

Reading Assignments for Constitutional Law II

Professor Tarkington

Below is the reading for the semester. The abbreviation CB refers to the Stone case book, *Constitutional Law*. The abbreviation “Supp.” refers to the 2010 Supplement to the casebook. Handouts will be distributed in class. I expect you to read all of the materials in the assigned page range, including all of the note cases, which we will generally discuss in class. However, when there is a particularly important note case, I will flag it by including its case name with the denomination “note” in the list of primary cases.

I expect you to read and be prepared every day. Your participation score will be lowered if you are **not prepared or not present** on a day when you are called upon. If you must be absent, you may email me in advance of class and seek an excuse. If your absence is excused by me (and I reserve sole discretion in determining whether an absence will be excused), it will **not** affect your participation score and it will **not** count as one of your two passes.

Class Period	Topic	Reading Assignment
	I-State Action and Government Neutrality	
1-(T) January 18	State Action Judicial Action and the Theory of Government Neutrality	CB 1543–69 (<i>The Civil Rights Cases</i> note, <i>DeShaney</i> note, <i>Flagg Bros.</i> , and <i>Shelly</i>)
2-(Th) January 20	Constitutionally Impermissible Departures from Neutrality II-Implied Fundamental Rights A. Methods of Interpretation	CB 1570–80 (<i>Burton</i>) CB 711–29 (<i>The Slaughter-House Cases</i>) Supp. 75–76
3-(T) January 25	B. Incorporation	CB 729–35 Supp. 76–98 (<i>McDonald</i>)
4-(Th) January 27	C. Early Substantive Due Process Rise and Fall of the Lochner Era	CB 735–61 (<i>Lochner</i> , <i>Carolene Products</i> note)
5-(T) February 1	The Contracts Clause D. Modern Substantive Due Process Right to Privacy	CB 961–68 (<i>Blaisdell</i>) CB 831–43 (<i>Griswold</i>) Supp. 99–100
6-(Th) February 3	Abortion	CB 843–855 (<i>Roe</i>)
7-(T) February 8	Abortion Cont’d	CB 864–98 (<i>Casey & Gonzales</i>) Supp. 100
8-(Th) February 10	Family & Sexual Autonomy	CB 899–927 (<i>Moore</i> note, <i>Zablocki</i> note, <i>Bowers</i> note, <i>Lawrence</i>)
9-(T) February 15	Right to Die	CB 927–42 (<i>Cruzan</i> , <i>Glucksberg</i>)
10-(Th) February 17	E. Procedural Due Process	CB 942–61 (<i>Loudermill</i> , <i>Mathews</i>) Supp. 101–04
11-(T) February 22	Review: Procedural and Substantive Due Process	No New Reading Assignment (but you may want to start working on the next one—it is quite long). Also, if you failed to read it for our January 25 th class, read <i>McDonald</i> (Supp. 76–98).
	III. The First Amendment	
12-(Th) February 24	A. The Free Speech Clause Theories of Free Speech Protection Subversive Advocacy & the Dangerous Idea	CB 1017–46 (<i>Shaffer</i> , <i>Masses</i> , <i>Schenk</i> , <i>Abrams</i> , <i>Gitlow</i>) Supp. 171
13-(T) March 1	Subversive Advocacy Cont’d	CB 1047– 1071 (<i>Whitney</i> esp. Brandeis concurrence; <i>Dennis</i> ; <i>Brandenburg</i>)

14-(Th) March 3	Subversive Advocacy by Attorneys as Advocate “The first thing we do, let’s kill all the lawyers”	<i>Holder v. Humanitarian Law Project</i> — handout <i>NAACP v. Button</i> — handout
15-(T) March 8	The Central Meaning of the First Amendment	CB 1129–1147 (<i>New York Times v. Sullivan</i> Supp. 115 <i>Garrison v. Louisiana</i> — handout
16-(Th) March 10	Threatening Speech Hostile Audience	CB 1071–76 & 1239–49 (<i>Black</i>) CB 1076–84 (<i>Cantwell and Ferier</i>)
17-(T) March 15	Hostile Audience, Fighting Words & Hate Speech	CB 1084–91, 1226–39 (<i>Chaplinsky, R.A.V.</i>)
18-(Th) March 17	Low-Value Speech: Commercial Advertising	CB 1152–72 (<i>Virginia Pharmacy, Central Hudson</i> note) <i>Bates</i> — handout
March 21-25	Spring Break	
19-(T) March 29	Low-Value Speech: Obscenity	CB 1172–78, 1181–91 & 1249–53 (<i>Roth</i> note, <i>Miller, Slaton</i>) Supp. 128–29 (“Cyber gender harassment”)
20-(Th) March 31	Low-Value Speech: Profanity & Indecency	1201–21 (<i>Cohen, Pacifica</i> note)
21-(T) April 5	Content-Neutral Restrictions The Public Forum Doctrine	1255–77, 1282–92, 1297–1305
22-(Th) April 7	Symbolic Conduct	1325–40 (<i>O’Brien</i> & flag burning note cases)
23-(T) April 12	Campaign Finance Regulation	CB 1346–57; 1365–71 (<i>Buckley, McConnell</i>) Supp. 152–68 (<i>Citizen’s United</i>)
24-(Th) April 14	B. The Establishment Clause Noncoercion	CB 1443–71 (<i>Lee</i>) Supp. 177
25-(T) April 19	Nonendorsement Incidental Aiding	CB 1471–1507 (<i>Lynch; Mueller, Zelman</i> note) Supp. 174–75
26-(Th) April 21	C. The Free Exercise Clause Required Accommodations	CB 1507–24 (<i>Yoder</i> note, <i>Smith</i>)
27-(T) April 26	Permissible Accommodations	CB 1524–41 (<i>Amos, Bullock</i> note, <i>Grumet</i> note)