

**CONSTITUTIONAL LAW II
SPRING 2010, Part I
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PROFESSOR BERGIN**

Class Meets: M/W 9:00-10:25

Office: Room 409; phone not yet assigned

Office Hours: Monday, 10:45-12:00, and by appointment.

Text:

Geoffrey R. Stone, et al., Constitutional Law (2009)

Bergin & Rhodes, Skills & Values, The First Amendment (2010)

TWEN:

Submit your e-mail address on the TWEN coursepage by following the links at www.lawschool.westlaw.com/twen. You do NOT need to send your e-mail address to me personally.

Be sure to use an e-mail address you check frequently, as this is how I will communicate important information to you throughout the semester.

You will need to register with TWEN prior to the first day of class to access important material including the syllabus. If you have a problem navigating TWEN you can contact the Westlaw representative on campus.

Attendance:

An attendance roster will be distributed at the start of each class for you to sign. If the roster does not make it to your row, you are responsible for finding it at the end of class and signing your name. You must sign the roster on the day of attendance during the class session. If your name is not on the roster by the time you leave class, you will be marked absent. Signing the roster after you have left class is not allowed.

You are responsible for tracking the number of accumulated absences. Neither I nor my secretary will provide periodic updates of how many absences you have missed, though you will be notified before you meet the maximum number of absences before being automatically withdrawn.

Recording of class:

Recording of the class by any means or device is not permitted.

Assignments:

Complete the assigned reading, fully brief all cases, and arrive prepared for mandatory recitation. You are also expected to look up any unfamiliar word in a legal dictionary and understand its meaning.

Reading assignments are numbered. Unless you are informed otherwise, the assignment for each class will include the remainder of the current lesson, plus the entire subsequent numbered lesson.

Assignments may be supplemented with additional handouts to reflect legal developments that emerge during the semester. You will be notified if this occurs.

Commercial Briefs, Outlines and Supplements:

Commercial briefs or those publicly available on-line are never allowed in class, though I do not have an objective to students reading them outside of class because they may offer some assurance that you have at least identified the correct issue or rule of law. Beyond that, they are of limited value because they provide nothing more than a skeletal framework of the case. Moreover, you are in law school to learn how to read cases, understand legal reasoning, and identify rules of law on your own. Canned briefs are useless in the real practice of law.

Many of you will have outlines from the internet or from students who took the course in a previous semester. The decision to rely on another student's outline is your choice, though you are cautioned against doing so. First, even outlines from students who did well in the course may be missing critical information. Important parts of class discussion may not make it into another student's outline - not because it is unimportant, but because that student knew the information reflexively.

Second, and more importantly, most students learn by doing. The process of making your own outline forces you to think through the material until you are able to articulate it in short-form and express it on paper. The manual process of transferring your thoughts onto paper (or a keyboard) is a form of active learning that enables your brain to store and retain information more effectively than passive reading alone. For these reasons, you are at a distinct disadvantage if you rely on an outline generated by another student. Think of "outline" as a verb, not a noun.

Commercial supplements, like commercial briefs, are not allowed in class, though you should refer to them for a general overview of new concepts and themes. Choose the supplement that best fits your needs.

For a general overview of unfamiliar concepts, “Federalism,” “The Commerce Clause,” or “Equal Protection,” for example, consider the *Turning Point Series* on Constitutional Law published by Foundation Press, or the *Nutshell* series published by West. Each will introduce you to the subject matter and provide a foundation upon which to build your knowledge.

Constitutional Law, Principles and Policies by Chemerinsky or *Constitutional Law* by Nowak and Rotunda, provide a more comprehensive discussion of individual cases within each topic, but is still easy to follow.

For a more pointed discussion of individual cases as well as practice exercises, you might consider *Examples and Explanations* published by Aspen Law and Business. The *Q&A* series on Constitutional Law published by Lexis provides multiple choice and essay practice questions as well.

Be sure to clarify anything from these resources that sounds inconsistent with something we have read or discussed in class. This outside material should help you, not provoke anxiety or confusion.

Also, as with outlines, you should rely on these sources sparingly. Constitutional law, and law school generally, is about more than simply knowing the answer. It is about acquiring the skills necessary to find the answer. In practice, you will be called upon to read and understand cases that are not included in a hornbook. You are here to learn how to do that.

Good luck.

Reading Assignments Part I

State Action Doctrine

1. Intro, 1543-44
Civil Rights Cases, 1544-47
DeShaney, Flagg Bros., Lugar,
1549-56
2. Shelley, 1561-63
Burton, 1570-73
Marsh, 1587-89

Implied Fundamental Rights

3. Incorporation
Twinning, 729-30
Palko, 730-31
Adamson, 731-33
Duncan, 733-35
4. Fundamental Rights and Equal Protection
Intro, 762
Skinner, 762-74
Note 1, 766-67
Harper, 767-68
Reynolds, 775-79 (omit Harlan
opinion)
5. Fundamental Rights and Substantive
Due Process
Intro, 831-32
Griswold, 832-39
Roe, 43-49
6. Notes 6-7, pp. 853-55
Maher, Harris, 855-59
Casey, 864-82 (omit § III of
O'Connor opinion)
7. Carhart, 883-97
TWEN page: Regulating Late Term
Abortions

8. Zablocki, 902-04
Lawrence, 912-22
9. Cruzan, 927-32 (omit Scalia opinion)
Glucksberg, 933-40

Procedural Due Process

10. Intro, 942-43
Roth, Perry, Loudermill, 943-47
Matthews, 952-55