.

Procedure for distribution of draft: Electronically; on Friday before Tuesday class meeting.

Students with special needs are encouraged to register with the Office of Disability Services, 348-4285. I am happy to assist in this important matter.
Assignment Calendar – FALL 2011

August 23  Introduction: *U.S. v Lopez* (1995) – What did the Court do “to” and “with” commerce clause precedent?

August 30  How to determine “original meaning” of the commerce clause?

McDonald, *Novus Ordo Seclorum*, 1-8, 143-293
Matson/Onuf, *A Union of Interests*, 1-168

September 6  What is the interpretation of the commerce clause established in *Gibbons, Passenger Cases, Cooley* and other cases, and why was slavery an issue?

*Gibbons v. Ogden*, 9 Wheaton (1824)
*Brown v. Maryland*, 25 U.S. 419 (1827)
*Willson v. Blackbird Creek Marsh Co.*, 27 U.S. 245 (1829)
*New York v. Miln*, 36 U.S. 102 (1837)
*Groves v. Slaughter*, 40 U.S. 449 (1841)
*License Cases*, 46 U.S. 504 (1847)
*Passenger Cases*, 7 Howard 283 (1849)
*Cooley v. Penn. Bd. of Wardens*, 12 Howard 299 (1852)

Baxter, *Steamboat Monopoly*, 37-68

September 13  What bearing did race relations, the railroads, antitrust and other business interests have on commerce clause jurisprudence during the late-nineteenth century?

*Welton v. Missouri*, 91 U.S. 275 (1876)
*Hall v. De Cuir*, 95 U.S. 485 (1878)
*Louisville, R.R. v. Mississippi* 133 U.S. 587 (1890)
*U.S. v. E.C. Knight Co.*, 156 U.S. 1 (1895)

Frankfurter, *Commerce Clause*, Waite Court.
O.M. Fiss, *Troubled Beginnings, History of Supreme Court*, v. 8 (see commerce clause in Index), KF8742.F741, v. 8 (on reserve)

September 20  How did the “commerce power” exercised by Congress and the Court differ in *Champion, Hoke, Hammer v. Dagenhart, Stafford*, and other federal Police Power Cases?

*Champion v. Ames*, 188 U.S. 321 (1903)
*Hippolite Egg Co. v. U.S.*, 220 U.S. 45 (1911)
*Hoke v. U.S.*, 227 U.S. 308 (1913)
*Shreveport Rate Cases*, 234 U.S. 342 (1914)
Sept. 20 (Cont.)  
  
*Stafford v. Wallace*, 258 U.S. 495 (1922)

A.M. Bickel and B.C. Schmidt, *Judiciary and Responsible Government History of Supreme Court*, v. 9 (see Commerce clause in index), KF8742.F74 v. 9 (on reserve).

September 27  
What was the “constitutional revolution" in commerce clause jurisprudence established during the New Deal era; afterwards, how did civil rights become commerce clause issues?

*Carter v. Carter Coal Co.*, 298 U.S. 238 (1936)  
*NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)  
*U.S. v. Darby*, 312 U.S. 100 (1941)  
*Wickard v. Filburn*, 317 U.S. 111 (1942)  
*U.S. v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944)

Corwin, *Constitutional What It Means Today* (Commerce clause only).

How and why did “civil rights" become commerce clause issues (and compare *Hall* and *R.R. v. Mississippi*)?

*Heart of Atlanta Motel v. U.S.*, 379 U.S. 241 (1964)  
*Katzenbach v. McClung*, 379 U.S. 294 (1964)  
Read, Cortner, *Civil Rights and Public Accommodations*

October 4  
[Choice of Paper Topic – turn in one page summary to Professor Freyer]

What, then, did the Supreme Court “do" in Lopez? (Re-read Lopez?)

  
*Gonzales v. Raich*, 125 S. Ct. 2195 (2005)  

**Immigration:** US v Arizona 641 F.3d 339 (9th USCA 9th 2011); Chamber of Commerce v Michael Whiting 131 S. Ct. 1968 (2011)

**Health Care:** Florida/AG Pam Bondi, v USDHS (2011 WL 723117, USDCND FL); (2011 WL 723117 USDCND FL); Virginia ex rel. Kenneth T. Cuccinelli v Kathleen Sebelius DHHS (2010); 702 F.Supp.2d 598 (2010); Thomas More Law Center v Barak Obama et al. (2011 WL 2556039 6th USCA, 2011)
October 4 (cont.) 1. **Patriot Act and Ashcroft/Gingrich/ACLU Comments** [Library Reserve]


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**October 4-Nov. 8** Prepare first draft of paper. No class: Please consult Professor Freyer if you desire. TBA.

**November 8** First Draft of paper (about one-of-half class) critiques of paper distributed before class meeting. Professor Freyer comments on papers and class discussion.

**November 15** First Draft of Paper (about one-half-of class) Professor Freyer comments on papers and class discussion.

**November 29** Turn-in revised final draft of paper and one page summary prediction of post-*Lopez* Commerce Clause.
Books on Reserve

   KF4606.B38

   KF4550.C49 1947

   KF228.H43C67 2001

   KF4541.C873 1998

   KF4606.F68 1964

F. McDonald, *Novus Ordo Seclorum* (1985)
   JA84.U5M43 1985


   KF4541.573 2005


See also volume 5, 8 and 9 Supreme Court History (on reserve).