Constitutional Law (LAW 5501)

Section 3

Spring semester 2020

TuWTh 1:00-2:15 pm HH 382

*Contact information:* [*dowd@law.ufl.edu*](mailto:dowd@law.ufl.edu)*; 352-273-0930; office HH 317*

***Office hours: Tuesday 3-4:30*** *(please feel free to stop by or email for an appointment at other times)*

***Course website:***Please sign on as soon as possible to the course website on TWEN to access class materials and to receive emails.

**Scope and Objectives:** This course provides an overview of constitutional law. It focuses on: Judicial, Legislative and Executive powers; separation of powers; federalism, and the content of civil rights and civil liberties (equal protection, fundamental rights and procedural due process). Constitutional law, as the supreme law of the land, infuses all areas of law, and is a critical part of the social and cultural understanding of what the law is.

**Learning outcomes**: This class will (1) develop your knowledge of foundational Constitutional doctrine and cases in the areas of Judicial, Legislative and Executive powers; separation of powers, and civil rights and civil liberties; (2) enhance your legal analysis and critical thinking, and will specifically focus on the skill of identifying and framing legal issues, and crafting legal arguments; (2) develop your skill of close reading and briefing of cases; (3) develop the ability to argue all possible positions on a particular case, in order to make the best case for the argument you will make; and (4) provide a foundation for many other courses in which you will return to the foundational constitutional doctrines covered in this class, or delve into other areas of constitutional law.

**Instructional methods**: Every student can expect to be called on to begin the discussion for 2 cases during the course of the semester. There will be a sign up sheet for cases. In addition, the class will be divided into three equal sections so that each section will be the first group on call for further discussion on their day of the week. Volunteers are encouraged from anyone in any group on any day as well.

Please feel free to bring to class or post on the discussion site any current event, news item or set of facts that raises constitutional issues, as a way of practicing your issue-spotting skills.

Review sessions (optional) will be scheduled approximately at the end of week 6, week 11 and week 13 (exact dates will depend on our completion of sections of the course). In those sessions we will discuss hypotheticals and/or prior exam questions so you can see how well you know the substantive law of the portion of the course that we have completed. You are strongly encouraged to write out your answer(s) for those sessions and I will review written answers if you wish.

**Preparation time/workload:** It is anticipated that you will spend 2 hours out of class reading and/or preparing for every 1 hour in class. You should read every case listed on the syllabus at least twice, and ideally 3-4 times (once for the overall sense of the case; a second time to identify issues, analysis and substantive doctrine (including dissenting positions); and a third and fourth time to confirm your analysis and consider alternative analysis or substantiation. Careful, complete analysis requires close, word-by-word reading.

I strongly encourage you to write your own briefs as a method of preparation. Briefs should not only identify the facts, procedural posture, parties, issues, and the court’s resolution of the issues (and the positions of any dissents), but also strengths and weaknesses, alternative analysis (eg, what are the opposing arguments to the Court’s resolution of the issues), and how you think the case might be used (or distinguished) in subsequent cases. You will use all of this analysis and information in our discussion of the cases, your learning of constitutional doctrine, and your application of the cases on the final exam.

**COURSE OUTLINE and READING ASSIGNMENTS:**

**Course materials**: Erwin Chemerinsky, Constitutional Law (5th edition 2017); any supplemental cases will be posted on TWEN under Course Materials.

**Assignments:** In every class we will cover approximately one third of the week’s assigned reading (and if that takes you to the middle of a case, prepare to the end of the case for that day).

**You should be prepared to (1) present the case, including the parties, the procedural posture, the issues and the holding; (2) discuss what the case says and (2) engage in analysis of the case, including (a) the arguments that were made, or could be made, on either side of the issues in the case, (b) what the case stands for (alternative readings), and (c) your evaluation of the strength of the analysis in the opinion(s). You may also be asked to consider hypothetical or actual applications of the case in subsequent situations.**

This is a brief outline of what we will cover:

1. Introduction: The Constitution and Constitutional Interpretation
2. Judicial Power
3. Legislative Power
4. Executive Power
5. Civil Rights and Civil Liberties/ Foundational Doctrines
6. Equal Protection
7. Fundamental Rights
8. Procedural Due Process

The following is a detailed outline, with assignments for each week and the case names of the primary cases. The weeks are arranged under the headings of the areas that we will cover summarized above. You are responsible for all the reading including note cases. All pages assigned are in Chemerinsky; any reading outside the casebook will be found under Course Materials on TWEN.

Week one: January 14, 15, 16

I.             Introduction: The Constitution and Constitutional Interpretation

First class: Chemerinsky, xli-lvii The Constitution (We will discuss the structure and content of the Constitution)

Second and third classes: *United States v. Nixon*, 418 U.S. 683 (1974) full case, available on TWEN (I suggest that you print the case so that you can annotate as well as brief). Read and brief the **entire** case, but particularly pay attention to Part IV The Claim of Privilege.

In our third class, we will also discuss the current members of the US Supreme Court. You will be assigned a particular justice in the first class together with other members of the class, to research relevant information about the justice, and report back collectively to the class.

Week two: January 21, 22, 23

II.         Judicial Power

1-13

(Marbury v. Madison)

III. Legislative Power

115-166

(McCulloch v. Maryland; National Federation of Independent Business v Sebelius; US v Comstock; Gibbons v Ogden)

Week three – January 28, 29, 30

166-84; 188-226

(NLRB v Jones and Laughlin Steel Corp; US v Darby; Wickard v Filburn; Heart of Atlanta Motel v US; Katzenbach v McClung; US v Lopez; US v Morrison; Gonzales v Raich; New York v US)

Week four—February 4, 5, 6

227-271

(Printz v US; Reno v. Condon; US v Butler; Sabri v US; South Dakota v Dole; US v Morrison; Katzenbach v Morgan & Morgan; City of Boerne v Flores; Shelby County v Holder)

Week five—February 11, 12, 13

IV. Executive Power

321-41, 381-401, 438-450

(Youngstown Sheet & Tube Co. v Sawyer; US v Nixon; Clinton v City of NY; US v Curtiss-Wright Export; Zivotofsky v Kerry; Dames & Moore v Regan; War Powers Resolution; Nixon v Fitzgerald; Clinton v Jones; impeachment)

Week six—February 18, 19, 20

V.           Civil Rights and Civil Liberties: Foundation Doctrines

Incorporation Doctrine

537-56; bottom of page 558-567

(Barron v City Council of Baltimore; Slaughter-House Cases; Saenz v Roe; McDonald v City of Chicago)

State Action Requirement

567-572; 579-581; 583-586; 593-595; 600-604; 1191-1197

(The Civil Rights Cases; Evans v Newton; Shelly v Kraemer Moose Lodge No. 107 v Irvis; Blum v Yaretsky; DeShaney v Winnebago County Department of Social Services)

Week seven— February 25, 26, 27

VI. Equal Protection

725-781 plus Brown v Board of Education full case; Plessy v Ferguson full dissent of Justice Harlan)

(Romer v Evans; Railway Express Agency v NY; NYC Transit Authority v Beazer; US Department of Agriculture v Moreno; City of Cleburne, Texas v Cleburne Living Center; Dred Scott v Sandford; Plessy v. Ferguson, add full dissent of Justice Harlan, on TWEN; Korematsu v United States; Brown v. Board of Education, full case, on TWEN; Loving v Virginia; Palmore v Sidoti)

SPRING BREAK-- March 2-8

Week eight—March 10, 11, 12

781-818

(Washington v Davis; McCleskey v Kemp; City of Mobile v Bolden; Palmer v Thompson; Personnel Administrator of Massachusetts v Feeney; Village of Arlington Heights v Metropolitan Housing Development Corp; Brown II; Swann v Charlotte-Mecklenburg Board of Education; Milliken v Bradley; Board of Education of Oklahoma City Public Schools v Dowell; Parents Involved in Community Schools v. Seattle School District 1)

Week nine—March 17, 18, 19

833-878, 882-892

(Richmond v J.A. Crosen; Grutter v. Bollinger; Gratz v. Bollinger; Fisher v University of Texas; Frontiero v Richardson; Craig v Boren; US v Virginia)

Week ten—March 24, 25, 26

892-941

Geduldig v Aiello; Orr v. Orr; Mississippi University for Women v Hogan; Michael M v Superior Court of Sonoma County; Rostker v Goldberg; Califano v Webster; Nguyen v INS; Graham v Richardson; Foley v Connelie; Ambach v Norwick; Plyler v Doe)

Week eleven—March 31, April 1, 2

941-49

(Massachusetts Board of Retirement v Murgia)

VII.       Fundamental Rights

949-1005

(United States v Windsor; Obergefell v Hodges; Michael H v Gerald D; Moore v City of East Cleveland; Meyer v Nebraska; Troxel v Granville; Skinner v Oklahoma)

Week twelve—April 7, 8, 9

1005-1065

Griswold v Connecticut; Eisenstadt v Baird; Roe v Wade; Planned Parenthood v Casey; Whole Women’s Health v Hellerstedt; Gonzales v Carhart; Maher v Roe; Planned Parenthood v Casey)

Week thirteen—April 14, 15, 16

1065-1096; 1178-1188

(Bellotti v Baird; Cruzan v Director, Missouri Department of Health; Washington v Glucksberg; Lawrence v Texas; San Antonio Independent School District v Rodriguez )

VIII. Procedural Due Process

1219-1233

(Mathews v Eldridge; District Attorney’s Office for the Third Judicial District v Osborne)

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Last day of classes, April 20

Reading period April 21-23

Final exam May 1 (take home, but space limited)

**Course policies**

**Attendance**: Attendance is taken for every class by sign-in sheet. Students are responsible for ensuring that they are not recorded as absent if they come in late. Absences for religious reasons are excused according to university policy. Please be on time. If you are absent more than 4 classes you may be dropped from the class.

**Use of laptops**: Please do not use your laptop or any other electronic device in class. The most recent empirical data indicate that students learn better and retain more by taking handwritten notes, which is why I do not permit laptops or other electronic devices in class. Please turn your phone off and put it away. If there is an emergency reason to keep your phone on let me know.

I will ask for a volunteer note taker for every class, who will post notes to the class online, and that person can take notes with a laptop. A signup sheet will be circulated the first week.

**Final exam:** The final exam will be a one day take home final on May 1 2020. It will be open book and must be done individually and without talking to anyone about the exam in compliance with the Honor Code. You will be given more detailed instructions prior to the final from Student Services about how to access the exam, and how to submit your answer.

You will have a full day to write the exam, from 8 a.m. until 6 p.m. but your answers will be limited to specific word counts.

The exam counts for 100% of your grade unless your outstanding participation is a factor, as follows:

Within the limits of the mandatory curve, I will raise a grade by a “plus” (eg, from B to B+) if the grade of a student does not match their excellent performance in class. Such an adjustment will be rare but it can happen. This will be based on how often you participate, whether you demonstrate knowledge of the reading, listening to your colleagues carefully, andwhether you share the opportunity to participate with others.

***College of Law Policies:***

## Academic honesty:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

## Grading scale:

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

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| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

## Accommodations:

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.