CONSTITUTIONAL LAW
SPRING TERM 2022
Professor Johnson

Syllabus

Welcome to Constitutional Law! In this class, you will learn key principles in the four areas of Constitutional Law tested on the Bar: Judicial Review; Separation of Powers; Federalism; and Individual Rights. We will study multiple-choice questions after every major topic to acculturate you to the Bar’s MBE test. This course requires careful and critical reading because the doctrines in Constitutional Law can be subtle and hard to define over time and through multiple cases. Yet this can be done if you give yourself time to prepare for each class. Throughout the course, we will examine different approaches to interpreting the Constitution. We will also have abundant opportunities to study the history of the Constitution as different doctrines come into and out of vogue. Finally, we will focus on select Justices—giants of the Judiciary—to help us understand diverse jurisprudential philosophies at play in the Court’s decision-making. You will be enlightened, hopefully entertained, and prepared for the Bar by the end of this course.

REQUIRED MATERIALS:

1. Erwin Chemerinsky, Constitutional Law (6th ed. 2020)
2. Course Materials on TWEN

RECOMMENDED MATERIALS:

Erwin Chemerinsky, Constitutional Law, Principles and Policies (5th ed. 2015 or 6th ed. 2019). Either one of these will work well as a supplement to the textbook.

OFFICE HOURS:

Tuesday, 3:30 pm – 5:00 pm
Wednesday, 9:00 am – 11:00 am
And by appointment (email me at: gjohnson@vermontlaw.edu)

TEACHING ASSISTANTS:

Robert Baker, RobertBaker@vermontlaw.edu
Office Hours: Thursday, 6:00 pm – 7:00 pm on Teams, or by appointment
Heidi Johnson, HeidiJohnson@vermontlaw.edu
Office Hours: Wednesday, 4:00 pm – 5:00 pm, ASP Office, or by appointment
GRADES:

Grades will be computed as follows:

(1) Midterm Exam (Friday, March 11) 20%
(2) Final Exam 80%

LEARNING OUTCOMES:

By the end of this course, you will:

1. Demonstrate an understanding of the central features of American Constitutional Law: A federal government of limited powers; separation of powers; federalism; and individual rights.
2. Become conversant in the basic approach to multiple-choice questions on the Multistate Bar Exam.
3. Gain competency in the competing approaches to constitutional interpretation.
4. Apply precedent to fact patterns to suggest likely outcomes.
5. Learn of the great epochs in the Supreme Court’s history, including the Marshall Court; the laissez-faire Court of the 1870s–1930s; the New Deal Court; the Warren Court; and the Court in modern times.
6. Understand the jurisprudence of some of the more noteworthy members of the Supreme Court in its 230-year history.

READING ASSIGNMENTS BY CLASS:

Part I: Judicial Review

WEEK ONE: JANUARY 17 – 21

Thursday, January 20
The Birth of Con Law: Marbury v. Madison
Textbook, pp. 1-9
Amy Coney Barrett, Originalism and Stare Decisis (2017) (on TWEN)

Marbury v. Madison (1803)

Friday, January 21
Interpretive Limits on Judicial Review
Textbook, pp. 11-32
Kanter v. Barr (7th Circuit, Judge Barrett in dissent) (2019) (on TWEN)
Recommended: More Perfect Podcast—The Gun Show (Season 2)

Kanter v. Barr (7th Circuit, Judge Barrett in dissent) (2019)
WEEK TWO: JANUARY 24 – 28

Tuesday, January 25
Justiciability Limits on Judicial Review, Part 1: Advisory Opinions and Standing
Textbook, pp. 41-42, 45-52
Uzuegbunam v. Preczewski (2021) (on TWEN)
Transunion v. Ramirez (2021) (on TWEN)

Opinion of the Justices
Hayburn’s Case (1792)
Allen v. Wright (1984)
Uzuegbunam v. Preczewski (2021)
Transunion v. Ramirez (2021)

Thursday, January 27
Justiciability, Part 2: Standing (cont’d), Ripeness, and Mootness
Textbook, pp. 79-83, 85-88
June Medical Services v. Russo (2020) (on TWEN)

June Medical Services v. Russo (2020)
Poe v. Ullman (1961)
Abbott Laboratories v. Gardner (1967)
Roe v. Wade (1971)
DeFunis v. Odegaard (1974)
Friends of the Earth, Inc. v. Laidlaw Environmental Services (2000)

Friday, January 28
Justiciability, Part 3: Mootness (cont’d); The Political Question Doctrine
Textbook, pp. 90-109
Recommended: More Perfect Podcast—The Political Thicket (Season 1)

Baker v. Carr (1962)

MBE Questions on Judicial Review
Part II: Separation of Powers

WEEK THREE: JANUARY 31 – February 4

Tuesday, February 1
Congress’s Powers under Article I
Textbook, pp. 119-32
Charles Beard, An Economic Interpretation of the Constitution of the United States (1913) (Chapter I) (on TWEN)

McCulloch v. Maryland (1819)

Thursday, February 3
Congress’s Treaty Power and Congress’s Commerce Clause Power, Part 1: The first two Eras
Textbook, pp. 155-66
McGirt v. Oklahoma (2020) (on TWEN)

McGirt v. Oklahoma (2020)
Gibbons v. Ogden (1824)

Friday, February 4
The Commerce Clause Power, Part 2: The expansive Third Era
Textbook, pp. 166-79
Recommended: More Perfect Podcast—One Nation, Under Money (Season 3)

NLRB v. Jones and Laughlin Steel Corp. (1937)
United States v. Darby (1941)
Wickard v. Filburn (1942)
Heart of Atlanta Motel, Inc. v. United States (1964)
Katzenbach v. McClurg, Sr. & McClurg, Jr. (1964)

WEEK FOUR: FEBRUARY 7 – 11

Tuesday, February 8
The Commerce Clause Power, Part 3: Retraction in the Modern Era
Textbook, pp. 187-204, 207-15

Gonzales v. Raich (2005)
Thursday, February 10
The Tenth Amendment as a Limitation on Congress’s Power
Textbook, pp. 216-40

New York v. United States (1992)
Printz v. United States (1997)
Murphy v. NCAA (2018)

Friday, February 11
Congress’s Taxing and Spending Power
Textbook, pp. 240-42, 245-48, 133-54

United States v. Butler (1936)
South Dakota v. Dole (1987)

WEEK FIVE: FEBRUARY 14 – 18

Tuesday, February 15
Congress’s Enforcement Powers
Textbook, pp. 248-74

The Civil Rights Cases (1883)
Katzenbach v. Morgan & Morgan (1966)
City of Boerne v. Flores (1997)
Shelby County, Alabama v. Holder (2013)

Thursday, February 17
The Eleventh Amendment
Eleventh Amendment Readings (on TWEN)
Whole Woman’s Health v. Jackson (2021) (on TWEN)

Kimel v. Florida Board of Regents (2000)
Board of Trustees, University of Alabama v. Garrett (2001)
Tennessee v. Lane (2004)
Whole Woman’s Health v. Jackson (2021)
Friday, February 18

The Executive Power
Textbook, pp. 275-84, 395-406
Chiafalo v. Washington (2020) (on TWEN)

Youngstown Steel & Tube Co. v. Sawyer (1952)
Chiafalo v. Washington (2020)

MBE Questions on Separation of Powers

Part III: Federalism

WEEK SIX: FEBRUARY 21 – 25

Tuesday, February 22

Preemption of State Law
Textbook, pp. 419-35

Lorillard Tobacco Co. v. Reilly (2001)
Florida Lime and Avocado Growers v. Paul (1963)

Thursday, February 24

The Dormant Commerce Clause, Part 1
Textbook, pp. 444-53, 461-67, 471-77

H.P. Hood & Sons, Inc. v. Du Mond (1949)
Tennessee Wine and Spirits v. Thomas (2019)
Exxon Corp. v. Governor of Maryland (1978)
Dean Milk Co. v. City of Madison, Wisconsin (1951)
Maine v. Taylor & United States (1986)
Loren J. Pike v. Bruce Church, Inc. (1970)
Friday, February 25
The Dormant Commerce Clause, Part 2
Textbook, pp. 483-89
Northeast Patients Group v. Maine Dept. of Admin. Servs. (on TWEN)

Reeves v. William Stake (1980)
South-Central Timber Development, Inc. v.
Dep’t of Natural Resources of Alaska (1984)

WEEK SEVEN: FEBRUARY 28 – March 4
NO CLASS – SPRING BREAK

WEEK EIGHT: MARCH 7 – 11

Tuesday, March 8
The Privileges and Immunities Clause of Article IV, § 2
Textbook, pp. 489-501

Toomer v. Witsell (1948)
United Building & Construction Trades Council of Camden County
v. Mayor & Council of the City of Camden (1984)
Baldwin v. Fish & Game Commission of Montana (1978)
Supreme Court of New Hampshire v. Piper (1985)

Thursday, March 10
Q and A Before Midterm Examination

MBE Questions on Federalism

Friday, March 11
Midterm Examination (One Hour)
Part IV: Individual Rights

WEEK NINE: MARCH 14 – 18

Tuesday, March 15
“Incorporation”: The Application of the Bill of Rights to the States
Textbook, pp. 504-16, 529-31
Ilya Shapiro and Josh Blackman, The Once and Future Privileges and Immunities Clause (2019) (on TWEN)

Barron v. Mayor & City Council of Baltimore (1833)
The Slaughterhouse Cases (1872)
Saenz v. Roe (1999)
Timbs v. Indiana (2019)

Thursday, March 17
“State Action”
Textbook, pp. 540-43, 546-51, 561-71

Jackson v. Metropolitan Edison Company (1974)
Manhattan Community Access Corp. Halleck (2019)
Burton v. Wilmington Parking Authority (1961)
Moose Lodge No. 107 v. Irvis (1972)
Norwood v. Harrison (1973)

Friday, March 18
Substantive Due Process (Origins)
Textbook, 581-84, 586-95, 599-606

Lochner v. New York (1905)
Muller v. Oregon (1908)
West Coast Hotel Co. v. Parrish (1937)
United States v. Carolene Products Co. (1938)
Williamson v. Lee Optical (1955)

WEEK TEN: MARCH 21 – 25

Tuesday, March 22
Equal Protection, Part 1: The Rational Basis Test
Textbook, pp. 683-98, 705-11

Romer v. Evans (1996)
U.S. Department of Agriculture v. Moreno (1973)
City of Cleburne, Texas v. Cleburne Living Center, Inc. (1985)
Thursday, March 24
Equal Protection, Part 2: Classifications Based on Race and National Origin
Textbook, pp. 711-28
Recommended: More Perfect Podcast—American Pendulum I
(Korematsu) and American Pendulum II (Dred Scott) (Both in Season 2)
Recommended: *Is Korematsu Good Law?* (on TWEN)

*Dred Scott v. Sandford* (1857)
*Korematsu v. United States* (1944)
*Loving v. Virginia* (1967)

Friday, March 25
Equal Protection, Part 3: Segregation and Its Aftermath
Textbook, pp. 728-38, 775-90

*Plessy v. Ferguson* (1896)
*Brown v. Board of Education* (1954)

WEEK ELEVEN: MARCH 28 – APRIL 1

Tuesday, March 29
Equal Protection, Part 4: Facially Neutral Laws with Discriminatory Impact
Textbook, pp. 738-54

*Washington v. Davis* (1976)
*Palmer v. Thompson* (1971)

Thursday, March 31
Equal Protection, Part 5: Laws Benefitting Minorities
Textbook, pp. 790-803, 825-32
*Justice Thomas’s Equality Canon* (2017) (on TWEN)

*Fisher v. University of Texas, Austin* (2016)
Friday, April 1
Equal Protection Part 6: Alienage Classifications
Textbook, pp. 876-91

Graham v. Richardson (1971)
Foley v. Connellie (1978)
Ambach v. Norwick (1979)

WEEK TWELVE: APRIL 4 – 8

Tuesday, April 5
Equal Protection, Part 7: Gender Classifications
Textbook, pp. 836-50, 854-59
Recommended: More Perfect Podcast—Sex Appeal (Season 2)

Frontiero v. Richardson (1973)
Craig v. Boren (1976)
Orr v. Orr (1979)
Mississippi University for Women v. Hogan (1982)

Thursday, April 7
Equal Protection, Part 8: Gender Classifications (continued)
Textbook, pp. 859-66, 867-75
Recommended: OLC Opinion on the Equal Rights Amendment (2020) &
Opinion of Chair Maloney on ERA Ratification (2021) (both on TWEN)

Michael M. v. Superior Court of Sonoma County (1981)
Nguyen v. Immigration & Naturalization Service (2001)

MBE Questions on Equal Protection

Friday, April 8
Substantive Due Process (Reprise)
Fundamental Rights, Part 1: The Right to Marry
Textbook, pp. 903-10, 915-29
Kim Davis Statement by Justices Thomas and Alito (2020 (on TWEN)

Loving v. Virginia (1967)
Kim Davis Statement by Justices Thomas and Alito (2020)
WEEK THIRTEEN: APRIL 11 – 15

Tuesday, April 12
Fundamental Rights, Part 2: The Right to Custody and Control of One’s Children
Textbook, pp. 929-50

Stanley v. Illinois (1972)
Moore v. City of East Cleveland (1977)
Meyer v. Nebraska (1923)
Pierce v. Soc. of the Sisters of the Holy Names of Jesus and Mary (1925)

Thursday, April 14
Fundamental Rights, Part 3: The Right to Procreate and
The Right to Abortion
Textbook, pp. 950-52, 961-68, 970-81
Recommended: Joshua J. Craddock, Note, Protecting Prenatal Persons: Does
the Fourteenth Amendment Prohibit Abortion? (2017)

Buck v. Bell (1927)
Skinner v. Oklahoma (1942)
Roe v. Wade (1973)
Planned Parenthood v. Casey (1992)

Friday, April 15
Fundamental Rights, Part 4: Government Regulation of Abortion
Textbook, pp. 1005-11, 982-87
June Medical Servs. v. Russo (2020) (Chief Justice Roberts’s concurrence)
on TWEN

Planned Parenthood v. Danforth (1976)
Whole Women’s Health v. Hellerstedt (2016)
June Medical Servs. v. Russo (2020) (Chief Justice Roberts’s concurrence)
WEEK FOURTEEN: APRIL 18 – 22

Tuesday, April 19
Fundamental Rights, Part 5: The Right to Physician-Assisted Suicide and the Right to Sexual Liberty
Textbook, pp. 1023-28, 1030-42
Recommended: More Perfect Podcast—The Imperfect Plaintiffs (Season 1)


MBE Questions on Fundamental Rights

Thursday, April 21
The Free Exercise Clause, Part 1
Textbook, pp. 1675-77, 1681-99

Sherbert v. Verner (1963)
Employment Division v. Smith (1990)

Friday, April 22
The Free Exercise Clause in the Time of the Pandemic
Roman Catholic Diocese of Brooklyn v. Cuomo (2020) (on TWEN)
Dr. A. v. Hochul (2021) (on TWEN)
Recommended: Josh Blackman, What Rights are “Essential”? The 1st, 2nd, and 14th Amendments in the Time of Pandemic (2020) (on TWEN)

Roman Catholic Diocese of Brooklyn v. Cuomo (2020)
Dr. A. v. Hochul (2021)

WEEK FIFTEEN: APRIL 25 – 29

Tuesday, April 26
The Establishment Clause, Part 1
Textbook, pp. 1717-30, 1782-90
Liam Stack, Satan is in the Illinois Capitol. Because It’s the Holidays!
NY Times (2018) (on TWEN)

Lemon v. Kurtzman (1971)
County of Allegheny v. ACLU (1989)
Thursday, April 28

Class Evaluations

The Establishment Clause, Part 2: Prayer in Public Places
Textbook, pp. 1747-62

Epperson v. Arkansas (1968)
Marsh v. Chambers (1983)
Town of Greece v. Galloway (2014)

Friday, April 29

Q and A Before Final Examination

**MBE Questions on the First Amendment Religion Clauses**

END OF THE SEMESTER