UNIVERSITY OF ALABAMA  
SCHOOL OF LAW  

CONSTITUTIONAL LAW  
PROFESSOR PAUL HORWITZ  
SPRING 2011  

SYLLABUS, COURSE REQUIREMENTS AND GRADING CRITERIA  

I. INTRODUCTION  

Welcome to Constitutional Law. This 4-credit course meets on Mondays, Wednesdays, and Thursdays from 10:45 a.m.-12:00 p.m. This course addresses basic questions of constitutional structure, governmental powers, and individual rights.  

II. COURSE MATERIALS AND BACKGROUND READING  

We will be using Kathleen M. Sullivan and Gerald Gunther, Constitutional Law (17th ed. 2010), as well as the 2010 supplement to the casebook. I may have occasion to assign handouts in the course of the semester.  

There are several excellent constitutional law treatises available, and you may find them useful if you have questions about particular topics or just find certain areas particularly engaging. I would, however, caution against undue reliance on these volumes for regular study or, especially, exam preparation. The materials covered in Sullivan and Gunther should provide you with enough material on their own. If you do still want to look at a treatise, I recommend Erwin Chemerinsky, Constitutional Law: Principles and Policies (3rd ed. 2006), or John E. Nowak and Ronald D. Rotunda, Constitutional Law (8th ed. 2009). Most students find the Chemerinsky book particularly useful – but I strongly advise you to use Chemerinsky as a supplement, not a substitute for your own reading. For a more complicated but very interesting read, you might try Laurence H. Tribe, American Constitutional Law, vol. 1 (3d ed. 2000), or his second edition, published in 1988 (the second edition covers the entire corpus of constitutional law; the first volume of the third edition is roughly coincident with the materials covered in this class). Of course, the standard outlines, supplemental study materials, and other Cliff Notes of the law are also available if you want them. From time to time, I may also hand out bibliographies of interesting secondary material on particular topics.
III. COURSE COVERAGE

This course covers a broad range of topics. A preliminary schedule of readings follows, subject to revision; any revisions will be announced in class. As a rule of thumb, I suggest you set a reading pace of 25 pages per class, and stick to it even if we lag behind, as we will cover longer stretches of material more quickly from time to time. We will go a little more slowly on the first 40 pages or so, but after that we will often move quite quickly. Please also consult your supplement to see whether there are any additional materials you should cover in addition to those listed below.

We will attempt to cover the material as follows. For each section of reading, where possible, I have specified the most important material. That does not rescue you from your obligation to read the remaining material, but it may help you to allocate your time and efforts and focus your outline. Note that I have not listed the materials by class day, so please be aware of where we are in the reading and keep up. If we keep a good pace, I will try to add some material later in the semester on the First Amendment.

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<thead>
<tr>
<th>Subject</th>
<th>Page</th>
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<tbody>
<tr>
<td>Introduction</td>
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</tr>
<tr>
<td>1) <em>District of Columbia v. Heller</em> handout;</td>
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<tr>
<td>note that this is a substantial excerpt, and</td>
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<tr>
<td>you should be sure to give it a thorough</td>
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<td>reading and think about it.</td>
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<td>2) United States Constitution, at App. A of</td>
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<tr>
<td>the casebook. Again, read it carefully,</td>
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<tr>
<td>preferably more than once. Also please look</td>
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<tr>
<td>up and read the Articles of Confederation.</td>
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I. The Nature and Sources of the Supreme Court's Authority


Judicial Review 1-15, 19-30

*Focus: Marbury*

Constitutional and Prudential Limits on Constitutional Adjudication 30-59

*Focus: Lujan, EPA, Baker*

II. Congressional Powers and Their Limits

National and States in the Federal System 60-81

*Focus: McCulloch, U.S. Term Limits*
The Commerce Power: Antecedents 82-106

The Commerce Power: The Modern Approach 106-126

Focus: Lopez, Morrison, Raich

The Commerce Power: External Limits 127-150

Focus: Garcia, New York v. United States

Taxing and Spending 151, 163-167

Focus: Dole

Dormant Commerce Clause/Preemption 175-178, 185-195, 204-210, 212-217, 232-241

Focus: Gibbons, Phila. v. New Jersey

III. The Executive/Separation of Powers

Executive Encroachment: The Basic Approach 249-256

Focus: Youngstown

The Constitution at War 264-266, 270-300

Focus: Hamdi, Hamdan, Boumediene

Congressional Control Over the Executive Branch 300-329

Focus: Chadha, Bowsher, Morrison

Executive Privileges and Immunities 329-347

Focus: Nixon, Clinton v. Jones
### IV. Due Process

- **Background on Incorporation**
  - Pages: 349-350, 363-367, 369-375

- **Procedural Due Process**
  - Pages: 495-500

- **Economic Substantive Due Process**
  - Pages: 375-398
  - *Focus: Lochner, Williamson*

- **Non-Economic Substantive Due Process: Privacy**
  - Pages: 427-438
  - *Focus: Griswold*

- **SDP: Contraception and Abortion**
  - Pages: 438-464
  - *Focus: Roe, Casey, Carhart*

- **SDP: Death**
  - Pages: 484-495
  - *Focus: Glucksberg*

- **SDP: Family and Sex**
  - Pages: 464-484
  - *Focus: Lawrence*

### V. Equal Protection

- **Race Discrimination: The Fundamentals**
  - Pages: 501-521
  - *Focus: Brown*

- **Race Discrimination: Purpose and Effect**
  - Pages: 521-531
  - *Focus: Washington v. Davis*

- **Race and Affirmative Action**
  - Pages: 531-576
  - *Focus: Bakke, Adarand, Grutter, PICS*

- **Other Suspect Classifications: Sex**
  - Pages: 586-616
  - *Focus: US v. Virginia*
Other Suspect Classes 620-641

Focus: Cleburne, Romer

Review of Economic Regulation Redux 641-654

Focus: None (skim this reading)

Fundamental Interests and Equal Protection 654-655, 654-680 (skim)

Focus: Reynolds

Fundamental Interests and Welfare Rights 680-692

Focus: Rodriguez

Enforcing the Civil War Amendments 693-699, 723-759

Focus: Katzenbach, City of Boerne

IV. OFFICE HOURS AND CONTACT INFORMATION

My office hours will be Tuesday and Thursday from 2-4 p.m. in Room 360. Feel free to stop by to discuss questions on the class or anything else. No appointments are necessary during office hours. If you can’t make it during those hours, feel free to make an appointment to stop by at another time. I’m also happy to schedule lunch or coffee with groups of students. Please note that my office hours may be limited in the first few weeks of the semester for medical reasons.

I can be reached by email at (205) 348-6110. You may also leave a note in my faculty mailbox or contact my assistant, Donna Warnack. I can be reached by email at phorwitz@law.ua.edu. I will try to return emails and calls promptly, but there may be delays depending on my availability or your question.

You must sign up for the TWEN page for this class. We’ll discuss the use of the TWEN page further in class.

V. MAKE-UP CLASSES

If I need to miss a class and believe a make-up is necessary, I will schedule a make-up period well before the end of classes.
VI. ATTENDANCE AND PARTICIPATION

Regular and punctual attendance is required. Each student is responsible for keeping track of his or her absences. Attendance will be taken at the start of class through distribution of an attendance sheet. If you are not in your seat at the beginning of class and do not personally initial the sign-in sheet at that time, you are considered absent. Students may initial only their own names, not those of other students. Lack of preparation, early departure, or inappropriate behavior may result in a student being marked absent.

Moreover, because this is not simply a case-parsing class, but ideally a wide-ranging discussion about constitutional law, I take seriously your obligation to read and think about the materials assigned for each class. Although I welcome volunteers, I do call on students. I expect anyone who has been called on to be ready to discuss the case. I do not expect perfection, but I will hold you to your obligation to do the reading and do your best to make sense of it and discuss it with me. To make things a little easier, only one half of the class will be on call during any given week: students whose last names begin with the letters A-M will be on call for a week, then N-Z, and so on. If you are on call for the week, be ready; a student who is unprepared for class may be counted as absent for that day. I still expect everyone, not just the on-call students, to come to class prepared and on time, and ready to focus on this class only. If you are aware in advance that you will be absent from class, or that you cannot do the reading, please let me know, or leave a message in my mailbox.

You are welcome to use laptops to take notes, but aside from the usual cautions against letting your laptop use interfere with others’ participation in and enjoyment on the class, please do not let your laptop use interfere with your participation in the class. It is more important that you follow the discussion than that you transcribe it.

VII. GRADES AND EVALUATION

Grades will be determined on the basis of a final examination at the end of the semester. The exam will be closed-book but you will be allowed to bring in a word-limited one-page outline or “checklist.” The exam will consist of essay questions. Specific details and discussion concerning the final exam will be given in class, and I will hand out at least one practice exam. I also may bump your grade a step up or down based on class participation. I would be happy to discuss your exams with you after grades have been turned in, for the sole purpose of discussing ways of improving your performance on future examinations. I will change grades only for mathematical or clerical errors, however.
VIII. DISCLAIMER

This is a syllabus, not a binding contract. In the words of Justice Holmes, “It is an experiment, as all life is an experiment.” Dates and details are subject to change. Actual mileage may vary. Void where prohibited.

PSH