

CONSTITUTIONAL LAW I, SPRING 2011, Section 2, at 1 to 1:50 pm, MWF in Room 101

PROFESSOR MARY JANE MORRISON
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OFFICE HOURS:
11 to 12 MWF, 11 to 1 Th
and by appointment on Saturdays

Required Text: Charles A. Shanor, American Constitutional Law: Structure and Reconstruction (4th ed.) [West].

Study Materials: You may need to read other materials, at least occasionally, to supplement your understanding of Constitutional Law. The reason is that some of your classmates have deep backgrounds in American history, political science, and jurisprudence that will be to their advantage in this course. Talk to me about what might suit your needs.

Goals and Learning Outcomes: Students will

- acquire basic understanding of the constitutional structure of the United States as a federal republic,
- be fluent in the patterns of constitutional analysis, including synthesis,
- be familiar with the impact of judicial philosophies and socio-economic-political culture on constitutional interpretation, and
- be adept at identifying, analyzing, and resolving a range of issues arising under some provisions in the Constitution for
 - inter-branch federal relations,
 - inter-governmental federal-state relations, and
 - government-individual relations.

Code of Conduct: The HUSL Code of Conduct applies in this class, including to initialing the Attendance Sheet, which specifically notes that you are affirming by your initials that you were on time for class, prepared for class, and present for class. If you were insufficiently prepared for a compelling and legitimate reason [family emergency, contagious illness, other serious illness, house fire], I will give you permission to initial the Attendance Sheet.

Class Participation: Education works best when we all are involved in it: Each student must be prepared to participate in each class, but each also student has the right to request the help of any other student in this class in responding to a question from me or to a statement by another student. If you are unprepared for class for a compelling and legitimate reason [family emergency, contagious illness, other serious illness, house fire], please tell me before class so that I will not embarrass either of us.

Excessive Absences: Excessive absences will result in your not being eligible to take the final exam; as a consequence, you will end up with an F in this course. There are 42 50-minute classes. Being absent in excess of four classes— whether by physical absence or intellectual absence in the form of insufficient preparation—is *prima facie* excessive.

Policies for Laptops, Cell Phones, and Other Electronic Devices: Students who make irresponsible uses of laptops, cell phones, or other electronic devices during class will lose

their privileges for using them during class for the remainder of the semester. Students who have a complaint about how a classmate is using one during class should notify me.

Exams and Grades: Although we regularly will work on problems during class, the grade for this course is a function solely of your performance on the final exam. That exam will be a three-hour, closed-book exam; it will consist of three essay questions, of equal weight. You will find copies of my old exams in the law library's archives. Some of the exams have comments from me; others have sample student A and C answers. Please note, however, the law of constitutional law changes over time; and topics of lively interest wax and wane.

Case names: Lawyers who "practice constitutional law," like all lawyers with specialties, use short-talk to carry on their arguments and analyses with each other and with courts. Their short-talk primarily is via using case names to stand for the holdings of cases or at least for the propositions for which lawyers in the field know the case. We will short-talk, too, so learn to use case names. For a very few cases, you need to be able to short-talk right down to the author of the majority opinion, the concurring opinions, and the dissents.

Reading assignments: The assignments are by week because one of the goals for this class is for you to learn to read the law as the decisions first appeared and as the law later was re-conceptualized. I will be asking you about both ways of thinking about the cases during class; hence, you ought to read for the entire week, not just for one class. In general, we will be covering 50 to 60 pages a week in Weeks 1 through 7. We drop to 44 pages in Week 8 and 40 or fewer pages per week there after; but, beginning in Week 11, we will read primary cases in their decisional order.

week 1. [2 classes] Ch. I & Ch II A. through C.1., read pp 1-50

week 2. Ch II C.2. through D.2.a., read pp 50-106

week 3. Ch II D.2.b. through Ch III B.1.b., read pp 106-56

week 4. Ch III B.2. through the end of Ch III, read pp 156-218

week 5. Ch IV A. through B.3., read pp 219-73

week 6. Ch IV C. through the end of Ch IV, read pp 273-324

Spring Break

week 7. Ch V through Ch VI A., read pp 325-67

week 8. Ch VI B. through the end of Ch VI, read pp 367-411

week 9. Ch X and Ch VII B., read pp 797-825, 424-52

week 10. Ch VII C. through Ch VIII A., read pp 452-94

Remember, beginning with week 11, with very few exceptions, we will read the primary cases in their decisional order. [I also indicate below the decisional order of many note cases—you may read these in their date order or as you see them before or after a primary case—if reading the primary cases in decisional order drives you crazy, then read them in the order they are in the book, too]

week 11. [total @ 40 pp]

pp 516-19 [incorporation doctrinal history]

Lochner v. New York 1905, pp 496-504

n. Meyer v. Nebraska 1923, p 521

Pierce v. Society of Sisters 1925, pp 494-96

Buck v. Bell 1927, pp 519-21

West Coast Hotel Co. v. Parrish 1937, pp 504-508

[Justice Harlan's views in Palko v. Connecticut 1937 and Poe v. Ulman 1961
are in his concurrence in Griswold]

Griswold v. Connecticut 1965, pp 521-30

n. Eisenstadt v. Baird 1972, p 530-31

Roe v. Wade 1973, pp 531-39

week 12. [total @ 30 pp; only 2 classes because of Good Friday]

Moore v. City of East Cleveland 1977, pp 561-67

n. Bowers v. Hardwick 1986 [read the Wiki for this case]

Cruzan v. Director, Missouri Department of Health 1990, pp 598-605

Planned Parenthood v. Casey 1992, pp 539-50 & n. 4 p 560

Washington v. Glucksberg 1997, pp 606-14

week 13. [total @ 40 pp]

Troxel v. Granville 2000, pp 567-75

n. Stenberg v. Carhart 2000, p 559

Lawrence v. Texas 2003, pp 576-87

State Farm v. Campbell 2003, pp 508-14

n. Philip Morris USA v. Williams 2007 and Exxon v. Baker 2008, pp 514-15

Gonzales v. Carhart 2007, pp 552-59 & nn 4 & 5 p 560

District Attorney's Office for the Third Judicial District v. Osborne 2009, pp 614-20

week 14. M=M, T=F, both are review classes, assuming we stayed on schedule