

Constitutional Law I (Law 121-002)

Autumn 2009

CLASS INFORMATION AND SYLLABUS

(November 3, 2009)

- Instructor:** Nelson Lund
(703) 993-8045
- Office Hours:** Room 433-I, by appointment
- Required Text:** Brest, Levinson, Balkin, Amar, & Siegel *Processes of Constitutional Decisionmaking: Cases and Materials*, Aspen 5th ed. (2006) & 2009 Supplement
- Assignments:** The syllabus below will be posted on the law school's web site. Regular attendance and class preparation are mandatory.
- Evaluation:** There will be an examination at the end of the semester. You will be responsible for all of the readings, including those that are not discussed in class. Final grades may be raised or lowered to reflect the quality of class participation.
- The casebook we're going to use is somewhat unconventional. It covers some historical material in greater depth than most casebooks, and correspondingly provides relatively superficial coverage of some important areas of modern doctrine. In partial compensation for this neglect, I will ask you to read the full text of some judicial opinions. In addition to plugging a few of the gaps in the casebook's coverage, this exercise should give you a better sense of the Court's approach to the law than you can acquire by reading only the edited snippets that appear in case books.
 - You may find the material in this course more confusing than the material in most of your first year courses. To some extent, you will be able to reduce this confusion by reading the assignments carefully and paying attention in class. In many respects, however, the law itself is not clear. One of your goals during the semester should be to figure out where the law is clear, and why it is often unclear. This will not be easy.

I recommend that you postpone the use of study aids such as commercial outlines and nutshells until the end of the semester, when you are reviewing the course materials for the exam. These study aids can be useful in helping you to organize and synthesize the readings, but they can be highly misleading if you don't struggle seriously with the underlying cases first.

- Academic Regulation 4 has strict and specific rules about attendance, which I do not have the authority to waive (see <http://www.law.gmu.edu/academics/regulations#Anchor62>). If you have questions or concerns about these rules, please contact the director of student academic affairs.
- I do not believe that it is either immoral or insulting to me personally when students fail to prepare for class. Class participation, however, is educationally important, and it requires coming to class prepared.

In recent years, I and others have noticed an increase in the number of students who are not paying attention to what's going on in the classroom. It seems that portable computers, especially with internet access, are more efficient sources of distraction than old-fashioned daydreaming. I don't find this offensive, but I do think it undermines the purpose of having class discussions, and everyone's time is wasted when I call on someone who has not been paying attention. Accordingly, **computers may not be used during class in this course.**

In order to encourage regular preparation for class, and attentiveness during class, the following additional policies will apply:

- No sound recording devices of any kind may be used during class. This is partly to encourage attentiveness during class, and partly to encourage participation by students who understandably don't relish the prospect that their contributions will be immortalized.
- When employing the Socratic method, I will call on students at random. That means that in any given class, you will have the same chance of being called on as anyone else, no matter how frequently or recently you've been called on before.
- Everyone is expected to pay attention in class, *not just to me but also to what other students are saying*, and to be ready to join the discussion. This is more important than taking extensive notes. Anyone who, when called on, seems not to have been paying attention will be marked down as unprepared.

Assignments

Class 1 - August 20, 2009

The Constitution of the United States (Casebook, pp. 1-15)

Casebook, pp. 19-51

Class 2 - August 25, 2009

Casebook, pp. 51-78, 81-95

Class 3 - August 27, 2009

Casebook, pp. 97-140

Class 4 - September 1, 2009

Casebook, pp. 140-86

Class 5 - September 3, 2009

Casebook, pp. 187-212

Class 6 - September 8, 2009

Casebook, pp. 212-60

Class 7 - September 10, 2009

Casebook, pp. 261-99

Class 8 - September 15, 2009

Casebook, pp. 301-39

Casebook Supplement, pp. 1-9

September 17, 2009

No class

Class 9 - September 22, 2009

Casebook, pp. 351-85

Class 10 - September 24, 2009

Casebook, pp. 412-60

Class 11 - September 29, 2009

Casebook, pp. 471-83, 499-530

Class 12 - October 1, 2009

Casebook, pp. 549-600

Class 13 - October 6, 2009

Casebook, pp. 600-24

Gonzales v. Raich, 545 U.S. 1 (2005)

[for all cases that are assigned outside the casebook, you must read all the opinions, including any concurrences and/or dissents, except as noted in this syllabus]

Class 14 - October 8, 2009

South Dakota v. Dole, 483 U.S. 203 (1987)

Casebook, pp. 629-49

Casebook Supplement, pp. 61-67

[Autumn Recess]

Class 15 - October 15, 2009

Casebook, pp. 649-53

Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985)

Casebook, pp. 661-63

Class 16 - October 20, 2009

Casebook, pp. 663-711

Class 17 - October 22, 2009

U.S. Term Limits v. Thornton, 514 U.S. 779 (1995)

Casebook, pp. 727-29

Class 18 - October 27, 2009

Casebook, pp. 729-34

United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgt. Auth., 550 U.S. 330 (2007)

Class 19 - October 29, 2009

Casebook, pp. 734-36

United Building & Constr. Trades Council v. Mayor and Council of Camden, 465 U.S. 208 (1984)

Bach v. Pataki, 408 F.3d 75, 76-82, 86-94 (2d Cir. 2005) [Parts I-II, V]

Class 20 - November 3, 2009

Casebook, pp. 749-61; 881-85

In re Sealed Case, 121 F.3d 729 (D.C. Cir. 1997)

Class 21 - November 5, 2009

Casebook, pp. 761-95

Class 22 - November 10, 2009

Casebook, pp. 795-817

Clinton v. City of New York, 524 U.S. 417 (1998)

Class 23 - November 12, 2009

Casebook, pp. 819-41

Class 24 - November 17, 2009

Casebook, 841-71

Class 25 - November 19, 2009

Casebook, pp. 871-78

Casebook Supplement, pp. 93-123

Class 26 - November 24, 2009

Casebook Supplement, pp. 68-93

Casebook, pp. 878-81

Casebook, pp. 79-81

Casebook Supplement, pp. 123-31

Statement of President Obama on Signing the Omnibus Appropriations Act, 2009, March 11, 2009,
http://www.whitehouse.gov/the_press_office/Statement-from-the-President-on-the-signing-of-HR-1105/

[Thanksgiving Recess]

Class 27 - December 1, 2009

Casebook, pp. 887-92

(Walter) Nixon v. United States, 506 U.S. 224 (1993)

Bush v. Gore, 531 U.S. 98 (2000)