



COURSE SYLLABUS (revised December 17, 2010)

Faculty: **Professor Marie A. Failing**

Course: **Constitutional Law II**

Semester: **Spring 2011**

Meeting Schedule: **Saturday, 8:15 a.m. to 11:15 a.m.**

Room: **240A**

Textbook	Primary Text	Primary Text	Recommended not required
Author	Stone, Seidman		
Title and edition of text	Constitutional Law, 6 th edition		
Publisher/year	Wolters Kluwer 2009		
ISBN	978-0-7355-77190		

NOTE: There will also be edited cases and materials posted on the course TWEN site as indicated below.

Learning Outcomes for the Course:

- a. Be able to 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 unenumerated rights to vote, travel, access to the courts, and related rights claims; and equal protection of the laws.
- b. Understand and be able to apply the most common interpretive approaches to constitutional decision-making.
- b. 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:

Attendance is important and required by the ABA and Hamline University School of Law. Students should keep their own attendance and turn in a certification of the number of classes they have missed or certify that they have missed no classes at the end of each month by email. (For example: I, Marie Failinger, missed class on September 29.) If a student is absent (for any reason) more than six (6) class hours (i.e., two entire classes) 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 and to be prepared to discuss cases and materials assigned for the day. You will be called on to recite cases just about every class, and will also have small group assignments to complete in or outside of class. Habitual lateness or unpreparedness may result in a grade reduction, to be applied after exam grades are turned in to the Registrar.

Policy on Laptop Use in Class: Laptops should be used in this class for taking and retrieving notes. On some occasions, we may find some benefit in going into the web to find information that would help the class discussion along at that time. Students who use their laptops for other purposes in class, including checking email, will need to work out a contract with me, the professor, that will ensure their future full participation in each class, including more frequent recitation or other in-class responsibilities.

Other Classroom Policies:

In order to take full advantage of our class, I encourage each of you to:

- Read, study and think/write about the assigned materials thoroughly;

- Know the cases and materials well enough that you can give a summary when 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.

Grading Components

Final examination:

Date/Time: TBA

Requirements: One 3.5 hour closed book examination.

Component of Grade: 100%, except that a grade raise (e.g., 3.0 to 3.25 or 3.5) given for class participation that is outstanding in quality and quantity.

Reading Assignments:

Reading Assignments/Classroom Activity

Classroom Activity: Most Con Law sessions will be divided into roughly three classroom periods, often of unequal length if appropriate. One period will usually be devoted to students presenting cases and traditional Socratic questioning and class discussion about assigned cases and legal rules. During one period, students will either be engaged in one of several small group activities, such as applying legal rules to hypothetical or real cases, simulations; or we will view a case video related to the day's reading and discuss the case and related cases using the video as our backdrop. The third period will involve additional Q&A/discussion on more cases and/or discussion/feedback about the small group assignment. The videos listed below are from the Aspen Voices series; and if you are interested in viewing them outside of class, you can purchase viewing rights on the Aspen website.

On the first day of class, students will be divided into small groups that will carry out small group activities.

Course assignments (in text unless

EQUAL PROTECTION OF THE LAWS: Read ahead 43-51 in text

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| January 15 | Session 1: | Introduction to the course and to equal protection, Q&A, 489-511, small group meeting |
| | Session 2: | Racial Discrimination/Intent and Effect—Q&A, 531-545 |
| | Session 3: | Racial discrimination and affirmative action, Q&A 553-582, 587-590 |
| January 22 | Session 1: | Gender discrimination—Q&A, 619-644, 647-48, 656-658 and U.S. v. Virginia Video |
| | Session 2: | Sexual orientation discrimination, 664-686 |
| | Session 3 | Alienage and other classifications—Q&A, 686-709 |

UNENUMERATED RIGHTS: Read ahead 762-766

- January 29** Session 1: Fundamental rights, the right to vote 766-782,
Cumulative voting story on TWEN
Session 2: The right to vote (**Small Group problems**)
Session 3: The right to vote—Q&A, 782-794, 590-98
- February 5** Session 1: The right to travel/access to the courts—Q&A, 794-813
Session 2: A right to education or welfare? Read 813-831
Small Group Performance or Guest Speaker
Session 3: The right to associate—Q&A, 1384-99

FREEDOM OF EXPRESSION: Read ahead 1017-1027

- February 12** Session 1: Freedom of speech and national security—Q&A,
1028-1050
Session 2: Fighting Words, read 1076-1089 (**Small Group Problems**)
Session 3: Inciting speech and subversive activities
Q&A 1043-71, Holder excerpt on speech/assn.
on TWEN
- February 19** Session 1: Hate speech—Q&A, 1223-1239
Session 2: Threatening speech, 1239-1249, 1071-76, 1089-91
Virginia v. Black video and discussion
Session 3: Overbreadth, vagueness, prior restraint—Q&A,
1109-1128, Holder (vagueness) and U.S. v. Stevens
excerpts on TWEN and U.S.
- February 26** Session 1: Libel and invasion of privacy—Q&A, 1128-1147
Session 2: Applying libel and privacy law to cases (**Small Group Problems**)—1147-52, 1259-61
Session 3: Symbolic speech—Q&A, 1325-1340, 1344-46
- March 5** **SPRING BREAK**
- March 12** Session 1: Obscenity, indecency and free expression—Q&A, 1172-
1192, 1201-1208
Session 2: Sexual speech and zoning, 1218-1223, 1249-54, 1340-
44---**Small Group Performance**
Session 3: Sexual speech about and to children—Q&A, 1192-1201,
1208-1218
- March 19** Session 1: Commercial Speech—Q&A, 1152-1172, Milavetz on

TWEN

Session 2: Elections and patronage 1376-83, **Republican Party v. White** video and discussion

Session 3 Money as Speech in politics—Q&A, Buckley etc, 1346-1375, Citizens United excerpt on TWEN

- March 26** Session 1: The Public Forum doctrine—Q&A, 1266-1285, 1297-1301 (n.3)
- Session 2: Content and viewpoint neutrality, 1258-1259, 1262-66, 1288-1297 (**Small Group Problems**)
- Session 3: Special settings and government subsidies---Q&A 1305-1325, Pleasant Grove and Ysursa excerpts on TWEN

FREEDOM OF THE PRESS

- April 2** Session 1: Press restraint and access, 1092-1102, 1106-08, 1399-1408
- Session 2: Fair Trial v. Free Press, 1408-1416, 1092-1094
Small Group Performance
- Session 3: Comparing media—Q&A, 1416-1436

THE RELIGION CLAUSES

- April 9** Session 1: The Establishment Clause/ Q&A, 1443-1471
- Session 2: Applying Non-endorsement—**Van Orden video** and discussion, 1471-84
- Session 3: The Establishment Clause/funding, Q&A 1490-1507
- April 16** Session 1: Free Exercise Clause—Q&A, 1302-1305, 1507-1524, Martinez excerpt on TWEN
- Session 2: Religion Clause Conflicts, 1522-1538
Locke v. Davey Video and discussion
- Session 3: REVIEW