Constitutional Law I (Law 121-002)
Autumn 2016

CLASS INFORMATION AND TENTATIVE SYLLABUS
(September 26, 2016)

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. 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 18, 2016
Bank of the United States and the Scope of Federal Power

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

Casebook, pp. 17-55

Class 2 - Tuesday, August 23, 2016
Bank of the United States and the Scope of State Power

Casebook, pp. 55-85

Class 3 - Thursday, August 25, 2016
The Scope of State and Federal Sovereignty

Casebook, pp. 87-117

Class 4 - Tuesday, August 30, 2016
Judicial Review

Casebook, pp. 117-60

Class 5 - Thursday, September 1, 2016
Natural Law, Regulation of Commerce, and Federal Spending

Casebook, pp. 160-77, 189-216

Class 6 - Tuesday, September 6, 2016
Federal and State Regulation of Commerce

Casebook, pp. 217-49
Class 7 - Thursday, September 8, 2016
Slavery
Casebook, pp. 249-301

Class 8 - Tuesday, September 13, 2016
Secession and the Civil War
Casebook, pp. 301-46

Thursday, September 15, 2016
No class

Class 9 - Tuesday, September 20, 2016
Reconstruction Amendments
Casebook, pp. 347-405

Class 10 - Thursday, September 22, 2016
Racial Discrimination
Casebook, pp. 405-44

Class 11 - Tuesday, September 27, 2016
Economic Substantive Due Process
Casebook, pp. 476-503


Class 12 - Thursday, September 29, 2016
Structural Limits on Federal Power
Casebook, pp. 503-29
Class 13 - Tuesday, October 4, 2016
Regulation of the Economy
Casebook, pp. 553-91

Class 14 - Thursday, October 6, 2016
Class cancelled by provostorial decree

[Autumn Recess]

Class 15 - Thursday, October 13, 2016
Regulation of the Economy
Casebook, pp. 613-48

Class 16 - Tuesday, October 18, 2016
Racial Discrimination
Casebook, pp. 648-95

Class 17 - Thursday, October 20, 2016
Limits on the Commerce Power
Casebook, pp. 697-752

Class 18 - Tuesday, October 25, 2016
Spending Power
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 19 - Thursday, October 27, 2016
Treaty Power and the “Reconstruction Power”

Casebook, pp. 776-825

Class 20 - Tuesday, November 1, 2016
Federal Authority over the States

Casebook, pp. 825-29


Class 21 - Thursday, November 3, 2016
Federal Authority over the States

Casebook, pp. 839-888

Class 22 - Tuesday, November 8, 2016
State Authority over Federal Elections


Class 23 - Thursday, November 10, 2016
State Authority over Federal Elections


Class 24 - Tuesday, November 15, 2016
Dormant Commerce Power and Privileges and Immunities Clause

Casebook, pp. 906-10

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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 25 - Thursday, November 17, 2016
Executive Power
Casebook, pp. 926-37, 950-83

Class 26 - Tuesday, November 22, 2016
Legislative Veto and Line-Item Veto
Casebook, pp. 983-1005


[Thanksgiving Recess]

Class 27 - Tuesday, November 29, 2016
Executive Power
Casebook, pp. 1007-27


Class 28 - Thursday, December 1, 2016
Executive Power and Political Questions
Casebook, pp. 1027-73