**Constitutional Law § A**

**LAW 5501, Class number 15906 (4 credits)**

**Professor Berta E. Hernández-Truyol**

**Fall 2020**

**Tuesday, Wednesday, & Thursday – 10:45am-noon**

**Room 355D**

**Course Description & Syllabus**

1. **Class Materials:**

Constitutional Law, 6th ed., Chemerinsky, 2020. ISBN: 978-1-5438-1307-4.

Unless otherwise indicated, the reading assignments refer to the required casebook.  Every student is expected to have completed the assigned readings **prior** to class. Assignment pages refer to the Chemerinsky casebook. Otherwise, as indicated in syllabus, readings are posted on Canvas.  
  
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 often start classes with a current event that implicates the constitutional issue being studied in that class.

1. **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). We will take a very brief look at the First Amendment in the context of an assigned case at the end of the course.

1. **Student Learning Outcomes:**

At the conclusion of the course, students should be able to read and critically analyze cases. Students will have a basic knowledge of and will be able to analyze:

- Separation of Powers and the roles of each branch:

- Judiciary

- Executive

- Congress

- Federalism

- Due Process

- Equal Protection

- Constitutionality of laws in light of the above principles.

1. **Attendance:**
   1. **In person and remote attendance:**

I take attendance in accordance with University and College of Law policy and ABA rules. College of Law 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.

* 1. **Remote attendance:**

Students participating remotely must be on video in order to be counted as in attendance. Students participating remotely must be prepared to participate in class discussion on the same terms as students in the classroom.

1. **Testing:**

There will be three graded tests during the semester. The first test is closed-book. Students will have 20 minutes to match the names of the cases that we will have covered up to that point in the course with a notable quote from each case. This test will account for 10% of your grade.

The second test will be a closed-book test following the format of the first test in which students will have 30 minutes to match the case quotes with the cases that we have covered up to that point in the course. This test will account for 15% of your grade.

The final exam will be a same day take-home exam. The exam is open-book. It will be distributed and collected electronically on ExamSoft. Further information regarding the exam will be available later in the semester. The exam accounts for 75% of the grade.

There will also be a mandatory 30-minute essay test approximately in the middle of the semester in which the students will be able to use their Chemerinsky 6th edition casebooks only. This will be graded for your information as √-, √, or √+.

Finally, during the semester all students will write 3 reflection pieces, each of which should be between 1-3 pages. These pieces will be the student’s reflection on a case or series of cases that address a particular topic or topics, e.g., executive authority, separation of powers, federalism, equality. These will be due as follows:

* The first reflection at the completion of “***Separation of Federal Powers”***
* The second reflection at the completion of ***Part VII*** (Substantive Due Process)
* The third reflection at the end of ***Part VIII(D)***

1. **Class Participation:**

Class participation is an important part of the course. I anticipate that all students – both in-person participants and those participating remotely – 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. Failure to participate in any of the required class obligations may negatively affect your grade.

1. **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 critically about the materials and asking questions about what you have read (Does the decision make sense?, Is the decision correct in light of the law?, Does the law make sense? Why or why not?, etc.) as well as synthesizing your learning and knowledge of, and questions about, the assigned materials. The case briefs must be written, and I will from time to time ask you to turn in your briefs.

1. **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 (Average) | 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 College of Law policy, which is available at: *https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies*.

1. **Accommodation:**

Students with needs for accommodations should see Dean Rachel Inman in Student Affairs whose staff will work with students according to College of Law and University policy.

1. **Class recordings:**

Classes will be recorded. Class recordings will be available **only** to students who have an ADA accommodation or to students who are required to miss class because of illness. Eligible students should contact Dean Inman for access to recordings*.*

1. **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.

1. **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*](http://www.dso.ufl.edu/students.php).

1. **Office Hours:**

My office is 319-A, my office number is 273-0928, and my email is [hernandez@law.ufl.edu](mailto:hernandez@law.ufl.edu). I have an open-door policy. However, during these Covid times, office hours will be held exclusively on Canvas.

My office hours will be 1-3 on Tuesday afternoons.

1. **Course Evaluations:**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

1. **Prohibition on Student Recording and Photography and Social Media Posting**:

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online.  It is the policy of the College of Law that Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

1. **Requirement to follow campus safety protocols:**

We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the University and College of Law have implemented the following policies and requirements in order to maintain your learning environment and to enhance the safety of our in-classroom interactions:

* You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
* This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
* Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
* Follow your TA’s guidance on how to enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return too campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.

Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.<https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>.

1. **New Nameplates for Class:**

Because of the new protocols concerning entering and exiting the classroom, seating charts, which are the way that I usually get to know students by name, are impossible. Therefore the administration is creating nameplates for all students who are taking courses in person this fall. Please make sure you bring your name plate to class and place it in such a position so that I can see them. This will help us get to know each other in these masked times.

1. **Syllabus and assignments:**

The syllabus and assignment sheet is attached.

SYLLABUS

|  |  |
| --- | --- |
| BASICS | ASSIGNMENT |
| **I. Introduction** | **Pages** |
| The Constitution, Scavenger Hunt (Canvas) | XXXIX - LV |
| SEPARATION OF FEDERAL POWERS ***A reflection piece will be due at the end of this section of the course*** |  |
| **II. The Federal Judicial Power (Role of Judiciary)** |  |
| A. Authority for Judicial Review  *Trump v. Hawaii*, *Marbury, Martin, Cohens* | 395-406; 1-11 |
| B. Limits on the Federal Judicial Power  1. Interpretive Limits  How should the Constitution be interpreted? –  *Nixon*, *Heller* – 2nd Amend | 11-13  286-290; 13-32 |
| **III. Federal Executive Power (Division of Power Between Executive & Legislative)** |  |
| A. Inherent Presidential Power  *Youngstown*, review *Nixon & Trump*  B. Legislative Veto (Nondelegation Doctrine) and Its Demise  *Chadha*  C. Separation of Powers & Foreign Policy  1. Difference between foreign & domestic policy  *Curtiss Wright*, *Zivotofsky v. Kerry*  2. Treaties & Executive Agreements  *Dames & Moore v. Regan*  3. War Powers  AUMF – Is it appropriate delegation?  D. Presidential Power & the War on Terrorism  1. Detentions – *Hamdi*, *Boumediene*  2. Military Tribunals – *Quirin* | 275-290  292-293; 304-312  339-351  351-354  354-358  358-387  387-395 |
| **IV. The Federal Legislative Power** |  |
| A. Congress & the States: Supremacy of Federal Law Framework  *McCulloch*  B. The Necessary & Proper Clause  *Comstock*  (in note)  C. The Commerce Power  1. Initial Scope of Commercial Power  *Gibbons*  2. 1890s-1937: Limited Federal Commerce Power  a. What is commerce?  *Knight, Carter Coal* (both in notes)  b. What does “among the states” mean?  1. Direct Effect – *Shreveport Rate* (in notes)  2. Indirect Effect – *Schechter Poultry* (in notes)  3. Stream of Commerce – *Swift, Stafford, Alton RR*  (all in notes)  c. Social Welfare: State Sovereignty Limits Federal Power  *Hammer, Ames* (both in notes)  3. 1937-1990s: Broad Federal Commerce Power – Demise of  State Sovereignty  *Jones*, *Darby*, *Wickard*, *Heart of Atlanta, Katzenbach*,  *Hodel* (skim), *Perez* (skim), *Garcia* (skim)  4. 1990- Revival of State Sovereignty: 10th Amend.  a. Congress’ Authority to Regulate  Commerce Among States  *Lopez*, *Raich*  b. Giving Context to the 10th Amend.  *New York, Printz*, *Condon*, *Sebelius, Murphy* | 119-130  155  155-159  159-166  166-187  187-199; 207-215  216-236; 130-154; 236-240 |
| 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  *Barron*, *Slaughterhouse Cases*, *Saenz*  2. The controversy over incorporation of BOR into  D/P Clause of 14th Amend.  *Palko* (skim), *Adamson* (skim), *Duncan* (skim),  *McDonald, Timbs*  B. The Application of the BOR to Private Conduct  1. Requirement of State Action (waving the wand)  *Civil Rights Cases: Stanley*  2. Exceptions to State Action  a. Public functions  *Marsh*, *Terry*, *Evans (*skim all 3)  b. Entanglement  *Shelley*, *Burton* (skim), *Moose Lodge* (skim)  *Norwood* (skim), *Brentwood*  4. Inaction as State Action?  *DeShaney* | 503-516  516-532  532-536  536-540; 543-546; 551-552  553-556; 561-568; 571-578  1134-1140 |
| **VI. Substantive D/P: Economic Liberties** |  |
| A. Introduction  B. The Lochner Era: The Rise of Substantive D/P (using freedom  of K to limit government economic regulations)  *Lochner*, *Muller*, *Adkins*, *Weaver*  C. The End of Substantive D/P – Starting in 1937  *Parrish*, *Carolene Products*, *Lee Optical* | 579-584  584-599  599-606 |
| **VII. Substantive D/P: Family, Education, Privacy**  ***A reflection piece will be due at the end of this part (VII) of the course*** |  |
| A. Introduction: Fundamental Rights  B. Family Autonomy  a. Right of Parents to control upbringing of children  *Meyer*, *Pierce*  b. Marriage  *Loving*  c. Family togetherness  *Moore*  d. Right to custody of one’s children – who is a parent?  *Stanley*, *Michael H*  e. Grandparents  *Troxel*  C. Reproductive Autonomy  1. Right to procreate  *Buck*, *Skinner*  2. Purchase & use of contraceptives  *Griswold*, *Eisenstadt*  3. Termination  *Roe*, *Casey, Hellerstedt*  D. Individual Autonomy & the Right to Die  *Cruzan*, *Glucksberg*  E. Right to Bear Arms  Review *McDonald* | 903-909  942-945  909-915  938-941  929-938  945-950  950-952  952-961  961-987; 1006-1011  1015-1030  523-529 |
| **VIII. Equality: Equal Protection**  ***A reflection piece will be due at the end of part VIII(D) of this section*** |  |
| A. Introduction: What is equality?  B. What is rational? Does law have a legitimate purpose?  *Cleburne*  C. Race & National Origin: Strict Scrutiny  1. Slavery  *Dred Scott*  2. Separate but equal  From *Plessy* to *Brown*, *Rodriguez*  3. Strict scrutiny  *Korematsu*, *Loving*, *Palmore*  4. Racially neutral laws with discriminatory impact:  Proof of discriminatory purpose  *Washington v. Davis*, *Palmer*  5. Affirmative action  *Grutter*, *Gratz*, *Fisher*  D. Gender  1. Level of scrutiny  *Frontiero*, *Craig*, *VMI*  2. Proving gender  *Geduldig*  3. Gender Classifications Benefitting Women  *Rostker, Califano*, *Nguyen, Sessions* (notes)  E. Alienage  *Graham*, *Foley*, *Ambach*, *Plyler*  F. S.O.: E/P & S-D/P Meet—The Ga(y)ping Hole  *Romer*, *Lawrence, Windsor* (notes), *Obergefell, Pavan* (Canvas), *Masterpiece Cake* | 683-689  689-691; 707-711  711-718  728-738; 1121-1128  718-728  738-742; 752-754  790-792; 802-833  836-851  851-854  862-876  876-891  Note at 696; 900-901; 691-696; 1031-1042; 911-915 (Windsor notes); 915-929; 1690-1700 |