

CONSTITUTIONAL LAW II **SPRING 2010 SYLLABUS**

Professor/Associate Dean Marie Failing
Class: Saturday, 8:15 -11:15 a.m.

Contact Information

I will hold office hours after class on Saturday during the “free hour.” If you need to meet with me on another day, please call or email Susan Curran, scurran02@hamline.edu or 651-523-2968 to set up an appointment, or feel free to stop by to see me if you are at school.

If you need to get in touch to ask a question, etc., the best way to reach me is by telephone, 651-523-2124 (please leave a message if I do not answer) or call Susan to get in touch with me. Do NOT use email if you need a response any sooner than 36 hours because of the volume of email traffic I get. I do not normally read email on Saturday after work or Sunday.

Learning Outcomes of this 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. 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.

Student Responsibilities in this Course

I. 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.

II. DURING CLASS, WE WILL:

- Discuss the issues in the materials and how the Court analyzes these issues and argues for their resolution;
- Discuss justifications the various opinions give for constitutional rules and the resolution of constitutional cases;
- Evaluate stated and unstated factual and value assumptions in the court's reasoning, including ongoing themes in constitutional values and interpretation;
- Identify flaws and strengths in the court's reasoning;
- Explore alternative arguments that might better resolve the controversies in this area;
- Explore related policy issues relevant to the cases; and
- Apply our learning to hypothetical and real constitutional cases.

III. 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.

Evaluation/Grading: 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 3.3 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 given to the Registrar.

Attendance Policy: 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 at the end of each month. 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.

Reading Assignments/Classroom Activity

Classroom Activity: Most classroom sessions will be divided into roughly three classroom periods, often of unequal length if appropriate. One period will usually be devoted to traditional Socratic questioning (designated as Q&A below) about assigned cases and legal rules. During one period, students will be engaged in one of several small group activities, such as applying legal rules to hypothetical or real cases, simulations, or discussions of videos setting the context for the issue of the day. The third period will involve additional Q&A on more cases and/or discussion/feedback about the small group assignment. The videos listed below are from the Aspen Voices series, and you can review them after class as well, along with the videos listed as optional.

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

Course assignments: The course text is Stone, Seidman, Sunstein, Tushnet, and Karlan, *Constitutional Law* 6th edition (Wolters Kluwer.) Some case updates may also be handed out or posted on the course TWEN site before the day they are assigned. The following are expected to be the assignments for the semester, though the assignment may be changed on some days, so check ahead if you miss class.

UNENUMERATED RIGHTS:

- January 23** Session 1: Introduction to the course and to fundamental rights, 43-51, 762-66
Brief small group organizational meeting
- Session 2: The right to vote—Q&A, 766-782
- Session 3: The right to vote—Q&A continued, 782-794, 590-98
- January 30** Session 1: The right to travel and access to the courts—Q&A, 794-813
- Session 2: A right to education or welfare? Read 813-831
Moot Court (Group 1)
- Session 3: The right to associate—Q&A, 1384-99, 1068-71

FREEDOM OF EXPRESSION:

- February 6** Session 1: Freedom of speech and national security—Q&A, 1017-1043
- Session 2: Fighting Words, read 1076-1091, apply the fighting words doctrine to cases (**Small Groups**)
- Session 3: Inciting speech, Q&A 1043-1066

- February 13** Session 1: Hate speech—Q&A, 1223-1239
 Session 2: Threatening speech, 1239-1249, 1071-76
Virginia v. Black video and discussion
 Session 3: Overbreadth, vagueness, prior restraint—Q&A, 1109-1128
- February 20** Session 1: Obscenity and free expression—Q&A, 1172-1192, 1249-54
 Session 2: Sexual speech about and to children—Q&A, 1192-1218
 Session 3: Sexual speech and zoning, 1218-1223, 1343-44
Legislative Committee (Group 2)
- February 27** Session 1: Libel and invasion of privacy—Q&A, 1128-1151 (n.3), 1259-60
 Session 2: Applying libel and privacy law to cases (**Small Groups**)
 Session 3: Symbolic speech—Q&A, 1325-1342, 1344-46, 1394-97
- March 6** Session 1: Commercial Speech—Q&A, 1152-1172
 Session 2: Judicial elections, 1375-83, **Republican Party v. White video** and discussion
 Session 3: Money as Speech in politics—Q&A, Buckley etc, 1346-1375
- March 13** 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, 1302-1305, (**Small Groups**)
 Session 3: Special settings and government subsidies vs. speech—Q&A, 1305-1325

FREEDOM OF THE PRESS

- March 20** Session 1: Press restraint and access, 1094-1102, 1106-08, 1399-1409
 Session 2: Fair Trial v. Free Press, 1409 n.5-1416, 1092-1094
Supreme Court chambers exercise (Group 3)
 Session 3: Comparing media—Q&A, 1417-40

THE RELIGION CLAUSES

- March 27** Session 1: The Establishment Clause/Government Aid, Q&A, 1443-1449 n.2, 1451-71, 1484-90
 Session 2: Applying Non-endorsement—**Van Orden video** and discussion, 1471-84
 Session 3: The Establishment Clause/funding, Q&A 1490-1507
 Optional for after-class viewing: Lee v. Weisman video

2. **MOOT COURT:** A group will be assigned to perform a mock motion or appellate argument on the hypothetical or real case provided. At least one student in each group will represent the appellant and one student will represent the appellee. The other students will select a Supreme Court justice (who has sat on the bench at the time of the relevant cases or thereafter) to impersonate, preferably with a range of conservative and liberal opinions, including a chief justice of the group's choice. Appellants will have 12 minutes to give their argument, followed by 12 minutes for appellees, followed by 2 minutes for a rebuttal by appellants. The justices will confer in front of the class and render an opinion.
3. **SUPREME COURT CHAMBERS:** In this mock scenario, one group will be assigned to impersonate members of the Supreme Court (whom they choose.) The Court will sit around a conference table debating how the hypothetical or real case provided should come out. A chief justice will run the discussion. The mock discussion will begin with a brief statement by each member of the Court about how he or she thinks the case should come out and why, followed by a discussion about these positions in an attempt to achieve a majority for a particular decision and set of reasons for the decision. Members should, to the extent possible, represent the views of the Supreme Court justice whom they impersonate.
4. **LEGISLATIVE COMMITTEE DRAFTING SESSION:** Group members will impersonate state legislators in a committee assigned the task of drafting a piece of legislation relating to the constitutional issue for the day. Prior to the day of this assignment, the facilitator should seek volunteers to represent interest groups or organizations with conflicting interests on this issue, and they should prepare ideas or language they seek to include in any proposed bill, and arguments about why their opponents' likely provisions should not be included in the bill. During class, the committee will attempt to determine what provisions the bill should contain.