

COURSE SYLLABUS

Faculty: **Professor Marie A. Failing**

Course: **Constitutional Law II**

Semester: **Fall, 2011**

Meeting Schedule: **Monday and Wednesday, 3-4:15 p.m.**

Room: **101**

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| Textbook | Primary Text | Primary Text |
| Author | Erwin Chemerinsky | Erwin Chemerinsky |
| Title/edition of text | Constitutional Law 3d edition | 2011 Supplement to Constitutional Law 3d edition |
| Publisher/year | Wolters Kluwer | Wolters Kluwer |
| ISBN | 9780735577176 | Not known |
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Learning Outcomes for the Course:

By the end of this course, you should:

- a. Know 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.
- 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: 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 four (4) classes this semester, it is his or her responsibility to contact me to determine whether the work can be made up.** Much beyond four (4) classes 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;
- 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:

- 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:

Other Materials: Students are invited to use the TWEN site to post Con Law issues “in the news” and if there are supplemental materials or problems provided, they will be posted there. The password for the site is “Chemerinsky.”

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 of .2 to .6 (e.g., 3.0 to 3.25) 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:

NOTE: This syllabus was developed before the 2011 supplement for the book came out. Therefore, cases in the supplement are listed by name, not page number, and assignments may be edited when the supplement is available. Please remember that, because these are 75-minute classes, the reading assignments are longer than those for the average 50-minute class. Note the “read ahead” assignments for each section.

I. EQUAL PROTECTION OF THE LAWS, READ AHEAD 717-723, 748-750

8/22 Introduction to the course and to equal protection, 723-737, 741-748

8/24 Racial Discrimination, 754-779

8/29 Racial Discrimination, 779-801, 816-823 (dissents optional)

8/31 Racial discrimination and affirmative action, 835-843, 847-872

9/5 LABOR DAY—NO CLASS

9/7 NO CLASS—MAKEUP on 12/7

9/12 Gender Discrimination, 878-896, 898-909

9/14 Alienage, Illegitimacy and other Classifications, 917-942, read Flores-Villar

II. UNENUMERATED RIGHTS, READ AHEAD 943-949

9/19 The right to vote, 1080-1107

9/21 The right to vote, 1110-1133, 873-878

- 9/26** The right to travel and access to the courts. 1072-1080, 1133-1151
- 9/28** The right to education and the right to associate, 1151-1158, 1603-1625, CLS v. Martinez (majority opinion)
- III. FREEDOM OF EXPRESSION, READ AHEAD 1205-1213**
- 10/3** Freedom of speech and content neutrality, 1213-1218, 1232-1247, Pleasant Grove v. Summum
- 10/5** Vagueness, Overbreadth and Prior Restraints, 1247-1268, 1282-1285, read Stevens
- 10/10** Compelled Speech and Unconstitutional Conditions, 1291-1302, 1307-1321, read Doe (majority opinion) and Holder
- 10/12** Inciting Speech, 1321-1345
- 10/17** Fighting Words and Hostile Audiences, 1345-1375
- 10/19** Obscenity 1375-1400
- 10/24** Indecent Speech and Zoning, 1400-1415, 1421-1428, read Brown
- 10/26** Commercial Speech, 1428-1445, 1448-1461
- 10/31** Defamation and Privacy, 1461-1480, 1482-1491
- 11/2** Symbolic Speech, Money as Speech, 1494-1519
- 11/7** Money as Speech, Public Forums, 1531-1548, read Citizens United
- 11/9** Public Forums and TPM Speech (cont), 1550-1568, read Snyder
- 11/14** Special Settings, 1568-1571, 1574-1600 (dissents optional)
- IV. FREEDOM OF THE PRESS, READ AHEAD 1625-26**
- 11/16** Press restraint and access, 1627-1655
- V. THE RELIGION CLAUSES, READ AHEAD 1665-1669**
- 11/21** Free Exercise, 1669-1696
- 11/23** **THANKSGIVING HOLIDAY—NO CLASS**
- 11/28** The Establishment Clause, 1703-1712, 1715-1719, 1727-1748 (dissents optional)
- 11/30** The Establishment Clause, 1762-1803
- 12/7** **MAKE-UP AND REVIEW**