

CONSTITUTIONAL LAW § B
LAW 5501, CLASS NUMBER 21848 (4 CREDITS)
PROFESSOR BERTA E. HERNÁNDEZ-TRUYOL

SPRING 2019

TUESDAY, WEDNESDAY, & THURSDAY – 09:00AM-10:10AM
ROOM 360

SYLLABUS

1. Class Materials:

CONSTITUTIONAL LAW, 5th ed., Chemerinsky, 2017. ISBN: 978-1-4548-7647-2.

Unless otherwise indicated, the reading assignments refer to the required casebook. Every student is expected to have completed the assigned readings **prior** to class.

Students also are expected to read additional materials as indicated and as posted on the Canvas page, usually in either pdf or html format. Adobe Reader 6.0 or higher should be used to view pdfs, otherwise you may experience some difficulties. Students should check Prof. Hernández's Canvas Course page on a regular basis for updates to the online materials and readings. Dates of last update are given for your convenience.

Note: In order to inform the course materials, we will start classes with a current event that implicates a constitutional issue.

2. Course Objective:

The purpose of this course is to provide students with an overview of Constitutional Law as well as to develop your critical thinking. After we review the Constitution and its structure, we will study the Separations of Powers, which includes Judicial, Executive and Legislative powers with the latter also including Federalism (the division of power between Federal and State governments). Following, we will study individual liberties (substantive due process and equal protection). If time permits, we will briefly study the First Amendment.

3. Student Learning Outcomes:

At the conclusion of the course, students will have a basic knowledge of and will be able to analyze:

- Separation of Powers
- Federalism
- Due Process
- Equal Protection
- Constitutionality of laws in light of the above principles.

4. Attendance:

I take attendance in accordance with University and Law School policy and ABA rules. Law School policy states as follows:

“Class attendance is a primary obligation of each student, whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor.”

The American Bar Association’s standards provide that “regular and punctual class attendance is necessary to satisfy residence and class hour requirements.”

Absences for religious reasons are excused in accordance with university policy.

Please be on time as it is distracting for everyone to have persons coming into the classroom after class starts.

5. Examination:

The exam will be a same day take-home exam. The exam is open-book, but only the class materials, which include the student’s notes, the text, assigned readings, and any other additional handouts that are distributed, may be used. The exam will be distributed and collected electronically on ExamSoft. Further information regarding the exam will be available later in the semester.

6. Class Participation:

Class participation is an important part of the course. I anticipate that students will keep up with the reading and be prepared for class discussion. The most instructive and enjoyable classes are those in which many people take part in the conversation. I understand that some students are eager to speak while others are reluctant to do so. While I will call on volunteers, I will also call on others. If you are not prepared for class on a particular day, please let me know before class and I will not call on you that day. We all have unexpected things happen that can derail our plans. I look forward to everyone contributing their insights in class.

7. Class Preparation:

Given that we meet three times per week for a 4-credit-hour course, anticipate spending about 3-4 hours preparing for each class meeting. Prep time includes reading the materials, briefing the cases, thinking about the materials, and synthesizing your learning and knowledge of the assigned materials.

8. Grades:

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:

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

Grading is in accordance with Law School policy, which is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>.

9. Accommodation:

Students with needs for accommodations should see Student Affairs whose staff will work with students according to Law School and University policy.

10. Internet Policy and Related Issues:

The internet, and more generally your laptop, is a great learning tool and invaluable asset to effective advocates. It should be used during class time as you will use it in practice: responsibly and ethically, consistent with the high professional standards that will be expected of you by your clients and by those who will employ you. This is important not only to you, but also to all the students around you who are affected by how you use your computer. It can be distracting to your classmates if you use your computer for activities unrelated to class. When you are talking, you should lower your laptop to facilitate communication.

Cell phones, tablets, and other electronic equipment should be turned off and not used during class. If you need to leave your phone on vibrate to receive an emergency call, please feel free to do so.

11. Academic Misconduct:

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>.

12. Office Hours:

My office is 319-A, my office number is 273-0928, and my email is hernandez@law.ufl.edu. I have an open door policy.

13. The assignment sheet is attached.

CLASS	BASICS	ASSIGNMENT
	I. Introduction	Pages
	The Constitution	xli-lvii
	SEPARATION OF FEDERAL POWERS	
	II. The Federal Judicial Power (Role of Judiciary)	
	A. Authority for Judicial Review <i>Marbury, Martin, Cohens</i>	1-11
	B. Limits on the Federal Judicial Power 1. Interpretive Limits How should the Constitution be interpreted? – <i>Nixon, Heller</i> – 2nd Amend	11-13 332-336, 13-32
	III. Federal Executive Power (Division of Power Between Executive & Legislative)	
	A. Inherent Presidential Power <i>Youngstown</i> , review <i>Nixon</i>	321-336
	B. Legislative Veto (Nondelegation Doctrine) and Its Demise <i>Chadha</i>	341-343, 347-355
	C. Separation of Powers & Foreign Policy 1. Difference between foreign & domestic policy <i>Curtiss Wright, Zivotofsky v. Kerry</i>	382-394
	2. Treaties & Executive Agreements <i>Dames & Moore v. Regan</i>	394-397
	3. War Powers AUMF – Is it appropriate delegation?	397-401
	D. Presidential Power & the War on Terrorism 1. Detentions – <i>Hamdi, Boumediene</i> 2. Military Tribunals – <i>Quirin</i>	401-438
	SEPARATION OF POWERS (CONT'D) FEDERALISM: THE DIVISION OF POWER BETWEEN THE FEDERAL AND STATE GOVERNMENTS	
	IV. The Federal Legislative Power	
	A. Congress & the States: Supremacy of Federal Law Framework <i>McCulloch</i>	115-126
	B. The Necessary & Proper Clause <i>Comstock</i>	150-156
	C. The Commerce Clause 1. Initial Scope of Commercial Power <i>Gibbons</i>	156-160
	2. 1890s-1937: Limited Federal Commerce Power Social Welfare: State Sovereignty Limits Federal Power <i>Hammer</i> (in notes), <i>Ames</i> (in notes)	160-166
	3. 1937-1990s: Broad Federal Commerce Power – Demise of State Sovereignty <i>Jones, Darby, Wickard, Heart of Atlanta, Katzenbach, Hodel, Perez, Garcia</i>	166-188
	4. 1990- Revival of State Sovereignty: 10th Amend.	

	a. Congress' Authority to Regulate Commerce Among States <i>Lopez, Morrison, Raich</i> b. Giving Context to the 10th Amend. <i>Printz, Condon, Sebelius</i>	188-216 217, 226-237, 126-150
	INDIVIDUAL LIBERTIES AS A LIMIT ON THE POWER OF GOVERNMENTS	
	V. Protection of Civil Rights & Civil Liberties	
	A. Bill of Rights & 14th Amendment 1. Application of BOR to states – Privileges and Immunities Clause <i>Barron, Slaughterhouse Cases, Saenz</i> 2. The controversy over incorporation of BOR into D/P Clause of 14th Amend. <i>Palko, Adamson, Duncan, McDonald</i> B. State Action (waving the wand) 1. Requirement <i>Civil Rights Cases: Stanley</i> 2. Public functions <i>Marsh, Terry, Evans (skim all 3)</i> 3. Entanglement <i>Shelley, Burton (skim), Moose Lodge (skim)</i> <i>Norwood (skim), Rendell-Baker (skim), Brentwood</i> 4. Inaction as State Action? <i>DeShaney</i>	537-550 550-567 567-572 572-574; 577-581 582-586; 591-600, 604-611 1191-1197
	VI. Substantive D/P: Economic Liberties	
	A. Introduction B. The Rise of Substantive D/P using freedom of K to Limit government economic regulations <i>Lochner, Muller, Adkins, Nebbia</i> C. The End of Substantive D/P <i>Parrish, Carolene Products, Lee Optical</i>	613-618 621-631, 633-635 635-642
	VII. Substantive D/P: Family, Education, Privacy	
	A. Introduction: Fundamental Rights <i>Meyer, Pierce</i> B. Family Autonomy a. Marriage <i>Loving, Obergefell</i> b. Family togetherness <i>Moore</i> c. Parental rights <i>Stanley, Michael H</i> d. Grandparents <i>Troxel</i> C. Reproductive Autonomy 1. Right to procreate <i>Buck, Skinner</i> 2. Purchase & use of contraceptives <i>Griswold, Eisenstadt</i> 3. Termination <i>Roe, Casey</i> D. Individual Autonomy & the Right to Die	949-954, 994-997 955-957, 967-981 990-993 981-989 997-1002 1002-1005 1005-1014 1014-1035, 1058-1065 1069-1084

	<i>Cruzan, Glucksberg</i>	
	VIII. Equality: Equal Protection	
	A. Introduction: What is equality? B. What is rational? Does law have a legitimate purpose? <i>Cleburne</i> C. Race & National Origin: Strict Scrutiny 1. Slavery <i>Dred Scott</i> 2. Separate but equal From <i>Plessy to Brown, Rodriguez</i> 3. Strict scrutiny <i>Korematsu, Loving, Palmore</i> 4. Racially neutral laws with discriminatory impact: Proof of discriminatory purpose <i>Washington v. Davis, Palmer</i> 5. Affirmative action <i>Grutter, Gratz, Fisher, Parents Involved</i> D. Gender 1. Level of scrutiny <i>Frontiero, Craig, VMI</i> 2. Proving gender <i>Geduldig, Califano, Nguyen</i> E. Alienage <i>Graham, Foley, Ambach, Plyler</i> F. S.O. E/P & S-D/P Meet <i>Romer, Windsor, Lawrence</i> Also review <i>Obergefell</i>	725-731 731-733, 750-754 760-761, 754-759 771-781, 1178-1185 761-771 781-785, 795-797 847-878, 818-833 882-897 898-900, 913-922 922-938 733-740, 958-966, 1084-1097