

COURSE SYLLABUS

Faculty: **Professor Marie A. Failing**

Course: **Constitutional Law II**

Semester: **Fall, 2010**

Meeting Schedule: **Monday and Wednesday, 1:00-2:15 p.m.**

Room: **103**

Textbook	Primary Text	Recommended, not required
Author	Stone, Seidman, Sunstein, Tushnet, and Karlan	
Title/edition of text	Constitutional Law 6 <sup>th</sup> edition	
Publisher/year	Wolters Kluwer	
ISBN 10	0735577196	
ISBN 13	978-0735577190	

***Learning Outcomes for the Course:***

By the end of this course, you should be able to:

- a. Recite the most important legal principles and rules interpreting the First Amendment and Fourteenth Amendment of the United States Constitution, sufficiently to pass a standard bar examination in this area. Specifically, we will cover the freedoms of speech, press, religion, and association; the unremunerated rights to vote, travel, access to the courts, and related rights claims; and equal protection of the laws. To engage students in argument on constitutional controversies based on the constellation of constitutional values and principles enunciated in Supreme Court cases.
- b. Understand and be able to apply the most common interpretive approaches to constitutional decision-making.
- c. Understand and be able to utilize the most common value controversies embedded in Constitutional Law so that you can lead public conversations as a citizen-lawyer about socially important contested issues of constitutional law such as hate speech and the rights of minorities.

***Course Expectations:***

*HUSL Policies on attendance, lateness and preparation*

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor's specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

**Attendance Policies in this Course:** Students should keep their own attendance and turn in a certification of the number of classes they have missed at the end of September (including August classes), October and by the last day of class for November and December, even if they have missed no classes. **If a student is absent (for any reason) more than six (6) class hours this semester, it is his or her responsibility to contact me to determine whether the work can be made up.** Much beyond six (6) hours of absence, a student risks being withdrawn from the class.

**Punctuality/Preparation Policies in this Course:** Students are expected to be on time unless they encounter an unforeseen emergency.

***BEFORE CLASS STUDENTS SHOULD:***

- Read, study and think/write about the assigned materials thoroughly;
- Know the cases and materials well enough that you can give a summary if you are called upon to do so;
- Decide what issue or issues the case raises and what rules of law or principles/definitions apply to the issue; and
- Be familiar with, and reflect on, the arguments that the opinions give to justify their application of the rules of law to the particular facts.

***AFTER CLASS STUDENTS SHOULD:***

- Complete any problems we did not finish in class;
- Identify and clarify anything confusing about substantive law or application, and do the necessary work to clarify their understanding of the law and constitutional argument;
- Consider their own views about these issues, and how they would be prepared to make an argument to resolve such issues;
- Think about how the day's assignment relates to past and upcoming areas of Constitutional Law;
- Review any material assigned but not covered to make sure they know it; and
- Summarize and outline course materials and class discussion.

**Policy on Laptop Use in Class:** Please limit your laptop use to retrieving and taking class notes so that your focus can be on Con Law, a bar examination subject in virtually all states.

***Other Classroom Policies:***

**Grading Components:**

Students will be graded on the regular Hamline grading scale, on a closed-book self-scheduled final examination of 3.5 hours. Grade raises (e.g., 3.0 to 3.25 or 3.5) may be given for outstanding class participation. These raises are given on the basis of BOTH quality and frequency of participation, not simply how often a student speaks in class. They are added to the student's grade after the exam grade is finalized and provided to the Registrar.

***Reading Assignments:***

**I. UNENUMERATED RIGHTS:**

**8/23** Introduction to the course and to fundamental rights, the right to vote, 43-51, 762-774

**8/25** The right to vote, 774-794, 590-98

**8/30** The right to travel and access to the courts, 794-813

**9/1** A right to education or welfare?, 813-831

**9/6 LABOR DAY**

**9/8** The right to associate, 910-911, 1384-99, 1068-71

**II. FREEDOM OF EXPRESSION: (Read ahead 1017-1027)**

**9/13** Freedom of speech and national security, 1030-50, 1052-56, 1061-64

**9/15** Fighting words and hate speech, 1076-1089, 1223-1231

**9/20** Threatening speech, 1231-1249, **Virginia v. Black video** and discussion

**9/22** Overbreadth, vagueness, prior restraint, 1109-1128

**9/27** Obscenity and free expression, 1172-1195, 1249-54

**9/29** Offensive speech and zoning issues, 1195-1223, 1340-44

**10/4** Libel and invasion of privacy, 1128-1152

- 10/6** Commercial Speech, 1152-1172
- 10/11** Campaign Speech, 1346-1376 and handout
- 10/13** Symbolic and compelled speech, 1325-1342, 1394-99
- 10/18** Content, viewpoint and the public forum, 1255-85
- 10/20** Content, viewpoint and the public forum, 1285-1305
- 10/25** Special settings and government subsidies, 1305-1325, 1376-83,  
video **Republican Party v. White**
- III. FREEDOM OF THE PRESS**
- 10/27** Press restraints, 1092-1103, 1106-08, 1399-1416
- 11/1** Press parity, 1416-1441
- IV. THE RELIGION CLAUSES**
- 11/3** The Establishment Clause, 1443-1478, **Van Orden video**
- 11/8** The Establishment Clause, 1480-1502
- 11/10** Free Exercise Clause and Interplay in the Joints, 1507-1538,  
**Locke v. Davey video**
- IV. EQUAL PROTECTION OF THE LAWS**
- 11/15** Introduction to Equal Protection, 489-519
- 11/17** Racial Discrimination/Intent and Effect, 531-55
- 11/22** Racial discrimination and affirmative action, 555-566, 571-583, 587-590
- 11/24** **THANKSGIVING**
- 11/29** Alienage and other classifications, 666-674, 686-706, **Romer v. Evans video**
- 12/1** Gender discrimination, 619-644, 656-569
- 12/6** **REVIEW**