CONSTITUTIONAL LAW

Information

1. **TEXT:** Weaver, et al. *Constitutional Law: Cases, Materials, and Problems* (4th ed.) No supplement required. The Casebook is optional, but the syllabus tracks the 4th edition. (You can locate all the assigned cases online, but they are unedited). There are used copies of the CB available on the secondary market.

2. **ON RESERVE:** I have requested the library staff to place several books on reserve including two Constitutional Law treatises: one written by Erwin Chemerinsky and another written by John Nowak and Ronald Rotunda. The hornbooks may assist you with any particularly confusing topic. I recommend that you become familiar with one of them to help master the leading cases and doctrine.

3. **ATTENDANCE:** It is important that you attend class. I will use class to explain and interrogate basic doctrine. You are responsible for compliance with the attendance policies as set out in the Student Handbook. Please try to arrive to class on time. We will start and end promptly each day.

4. **PARTICIPATION:** I expect each member of the class to participate in our case discussions. I will assign briefs to each of you in reverse alphabetical order (please see the last two pages of the syllabus for brief assignments); several students may be called on in one class. **When I ask you to prepare a brief of a case, please prepare a typed brief of the essential points of the case. Your briefs should contain the key facts, legal issue, legal rule, holding, and rationale. Please make sure your brief is completed the day before you are scheduled to present it in class. Please post your brief on TWEN for this class.** Any of you may be called on at any time to discuss the majority, concurring, or dissenting opinions; to discuss note cases; to discuss hypotheticals; or to discuss the subject in general. Thank you for your preparation. Careful preparation is essential for success on the examination.

5. **EXAMINATION:** There will be a final examination in the course as scheduled by the Registrar on Monday, April 30 at 1:30 p.m. It will be 4 hours long and an open book exam. It will include between 30 to 35 multiple choice questions similar to those which appear on the Uniform Bar Examination (“UBE”) and at least one essay question. You may bring to the exam your casebook and any written outline of the course material that you yourself created. You cannot bring in a commercial outline or hornbook/treatise. **You may not consult on-line materials or summaries on your computers during the exam.**
6. **GRADING:** The Law School has a mandatory grade curve which I will follow as nearly as possible. I will evaluate your exams based on your mastery of the cases and materials. Your answers should reflect the language used by the Court. As you prepare and practice, be sure to incorporate the language and legal standards established by the Court.

The Honor Code applies to each part of the exam. If you have a problem and cannot take the exam, you should speak to the Associate Dean. Any cheating will be punished severely.

7. **PRACTICE EXAMS:** I will provide you with several practice questions during the semester. I encourage you to work through each practice question as we cover each topic. I am willing to review one practice exam for you before Spring Break.

8. **OFFICE HOURS:** I will have office hours on Mondays, 1:30-3:30 p.m. If I am busy during those hours or you wish to see me at other times, you can schedule an appointment to meet with me. If you have an emergency, call my assistant, Brittany Lovette (348-8870), and she will find me, or email me.

9. **READING ASSIGNMENTS:** We will try to move through the reading material as set out in the syllabus at a rate of 25 to 30 pages per class meeting. I will make additions and deletions to the syllabus, so do not read too far ahead each week. For a few cases, you will need to read the case online. I will try to tell you each class what I expect us to cover during the next day or so.

10. **ADA ACCOMMODATIONS:** The Law School is committed to meeting the needs of students with physical, learning, and other disabilities, and provides appropriate accommodations and services tailored to each person’s specific requirements. The Law School’s deans and the University’s Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact the Associate Dean for Students/Academic Services at (205) 348-7190 or 348-5750 so that the individual’s needs for support services can be evaluated and accommodated in a timely manner.
Assignments

For each assignment, I list the primary cases for discussion. If a primary case is not in the book, look it up online. Regrettably, we will not have time to discuss every case in the casebook. The notes and examples are there for you to reflect on, in light of the primary cases. Reading assignments are linked to the 4th edition of the casebook. Our first class will be on January 8, 2018.

I. A Summary of Constitutional Principles and An Introduction to Constitutional Analysis

Introduction to Constitutional Documents – check out the following websites

Chronology of American History
Declaration of Independence
Articles of Confederation
United States Constitution

avalon.law.yale.edu/subject_menus/chrono.asp
avalon.law.yale.edu/18th_century/declare.asp
avalon.law.yale.edu/18th_century/artconf.asp
avalon.law.yale.edu/18th_century/constmed.asp

Course Introduction
Classes 1-2

Readings: Heller, McDonald (both online), pp. 1721-1736

Questions:

What are the key rights of the People?

Who decides?

Who determines conflicts? How?

What are the key powers of government?

Who decides the nature and scope of government powers?

Who determines disputes over government power? Under what principles?

What is a constitutional claim?

How do you frame constitutional claims?

How do claims get to the U.S. Supreme Court?
Who was Heller?

What constitutional claim did he present?

What constitutional right did he rely on in his claim?

What is the nature and scope of that right?

What did the DC government claim?

What power did it assert?

What did the Court say was the constitutional issue?

What legal standard did the Court apply to resolve the dispute?

What was the Court’s holding?

What was the Court’s rationale?

Was there a major dissent?

What was the primary argument of the dissent?

What is the principal question in McDonald?

What is the constitutional issue in McDonald?

Who is McDonald?

What did McDonald claim?

What did the government claim?

What legal principles did the Court apply?

What did the Court hold?

What was the Court’s rationale?

What are the limits on Heller and McDonald?
What is the meaning of the Second Amendment?

What about Stand Your Ground laws?

What about the use of deadly force by law enforcement?

Does Heller or McDonald have any application to those types of cases?

II. The Religion Clauses

A. The Establishment Clause Cases

Class 3
1. Financial Aid
   Readings: pp. 1579-1591, 1599-1611
   Everson (see sample brief)
   Lemon
   Zelman

Class 4
2. Government Sponsored Prayer
   Readings: pp. 1611-1615, 1619-1623
   Lee v. Weisman
   Town of Greece (online)

Class 5
3. Public Displays
   Readings: pp. 1643-1665
   Van Orden
   McCreary v. ACLU

Class 6
B. Free Exercise Clause Cases
   Readings: pp. 1667-1678, 1683-1689
   Yoder
   Smith

C. Free Exercise and Establishment Clause Tensions
   Readings: pp. 1716-1719
   Locke v. Davey
   Trinity Lutheran (online)
III. Freedom of Speech under the First Amendment: An Introduction to Categories of Speech Regulation

Class 7
1. What values are advanced by the free speech clause? Political Speech
   Readings: pp. 1041-1050, 1073-1087
   Brandenburg
   Holder v. HLP

Classes 8 and 9
2. Fighting Words, Offensive Speech, and Hostile Audiences
   Readings: pp. 1087-1108
   Chaplinsky
   Feiner v. NY
   Cohen

Class 10
3. Defamatory Statements
   Readings: pp. 1099-1114
   NY Times v. Sullivan

Class 11
4. Obscenity
   Readings: pp. 1158-1170
   Miller

5. Adult Pornography vs. Child Porn
   Readings: pp. 1187-1197
   Ashcroft

Class 12
6. True Threats
   Readings: pp. 1219-1246
   Virginia v. Black

7. Commercial Speech
   Readings: pp. 1268-1280
IV. Judicial Review

Classes 13 and 14
1. The Power and Jurisdiction of the Supreme Court
   Readings: pp. 1-21
   Marbury v. Madison
   Ex Parte McCordle
   Martin
   Cooper

Class 15
2. The Case or Controversy Requirement- Standing
   Readings: pp. 39-45, 67-71, 82-85
   Warth v. Seldin (online)
   Daimler
   Lujan

V. National Legislative Power- Affirmative Commerce Clause

Classes 16, 17, and 18
   Readings: pp. 101-110, 117-124, 144-153, 158-166, 166-177
   McCulloch
   Gibbons
   Wickard
   Heart of Atlanta
   Morrison
   Raich (online)
   Sebelius

VI. The Relationship Between the States and Federal Government

Class 19
   A. State Immunity from Federal Regulation
      Readings: pp. 355-367
      Garcia
B. Anti Commandeering Principle
   Readings: pp. 367-381
   NY v. U.S.
   Printz

VII. State Power to Regulate Commerce (Negative/Dormant Commerce Clause)

Class 20
A. Facial Discrimination/Discriminatory Effects
   Readings: pp. 403-421
   Granholm
   Philadelphia v. N.J.
   Dean Milk

Class 21
B. Neutrality and Balancing
   Readings: pp. 436-447
   Minnesota v. Cloverleaf
   West Lynn Creamery
   American Trucking

C. Market Participant Exception
   Readings: pp. 447-454
   Reeves
   Wunnincke

Class 22
   Preemption
   Readings: pp. 481-492
   Arizona v. U.S.

VIII. State Action

Class 23
   Readings: pp. 493-498, 512-525
   Civil Rights Cases
   Burton
   Moose Lodge
Brentwood Academy

IX. Due Process

Classes 24-25
A. Economic Liberties and Due Process
   Readings: pp. 591-607
   Lochner
   Nebbia
   Carolene Products (online)

B. Takings and Due Process
   Readings: pp. 607-614
   Kelo

Classes 26-27
C. Due Process and Fundamental Rights
1. Private Choices/Autonomy
   Readings: pp. 688-700, 702-731, 738-741
   Griswold
   Roe
   Casey

2. Family Liberty/Privacy
   Readings: pp. 741-750, 756-792
   Zablocki
   Lawrence
   Obergefell

X. Due Process and Fair Procedures

Classes 28-29
A. Deprivation of Liberty or Property Right
   Readings: pp. 555-565
   Goldberg v. Kelly
   Bd of Regents v. Roth (online)
B. What Process is Due?
   Readings: pp. 569-576, 578-589
   Matthews v. Edridge
   Board of Curators v. Horowitz

XI. Equal Protection

Classes 30 and 31
   A. Government Economic Regulations and Equal Protection
      Readings: pp. 813-822
      Railway Express
      Beach Communications

Classes 32-33
   B. Racial Classifications and Equal Protection
      1. Separate but Equal
         Readings: pp. 822-834
         Dred Scott
         Plessy
         Korematsu

Classes 34-35
   2. Racial Classifications and School Segregation
      Readings: pp. 834-851
      Brown I and II
      Swann
      Dowell
      Jenkins

Class 36
   3. Finding Discriminatory Purpose/Intent
      Readings: pp. 852-861
      Loving
      Washington v. Davis
      Arlington Heights
Class 37 and 38

4. Affirmative Action and Equal Protection
   Readings: pp. 869-874
   Grutter

5. Diversity and Integration
   Readings: pp. 875-899
   PICS v. Seattle
   Fisher v. UT Austin (Fisher II)

XII. Equal Protection and Gender Discrimination

Classes 39-40
   Readings: pp. 899-916
   Reed
   Frontiero
   Craig
   U.S. v. Virginia

XIII. Equal Protection and Aliens

Class 41
   Readings: pp. 936-947
   Graham v. Richardson
   Bernal v. Fainter

Class 42
   Review/Discuss Exam