Constitutional Law I (Law 121)
Autumn 2015

CLASS INFORMATION AND TENTATIVE SYLLABUS
(September 13, 2015)

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
6th ed. (2014)

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 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. 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, and I recognize that evening students face special challenges in keeping up with the readings. Class participation, however, is educationally important, and it requires coming to class prepared. For that reason, final grades may be raised or lowered to reflect the adequacy of class participation. If you are not prepared when called on in a given class, it’s better to say so than to waste everyone’s time by trying to wing it.

- 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. Some students also make the mistake of treating the class as though it were a lecture course in which their role is to copy down as much as possible of what the instructor says. 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 of having their contributions 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 my questions and comments 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 - Thursday, August 20, 2015
The Constitution of the United States (Casebook, pp. 1-15)
Casebook, pp. 17-55

Class 2 - Tuesday, August 25, 2015
Casebook, pp. 55-85

Class 3 - Thursday, August 27, 2015
Casebook, pp. 87-117

Class 4 - Tuesday, September 1, 2015
Casebook, pp. 117-60

Class 5 - Thursday, September 3, 2015
Casebook, pp. 160-77, 189-216

Class 6 - Tuesday, September 8, 2015
Casebook, pp. 217-49

Class 7 - Thursday, September 10, 2015
Casebook, pp. 249-301
Class 8 - Tuesday, September 15, 2015
Casebook, pp. 301-46

Class 9 - Thursday, September 17, 2015
Casebook, pp. 347-405

Class 10 - Tuesday, September 22, 2015
Casebook, pp. 405-44

Class 11 - Thursday, September 24, 2015
Casebook, pp. 476-503


Class 12 - Tuesday, September 29, 2015
Casebook, pp. 503-29

Thursday, October 1, 2015
[Class cancelled — makeup class on Thursday, December 3, 2015]

Class 13 - Tuesday, October 6, 2015
Casebook, pp. 553-91

Class 14 - Thursday, October 8, 2015
Casebook, pp. 613-48
[Autumn Recess]

Class 15 - Thursday, October 15, 2015
Casebook, pp. 648-95

Class 16 - Tuesday, October 20, 2015
Casebook, pp. 697-752

Class 17 - Thursday, October 22, 2015
Casebook, pp. 752-61

[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]
Casebook, pp. 763-76

Class 18 - Tuesday, October 27, 2015
Casebook, pp. 776-825

Class 19 - Thursday, October 29, 2015
Casebook, pp. 825-29


Class 20 - Tuesday, November 3, 2015
Casebook, pp. 839-888
Class 21 - Thursday, November 5, 2015


Class 22 - Tuesday, November 10, 2015


Class 23 - Thursday, November 12, 2015

Casebook, pp. 906-10

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

Casebook, pp. 911-12


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

Class 24 - Tuesday, November 17, 2015

Casebook, pp. 926-37, 950-83

Class 25 - Thursday, November 19, 2015

Casebook, pp. 983-1005

Class 26 - Tuesday, November 24, 2015
Casebook, pp. 1007-27


[Thanksgiving Recess]

Class 27 - Tuesday, December 1, 2015
Casebook, pp. 1027-73

Class 28 - Thursday, December 3, 2015
